

Editorial Standards Findings

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

October & November 2014, issued January 2015

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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://www.bbc.co.uk/bbctrust/assets/files/pdf/about/how_we_operate/committees/2011/esc_tor.pdf.

At the October meeting of the ESC, the Committee comprised six Trustees: Alison Hastings (Chairman), Sonita Alleyne, Richard Ayre, David Liddiment, Bill Matthews and Nicholas Prettejohn. At the November meeting of the ESC, the Committee comprised five Trustees: Richard Ayre (Chairman), Sonita Alleyne, Diane Coyle, Bill Matthews and Nicholas Prettejohn. The Committee is advised and supported by the Trust Unit.

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

The Committee may consider appeals concerning complaints which allege that:

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

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

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

¹ http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2012/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 findings

Asian Network Reports, BBC Asian Network, 1pm and 5pm, 23 April 2014, and related alerts on social media and online news reports

Summary of finding

The complainant contacted the BBC to complain about the way in which parents who had objected to being allocated places at a Sikh school were repeatedly referred to by the BBC in broadcasts, online and in social media as “white parents”. He felt this wrongly framed a debate about religious freedom in education, as a race issue. Additionally, the complainant alleged he was not dealt with fairly when he was interviewed for the BBC’s reports, noting that he might not have consented to the interview had he known how it was going to be framed.

The Committee concluded that:

- while appreciating that the station served the UK’s South-Asian community in particular, it did not accept that using ‘non-Sikh’ instead of white would have been inappropriate because that would usually be taken by the audience to refer to Hindus and Muslims.
- none of the output, with the exception of one of the articles on the news website, had specified that the children were non-Sikh and incorrectly suggested that the story would potentially concern race, rather than religious freedom in education.
- all the output, with the exception of one of the articles on the news website, implied that white parents in general were objecting to their children going to the school, rather than the story being about a particular group of non-Sikh parents.
- the BBC could not rely on the substantive item for context, given that many users would be scanning summaries online or reviewing the social media alerts, and not necessarily clicking through to the full story.
- while the comments on the story showed only one person had seen this as a race issue, the Committee noted that those commenting were members of the public who had particularly engaged with the story.
- the fact two of the broadcast headlines did not refer to the parents being white demonstrated that it was possible to explain this story with brevity for this audience without mentioning that the parents were white. This undermined the argument that the story could have been misunderstood by the audience without the information being given straightaway that the parents were non-Asian.
- both introductions to the substantive item suggested that the story was about race, rather than religious freedom in education but nothing in the substantive report had supported the context the story had been given by the introduction.
- while the main reports would have lessened the impact of the imprecise language used in the introduction, this did not entirely mitigate the lack of accuracy. The Committee therefore concluded that the introductions to the main reports were

not duly accurate and contained language that was not clear or precise.

- the decision not to edit the material after the complainant contacted the reporter following the first bulletin was a misjudgement. However, the Committee did not accept that this was a deliberate editorial decision to mislead the audience about the true nature of the story but rather was a professional judgement made in good faith in a busy newsroom on the day.
- the impression was given that white (rather than simply non-Sikh) parents objected to their children being sent to Sikh schools. This did not present an impartial account of the reasons for the parents' position. The Committee therefore concluded that there had been a lack of due impartiality (albeit unwittingly and accidentally) in that it was implied that the parents' objections to faith education were on the grounds of race.
- the complainant had used the interview to set out his position and it had been included in a way that did not undermine or distort his position or cast doubt that he was speaking about anything other than faith education.
- the audience would not, from the context or content of the interview, have concluded that he or the National Secular Society was putting forward an argument that was about race.
- there was no evidence that the BBC had intended to deceive or mislead the complainant. Nor did the Committee feel that the complainant's contribution was used unfairly or in a manner that differed from what he had consented to. In those circumstances the Committee considered he and the National Secular Society had been appropriately informed about the nature and context of their contribution in line with the Editorial Guidelines.
- the BBC had been open, straightforward and fair in its dealing with the complainant in accordance with guideline 6.2.1, because of the fair way his contribution had been used and because there was no evidence of dishonesty or an intention to mislead on the part of the BBC. It was acknowledged that a mistake was made in the language used in some material; however, this editorial misjudgement by the BBC did not affect the fairness of the complainant's contribution.
- while the BBC made a mistake by not amending the introduction, the BBC's timely investigation and analysis of the complainant's concerns was evidence of the respectful treatment of a contributor. The Committee noted more generally, that there was no evidence to suggest that the BBC had treated the complainant in a disrespectful manner. The Committee considered that guideline 6.4.1 had not been breached because the complainant had been treated honestly and with respect.
- In light of those reasons, the Committee concluded that the guidelines on Fairness, Contributors and Consent had not been breached.

The complaint was partially upheld

For the finding in full see pages 6 to 12.

The One Show, BBC One, 7 February 2014

Summary of finding

The complainant contacted the BBC to complain that an item on *The One Show* about the escape of the spy George Blake was inaccurate in suggesting that the complainant's motives for helping in the escape were an issue at his subsequent trial.

The Committee concluded that:

- the reporter had been duly accurate in his account of the trial.
- the reporter's words had been well sourced and not misleading.
- in context, it was not unfair for the presenter to comment that the complainant was still "very chipper" about his actions, or for the reporter to point out the exceptional nature of the escape.
- it was not necessary, in order to achieve fairness, to invite the complainant to take part in the discussion or to subsequently offer him a right of reply.
- the complainant's motives had been properly summarised and well signposted to the audience and that the programme had not been unfair by omitting to state explicitly that the complainant had been motivated by humanitarian considerations.
- there was no need to offer the complainant a right of reply.

The complaint was not upheld

For the finding in full see pages 13 to 18.

Appeal Findings

Asian Network Reports, BBC Asian Network, 1pm and 5pm, 23 April 2014, and related alerts on social media and online news reports

Background

BBC Asian Network is a national speech and music station serving the UK's South Asian Community. *Asian Network Reports* is the station's Monday to Friday half-hour news programme broadcast at 1pm and 5pm. Links referred to in this finding were current at the time the ESC considered the appeal but they may change over time.

The complaint

The complaint concerned the introductions to a broadcast news report on the BBC Asian Network, various alerts on social media and online news pages leading to the report. The report itself, about which there was no complaint, concerned the allocation by the local authority of places at a Sikh faith school to non-Sikh children against their parents' wishes.

The complainant, who was acting on behalf of the National Secular Society, said the BBC had repeatedly referred to the objecting parents as "white parents" in trails, so wrongly framing a debate about religious freedom in education as a race issue.

Additionally, the complainant said he was not dealt with fairly or openly when he was interviewed for the item and might not have consented to contribute if he had known how his interview was going to be framed.

Stages 1 and 2

A range of arguments was raised in Stage 1 and Stage 2 correspondence, during which responses were made by the BBC. The BBC's Editorial Complaints Unit (ECU) did not uphold the allegations.

Appeal to the BBC Trust

The complainant appealed to the Editorial Standards Committee of the Trust requesting that it review the ECU's decision not to uphold his complaint. The complainant made the following allegations:

Point (A) Non-Sikh parents were repeatedly referred to in broadcasts, online and in social media trails as "white parents", framing a debate about religious freedom in education as a race issue.

Point (B) The complainant, speaking on behalf of the National Secular Society was not dealt with fairly and openly. If the National Secular Society had known its contribution was going to be framed in terms of race, it might not have consented to contribute.

Applicable Editorial Guidelines

The sections of the BBC Editorial Guidelines applicable in this case relate to: Accuracy; Impartiality; and Fairness, Contributors and Consent. The full guidelines are at <http://www.bbc.co.uk/editorialguidelines/>.

[Applicable BBC Guidance on the personal use of social networking can be found at: http://www.bbc.co.uk/editorialguidelines/page/guidance-blogs-personal-full](http://www.bbc.co.uk/editorialguidelines/page/guidance-blogs-personal-full).

The Committee's decision

The Committee considered the complaint against the relevant editorial standards, as set out in the BBC's Editorial Guidelines and the relevant aspects of BBC Guidance. The Guidelines are a statement of the BBC's values and standards. In reaching its decision the Committee took full account of all the available evidence, including (but not limited to) a report by an Independent Editorial Adviser.

Point (A) Non-Sikh parents were repeatedly referred to in broadcasts, online and in social media trails as "white parents", framing a debate about religious freedom in education as a race issue.

The Committee noted that there was no dispute between the complainant and the BBC about the accuracy and impartiality of the main reports. It also noted that the BBC agreed with the complainant that the story was about religious freedom in education and not about race, or racial prejudice.

Accuracy

The most relevant parts of the Accuracy guidelines to this aspect of the complaint, the Committee noted, were 3.2.1 and 3.2.2, which underline the requirement for due accuracy in all the BBC's output, and the importance of clear, precise language.

The Committee considered the following tweets from the personal account of the reporter who had compiled the report:

- (i) On [@bbcasiannetwork](#) - White parents refuse to send their children to a Sikh school. Some children given a place at [a] Secondary Academy
- (ii) On [@bbc5live](#) in the next hour to talk about white parents' refusal to send their kids to sikh school - hear more on [@bbcasiannetwork](#) today

The Committee noted that the BBC Guidance on the personal use of social networking made it clear that "when someone clearly identifies their association with the BBC and/or discusses their work, they are expected to behave appropriately when on the Internet, and in ways that are consistent with the BBC's editorial values and policies". It considered that the reporter in this case was clearly identified with the programme and was referring to her work in that context, and it was therefore appropriate to consider these tweets in relation to the BBC's Editorial Guidelines.

The Committee also considered the following from the BBC on Facebook:

- (iii) https://www.facebook.com/BBCAsianNetwork/posts/10154103175860381?stream_ref=5
[BBC Asian Network](#)
[23 April](#) ·

On Asian Network Reports at 1: The white parents refusing to send their children to a new Sikh Free School
<<http://www.bbc.co.uk/programmes/p01xtlb6>>

It also considered two entries on the BBC's website:

- (iv) <http://www.bbc.co.uk/programmes/p01xtlb6>

Parents refuse Sikh school places

A number of white, non-Sikh, parents say they will refuse to send their children to a new Sikh school in Buckinghamshire. A shortage of places in the area has meant some children have been given a place at the [a] Secondary Academy in Stoke Poges from September even though it was not one of their choices.

- (v) <http://www.bbc.co.uk/programmes/b041j769>

White parents' refusal to send children to Sikh school

Duration: 3 hours. First broadcast: Wednesday 23 April 2014

[Name] at 10 is asking, can you understand why white parents don't want to send their children to a Sikh Faith school? Because of a shortage of school places in Buckinghamshire, some white children are being sent to [a] Secondary Academy in Stoke Poges from September - even though it wasn't one of their six choices. The parents aren't happy saying their children won't fit in with the Sikh ethos. What do you think? Do you have sympathy for them?

The Committee considered the explanation put forward by the Asian Network's Head of News (Head of News) for defining the parents in the case as "white", rather than, say, "non-Sikh". He said he believed "that if we hadn't made it clear that the parents were not Asian straightaway then people may have understood it as a story about divisions between Asian cultures...an alternative such as 'non-Sikh' would have been inappropriate because that would usually be taken by the audience to refer to Hindus and Muslims".

It was appreciated by the Committee that the station served the UK's South-Asian community, in particular, and it saw nothing wrong with using the term "white" in context and where appropriate. However, it did not accept the Head of News' argument in this case, given that all accepted the story concerned the allocation of places at a Sikh school to non-Sikh children, rather than the allocation of places to non-Asian children. With the exception of (iv), above, none of the material had specified that the children were non-Sikh. In the view of the Committee the other output listed above incorrectly suggested that the story would potentially concern race, rather than religious freedom in education. Moreover, the Committee considered the output, again apart from (iv), implied that white parents in general were objecting to their children going to the school, rather than the story being about a particular group of non-Sikh parents.

The Committee noted that the Editorial Complaints Unit at Stage 2 of the complaint, reporting on a conversation with the station's Head of News, had said the Head of News "acknowledged the various tweets and headlines, taken in isolation, could have given the impression the story was about race rather than religious or cultural issues". He said that the Head of News had argued that "all the subsequent coverage would have guarded against this".

The Committee considered this argument but concluded that it did not agree. In this case the Committee was of the view that the BBC could not rely on the substantive item for context, given that many users would be scanning summaries online or reviewing the social media alerts, and not necessarily clicking through to the full story.

The Committee also took into account arguments by the BBC that comments on the story showed that all but one person had not seen this as a race issue. However, the Committee noted these were self-selecting members of the public who had particularly engaged with the story. It did not consider they represented all audience members.

The Committee then looked at the following broadcast headlines and introductions to the items:

1pm bulletin

- (vi) [Headline] Our top story this afternoon, the parents refusing to send their children to a new Sikh school. [Clip of man talking] "It's very much faith dominated, the way it's going to be taught, the culture of the school. My daughter, if she does go there, is going to stick out like a sore thumb."...
- (vii) [Introduction to full item] First to the white parents refusing to send their children to a new Sikh school in Buckinghamshire. The school in question is [a] Secondary Academy in Stoke Poges. The parents say it wasn't one of their choices and they're put off by the school's strict no meat policy and Sikh ethos. Asian Network's [reporter] has been talking to some of them.

5pm bulletin

- (viii) [Headline] Also coming up, the parents refusing to send their children to a new Sikh school. [Clip of man talking, as above.]
- (ix) [Introduction] Next, to the white parents refusing to send their children to a new Sikh school in Buckinghamshire [continues as 1pm].

The Committee noted that the broadcast headlines, (vi) and (viii), did not refer to the parents being white. The Committee thought that this demonstrated that it was possible to explain this story with brevity for this audience without mentioning that the parents were white. In the Committee's view this undermined the Head of News' argument that the story could have been misunderstood by the audience without the information being given straightaway that the parents were non-Asian.

However, the Committee agreed that both introductions to the substantive item, (vii) and (ix), suggested that the story was about race, rather than religious freedom in education. The Committee also agreed that nothing in the substantive report had supported the context the story had been given by the introduction. The Committee noted that the Head of News believed that the reports would have guarded against audiences gaining the wrong impression. While the Committee agreed this lessened the impact of the imprecise language used in the introduction, in the Committee's view, this did not entirely mitigate the lack of accuracy. The Committee agreed that this material was not duly accurate.

The Committee therefore concluded that the introductions to the main reports were not duly accurate and contained language that was not clear or precise.

The Committee noted that the complainant had contacted the reporter after the first broadcast bulletin at 1pm and the Head of News had considered whether to amend any of

the material for the 5pm programme. He had said: "We listened through to the coverage and it was clear that the substantive reports were not about race but that the cue [introduction] into it was necessary to provide context and to help our predominantly Asian audience understand the story better. We also reviewed the audience reaction to the story and were satisfied that the vast majority talked about it as a religious issue."

In the Committee's view, this decision was a misjudgement. However, the Committee did not accept that this was a deliberate editorial decision to mislead the audience about the true nature of the story but rather was a professional judgement made in good faith in a busy newsroom on the day.

Upheld – Breach of the Accuracy Guidelines

Impartiality

The Committee considered impartiality in relation to all the material where it had upheld on accuracy.

The Committee noted that the particularly relevant parts of the Impartiality guidelines were 4.2.1 and 4.2.2, which set out respectively that "controversial subjects" should be treated with due impartiality in all BBC output, and that news, in whatever form, should be treated with due impartiality. The Committee agreed that sending children to faith schools against their parents' wishes amounted to a controversial issue in this particular context.

The Committee noted that there are occasions where a breach of accuracy in relation to a controversial subject does not necessarily lead to a breach of impartiality.

In this case, however, the impression was given that white (rather than simply non-Sikh) parents objected to their children being sent to Sikh schools. This did not present an impartial account of the reasons for the parents' position. The Committee concluded that there had been a lack of due impartiality (albeit unwittingly and accidentally) in that it was implied that the parents' objections to faith education were on the grounds of race.

Upheld – Breach of the Impartiality Guidelines

Point (B) The complainant, speaking on behalf of the National Secular Society was not dealt with fairly and openly. If the National Secular Society had known its contribution was going to be framed in terms of race, it might not have consented to contribute.

The Committee, in considering this point from the complainant, referred to the guidelines on Fairness, Contributors and Consent and the requirement (guideline 6.2.1) for honest dealings with contributors, the requirement for individuals to be appropriately informed about the context of their contributions (guideline 6.2.2), and the requirement to treat contributors honestly and with respect (guideline 6.4.1)

The Committee noted that the complainant felt that he had not been dealt with honestly or with respect. He had given his consent (as had others) to participate in a news segment on religious freedom and education. Had he known this would have been inaccurately framed as a race issue with the accompanying insinuation "...[he] would have been much more reluctant to take part. At the very least [he] would have made sure [the National Secular Society's] contribution addressed the inaccurate and misleading framing of the story".

The Committee noted that the BBC did not consider it had framed the issue as being about race and so did not feel it had misled the contributor.

The Committee noted that it had upheld on a breach of the accuracy and impartiality guidelines in relation to the two introductions to the report and also on the various tweets, Facebook alert and online summaries. It also noted that the complainant and the BBC agreed that the actual reports, which the complainant contributed to, were in themselves both duly accurate and duly impartial. The Committee further noted that the complainant had described the main reports as "fair, accurate and balanced".

The Committee noted the full content of the report and the complainant's contribution, which was as follows:

Parish Council member: The school originally was aimed at the Sikh community in Slough, which is a completely different local authority. And if the school was based in Slough then the parents in South Bucks and Buckinghamshire wouldn't be facing this issue.

Reporter: [complainant's name] from the National Secular Society believes this is an issue which will affect many parents up and down the country, regardless of location.

Complainant: There will come a time when there's just not enough places to go round and so I think we really need to start considering moving away from this dangerous, I think, and divisive faith school experiment and moving towards a more inclusive secular education system that respects everyone's beliefs equally.

Reporter: In a statement, Bucks County Council have said parents who prefer their children not to go to a faith school can appeal.

The Committee agreed that the complainant had used the opportunity to set out his position and it had been included in a way that did not undermine or distort his position or cast doubt that he was speaking about anything other than faith education.

The Committee noted that all the mentions of race occurred in supplementary material to the actual reports. The report (which was the same in both bulletins) was put together entirely in terms of faith and not race. Whilst the Committee accepted that the various aspects of BBC output it had upheld against the Accuracy guidelines might incline audiences to the impression that this was a story about race, the Committee did not think the audience would, from the context or content of the interview, have concluded that he or the National Secular Society was putting forward an argument that was about race.

Whilst the Committee understood the contributor had been highly concerned by the outcome of his agreement to contribute to the report, the Committee considered that there was no evidence that the BBC had intended to deceive or mislead the complainant. Nor did it feel that his contribution was used unfairly or in a manner that differed from what the complainant had consented to. In those circumstances the Committee considered he and the National Secular Society had been appropriately informed about the nature and context of their contribution in line with guideline 6.2.2.

The Committee took the view that the BBC had been open, straightforward and fair in its dealing with the complainant in accordance with guideline 6.2.1, because of the fair way his contribution had been used and because there was no evidence of dishonesty or an intention to mislead on the part of the BBC. It was acknowledged that a mistake was

made in the language used in some material; however, this editorial misjudgement by the BBC did not affect the fairness of the complainant's contribution.

It was noted that the complainant raised concerns with the reporter after the lunchtime bulletin had been broadcast. The reporter raised these concerns with the Head of News. The Head of News and the Deputy Head of News reviewed the broadcast and audience's reactions to determine whether any changes needed to be made to the 5pm broadcast. Although, the Committee took the view that the BBC made a mistake by not amending the introduction, the BBC's timely investigation and analysis of the complainant's concerns was evidence of the respectful treatment of a contributor. The Committee noted more generally, that there was no evidence to suggest that the BBC had treated the complainant in a disrespectful manner. The Committee considered that guideline 6.4.1 had not been breached because the complainant had been treated honestly and with respect.

In light of those reasons, the Committee concluded that the guidelines on Fairness, Contributors and Consent had not been breached.

The Committee did not uphold on Fairness, Contributors and Consent.

Finding: Upheld in relation to Accuracy and Impartiality. Not upheld in relation to Fairness, Contributors and Consent.

The One Show, BBC One, 7 February 2014

This appeal came before the Editorial Standards Committee at its October 2014 meeting. The Committee decided that some elements of the appeal qualified for consideration. These elements are reflected below. The Committee decided that the remainder of the appeal did not qualify to proceed for consideration. The elements of the appeal which were not considered can be found under Rejected Appeals.

Background

A report and studio discussion on the escape of the spy George Blake was broadcast on *The One Show* on BBC One on 7 February 2014.

George Blake escaped from Wormwood Scrubs prison in 1966 with the help of the complainant and two others. The complainant and his family then smuggled Mr Blake to East Germany by hiding him under a bunk in their camper van.

In 1991, the complainant and one other stood trial at The Old Bailey for their part in the escape. Despite a direction from the judge to convict, the jury found them not guilty on all counts.

This finding does not include those elements of the complaint that the Committee decided not to take on appeal.

The complaint

The complainant initially complained to the BBC on 14 February 2014 to say that the programme had been inaccurate and misleading by (amongst other issues):

- The reporter suggesting in the studio discussion that the complainant's motives were an issue at his trial when they were not.
- The item omitting an explicit statement from him to say that he did not approve of Mr Blake's spying activities and that he was motivated solely by humanitarian considerations. As a result, the programme had not ruled out the possibility that the complainant might have had some sympathy with Mr Blake.

The complainant said that the programme had created an unfair impression of him and his role in the escape and that he should have been offered a right to reply by being invited to take part in the studio discussion.

BBC Audience Services responded to say (amongst other points):

- There had been nothing in the film or studio discussion to suggest that the complainant sympathised with George Blake politically and that the programme had explained that his motives were humanitarian.
- That it disagreed that the reporter had been prejudicial in the studio discussion and that it believed viewers would have taken his comments as a whole to mean that the jury knew the complainant had helped Mr Blake to escape but had sympathised with the complainant's viewpoint and so acquitted him.

Given this, BBC Audience Services said it did not believe the programme needed to give the complainant a right of reply.

The complainant was not satisfied and took his complaint to Stage 2, the Editorial Complaints Unit (the ECU). In his letter, he said he wanted to emphasise three points:

- A humanitarian concern for the length of Mr Blake's prison sentence did not exclude the possibility that the complainant had also been sympathetic with his actions. As a result, the programme should not have omitted an explicit statement from him saying that he disagreed with Mr Blake's spying activities.
- His and his co-defendant's motives for aiding Mr Blake were not a matter of contention at their trial as the programme had suggested.
- The reporter made prejudicial comments about him during the studio discussion and so he believed he should have been offered a right of reply.

The ECU replied with the outcome of its investigation. It began by saying that it could not consider the complainant's concern about not being invited to take part in the studio discussion as that was outside its remit.

After considering the complainant's other points against the BBC Editorial Guidelines to do with Accuracy, the ECU did not uphold the complaint for the following reasons (amongst others):

- On the issue of whether an inaccurate impression had been given of the complainant's motives, the ECU acknowledged that the words chosen by the reporter in dealing with this point during the studio discussion could have been better chosen. However, the Complaints Director said:

"I feel that in the filmed report the words that you used yourself used gave a clear understanding that you were solely motivated by humanitarian considerations. You said: 'Our motivation was that we felt it was an unjust and inhuman sentence and on that basis we were prepared to help'"

The Complaints Director noted that this had been reiterated by the reporter in his script. As a result, the ECU said it did not believe the viewer would have been left with an inaccurate impression about the complainant's motives.

- On the issue of whether the programme had been inaccurate in suggesting the complainant's motives were an issue at his trial, the ECU acknowledged that the reporter's account of the trial was not entirely accurate and that his words could have been better chosen. However, it did not believe this was a serious inaccuracy as it said the programme had made it clear that the complainant's motives were humanitarian and had not created the impression that he had any other reasons for helping Mr Blake to escape.

The Head of Complaints Management, BBC Television wrote to the complainant to explain why he had not been invited to take part in *The One Show's* studio discussion. He said he believed the item was not intended to be adversarial or critical in nature and that he considered it was entirely possible to achieve a fair account of the complainant's story without his participation in the live discussion. He said, as a result and regardless of any imperfect phrasing by the reporter, he did not believe the programme makers were duty bound to invite the complainant on air.

Appeal to the Trust

The complainant escalated his complaint to the BBC Trust, saying that he was unhappy with the decision of the ECU to reject his concerns. He said that the ECU had said that "there were inaccurate impressions given in the programme that really should not have occurred" and that it could understand why he was unhappy with the account of his role and why he had pursued a complaint. The complainant said that, despite this, the ECU considered that none of the inaccuracies amounted to a serious breach of BBC standards.

The complainant said there was a question over whether the BBC procedure for handling complaints was adequate when programme makers could continue to say their programmes were fair even when the ECU acknowledged that there were inaccuracies. He said all inaccuracies and mistakes, whether large or small, should be acknowledged by the BBC.

Admissibility

The Head of Editorial Standards, BBC Trust (the Adviser) wrote to the complainant to say that the Trustees would consider whether the programme had given the impression that his motives were an issue at his trial, and would go on to consider fairness and right of reply regarding that point and in the round. She said this would include whether the film should have carried an explicit statement about the complainant's motives.

The Head of Editorial Standards decided that other points of appeal should not go before Trustees as they did not stand a reasonable prospect of success. The complainant asked Trustees to review this decision. The Trustees did so but agreed that the points in question had no reasonable prospect of success. That decision is covered in a separate finding.

Applicable Editorial Guidelines

The relevant editorial guidelines relating to Accuracy and Fairness are applicable to this case. The full guidelines are at www.bbc.co.uk/editorialguidelines

The Committee's decision

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

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

Trustees began by looking at what the programme had said about the complainant's motives for helping Mr Blake. They noted that during the film, the reporter spoke about the complainant's trial in a voiceover:

[The complainant] was tried at The Old Bailey for aiding and abetting Blake's escape. His defence was he was acting out of necessity, believing Blake's 42 year sentence was inhuman. Despite strong guidance from the judge to convict, the jury found him not guilty.

The Committee noted that later in the film the following exchange took place between the reporter and the complainant:

Reporter: People might say you helped a traitor, a KGB spy, escape from the country.

The complainant: Not really because his usefulness as a spy had expired. Our motivation was that we felt it was an unjust and inhuman sentence and, on that basis, we were prepared to help.

It was then noted that the following exchange had taken place in the studio between the presenter and the reporter:

Presenter: So how does this work then because George Blake gets 40 years. [The complainant], who we saw there, smuggles him out of prison, then smuggles him across many different countries to East Berlin and doesn't get anything seemingly?

Reporter: Well it took 25 years to put [the complainant] on trial and by the time they put him on trial the Cold War was over, times had changed and he managed to convince a jury that he'd done it all out of humanitarian reasons and that he hadn't really been helping a traitor. So amazingly, even though the evidence was pretty clear, he got off, and today he is still unrepentant about helping George Blake escape from prison.

The Committee noted that the complainant believed the reporter had expressed scepticism in the studio discussion that humanitarian reasons were his sole motivation for helping George Blake to escape. It noted that the complainant considered that the reporter had given the impression that he had somehow pulled the wool over the jury's eyes and convinced them that his actions were based on humanitarian concerns – with the implication that he had other motives. The Committee further noted that the complainant believed the studio discussion had been trivialising and condemnatory with the use of comments such as “unrepentant” and that he was still “very chipper” about it.

The Committee then examined the language used in the studio discussion. It began by considering whether it was accurate to say that the complainant had “managed to convince a jury that he'd done it all out of humanitarian reasons and that he hadn't really been helping a traitor”.

It noted the complainant said that neither the prosecution nor the judge at his trial had ever questioned his or his co-defendant's motives for helping George Blake and that it was a given from the start of the trial that they had acted out of humanitarian reasons. It noted too that the complainant had said at no point did he or his co-defendant try to persuade the jury that they had not really been helping a traitor, as they had acknowledged that they helped Mr Blake escape and that he had betrayed secrets to the Russians including names of British agents.

The Committee then noted that both the ECU and the reporter had acknowledged that the words used in the studio discussion could have been better phrased. It noted further that the ECU had acknowledged that the reporter's account of the trial was not entirely accurate.

It noted that the reporter said that his intention when using the phrase “hadn't really been helping a traitor” was to make the point that in helping Mr Blake, the complainant's motivations had been humanitarian rather than political and that he was trying to help Mr Blake as a human being whom he felt had been subject to an inhuman sentence and was not helping him because he was a traitor who had worked with the KGB.

The Committee also noted that the reporter believed that, even though the complainant's motives were not questioned by the prosecution, he and his co-defendant still had to persuade the jury that their motives in helping in the escape were truly humanitarian in order to secure an acquittal. It noted that the reporter believed the need to convince the jury was a key feature of the trial particularly in the light of the fact that the judge directed them to convict the complainant.

The Committee then looked at the submission from the complainant written to the BBC Trust on 17 September 2014 in response to the note prepared on the matter for the Editorial Standards Committee. It noted that the complainant had said in it:

"Of course the members of jury too had to believe that we were motivated by humanitarian considerations, and, as I understand it, it might just have been possible for them to have accepted our defence of necessity and acquitted us if they decided that we held an honest belief that what we did was right and necessary. But that's a much more dubious proposition, especially in the circumstances of our case, and what we sought to persuade the jury was that the 42 year sentence on George Blake, coupled with the restrictions he faced during his period in prison, amounted in fact to a cruel and unusual punishment, and that therefore we were entitled to invoke the defence of necessity, despite the judge's ruling on the issue."

From this, the Committee considered that the complainant acknowledged that the fact that the jury accepted the humanitarian motive behind the complainant's actions in helping George Blake was a factor in securing his acquittal. It considered that the reporter had been duly accurate in his account of the trial.

The Committee then examined whether it was accurate and fair of the reporter to say of the complainant: "So amazingly, even though the evidence was pretty clear, he got off, and today he is still unrepentant about helping George Blake escape from prison."

It noted that the reporter had said that he believed using the word "amazingly" to refer to the outcome of the trial was fair given that two people had admitted helping a convicted traitor escape from prison and then were acquitted. Trustees considered that this was an unusual turn of events particularly in light of the judge at the trial directing the jury to convict. Given this, the Committee considered that the reporter's words had been well sourced and had not been misleading.

The Committee noted that the complainant was concerned about the whole studio discussion which he believed suggested he was irresponsible in putting his family at risk and the presenter's comment that he was still "very chipper" about it all.

The Committee noted the exchange in question:

Presenter: I mean he's quite chipper in that film isn't he?

Reporter: He's still today – I mean the fact that he had his kids in the van and that Gorge Blake a spy underneath ... I mean they thought he was just a family friend. They didn't realise that he was an MI6 officer turned spy right under their feet.

The Committee considered that the discussion should be seen in context with the preceding film. The main point to be taken from the discussion was the highly unusual nature of: the escape; the motive of those who helped George Blake escape; and the nature of the trial and verdict. It was far removed from the lives of the audience. It was this that came across from the discussion. It was an extraordinary set of events and it was not unfair for the presenter to comment that he was still "very chipper" about it or the reporter to point out the exceptional nature of the escape.

Trustees were of the view that it was not necessary, in order to achieve fairness, to invite the complainant to take part in the discussion or to subsequently offer him a right of reply.

The Committee next considered whether an explicit statement that the complainant disagreed with Blake's actions should have been included in the programme. It noted that the complainant believed that, without one, the programme had left open the possibility of the audience considering that he did sympathise to some degree with George Blake's actions.

Trustees noted that the film in which the complainant had been interviewed had made it clear on two occasions that he had been motivated by humanitarian considerations. Taking this and the fact that the Committee considered that due accuracy had been achieved in the studio discussion when discussing his motives at the trial, it concluded that the complainant's motives had been properly summarised and well signposted to the audience and that the programme had not been unfair by omitting an explicit statement.

Given that the Committee did not believe that the programme had been either inaccurate or unfair, the Committee considered that there was no need to offer the complainant a right of reply.

Finding: Not upheld

Rejected Appeals

Appeals rejected by the ESC as being out of remit or because the complaints had not raised a matter of substance and there was no reasonable prospect of success.

The One Show, BBC1, 07 February 2014

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.

This appeal came before the Editorial Standards Committee at its October 2014 meeting. The Committee decided that some elements of the appeal qualified for consideration. These elements are reflected under Appeal Findings. The Committee decided that the remainder of the appeal did not qualify to proceed for consideration. The elements of the appeal which were not considered are reflected here.

The complaint

The complainant believed that an item on *The One Show* about his role in the escape from Wormwood Scrubs in 1966 and flight to East Berlin of the Soviet spy and former MI6 officer George Blake was inaccurate and not impartial on a number of counts. These were:

- The programme had given the false impression that the complainant had personally thrown a rope ladder over the prison wall to aid Mr Blake's escape.
- The programme had given the false impression that the complainant had stood trial alone in 1991 and the programme had edited a film of a phone call made by George Blake after the case to conceal the fact that George Blake was talking about two people.
- The programme had given a false impression by deciding to omit a statement from the complainant that he did not approve of Mr Blake's spying activities and that he was motivated solely by humanitarian considerations.
- The programme should have invited the complainant to take part in a studio discussion on the issue in order to achieve balance.
- The programme had given the false impression during the studio discussion that the complainant's motives were an issue at his trial.

Appeal to the BBC Trust

The complainant escalated his complaint to the BBC Trust, saying that he was unhappy with the decision of the Editorial Complaints Unit (ECU) to reject his complaint.

He said he was also appealing against the decision of the Head of Complaints Management, BBC Television that it was not necessary to invite him to take part in the studio discussion to meet Editorial Standards. He said that several inaccurate and prejudicial statements were made in the course of the programme that he would have challenged had he been invited onto the programme.

He contrasted the view of the Head of Complaints Management, BBC Television that the film and discussion "set out to give fair, accurate and non-judgemental account" with the

ECU's view that "there were inaccurate impressions given in the programme that really should not have occurred" and that it could understand why he was unhappy with the account of his role and why he had pursued a complaint. He said that in his view, the studio discussion was both "trivializing and condemnatory".

He said the episode was "highly controversial" and for that reason he should have been present at the studio discussion to correct false impressions given in the edited interview and to give a different perspective.

He also reiterated his points that:

- The programme had given the false impression that the complainant had personally thrown a rope ladder over the prison wall to aid Mr Blake's escape.
- The programme had given the false impression that the complainant had stood trial alone in 1991 and the programme had edited a film of a phone call made by George Blake after the case to conceal the fact that George Blake was talking about two people.
- The programme had given a false impression by deciding to omit a statement from the complainant that he did not approve of Mr Blake's spying activities and that he was motivated solely by humanitarian considerations.
- The programme had given the false impression during the studio discussion that the complainant's motives were an issue at his trial.

The complainant said there was a question over whether the BBC procedure for handling complaints was adequate when programme makers could continue to say their programmes were fair even when the ECU acknowledged that there were inaccuracies. He said all inaccuracies and mistakes, whether large or small, should be acknowledged by the BBC.

The Trust Unit's decision

The Head of Editorial Standards (The Adviser) carefully read the correspondence that had passed between the complainant and the BBC, and she acknowledged the strength of the complainant's feelings. The relevant correspondence was reviewed by the Trust Unit and an independent editorial adviser also read the correspondence and carried out research into the escape of George Blake.

The Adviser decided that the complainant's concern that a studio discussion within the programme had been inaccurate in suggesting that his motives were an issue at his trial at The Old Bailey should go in front of the Trustees. Should the Trustees uphold on accuracy with regard to the motives being at issue in the trial then they would go on to consider fairness and right of reply regarding that point and in the round. That would include whether the film should have carried an explicit statement about the complainant's motives.

The Adviser considered that the other points raised by the complainant did not have a reasonable prospect of success.

The Adviser considered that these points needed to be looked at using the Editorial Guidelines that cover Accuracy.

The Adviser began by examining the complainant's concern that the programme had given the false impression that he had personally thrown a rope ladder over the prison wall to aid Mr Blake's escape.

The Adviser noted that the complainant was introduced in the film in the following way:

Reporter (voiceover)

The escape was orchestrated by a collection of fellow inmates, one of them was anti-nuclear campaigner [the complainant]

She noted that the programme then went on:

Reporter (voiceover)

Blake established a collection of supportive fellow inmates. After his release, [the complainant] communicated with Blake via a fellow prisoner and a plan was hatched to manoeuvre the former spy through the tiny window frame to access the prison walls.

Reporter: How did he get over this pretty high wall?

[the complainant]: That was with a rope ladder and the rungs were reinforced with knitting needles. This was an idea of my wife Anne.

Reporter: Knitting needles for him to stand on?

[the complainant]: Yes. The rungs... because if it had just been rope the uprights would have come together.

Reporter: George got to the top of the wall and just jumped down. It's a long way and he actually broke his wrist.

The Adviser noted that the interview between the reporter and the complainant was intercut with a black and white reconstruction of a man throwing a rope ladder to another on a wall. She further noted that the Editorial Complaints Unit had agreed that the impression given in the film was that the complainant was involved in throwing the ladder over the wall for George Blake to use in his escape.

The Adviser considered that the programme had made clear to the audience from the start that the complainant had been one of a collection of inmates involved in the escape and so had not been acting alone. Furthermore, she noted that the programme had not raised the issue of who threw the rope ladder and so had not made it important in the audience's mind.

The Adviser also noted that the complainant was the only one of those involved in the escape to be interviewed. Given this and that the film and studio discussion combined ran to less than seven minutes, the Adviser considered that it made sense for the programme to focus on the complainant.

As a result, the Adviser believed that accuracy was adequate and appropriate to the output. Furthermore, given that the programme had clearly signposted that the escape was carried out by a group and that the complainant was not denying his involvement, she did not believe the audience had been misled and therefore considered that the guidelines on due accuracy had not been breached.

The Adviser then considered whether the programme had given the false impression that the complainant had stood trial alone in 1991. She noted that the reporter had said the following:

[the complainant] was tried at The Old Bailey for aiding and abetting Blake's escape. His defence was he was acting out of necessity, believing Blake's 42 year sentence was inhuman. Despite strong guidance from the judge to convict, the jury found him not guilty.

The Adviser began by noting that the complainant had stood trial for aiding George Blake's escape with one other, Pat Pottle. She noted that the Editorial Complaints Unit had acknowledged that the programme had given an inaccurate impression and that the audience may well have formed the view that the complainant had stood trial on his own. She further noted that the complainant believed a film of a phone call made by George Blake after the case had been edited to conceal the fact that he was talking about two people.

The Adviser took into consideration that the complainant had been on trial at The Old Bailey as stated in the programme. She noted again that the report had made clear that the complainant was one of several people involved in the escape and so the audience would have been aware that he had not acted alone. She further noted that the complainant was the only one of those involved to be interviewed in the film and could understand the rationale for focussing on the complainant and his role in the escape.

Taking account of the subject and nature of the content, the Adviser believed that due accuracy had been achieved and, given that the complainant had stood trial, the audience had not been misled.

The Adviser noted that the complainant believed the programme should have invited him to take part in a studio discussion on the issue in order to achieve balance.

She noted that the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. "The direction of the BBC's editorial and creative output" was specifically defined in the Charter (paragraph 38, (1) (b)) as a duty that was the responsibility of the Executive Board, and one in which the Trust did not get involved unless, for example, it related to a breach of the BBC's editorial standards which did not apply in this case.

She noted that, as a result, decisions relating to which contributors should be invited onto a programme fall within the "editorial and creative output" of the BBC and were the responsibility of the BBC Executive.

To this end, the Adviser noted that the Head of Complaints Management, BBC Television had responded to the complainant on 10 July 2014 explaining that the item was clearly not intended to be adversarial or critical in nature and so he considered that it was entirely possible to give a fair, accurate and non-judgemental account of the complainant's story without his participation in the live studio discussion.

She agreed that it was possible to give a fair, accurate and non-judgemental account of the complainant's story without his participation in the live studio discussion but noted that in any event fairness was being considered by the Trustees. If the Trustees concluded fairness was not achieved without a specific statement by the complainant (either included within the filmed report or made live in the studio) this would cover this point.

Finally she noted that the complainant was concerned that inaccuracies were not acknowledged by the BBC publicly in a simple manner. She noted that the BBC has a correction and clarifications page. Complaints upheld at Stage 2 were published and that the Trustees' decisions at Stage 3 were also published. The inaccuracies noted by the ECU would be published at Stage 3. His question as to whether it was acceptable for the BBC to acknowledge inaccuracies and yet to continue to describe a programme as fair would be considered by Trustees in the context of his appeal.

Request for review by Trustees

The complainant wrote to the BBC Trust on 17 September 2014 to request that the Trustees review the decision not to proceed with his appeal. He also made some comments on the appeal paper that had been drafted in relation to the aspects of his complaint accepted on appeal. These are dealt with separately.

In relation to the Adviser's decision not to proceed with his appeal, he said it could not be right to edit a recorded interview with George Blake to support the narrative that the complainant alone had stood trial.

He said that when considering whether the audience had been misled over who had thrown the rope ladder over the wall at Wormwood Scrubs, the BBC Trust should not treat the audience as an undifferentiated whole. He said particular individuals and groups within that audience, such as the relatives and friends of the person who threw the rope ladder, would have had every reason to be incensed when the complainant appeared to be taking credit for what was – whether one agrees with it or not – a courageous act.

He said that similarly, when considering whether the programme had given the false impression that the complainant had stood trial on his own, the BBC Trust should consider the feelings of the friends and family of his co-defendant whose presence had been airbrushed out of the item. He thought the fact that the programme was a short one aimed at a popular audience was irrelevant.

The Committee's decision

The Committee was provided with the complainant's appeal to the Trust, the response from the Head of Editorial Standards (the Adviser) and the complainant's letter asking the Committee to review her decision. The programme in question was also provided.

The Committee first considered the complainant's challenge to the Adviser's decision that the impression given by the programme as to who threw the rope over the wall at Wormwood Scrubs was duly accurate.

Trustees noted that the Adviser considered the programme had made clear to the audience from the start that the complainant had been one of a collection of inmates involved in the escape and so had not been acting alone. They also noted that the Adviser thought the programme had not raised the issue of who threw the rope ladder and so had not made it important in the audience's mind.

The Committee noted the complainant's argument that the BBC should not consider the audience as a whole when deciding whether the audience had been misled for the purposes of due accuracy, but that it should consider members of the audience who had a particular connection with the man who threw the ladder to help George Blake escape. It noted the complainant's argument that the lack of reference to the man who had thrown the rope ladder would particularly cause annoyance to relatives and friends of that

man, as it failed to properly attribute what the complainant called a "courageous act" to him.

Having considered the arguments of both parties, the Committee agreed with the Adviser that the programme made it clear that the complainant had been one of a collection of inmates involved in the escape and so had not been acting alone. Trustees were of the opinion that due accuracy did not concern whether particular individuals felt that they, or their friends or family, had been treated fairly by the content. Such complaints were not complaints about accuracy, but rather about fairness. They noted that under paragraph 1.5 of the Editorial Complaints and Appeals Procedure, fairness complaints may only be made by a first party, or someone with the authority to represent them. The Committee noted that no such first party fairness complaint had been made on behalf of the man who had thrown the rope ladder, and that as such, there was no fairness complaint for it to consider. The Committee did not consider that this aspect of the complaint could be considered against the accuracy guidelines.

The Committee did not agree with the Editorial Complaints Unit at Stage 2 when it had said that the film had made it appear that the complainant was involved in throwing the ladder. In the Committee's view this was an open question. As a result, it decided that this issue should not be considered further as there was no reasonable prospect of success for an appeal based on the suggestion that this had breached the guidelines for due accuracy.

Trustees then turned to the question as to whether the film had been inaccurate in that it had implied that the complainant had stood trial alone in 1991.

It was noted that the complainant had been on trial with one other person. The Committee again noted that the film had made it clear that the complainant was one of several people involved in the escape. It also noted the Adviser's point that the complainant was the only person involved in the escape to be interviewed for the film and that he had been on trial as stated. Trustees considered that it was acceptable, given the subject and nature of the content, to cover one of the defendants and not to state explicitly that there had been a second defendant.

The Committee then noted the complainant's concern that a clip of George Blake had been edited to make it appear that the complainant was the only person on trial. It noted that in the eight-second clip, Mr Blake had said:

"I never thought that you'd get off altogether and I'm just absolutely flabbergasted and I cannot find enough words."

The Committee considered that whether or not the clip had been edited was not material. Most recorded interviews are edited. The question was whether the words used referred to the complainant and whether in the context of this item they were duly accurate. Trustees saw no reason to conclude that the clip did not refer to the complainant.

The Committee then considered the complainant's complaint that the programme should have invited him to take part in a studio discussion on the issue in order to achieve balance. It noted the complainant's assertion that, given the highly controversial nature of the matter under discussion, he should have been there to challenge any contentious points that arose. It was further noted that the complainant thought the tone throughout the studio discussion was judgemental and censorious of him, which he should have been allowed to balance.

Trustees noted that the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. “The direction of the BBC’s editorial and creative output” was specifically defined in the Charter (paragraph 38, (1) (b)) as a duty that was the responsibility of the Executive Board, and one in which the Trust did not get involved unless, for example, it related to a breach of the BBC’s editorial standards, which did not apply in this case.

The Committee agreed with the Adviser that, as a result, decisions relating to which contributors should be invited onto a programme fell within the “editorial and creative output” of the BBC and were the responsibility of the BBC Executive. Trustees did not consider that the subject of the discussion was such that it was necessary for him to take part and thought it was a matter for the programme team as to whether they decided to invite him to participate.

The Committee concluded that if it were to take these issues on appeal there was no reasonable prospect that it would consider the guidelines on accuracy had been breached or that the audience had been materially misled.

The Committee therefore decided that these aspects of the appeal did not qualify to proceed for consideration.

Interview on Up All Night, Radio 5 live, 8 May 2014

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 complaint

In early May, President Putin urged pro-Russian separatists in Ukraine to postpone their forthcoming referendum on autonomy.

The *Up All Night* programme on Radio 5 live broadcast an interview with a British-Russian journalist about how best to interpret Mr Putin's move.

The complainant alleged that BBC Radio 5 live's interview with the journalist and its coverage of the crisis in Ukraine in general lacked impartiality, that it was developing a main story line that put Russia in the wrong and represented Western bloc interference as benign.

The complainant received Stage 1 responses from BBC Audience Services and from the programme, and a Stage 2 response from the Head of Editorial Standards for BBC News. The complaint was not upheld.

Appeal to the BBC Trust

The complainant appealed to the BBC Trust on 27 June 2014 on the substance of his complaint that the interview with the journalist was not impartial. The complainant singled out the journalist interviewed as well as a series of other experts more generally. He alleged that

"[The journalist] and the stream of other 'experts' from US think tanks are – quite conceivably – being employed to demonize Russia and prepare the public mind for more aggressive measures.

"It does not appear to me that producers and interviewers on 5 LIVE have mugged up on the complex and bloody history of the region – it is completely offensive to associate Putin with Hitler in the light of the 30 million Russian lives lost in the Second [World] War. For the Western Bloc to seek to advance with NATO to the Russian border can only be understood by Russians as hostile. The new elected President of Ukraine has limited legitimacy because half the country did not participate in the election. We know from leaked material that the US was behind the Coup d'etat which removed Yannokovitch."

The complainant alleged that the BBC was acting as a mouthpiece for a "Western Bloc economic hegemony" and that the BBC was not ensuring impartiality. He requested reassurance that the BBC was protecting itself from subversion, and said there were other examples of where "BBC teams appear[ed] to have collaborated with US agencies to project propaganda". He asked for reassurance that Radio 5 live and *Up All Night* in particular had not been or were not in the process of being taken over and "run by US agents".

The Trust Unit's decision

An Independent Editorial Adviser reviewed the relevant output and carried out further research. The Head of Editorial Standards, Trust Unit (the Adviser) carefully read the correspondence that had passed between the complainant and the BBC and listened to the item on Radio 5 live. She considered the appeal did not have a reasonable prospect of success.

The Adviser acknowledged the strength of the complainant's feelings.

The Adviser noted that the essence of the complaint was that listeners to a particular edition of *Up All Night* would have been misled about Russia and the character of its President. The Adviser considered that her assessment of the complaint related to those clauses from the Editorial Guidelines which relate to impartiality; of particular relevance was the section relating to the signposting of contributors' views and also the clauses on how long-running output might achieve impartiality over time.

The Adviser noted the over-arching guideline requirement is for "due impartiality", defined in the guidelines as that which is

"...adequate and appropriate to the output, taking account of the subject and nature of the content, the likely audience expectation and any signposting that might affect that expectation."

The Adviser noted clause 4.4.14:

"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 Adviser considered that in relation to the interview with the journalist the BBC was required to demonstrate that the audience had been adequately informed of his credentials and the viewpoint he represented.

The Adviser noted how the journalist was introduced by the presenter:

"[The journalist] is a British-Russian journalist who was born in Kiev, based in London, and is the author of 'Russia: A Post-Modern dictatorship'."

The Adviser considered that the audience was provided with clear information about the contributor, including the likelihood from the title of the book that he would be presenting his assessment of events from an anti-Putin standpoint. The Adviser noted that as the interview developed this impression would have been likely to have been borne out by the content of [the journalist]'s responses. The Adviser concluded therefore that were this allegation to proceed to appeal Trustees would be likely to conclude that the requirements of 4.4.14 had been fulfilled.

The Adviser noted next, clause 4.4.8, which states that due impartiality normally allows for programmes and other output to provide an opportunity for a single view to be expressed and that consideration should be given to the appropriate timeframe for reflecting other perspectives and whether or not they need to be included in connected and signposted output.

The Adviser noted Guideline, 4.4.26 which states that on long-running or continuous output, due impartiality can be achieved over time "by the consistent application of editorial judgement in relevant subject areas". She noted that editors of long-running or continuous output are required to ensure that it reflects a broad range of individuals and views, including all main strands of argument.

The Adviser noted that *Up All Night* had been running for 20 years in its overnight slot on BBC Radio 5 live. It qualified to be considered as "long-running or continuous output" within the definition of the Editorial Guidelines.

The Adviser noted that the referendum was one aspect of the ongoing Ukraine crisis. At the time of the interview, in the Adviser's view, neither the referendum nor the crisis overall had reached a decisive moment that necessarily required that a partial viewpoint such as [the journalist]'s was immediately balanced by an alternative viewpoint. The Adviser noted also that the discussion with [the journalist] was a broad assessment of President Putin's strategy in relation to Ukraine and his relations with the West, loosely pegged to his statement about the referendum, rather than a detailed discussion of the referendum itself. She considered that Trustees would be likely to conclude that an appropriate time frame over which to consider the achievement of due impartiality would therefore be from March 2014 when Russia announced its annexation of Crimea.

The Adviser considered whether the BBC had been able to demonstrate in its responses how it had reflected other perspectives in related output over the appropriate timeframe.

The Adviser noted the information provided to the complainant by the programme at Stage 1:

"We are always mindful on 'Up All Night' to ensure that we don't just hear from pro-Western voices, and so we have had a number of voices and experts on the show which have articulated a pro-Russian and pro-Putin view. In the recent past this has included Andranik Movsesovich Migranyan (on 25 March and 16 April), a political analyst and Director of the pro-Russian think tank the Institute for Democracy and Cooperation in New York, who speaks strongly in favour of Mr Putin; Nikolas Gvosdev (on 7 June), a pro-Russian expert and professor at the Naval War College in Rhode Island, and Dmitry Babich (on 10 April), a journalist in Russia, who did not believe that the protests in Eastern Ukraine were organised by Moscow. We also seek to put points that represent the Russian point of view to most of our analysts when they come on to 'Up All Night'."

The Adviser noted in respect of the final point in the programme's response above, that in the interview which was the subject of this complaint the presenter had challenged some of [the journalist]'s points. Picking up on a comment by [the journalist] that the Russian President's call for a delay to the referendum was not prompted by any coherent strategy, the presenter suggested that this was the first time Mr Putin had said anything positive about the elections. In response to that [the journalist] explained in detail the basis of his criticism of Mr Putin and how only a year earlier Russia would have been characterised as a Western orientated democracy. The presenter then put it to [the journalist] that perhaps Mr Putin's announcement had moved the "doomsday clock" back by a few minutes.

The Adviser concluded that were this allegation to proceed to appeal Trustees would be likely to conclude that the requirements of 4.4.8 and 4.4.26 had been fulfilled.

The Adviser then considered the broader allegation made by the complainant, that interviewees like [the journalist] and other “experts” from US think tanks were being employed to demonise Russia and that the BBC was acting as a mouthpiece for the West. The Adviser concluded that the point could best be considered with reference to how the programme had demonstrated the range of voices it had spoken to in the course of the crisis in Ukraine. She noted also, that in the interview which was the subject of this complaint, there was no specific discussion or reflection of the American view or America’s role. Nor did she agree that [the journalist]’s remarks could be characterized, as the complainant asserted in his appeal, as having associated President Putin with Hitler.

Finally, the Adviser noted that the programme had addressed the broader thrusts of the complainant’s allegation in its Stage 1 response:

“The point you make seems to be that we are not critical enough of US foreign policy. When we have covered Ukraine, comments on general US foreign policy have been less central to the discussion. The relevant discussion at that time was more about Russian foreign policy and the reaction of the international community, which was broadly unified, and the US was not out of step with other countries. I would not agree that we are uncritical of US foreign policy throughout our show. We frequently have analysts, experts or people such as former ambassadors who point out what they see as flaws or errors in US foreign policy. Only in the past few days we spoke to Patrick Cockburn, the Independent newspaper’s Iraq correspondent, who was highly critical of the US policy in Iraq.

“We don’t often mention specific incidents from the longer past (for instance, US foreign policy in Latin America in the 1970s and 1980s), largely because it doesn’t directly pertain to the current news agenda. But it does definitely come up in our coverage and our presenters are fully aware of the need for balance and to question the merits of how the US has approached foreign policy in the longer-term.

“I would finally note that your points, which I have passed on, are a useful reminder to our production team to remember that there are strong views which are critical of the overall tenor of US foreign policy since 1945, and we should remember to hear and air them.”

The Adviser concluded therefore that the complaint would not have a reasonable prospect of success and should not proceed to appeal.

Request for review by Trustees

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

He noted that the issue he raised should not be considered in isolation, but as part of “the story line being advanced night by night” on the programme. The complainant also noted that his complaint about the journalist was part of a larger critique.

The complainant noted the importance of serious and impartial reporting and suggested that the BBC’s failure to recognise the role of the United States of America in Ukraine, was either naïve or deliberate. He reiterated his view that it was possible the BBC had been infiltrated by “Western Bloc agents”. The complainant warned the BBC of falling into a trap of legitimising propaganda through its broadcasts.

The Committee's decision

The Committee was provided with the complainant's appeal to the Trust, the response from the Head of Editorial Standards and the complainant's letter asking the Committee to review her decision.

The Committee noted the episode of *Up All Night* which was the subject of this complaint.

Trustees noted that the complainant felt that this interview in particular and Radio 5 live's coverage of Ukraine in general, lacked impartiality. The Committee noted the complainant's request that this interview not be considered in isolation.

The Committee noted the manner in which the journalist had been introduced on the programme. It noted the Adviser's view that the audience would have been clear from this introduction, and from the journalist's subsequent contributions, of his anti-Putin perspective. Trustees agreed that clarity in the introduction enabled audiences to understand that the speaker was coming from a particular perspective and that they should judge what was said in that context. The Committee thought that the introduction to the journalist enabled the audience to distinguish that the views expressed were opinion and not fact.

It was noted that the Adviser had considered, against the Editorial Guidelines, the matter of impartiality in long-running series.

The Committee noted that *Up All Night* was a long-running series and noted the information supplied at Stage 1 outlining instances of pro-Russian and pro-Putin views on the programme. Trustees noted that as a long-running series, listeners to *Up All Night* would be aware that this was a nightly series in which over time a wide range of interviewees took part. The Committee concluded that the series as a whole acknowledged a range of views on the issue, and met the over-arching requirement of due impartiality under the Editorial Guidelines.

The Committee also agreed with the Adviser that during the interview in question, the journalist was challenged by the presenter on some points.

Therefore, the Committee concluded that there was no reasonable prospect of it finding there had been a breach of the Editorial Guidelines on Impartiality.

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

BBC News at Ten, BBC One, 11 April 2014

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 complaint

In April 2014, the leader of the Labour Party and official opposition, Ed Miliband, visited Israel with his wife. His short trip to the region included a visit to the West Bank and a meeting with the Palestinian President, Mahmoud Abbas. The BBC's Political Editor Nick Robinson was amongst a group of journalists who accompanied the Labour leader.

Nick Robinson's report for the Ten O'Clock News covered the first part of Mr Miliband's visit, which was entirely within Israel. He visited the Holocaust memorial at Yad Vashem and a town in southern Israel close to the border with Gaza. His day ended with an emotional reunion with an aunt who had survived the Holocaust.

The complainant alleged that the report failed to provide sufficient context for the Labour leader's visit in relation to the Israel-Palestine conflict and as a result it amounted to "pro-Israel bias".

The following day Mr Miliband's itinerary took him to the Israeli-occupied West Bank. It was a Saturday; the shorter weekend bulletin marked the visit and noted a statement by Mr Miliband in which he criticised the growth of Israeli settlements.

The complainant received responses at Stage 1 from BBC Audience Services and at Stage 2 from the Editorial Complaints Unit (ECU). His complaint was not upheld.

Appeal to the BBC Trust

The complainant appealed to the BBC Trust on 2 July 2014. He appealed on the substance of his complaint, that the report favoured the Israeli narrative by failing to reflect the Palestinian viewpoint.

In his letter of appeal the complainant noted the view of the ECU, in relation to the Milibands' visit to a town in southern Israel which is a frequent target of rockets fired from Gaza

"that it would have been better if the report had reflected the fact that there have been attacks from both sides, (although I imagine regular viewers to news bulletins would be aware of this)".

The complainant said the ECU's statement failed to differentiate between the strength of the two sides:

"Israel has the largest and most effective military force in the Middle East, while the totally surrounded Palestinians in Gaza have homemade none [*sic*] guided rockets!"

The complainant also disagreed with the second part of the ECU's statement that regular viewers to news bulletins would be aware there have been attacks by both the Palestinians and the Israelis. He referred to other recent stories from the region, and highlighted the difference between BBC coverage of the kidnapping and deaths of Israeli

children and the deaths of Palestinian children. The complainant alleged that coverage relating to the kidnapping and deaths of Israeli children received more focus from the BBC than a separate BBC report which simply stated the number of recent Palestinian deaths. The complainant alleged that in light of this, BBC viewers were not properly informed about the facts of the conflict.

The Trust Unit's decision

An Independent Editorial Adviser reviewed the relevant output and carried out further research. The Head of Editorial Standards, Trust Unit (the Adviser) also reviewed the correspondence and watched the item. She considered the appeal did not have a reasonable prospect of success.

The Adviser acknowledged the strength of the complainant's feelings.

The Adviser noted the overarching guideline requirement is for due impartiality, defined in the guidelines thus:

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

The Adviser noted the transcript of the item, which was sent to the complainant along with her decision. She noted the editorial focus of the report was not the current situation in the Middle East, rather it was clearly signposted in the commentary and in the unusually personal comments and reactions from Mr Miliband, as an item about his Jewish heritage and family history and how he saw this affecting his role as Labour leader and would-be Prime Minister. She noted in particular the opening paragraph of Nick Robinson's report:

"These are the faces, the names, the people behind the grimmest of all statistics. The six million Jews killed by the Nazis in the Holocaust. Amongst them, Ed Miliband's grandfather. The Labour leader and his wife Justine have come to Israel to connect with his past as well as to talk about the future of the Middle East. It's a trip the man who might be Prime Minister, in a little over a year's time, says he won't forget."

The Adviser noted too Nick Robinson's closing commentary:

"This trip's been about the personal not the political. Tonight Ed Miliband's visit to Israel ended in the warm embrace of his extended family, including Sara his mother's cousin, who survived internment in a Nazi concentration camp. The Labour leader's message to voters at home: this is what makes me tick, this is who I am."

The Adviser then noted how Nick Robinson set this personal part of Mr Miliband's visit, in the context of the rest of his trip to the region and a direct reference to the stalling peace talks:

"Last night the Labour leader met Israel's Prime Minister Benjamin Netanyahu. Tomorrow he'll travel from Jerusalem to the West Bank to meet the leader of the Palestinian Authority to discuss stalling peace talks."

The Adviser noted, as might be expected of the BBC's Political Editor, that where the report focused on the non-family aspects of the visit, it was about the relevance of the visit to Mr Miliband's political career back at Westminster.

The Adviser considered that the nature and subject of the content had been clearly signposted; she concluded this would have managed audience expectations as to how far other aspects of the conflict might be included, and the context in which those other aspects might be reflected.

The Adviser noted the complainant identified as his particular concern the following section of the report, in which Mr Miliband and his wife were filmed in Sderot, the town in southern Israel close to the Gaza Strip which had been the target of frequent rocket attacks:

POLITICAL EDITOR

How broken the Middle East is you can see from here. On the top of a hillside just above the Gaza Strip, Justine and Ed Miliband were shown where the rockets are fired which rain down on this Israeli town.

UNNAMED ISRAELI

They send thousands and thousands of rockets to our land to Sderot, just to kill the people.

POLITICAL EDITOR

This is no ordinary playgroup. These kids are only safe if they don't play under the deep blue sky but under a roof of thick reinforced concrete.

JUSTINE MILIBAND

I think it's brought it home for me. We've got a three and a four year old at home. But they don't have to play as they play here. They have a choice as to whether to go outside. So I was quite struck by that.

The Adviser noted the complainant's assertion, detailed in his Stage 1 submission:

"When Mr Robinson referred to 'the nearby hills', I assumed he was about to balance his report by referring to illegal Israeli settlements, built on Palestinian land – against international law. However instead of this, he was pointing out the 'difficulties' of living in the nearby Israeli town of Sderot, which is targeted from Gaza with homemade rockets, usually in retaliation to a previous Israeli attack on Gaza!

"Extracting the maximum sympathy for Israel, Mr Robinson reports Mr & Mrs Miliband visiting a playgroup – which looks like many you would see in the UK – until you realise the kids are playing inside instead of outside because of rockets fired from Gaza.

"No mention of the problems faced by the Gaza Palestinians and their children! NO mention of Palestinians kids too traumatized to go to playgroup by frequent Israeli attacks!

"No mention of the 47 years of brutal Israeli occupation of the rest of Palestine land!"

The Adviser noted that there are no Israeli settlements in the Gaza Strip, that Israel withdrew all its troops and closed all the settlements there when it completed its military withdrawal in 2007. However, she understood the spirit of the complainant's assertion.

She accepted that it would have been preferable had Nick Robinson noted the conditions in Gaza as well as those in Sderot when he introduced the section. But she considered also that in such a long-running story, where the status of the Gaza Strip and the nature of the ongoing conflict between Israel and the Palestinians is reported regularly across BBC output, this was likely to have been information already known to the viewer. It was not therefore essential information that required to be included in order for the report to achieve due impartiality.

The Adviser noted clause 4.4.8 from the guideline on Impartiality:

"Due impartiality normally allows for programmes and other output to explore or report on a specific aspect of an issue or provide an opportunity for a single view to be expressed. When dealing with 'controversial subjects' this should be clearly signposted, should acknowledge that a range of views exists and the weight of those views, and should not misrepresent them.

Consideration should be given to the appropriate timeframe for reflecting other perspectives and whether or not they need to be included in connected and signposted output."

The Adviser noted again how the report included summary details of the rest of Mr Miliband's agenda, and that it referred also to the stalled peace process. She noted too the relevant content from the following night's television news bulletin:

"The Labour leader Ed Miliband had criticised the growth of Israeli settlements while on a visit to the West Bank. He said the continued expansion represented a mortal threat to the peace process. Mr Miliband is on the last stage of a three day visit to the region. He's already met the Israeli Prime Minister and tomorrow will meet the Palestinian President."

She noted the guideline clause 4.4.26 which relates to long-running or continuous output (such as the Ten O'Clock News), and which states that:

"Due impartiality may be achieved over time by the consistent application of editorial judgement in relevant subject areas. For instance, it is not usually required for an appearance by a politician, or other contributor with partial views, to be balanced on each occasion by those taking a contrary view, although it may sometimes be necessary to offer a right of reply."

The Adviser considered with reference to the relevant clauses in the editorial guidelines that for there to be a reasonable prospect that Trustees would uphold the allegation of bias there would have to be some evidence that the Palestinian viewpoint had been misrepresented, and/or that the subject and nature of the content had not been clearly signposted, and/or that a different perspective had not been reflected in an appropriate timeframe. She considered this was not the case on this occasion. The personal nature of the trip was quite clear. It was also clear that the item was located in Israel, that the Israeli speaker was representing an Israeli view, that Mrs Miliband was reflecting on how the playgroup situation had struck her and that Nick Robinson's commentary was describing factually what the Milibands were shown. The report also reflected that Mr Miliband would hear the Palestinian perspective the next day; the BBC had subsequently

noted his comments that the expansion of settlements represented “a mortal threat to the peace process” in the following evening’s news bulletin.

Accordingly the Adviser concluded that the allegation did not qualify to proceed to appeal and should not be put in front of Trustees.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with his appeal. The complainant noted that he regularly complained to the BBC in relation to the “sometime skewed reporting of the Israel/Palestine conflict”.

He maintained his view that Nick Robinson was “not quite equal in his reporting”.

The complainant noted the introduction of the analysis of his complaint:

“In April 2014 Ed Miliband visited Israel. His short trip to the region included a visit to the West Bank and a meeting with the Palestinian President, Mahmoud Abbas.”

The complainant objected to this passage, noting “This prioritizing of a visit to Abbas was not why Miliband was visiting the region!”

The Committee’s decision

The Committee was provided with the complainant’s appeal to the Trust, the response from the Head of Editorial Standards and the complainant’s letter asking the Committee to review her decision.

The item on the News at Ten which was the focus of this complaint was noted by Trustees.

The Committee noted the complainant’s view that insufficient context regarding the Israel-Palestine conflict was provided in the report as a background to the Labour leader’s visit. The Committee noted that the complainant felt this amounted to a pro-Israel bias by the BBC.

Trustees noted the Adviser’s observation that the report’s focus was the Labour leader’s personal journey. The Committee agreed with the complainant that the visit to Mahmoud Abbas was not the primary goal of the visit, but noted that Mr Miliband met both the Israeli and Palestinian leaders during his trip.

The Committee noted the complainant’s view that the BBC’s Political Editor was not balanced in his reporting. In particular, it noted the complainant’s objection to the mention, in the report of Mr Miliband’s visit to Israel, of rockets fired from Gaza, and the omission of any mention of attacks by Israel.

The Committee noted that the Adviser considered the complaint against the Editorial Guidelines on Impartiality and cited the provision relating to long-running series.

Trustees agreed with the Adviser that the Labour leader’s trip was primarily personal and it had been clearly signposted to audiences in advance that personal views were contained in the output. The Committee also agreed that the Palestinian perspective in connection to this visit had been given in other output which reflected the breadth and diversity of opinion and directly acknowledged that a range of views existed. The

Committee concluded that there was no reasonable prospect of it finding there had been a breach of the Editorial Guidelines on Impartiality.

It was noted the complainant had stated a wider view that the BBC sometimes provided “skewed reporting of the Israel/Palestine conflict”, for example by dedicating more time to reporting the deaths of Israelis than the deaths of Palestinians. However, the Committee considered the Adviser had provided examples of balanced reporting in relation to the content complained about by reference to the following night’s television news bulletin. It considered that this illustrated due impartiality on this subject, and noted that reports of Israeli/Palestinian deaths were not the subject of this complaint.

The Committee noted the complainant’s view that the BBC failed to acknowledge its mistakes. The Committee wished to reassure the complainant of its commitment to accountability and transparency. The Committee wanted to point the complainant to its published output where its decisions, including those which hold the BBC to account, can be found: http://www.bbc.co.uk/bbctrust/our_work/complaints_and_appeals/esc.html

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

Madeley on Sunday, Radio 2, 29 December 2013

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 complaint

The complainant contacted the BBC on 29 December 2013 to express his concern that the programme had included inaccuracies on two points. For the purposes of this appeal to the Trust he focused on one point:

1. The presenter had given an explanation for the phrase "runaway carriage knockers". He stated that there was a "nationally accepted knock" used by carriage drivers or delivery men – and that children would knock on doors using this recognised knock and then run away – and were then termed "runaway carriage knockers".

The complaint went to Stage 2 of the complaints process and was investigated by the Editorial Complaints Unit (ECU). The Complaints Director gave the complainant further information about a mischievous game in which someone would knock on a door and run away:

The game mentioned by Mr Madeley was actually known as "runaway carriage-doubles" (rather than runaway carriage knockers) and is referred to in "The Chimes", a short story published by Dickens in 1845, as follows:

'Come, come!' he said, with his hands in his pockets, 'you mustn't give way, you know. That won't do. You must fight up. What would have become of me if I had given way when I was porter, and we had as many as six runaway carriage-doubles at our door in one night! But, I fell back upon my strength of mind, and didn't open it!'

The complaint was not upheld.

Appeal to the BBC Trust

The complainant escalated his complaint to the BBC Trust on 26 May 2014.

He made the following additional points in his appeal:

- The reference to a "special knock" was an invention of the presenter.
- He supplied numerous references in support of his appeal referring to social, living and working conditions and slang among other matters and requested that the Trust should read them.
- He said that the ECU Complaints Director assumed he agreed that there was a practice called 'runaway carriage doubles', whereas "Dickens only uses the phrase once and not as a children's game. The evidence is, even in the works of Dickens that this 'practice' was carried out by 'well to do' adults not children."

- He disputed the Complaints Director's reference to the alleged inaccuracy as "a passing comment". He said it was not a passing comment; it was given at length as a fact.
- He was aware of the Oxford University Press glossary entry that had been referred to by the ECU Complaints Director. He thought that adding an invention to a dubious glossary entry and presenting it as a fact was misleading.
- Although the Complaints Director had said that the general audience would not expect the presenter to offer a definitive or complete explanation, that was precisely what the presenter did.
- The presenter had not made his comment as a personal view, or given a third party source; it had been presented as fact.
- Many people researching their family history would have an interest in this historical period which would be shared by a large number of Radio 2 listeners. In addition, the work of Susie Dent would also be known to many listeners who would expect explanations given during an interview with her, albeit by the presenter, to be correct.
- The BBC has a worldwide audience, and some listen to learn both English and about British culture. That audience did not expect the BBC to rewrite history by turning the early 19th century into a time when cabbies had "a special code of knocking" and children were running round the streets at night cheerfully playing games.

The Trust Unit's decision

The Senior Editorial Complaints Adviser (the Adviser) carefully read the correspondence that had passed between the complainant and the BBC and she acknowledged the strength of the complainant's feelings.

The Adviser noted, however, that the complaint had been investigated in detail at Stage 2, that the ECU had issued a substantive response and it had not upheld the complaint. She noted that the ECU response had explained that output was required to be "duly accurate" and had included the definition from the Editorial Guidelines that output producers should bear in mind the subject and nature of the content and the likely expectations of the audience.

She noted that according to the General Complaints Procedure, when deciding whether a complaint raised a matter of substance, the Trust considered (in fairness to the interests of all licence fee payers in general) whether it was appropriate, proportionate and cost-effective to consider an appeal. In this case she believed that Trustees would consider that it would be disproportionate to spend licence fee payers' money on a further detailed consideration of the complaint which had already been carefully addressed at Stage 2.

The Adviser did not believe the complaint had a reasonable prospect of success and did not propose to put it before Trustees for their consideration.

Request for review by Trustees

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

He rejected the view that the BBC had shown due accuracy, and he maintained that “a misleading picture of life in Dickensian Britain” had been given.

The complainant provided information to support his picture of life in nineteenth century Britain. He outlined the way in which the realities of life in those times was often mythologised and represented as something it never was. The complainant reiterated his objection to the phrase “runaway carriage knockers” and rejected the reasoning of the ECU’s Complaints Director in relation to this. The complainant stated that:

- In “The Chimes” Dickens mentions a practice and uses a phrase which may have been current at the time; he does not say it was a game. He does not say it was carried out by children.
- There is no evidence of any such game being played by children.
- There was no special code used by cab men, coach drivers.
- There are at least fifty nine mentions of the “double knock” in the works of Dickens carried out by sundry characters, and on a couple of occasions referred to as a “creditors knock” or a “postman’s knock”.
- Wrong name given to “practice” and wrong short story quoted.

The complainant noted that his complaint centred on a class issue and observed that the working class position was not always justly reflected.

The Committee’s decision

The Committee was provided with the complainant’s appeal to the Trust, the response from the Senior Editorial Complaints Adviser and the complainant’s letter asking the Committee to review her decision.

The Committee noted the section of the programme which the complainant had objected to, where Richard Madeley interviewed Susie Dent about her new children’s book and the origins of words/phrases and then referred to Charles Dickens:

Presenter:

Again from a Christmas Carol. This fascinated me. There was a phrase back in the 1840s and 30s in Dickens time. It was called runaway carriage knockers. Runaway carriage knockers. Now what does that mean? I mean it’s just meaningless isn’t it? It was the word they used for what we now call today knock down ginger, kids knocking on doors and running away. And the definition was because if a carriage man called at your house either with a parcel or with a guest or to pick you up like a taxi, the code of all carriage men right across the country was a double knock on the door (sound effect of a sharp double knock). That’s what it was (sound effect).

Now no one else knocked like that. That meant the carriage man was outside. So the kids would do that (sound effect) and run away and they’d know someone would... and it’s called, hang on, runaway carriage knockers.

The Committee considered there was no material difference between the phrase “runaway carriage knockers” or “runaway carriage doubles” – the phrase used in the Dickens’ quote referred to by the ECU Complaints Director. It clearly referred to the same practice, which was knocking on a door twice and running away. This was evidently a game to irritate householders whether it was played by children or youths or adults. Whether the knock was specific to carriage drivers or used more widely was also not material.

The Committee noted that the wrong story by Dickens had been referred to but in the context of a live radio interview did not consider this was material.

The Committee agreed with the Complaints Director that both issues raised by the complainant were duly accurate and that listeners would not have been materially misled. The Committee therefore concluded that there was no reasonable prospect of it finding there had been a breach of the Editorial Guidelines on Accuracy.

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

Is Amanda Knox Guilty?, BBC Three, 17 February 2014

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.

Background

Meredith Kercher, a British student studying in Italy, was murdered on 1 November 2007. Who killed her became a subject of much debate. Rudy Guede (a local resident), Amanda Knox (an American student and Ms Kercher's housemate) and Raffaele Sollecito (an Italian student and Ms Knox's boyfriend) were convicted of the murder. Mr Sollecito and Ms Knox were acquitted on appeal. Mr Sollecito's and Ms Knox's convictions were then reinstated. This decision is being appealed and will be heard in 2015.

On 2 November 2007 a mobile phone used by Ms Kercher was discovered by the Postal Police (who are responsible for investigating crimes relating to communications). The Postal Police went to the property shared by Ms Knox and Ms Kercher. Ms Knox and Mr Sollecito were there. They said a burglary had taken place. A disputed issue is whether Mr Sollecito had rung the Carabinieri about the "break-in" at Ms Knox's and Ms Kercher's shared cottage before or after the arrival of the Postal Police.

The programme which is the subject of this complaint – *Is Amanda Knox Guilty?* – covered this matter in this way:

Presenter: When Police arrive here they see two students in the driveway. Amanda Knox and Raffaele Sollecito. They tell the Police the front door is open and one room has been ransacked. Police go into the house. One bedroom's a mess. Clothes are all over the floor and a large rock is lying near the window.

Shortly after the Postal Police arrive, at 12:51 Raffaele Sollecito calls the elite police force, the Carabinieri. He doesn't mention that the Postal Police are already there and says that nothing has been stolen – details Prosecutors would later claim as significant.

Ms Knox at an early stage implicated Diya "Patrick" Lumumba, a bar owner she worked for. He was arrested but later released. The question arose as to why she did not say at an earlier stage that he was innocent. She wrote a note on 6 November and again on 7 November about her recollections and about Mr Lumumba.

The programme covered this matter in this way:

Presenter: Waiting to be taken to jail, Amanda makes another attempt to tell Police what happened with Mr Lumumba by writing out an explanation in English.

Voiceover: In my mind I saw Patrick in flashes of blurred images. I saw him at the basketball court. I saw him at my front door. I saw myself cowering in the kitchen with my hands over my ears because in my head I could hear Meredith screaming. But I have said this many times so as to make myself clear: these things seem unreal to me, like a dream. I want to make it clear that I am very doubtful of the verity of my statements. Because they were made under the pressure of stress, shock and extreme exhaustion.

Presenter: But despite her uncertainty she doesn't retract her accusation. Mr Lumumba remains in jail, pleading his innocence.

The complaint

The complainant contacted the BBC on 23 February 2014 with regard to the programme, which he believed was biased against Ms Knox. He stated that: it presented disputed Prosecution claims as fact; a note written by Ms Knox was misrepresented in a way that assumed her guilt; and the selection of interviewees and contributors made the programme biased.

The complainant received responses at Stages 1a and 1b, but remained dissatisfied. He pursued his complaint to the Editorial Complaints Unit. His complaint was not upheld, and he was informed he could appeal to the Trust.

Appeal to the BBC Trust

On 27 July 2014, the complainant appealed to the BBC Trust against the decision of the Complaints Director, Editorial Complaints Unit, not to uphold his complaint. The complainant made the following points.

- He considered the programme was “insidiously biased”, because key parts privileged the Prosecution’s point of view.
- He said the most important faults were:
 - at least two Prosecution claims were presented as undisputed facts; and
 - there was an overwhelming number of pro-Prosecution interviewees, compared to a single pro-Defence interviewee.
- He was dissatisfied with the BBC Executive’s response for three reasons:
 1. There was no satisfactory explanation of why Amanda Knox’s voluntary note (“the 6 November Note”) was not considered a retraction of her accusation against Diya “Patrick” Lumumba.
 - The reasoning of the Complaints Director’s provisional finding presumed Ms Knox’s guilt.
 - The Complaints Director’s decision in this regard rested on three grounds:
 - (i) a retraction had to be an unequivocal revocation;
 - (ii) the context and the seriousness of the “charge” [*sic*]⁴ warranted that only an unequivocal revocation could count as a retraction;

⁴ The complainant’s letter of appeal referred in several places to the “charge” against Mr Lumumba. However, Mr Lumumba was not charged. The remainder of this summary therefore refers to the “accusation” against Mr Lumumba.

- (iii) the purpose of the passage in question was to explain the actions of the Police (who did not consider it a retraction) in continuing to hold Mr Lumumba.
- o The reasoning of the first ground meant that Ms Knox should have said that she no longer had what seemed to be a memory of Mr Lumumba as the murderer. In other words, rather than expressing doubt in the strongest terms about the reliability of an apparent memory and stating that she preferred to believe the alternative but stronger memory that she was with Mr Sollecito all night, Ms Knox should have denied having a possible memory of events that might be useful evidence.
 - o Applying the reasoning of the first ground, Ms Knox's prison letter of 7 November 2007 ("the 7 November Note") was a "retraction". This stated "now I remember that I can't know who the murderer was because I didn't return back to the house."⁵ The programme was therefore misleading in claiming that the 6 November Note was not a retraction while failing to acknowledge that the 7 November Note was.
 - o With regard to the second ground, the Complaints Director had argued that, given the context and seriousness of Ms Knox's accusation against Mr Lumumba, only an unequivocal revocation could count as a retraction, whereas in the complainant's view the seriousness of the accusation required the strongest of evidence to prove it. The complainant asked:
 - whether the BBC thought that a signed statement by a witness/suspect, who shortly afterwards qualified it with extremely clear doubts about the reliability of the memory, was sufficient to sustain an accusation of murder;
 - why the seriousness of the accusation against Mr Lumumba was presumed to be Ms Knox's responsibility, rather than the Police's; and
 - whether the BBC considered an assertion expressed as a remote possibility (and, on the presumption of innocence, made in good faith) to be something for which a person⁶ could be blamed.
 - o With regard to the third ground, the documentary should have made it more explicit that this was the Police's interpretation and not something that could be taken for granted.
 - o Ms Knox's "confession", her accusation of Mr Lumumba and her "failure" to retract her accusation were the only remaining cornerstones of the Prosecution case. The way in which these were presented was bound to influence an audience unfamiliar with the details.
2. The programme presented as fact the Prosecution's disputed assertion that Raffaele Sollecito rang the Carabinieri after the arrival of the Postal Police.
- o The BBC's defence seemed to be:

⁵ This is a slight misquotation. The sentence in question read, "... now I [deletion] remember I can't know who was the murder [sic] because I didn't return back to the house."

⁶ Namely, Ms Knox.

- reliance purely on the testimony of the Postal Police (who were inconsistent in their recollections of how they determined the time of their arrival), which was contradicted by Ms Knox's and Mr Sollecito's claims that they rang the Carabinieri before the Postal Police arrived;
 - that the programme did not mislead the audience, despite implying that Mr Sollecito and Ms Knox were lying and that the central arguments against them depended on establishing their deceitfulness; and
 - interpreting the concept of "due weight" by giving greater weight to the most recent rulings by the higher courts. This was not an argument against the accusation of bias, but rather an explicit admission of it. To deny that this reasoning assumed legal infallibility, by pointing to other areas of the programme that showed that the legal system was not above reproach, missed the point.
3. There was no satisfactory justification for interviewing more pro-Prosecution "talking heads" than pro-Defence ones.
- If impartiality could not be measured by the number of interviewees or the length at which they were allowed to speak, then presumably a documentary that consisted purely of interviews with the Prosecution could also be considered fair.
 - The complainant queried whether a five-second soundbite from a pro-Defence commentator would be sufficient to redress the balance.
 - The complainant asked, if the relative number of interviewees was irrelevant, what factors were relevant.
 - To say that quantity did not matter, as long as the interviews were fairly presented, was to beg the question.

The Trust Unit's decision

The Senior Editorial Complaints Adviser (the Adviser) responded on 5 September 2014. She stated that, for the following reasons, she considered the appeal did not have a reasonable prospect of success.

Applicable standard of 'due' accuracy and impartiality

The Adviser noted that the applicable standard of 'due' accuracy and impartiality depends upon certain factors relating to the nature and context of the output in question. With regard to due accuracy, Guideline 3.1 states:

"... 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.

"Therefore, we do all we can to achieve due accuracy in all our output, though its requirements may vary. The due accuracy required of, for example, drama, entertainment and comedy, will not usually be the same as for factual content. The requirements may even vary within a genre, so the due accuracy required of

factual content may differ depending on whether it is, for example, factual entertainment, historical documentary, current affairs or news ...”

Similarly, the Introduction to the Impartiality Guidelines(4.1) states:

“...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. ...”

With regard to the subject and nature of the programme’s content, the Adviser noted that the programme offered a factual account of events relating to the murder of Meredith Kercher and the ensuing trials of Rudy Guede, Raffaele Sollecito and Amanda Knox, the last of whom was the programme’s primary focus. The Adviser noted that the evidence concerning Ms Kercher’s death was complex and disputed, that criminal proceedings had begun over six years ago and were still continuing, and that the trials of the accused had resulted in the initial convictions of Mr Guede, Mr Sollecito and Ms Knox, the subsequent acquittals of Mr Sollecito and Ms Knox on appeal and, most recently, the reinstatement of Mr Sollecito’s and Ms Knox’s convictions (which decision was now being appealed).

With regard to the likely audience expectation, the Adviser noted that the programme was broadcast on BBC Three, which is a mixed-genre channel for 16 to 34-year-old viewers who are “young in spirit and mindset”.⁷ In the Adviser’s estimation, the target audience was likely to be aware that Ms Knox had been convicted, acquitted and re-convicted of Ms Kercher’s murder, but was unlikely to be familiar with the specific details of Ms Kercher’s death or the ensuing criminal trials. The Adviser did not believe that viewers would expect the programme to offer an exhaustive, detailed forensic analysis of this complex case; rather, they would expect an engaging, clear, easily assimilated account of the salient points concerning Ms Kercher’s death and the trials of those accused of her murder.

With regard to signposting, the Adviser noted that the programme was entitled *Is Amanda Knox Guilty?* and that the “lead-in” to the programme stated:

“...in the first TV documentary since the new verdict,⁸ the team who have followed the case from the very start present evidence and ask, ‘Is Amanda Knox Guilty?’ With crime scene footage you may find upsetting.”

The Adviser took the view that the signposting would lead viewers to expect the programme to offer an up-to-date, evidenced, explicit, factual account of the case. She did not believe that viewers would necessarily expect the programme to provide a definitive answer to what they would be likely to regard as a rhetorical question, but rather that they would expect it to provide sufficient information from which to draw their own conclusions.

Taking all the above matters into consideration, the Adviser concluded that the standard of ‘due’ accuracy and impartiality applicable to a factual programme such as *Is Amanda Knox Guilty?* was not as high as that applicable to a scholarly or academic documentary (such as might be broadcast on BBC Four), and did not require the programme to offer a detailed analysis of every aspect of the case.

⁷ <http://www.bbc.co.uk/commissioning/briefs/tv/browse-by-channel/bbc-three/>

⁸ This is a reference to Judge Alessandro Nencini’s decision of 30 January 2014 in the second-level retrial, which reinstated Ms Knox’s and Mr Sollecito’s convictions.

Controversial subjects

The Adviser noted that, under the Impartiality guidelines, particular considerations apply to 'controversial subjects'. Guideline 4.4.7 states:

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

The Adviser noted that the murder of Meredith Kercher and the innocence or guilt of Amanda Knox were matters of debate – sometimes heated – on internet forums, and that campaigning websites had been established by advocates of both sides of the argument. However, it did not necessarily follow that the subject was a controversial one within the meaning of the Editorial Guidelines. Guideline 4.4.6 sets out the various factors that should be taken into account when determining whether a given subject is controversial:

"In determining whether subjects are controversial, we should take account of:

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

Applying the criteria set out in guideline 4.4.6, and having particular regard to the relatively low level of public contention and debate in the UK, the subject's relative lack of topicality, the relative lack of any importance in a particular nation, region or discrete area likely to comprise at least a significant part of the audience, and the fact that much of the public debate consisted of speculation and matters of opinion, the Adviser concluded that the murder of Meredith Kercher and the innocence or guilt of Amanda Knox was not a 'controversial subject' within the meaning of the Editorial Guidelines. It followed that the particular considerations in guideline 4.4.7 did not apply in this instance.

Amanda Knox's accusation against Patrick Lumumba

The Adviser noted that this point of appeal concerned the following passage:

Presenter: Waiting to be taken to jail, Amanda makes another attempt to tell Police what happened with Mr Lumumba by writing out an explanation in English.

Voiceover: In my mind I saw Patrick in flashes of blurred images. I saw him at the basketball court. I saw him at my front door. I saw myself cowering in the kitchen with my hands over my ears because in my head I could hear Meredith screaming. But I have said this many times so as to make myself clear: these things seem unreal to me, like a dream. I want to make it clear that I am very doubtful of the verity of my statements. Because they were made under the pressure of stress, shock and extreme exhaustion.

Presenter: But despite her uncertainty she doesn't retract her accusation. Mr Lumumba remains in jail, pleading his innocence.

The Adviser noted that the definition of "retract" (so far as applicable to this context) in the online version of the Oxford Dictionary states:

"[WITH OBJECT] Withdraw (a statement or accusation) as untrue or unjustified: *'he retracted his allegations'*"⁹

The Adviser noted that, in the 6 November Note,¹⁰ Ms Knox stated:

"And I stand by my statements that I made last night about events that could have taken place in my home with Patrik [*sic*], but I want to make very clear that these events seem more unreal to me than what I said before, that I stayed at Raffaele's house. ...

"In these flashbacks that I'm having, I see Patrik [*sic*] as the murderer, but the way the truth feels in my mind, there is no way for me to have known because I don't remember FOR SURE if I was at my house that night." [emphasis added in bold]

The Adviser noted that, while expressing her doubts about the reliability of her previous statements, Ms Knox affirmed that she stood by them. In the Adviser's view, this fell short of withdrawing a statement or accusation as untrue or unjustified. The Adviser therefore believed that Trustees would be unlikely to decide that the statement that "... despite her uncertainty she doesn't retract her accusation" was inaccurate or misleading.

The Adviser also noted that, in the passage in question, the voiceover clearly stated in Ms Knox's own words that she was very doubtful of the veracity of her statements. The Adviser therefore believed that Trustees would be unlikely to decide that viewers would have been misled as to the import of the 6 November Note.

The Adviser noted the complainant's argument that the 7 November Note was a "retraction", and that the programme was therefore misleading in claiming that the 6 November Note was not a retraction while failing to acknowledge that the 7 November Note was. The Adviser noted that the complainant had not previously raised this argument, and that the ECU had not had the opportunity to consider it. However, in view of the additional costs and delay involved in remitting this point of appeal to the ECU for further consideration, the Adviser decided that it was appropriate and cost-effective for the Trust to consider it together with this appeal.

The Adviser noted that the 7 November Note stated:

"I didn't lie when I said I thought the killer was Patrik [*sic*]. I was very stressed at the time and I really did think he was the murder [*sic*]. But now I [*deletion*] remember I can't know who was the murder [*sic*] because I didn't return back to the house."

⁹ <http://www.oxforddictionaries.com/definition/english/retract>

¹⁰ <http://www.telegraph.co.uk/news/worldnews/1570225/Transcript-of-Amanda-Ms-Knox-note.html> ;
<http://www.amandaMsKnox.com/wp-content/uploads/2013/07/MEMORIALE-I.docx>

The Adviser agreed that this might be described as a “retraction” of Ms Knox’s accusation against Mr Lumumba. The Adviser therefore considered whether its omission from the programme was materially misleading.

The Adviser noted that, following the passage quoted above, the narrative turned to the local African community’s response to Mr Lumumba’s detention, Mr Lumumba’s views of the role that race had played in his arrest and detention, and the identification of Rudy Guede as a suspect. The narrative then returned to Mr Lumumba’s story, stating:

Presenter: Meanwhile the case against Patrick Lumumba, as outlined by Amanda Knox, collapses. A customer at the bar has given him an alibi, and he’s freed.

The Adviser noted that Mr Lumumba was not released until 20 November 2007, almost two weeks after the 7 November Note.¹¹ It appeared to the Adviser that the decision to release Mr Lumumba was attributable to his alibi, and that the 7 November Note was not instrumental in procuring his release. The Adviser therefore concluded that Trustees would be likely to decide that knowledge of the 7 November Note was not essential to viewers’ appreciation of events, and that its omission from the narrative was not materially misleading.

The Adviser noted that the narrative continued:

Presenter: How did Amanda Knox come to mention Mr Lumumba’s name to Police? For the first time, we can hear an audio tape of her explanation to the Prosecutor. A transcript of this was presented in court, but not the audio. ... [O]n December 17th 2007 Ms Knox is asked why she told Police Mr Lumumba committed the crime.

There then followed audio footage of Ms Knox’s questioning by the Prosecutor, over video footage of Ms Knox in what appeared to be a courtroom.

The Adviser believed that Trustees would take the view that, by including Ms Knox’s own explanation of her mental state in relation to her accusation against Mr Lumumba, expressed in her own words and uttered in her own voice, the programme offered viewers a vivid, first-hand account of her reasons for acting as she had done. The Adviser therefore concluded that Trustees would be unlikely to decide that the omission of any reference to the 7 November Note would have given viewers a misleading impression of Ms Knox’s conduct in this regard.

For these reasons, the Adviser concluded that Trustees would be likely to decide that the passage in question was duly accurate and was not misleading. She therefore decided that this point of appeal did not raise a “matter of substance”, and that it should not proceed for consideration by Trustees.

The timing of Raffaele Sollecito’s call to the Carabinieri, in relation to the arrival of the Postal Police

The Adviser noted that this point of complaint referred to the following passage:

Presenter: When Police arrive here they see two students in the driveway. Amanda Knox and Raffaele Sollecito. They tell the Police the front door is open

¹¹ http://en.wikipedia.org/wiki/Murder_of_Meredith_Kercher

and one room has been ransacked. Police go into the house. One bedroom's a mess. Clothes are all over the floor and a large rock is lying near the window.

Shortly after the Postal Police arrive, at 12:51 Raffaele Sollecito calls the elite police force, the Carabinieri. He doesn't mention that the Postal Police are already there and says that nothing has been stolen – details Prosecutors would later claim as significant.

The Adviser noted the complaint that the programme had presented as fact the Prosecution's disputed allegation that Mr Sollecito rang the Carabinieri after the arrival of the Postal Police.

The Adviser noted that the programme makers had argued that, although the timing of the calls was heatedly debated in court, the investigators' own testimony and the majority of judicial decisions confirmed them being made after the arrival of the Postal Police. The programme makers also argued that, in any case, the key point of this section was that Mr Sollecito told the operator that nothing had been stolen.

The Adviser noted the Complaints Director's findings, as follows:

- The most recent, legally binding, court decision could not be reduced to the status of an "assertion", controversial or otherwise. That is not to say that it should not be tested and the opposing arguments considered. However, the Complaints Director did not think that an approach which acknowledged and gave due weight to the fact of the most recent and highest 12 legally binding decision was inherently biased or unfair.
- Although Judge Massei's Report¹³ (in the first-level trial) suggested that the Postal Police had arrived after the calls, this was based on the officers' apparent ignorance of the calls having been made, rather than on any evidence to contradict the account of Inspector Battistelli of the Postal Police. Despite his conclusion on this point, Judge Massei found Ms Knox and Mr Sollecito guilty, from which the Complaints Director inferred that the Judge did not believe the point to be material to the question of their guilt or innocence.
- While making clear that this version of events was disputed might have given audiences a fuller understanding of the defence arguments, the script was not materially misleading in this regard. Given that the point was contested by the defendants, but was not in the event fundamental to the case against them, the Complaints Director did not believe that viewers would have been misled by the absence of their argument.
- The programme did not expand on the implications of the presence or absence of the Postal Police, although these were mentioned briefly later on. The Complaints Director concluded that, while this point may have had some significance in legal proceedings, he could not see how audiences would have been materially misled by the reference to the timing.
- Judge Nencini, in the most recent ruling, was not convinced that the Carabinieri had been called before the Postal Police arrived:

¹² NB the most recent adjudication, that of Judge Nencini, was in a second-level court, not in the highest Italian court (the Court of Cassation).

¹³ NB the report was a joint one, by Presiding Judge Giancarlo Massei and Assistant Judge Beatrice Cristiani. See

<http://masseireport.wordpress.com/>.

“From these findings of fact and verifications made by the Police, it emerges that the first call to the Carabinieri’s emergency number was made at 12:51:40, and thus more than 15 minutes after Inspector Battistelli had arrived ...

“It follows from this that when Raffaele Sollecito communicated to Inspector Battistelli that he had already called the Carabinieri, he had not yet done so, and would do so about a quarter of an hour later ...

“The observation of the first-instance Judges¹⁴ does not appear to this Court to take into account the importance of a series of findings of fact which lead one to conclude, contrary to what has always been claimed by the defendants, that the latter alerted the Carabinieri after the arrival of the police officers and not before ...”¹⁵

- The finding of the most senior¹⁶ and most recent court was that the evidence did not support the defence argument, and the Complaints Director felt unable to conclude that the programme may have misled viewers on this point.

The Adviser noted the complainant’s response to the Complaints Director’s provisional findings:

- With regard to due impartiality, it was difficult to understand how the recommendation to avoid “detachment from fundamental democratic principles” justified giving greater weight to claims endorsed by the latest and highest¹⁷ court ruling.
- A documentary should mention that ruling because it was pertinent, but there was no obligation to give greater weight to its assertions, especially when those assertions were at the heart of the controversy.
- The legal authority of court rulings cannot be relevant to the truth or falsehood of the assertions they make.
- The BBC seemed to be adhering to the principle of legal infallibility – although the programme broke this principle by dismissing the ruling of the Massei court. This deviation was defended for other reasons, but the principle was restored by referring to the more recent Nencini verdict, despite the admission that Nencini’s decision post-dated the broadcast.
- The complainant wondered whether the BBC would have accepted the programme was biased if it had been made before the Hellman verdict¹⁸ was annulled by the Supreme Court.
- The implication of this allegation was that Mr Sollecito and Ms Knox were both lying. As there was no indication that the timing of the call was disputed, an uninformed viewer would naturally be more sceptical of other claims made by Mr Sollecito and Ms Knox. Given that the supposedly staged burglary, Mr Sollecito’s and Ms Knox’s

¹⁴ Namely, Judge Massei and Assistant Judge Cristiani.

¹⁵ <http://www.amandaKnox.com/the-meredith-kercher-murder/verdicts-motivations/the-nencini-report/>

¹⁶ NB the most recent adjudication, that of Judge Nencini, was in a second-level court, not in the highest Italian court (the Court of Cassation).

¹⁷ See previous footnote.

¹⁸ This is a reference to the decision of Judge Hellman of 3 October 2011 in the “second grade” or appeals court, which upheld Ms Knox’s and Mr Sollecito’s appeals against conviction. See <http://hellmannreport.wordpress.com/>

“changing alibis” and Ms Knox’s “confession” were central to the Prosecution case, it was difficult to see how this would not have materially misled the audience.

- Inspector Battistelli’s partner, Assistant Marsi, denied that they established the time by looking at a watch when they arrived; rather, they reconstructed the time of arrival from the time they left their station and the time they discovered Ms Kercher’s body.¹⁹

The Adviser noted that, in response, the Complaints Director disagreed:

- with the complainant’s assessment of the sense that viewers would have taken from this passage;
- that viewers would have drawn the conclusions the complainant ascribed to them based on this point; or
- that it was necessary to include more on Fabio Marsi’s testimony.

In the Complaints Director’s view, given the “enormous number” of details that had been argued over in the case, it would not be possible or practical to explore all such points in such detail. The Complaints Director remained of the view that it was not misleading to refer to the phone calls as the programme had done, and did not agree that Massei’s view was such that the programme ought to have presented more of the defence argument on this point.

The Adviser noted that this point of complaint concerned the statement in the passage quoted above that “Shortly after the Postal Police arrive, at 12:51 Raffaele Sollecito calls the elite police force, the Carabinieri.”

The Adviser noted that Judges Massei and Nencini agreed on the timing of Mr Sollecito’s first call to the Carabinieri. Judge Massei stated:

“The phone calls made to the Carabinieri ... were at 12:51pm and 12:54pm on November 2, 2007 by Raffaele Sollecito.”²⁰

Judge Nencini stated:

“... the first call to the Carabinieri’s emergency number was made at 12:51:40 ...”²¹

Noting that the complainant had not disputed the time at which the first call was made, the Adviser concluded that there was no evidence to suggest that the statement “... at 12:51 Raffaele Sollecito calls the elite police force, the Carabinieri” was inaccurate or misleading.

With regard to whether Mr Sollecito made the first call before or after the arrival of the Postal Police, the Adviser noted that, according to both Inspector Battistelli’s and Assistant Marsi’s testimonies, they (the Postal Police) arrived at the murder scene at around

¹⁹ Trial testimony, 6 February 2009, pp 139–140. For transcripts in Italian, see <http://www.amandaknox.com/wp-content/uploads/2013/07/Trascrizioni-2009-Feb-6-Pt.1-Bartolozzi-Battistelli-Marsi-Lana-Biscarini-A-Biscarini-F-Zaroli-Altieri.pdf> (incomplete); http://murderofmeredithkercher.com/wp-content/uploads/2014/04/2009-02-06_-_Bartolozzi-Battistelli-Marsi-Lana-Biscarini-A-Biscarini-F-Zaroli-Altieri-OCR.pdf

²⁰ Massei report, p 79.

²¹ <http://www.amandaKnox.com/the-meredith-kercher-murder/verdicts-motivations/the-nencini-report/>

12:30.²² The Adviser noted that, although the police officers' testimonies were inconsistent with regard to the means by which they reckoned the time of their arrival, they agreed on the time itself.

The Adviser noted that Judge Massei's finding on this point was a parenthetical aside, made in the context of his consideration of why Mr Sollecito had changed his story with regard to whether there had been a burglary. In the Adviser's view, this tended to support the programme makers' argument that the key point of this section was that Mr Sollecito told the operator that nothing had been stolen.

The Adviser noted that the relevant passage of Judge Massei's report stated:

"And then, **a change of version takes place** and he [Sollecito] tells the Postal Police (who it can be held that, according to what is maintained by the defendants' defence, arrived after Raffaele Sollecito's telephone call to 112, and this by nothing other than the fact that regarding these calls to 112, the Postal Police say nothing; in the same way that they said nothing about those that preceded them, at 12:40 pm and at 12:50 pm; each of these phone calls being of a not brief duration that, therefore, would not have escaped the attention of the two police officers) that there has been a burglary. Fabio Marsi in fact testified that the two young people told him they were awaiting the arrival of the Carabinieri because there had been a burglary inside the house ..."²³ [emphasis added]

The Adviser noted that Judge Massei's finding was based upon the Postal Police officers' ignorance of Sollecito's calls, and upon Assistant Marsi's testimony that Ms Knox and Mr Sollecito told him they were waiting for the Carabinieri to arrive. As discussed below, this reasoning was disapproved by Judge Nencini in the second-level retrial, on the grounds that it took inadequate account of all the witness statements and of the confusion of the situation, which (in Judge Nencini's view) prevented the police officers from paying attention to what Mr Sollecito and Ms Knox were doing.

The Adviser also noted that, notwithstanding Judge Massei's preference for the Defence's version on this point, he proceeded to find Ms Knox and Mr Sollecito guilty, from which the Adviser inferred that this point was not an essential element of the case against them. The Adviser therefore agreed with the Complaints Director's conclusion that Judge Massei's verdict implied that he did not consider this point to be material to the question of the Defendants' guilt or innocence.

The Adviser noted that Judge Massei's first-level decision had been superseded by the decisions of higher courts, and that, in the second-level retrial, Judge Nencini disapproved of Judge Massei's reasoning on this point, as follows:

"The finding of the first-level Judges necessarily suffers from an inadequate attention to the plurality of the statements of the witnesses known to have been present ... in the excited moments which preceded the breaking of the door to the victim's room ...

"What this means is that this argument of a logical nature adopted by the first-level Judges does not withstand the simple finding that in the time before the discovery of the body none of those present, including the police officers, paid

²² http://murderofmeredithkercher.com/wp-content/uploads/2014/04/2009-02-06_-_Bartolozzi-Battistelli-Marsi-Lana-Biscarini-A-Biscarini-F-Zaroli-Altieri-OCR.pdf , pp 61 (Bartolozzi) and 139–40 (Marsi).

²³ Massei Report, pp 80, 81.

attention to the movements of Raffaele Sollecito, who thus had the possibility of removing himself from the view of those present, and making, in the span of a few minutes, the calls to his sister and to 112. It is indeed of significance that ... the crowd of people that had been brought there all for different reasons, had created an appreciably confusing situation, which certainly prevented the police officers from paying attention to what each of the individual youths were doing.”²⁴

The Adviser noted Judge Nencini’s finding that the call to the Carabinieri was made over 15 minutes after the arrival of the Postal Police. While acknowledging that no court is infallible, the Adviser agreed with the Complaints Director that Judge Nencini’s decision amounted to more than mere “assertion”.

It appeared to the Adviser that, where a conflict arose between two legal decisions, and that conflict could not be resolved by reference to any other authority, it was reasonable to prefer the decision of the higher court (namely, that of Judge Nencini), which in this instance was also the more recent decision. The Adviser noted that that decision accorded with the programme’s editorial line, and she did not consider the fact that it post-dated the broadcast to be a material consideration.

In the Adviser’s view, although an acknowledgement that the Defendants had disputed the allegation in question would have afforded viewers a fuller picture of the conduct of the criminal proceedings, such an acknowledgement was not essential to viewers’ appreciation of those proceedings. In the Adviser’s view, such an acknowledgement was not essential to viewers’ understanding of the events surrounding the murder of Ms Kercher and the convictions of Ms Knox and Mr Sollecito, and its omission was not materially misleading.

With regard to the complaint that the disputed allegation would have undermined Ms Knox’s and Mr Sollecito’s credibility in the audience’s eyes, the Adviser took the view that, while the audience might have wondered why Mr Sollecito had delayed ringing the Carabinieri until after the arrival of the Postal Police, they would not have drawn any conclusion with regard to his credibility.

The Adviser noted that the passage quoted above went on to state: “He [Sollecito] doesn’t mention that the Postal Police are already there and says that nothing has been stolen – details Prosecutors would later claim as significant.” The Adviser did not believe that viewers would have inferred from this comment that Mr Sollecito was being deceitful or dishonest, but merely that the Prosecution had alleged that Mr Sollecito’s conduct was, in some unspecified respect, “significant”. (As discussed above, the significance lay in the fact that Mr Sollecito changed his story with regard to whether there had been a burglary.)

As Ms Knox was not mentioned in relation to Mr Sollecito’s call to the Carabinieri, the Adviser could not agree that the audience would have drawn any inference as to her credibility.

For these reasons, the Adviser concluded that Trustees would be likely to decide that the passage in question was duly accurate, not misleading and impartial. She therefore decided that this point of appeal did not raise a “matter of substance”, and that it should not proceed for consideration by Trustees.

The respective numbers of pro-Prosecution and pro-Defence interviewees

²⁴ <http://www.amandaKnox.com/the-meredith-kercher-murder/verdicts-motivations/the-nencini-report/>.

The Adviser noted the complaint that there was an overwhelming number of pro-Prosecution interviewees, as compared with a single pro-Defence interviewee, and that this had resulted in a lack of impartiality.

The Adviser noted that the Introduction to the Impartiality guidelines states:

“Due impartiality is often more than a simple matter of ‘balance’ between opposing viewpoints. Equally, it does not require absolute neutrality on every issue or detachment from fundamental democratic principles.”

This is amplified in guideline 4.4.2, which states:

“Impartiality does not necessarily require the range of perspectives or opinions to be covered in equal proportions either across our output as a whole, or within a single programme, web page or item. Instead, we should seek to achieve ‘due weight’ ...”

In the Adviser’s view, the question to be considered was whether ‘due weight’ was accorded to the conflicting perspectives on the murder of Meredith Kercher and the convictions of Ms Knox and Mr Sollecito.

The Adviser noted, and agreed with, the Complaints Director’s view that it would not be reasonable to expect an examination of every claim which emerged from the various court cases in what was a short documentary on a complex subject. The Adviser noted, as had the Complaints Director, that the programme included the perspective of Ms Knox and her team, in the form of extensive footage from an interview in which she asserted her innocence. The Adviser also noted that the programme included a direct quotation from Ms Knox’s 6 November Note, audio footage of Ms Knox’s explanation to the Prosecutor concerning her accusation against Mr Lumumba, and several contributions from Anne Bremner of the *Friends of Amanda Knox* campaign.

In the Adviser’s view, the programme had given due weight to the perspective of Ms Knox and those who advocated on her behalf. She did not consider that the omission of certain defence claims, concerning the *minutiae* of the case, would have materially affected the audience’s appreciation of Ms Knox’s position.

For these reasons, the Adviser concluded that Trustees would be likely to decide that the passage in question was duly impartial. She therefore decided that this point of appeal did not raise a “matter of substance”, and that it should not proceed for consideration by Trustees.

Request for review by Trustees

On 14 September 2014, the complainant sent a long document to the Trust, asking the Trustees to review the Adviser’s decision. The complainant’s objections to the Adviser’s decision can be summarised under the following four headings:

1. Controversial Subject

The Adviser’s reasons for deciding there was no material breach of the Editorial Guidelines were partly dependent on her assessment that the subject of Ms Knox’s guilt or innocence was insufficiently controversial. The complainant disagreed with this assessment, and said

the real controversy was the “incarceration of a young woman because of suspicions arising from speculation and opinion”.

2. Ms Knox's Note

The complainant objected to the fact that the Adviser had pointed to the expression “And I stand by my statements that I made last night” from Ms Knox’s 6 November Note, as if its meaning were self-evidently that she affirmed her accusation of Lumumba. The complainant said that this was not clear – she could have been affirming that she had made the statements.

The complainant clarified that his complaint was that the programme had emphasised the note as a failure to retract the accusation. He said that given that Ms Knox did, on any account of the facts, retract her statement on 7 November, the programme distorted the viewer’s perception of the truth.

He also said that it was not fair to blame the continued detention of Lumumba on Ms Knox rather than the police when her statements were never clearly re-affirmed and were retracted in less than 48 hours.

He suggested it was unfair to dismiss his point that the programme failed to present an adequate explanation for Knox’s accusation of Mr Lumumba. He said a balanced report had to consider Ms Knox’s explanation of why she accused Mr Lumumba in the context of false memory confessions.

3. Mr Sollecito's Call to the Police

In relation to the timing of Mr Sollecito’s calls, the complainant objected to the fact that the Adviser had admitted that the programme could have provided a fuller picture, but considered that not doing so was not inaccurate or biased, because it was justified by the evidence, the court rulings and the insignificance of the point. The complainant said the evidence did not justify this, and court rulings should not be considered infallible, or as reliable factual sources. He said the suggestion that the point was insignificant did not acknowledge the inferences that viewers might draw from it.

4. The Number of Pro-Prosecution Contributions

The complainant objected to the fact that the number of pro-Prosecution contributions was deemed fair by the Adviser, because the perspectives of both sides were generally presented impartially. While the complainant accepted that many of the issues were presented fairly, he said this served to highlight the insidious nature of the biased aspects of the programme. He said a viewer who received an overall impression of balance was less likely to notice the manipulative use of subtle language and the portrayal of key evidence in the Prosecution’s favour.

The complainant said he “would expect that the documentary limit itself to the central and most important arguments and claims of the prosecution and with a corresponding defence argument”.

The complainant also objected to being told that the inclusion of Ms Knox’s own account offered sufficient balance in the programme. The complainant pointed out that Ms Knox’s first attempt to explain had been used as evidence against her.

The complainant concluded his document by suggesting that if the Trustees thought there was no material breach of the Editorial Guidelines, they should consider revising the guidelines to redefine the meaning of “controversy” and to require a higher standard of accuracy, integrity, fairness and impartiality.

The Committee’s decision

The Committee was provided with the programme, the complainant’s appeal to the Trust, the Senior Editorial Complaints Adviser’s response and the complainant’s letter asking the Committee to review her decision.

Preliminary issues

(a) Nencini decision

The Committee noted the complainant’s objection that the Nencini decision post-dated the broadcast and so could not be relied upon as evidence for the programme. Trustees understood that the Nencini court’s verdict was announced on 30 January 2014, which pre-dated the broadcast by just over two weeks. The verdict did not disclose the court’s detailed reasons for its decision, which were published on 29 April 2014, approximately ten weeks after the date of broadcast. Therefore, as at the date of broadcast, the Nencini court’s specific findings were not in the public domain.

The Committee noted that the Adviser had relied on certain points in her decision on the judgement which had been issued after the programme had been broadcast. It agreed that it would restrict its decision in this case to what was known at the time of broadcast.

(b) Audience expectation

Generally, the Committee agreed with the Adviser’s analysis that the target audience for the programme was likely to be aware that Ms Knox had been convicted, acquitted and re-convicted of Ms Kercher’s murder, but was less likely to be familiar with the specific details of Ms Kercher’s death or the ensuing criminal trials. Trustees agreed that viewers would not expect the programme to offer an exhaustive, detailed forensic analysis of this complex case, but would expect an interesting, clear, easily assimilated account of the salient points concerning Ms Kercher’s death and the trials of those accused of her murder. The Committee noted that this was relevant to whether the programme achieved due accuracy and due impartiality, which both take into account likely audience expectation.

1. Controversial subjects

The Committee noted that the complainant disagreed with the Adviser’s reasons for deciding that the subject of the programme was not controversial. Whilst Trustees acknowledged that the murder of Ms Kercher was in itself a serious issue they did not accept that meant the subject of the programme was controversial under the Editorial Guidelines. The Committee agreed that the true identity of Ms Kercher’s murderer, or murderers, was a matter of interest to a UK audience but thought that, whilst the subject of Ms Knox’s guilt or innocence was highly important to the complainant, the UK public did not generally share the complainant’s level of interest in it.

The Committee did not think that the subject of the programme was the “incarceration of a young woman because of suspicions arising from speculation and opinion” as claimed by the complainant. It thought the subject of the programme was Ms Knox’s guilt or

innocence, which, as discussed above, it did not think was controversial within the meaning of the Guidelines.

2. Ms Knox's Note

The Committee noted that the complainant said his complaint was about the emphasis on Ms Knox's voluntary note of 6 November as a failure to retract her accusation against Mr Lumumba, when she did retract her accusation the following day. It was noted that the complaint argued that the programme had distorted viewers' perception of the truth and had thus supported the prosecution's story.

Trustees also noted the complainant's argument that Ms Knox should not have been blamed in the programme for the decision by the police to continue to detain Mr Lumumba.

It was noted that the programme makers had juxtaposed two statements:

"But despite her uncertainty she doesn't retract her accusation. Mr Lumumba remains in jail, pleading his innocence."

but had not linked them as to cause and effect and so did not exclude the possibility that there might have been reasons other than Ms Knox's accusation for why Mr Lumumba was kept in custody.

Trustees noted that the complainant disagreed with the Adviser that when Ms Knox said "And I stand by my statements that I made last night" in her 6 November Note she was affirming her accusation, rather than just confirming she had made it.

Generally, in terms of due accuracy and impartiality, the Committee noted that the programme had acknowledged the lack of clarity in the note, firstly by using the words of the note which had shown that Ms Knox questioned the veracity of her own statement and secondly by characterising it as uncertainty.

The Committee agreed with the Adviser that the inclusion of a recording of Ms Knox's own, first-hand explanation to the Prosecutor of her reasons for initially inculping Mr Lumumba gave viewers balanced evidence upon which to form a view of her mental state and the reliability of her statements.

Trustees did not think that the programme had emphasised Ms Knox's voluntary note of 6 November as a failure to retract her accusation against Mr Lumumba in an inaccurate or biased manner. The Committee agreed with the Adviser's reading of the 6 November Note (that Ms Knox did not retract her statement in it), and noted that the programme had simply presented the fact that Ms Knox did not retract her accusation in the 6 November Note, and did not necessarily suggest that Ms Knox was the only reason for Mr Lumumba's continued detention. It agreed that the programme made the uncertainty of the note and Ms Knox's recollections clear to the audience, for it to draw its own conclusions.

In the Trustees' view, due accuracy did not require a programme of this nature, for this target audience, to attempt to set Ms Knox's explanation in the context of current research on false memory confession, or to present all the possible interpretations of it or explanations for it.

For the reasons given above, the Committee felt that were this complaint to come to it on appeal, it would be likely to conclude that the account of Ms Knox's note offered by the programme was duly accurate and impartial.

3. Mr Sollecito's Call to the Police

The Committee noted that it was disputed whether Mr Sollecito had rung the Carabinieri about the "break-in" at Ms Knox's and Ms Kercher's shared cottage before or after the arrival of the Postal Police.

It was noted how the programme covered the matter.

Trustees noted that at the time the programme was in production:

- the Massei court had accepted the Defendants' argument on this point, but had nevertheless convicted them of murder; and
- the Hellman court had not considered this issue to be relevant.

It appeared to the Committee that, even if the complainant's argument were taken at its highest and the Massei court's finding on this point were regarded as definitive, it could nevertheless be inferred from the Massei court's verdict that the court did not regard the issue as crucial to its determination of the Defendants' guilt.

The Committee agreed with the Adviser that this was a relatively minor issue. It acknowledged that, in the criminal proceedings, extensive argument may have been devoted to the point; however, it did not follow that the issue was of commensurate importance either to the ultimate question of Ms Knox's innocence or guilt or in the context of the accuracy of this programme.

Trustees agreed with the Adviser that it would not be reasonable to expect the programme to examine every claim that emerged from the various court cases in what was a short documentary on a complex subject.

The Committee agreed that in a programme of the nature of *Is Amanda Knox Guilty?*, and in circumstances where the disputed facts were not crucial to the innocence or guilt of Ms Knox, it was duly accurate and duly impartial to present the version of facts the programme had included.

The Committee therefore concluded that were this point to come to it on appeal, it would be likely to conclude that the programme was duly accurate and impartial and was not misleading in this regard, and that this point of appeal did not raise a "matter of substance".

4. The Number of Pro-Prosecution Contributions

The Committee noted that the complainant objected to the number of pro-Prosecution contributions in the programme.

The Committee noted the complainant's argument that he "would expect that the documentary limit itself to the central and most important arguments and claims of the prosecution and with a corresponding defence argument".

It was noted that the Introduction to the Impartiality Guidelines states:

“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. Equally, it does not require absolute neutrality on every issue ...”

Trustees did not accept the proposition that, in order to achieve due impartiality, a strict balance between argument and counter-argument must be maintained: the Committee noted that the Introduction to the Impartiality guidelines makes it clear that due impartiality is often more than a simple matter of “balance” between opposing viewpoints.

The Committee noted that Editorial Guideline 4.4.2 states:

“Impartiality does not necessarily require the range of perspectives or opinions to be covered in equal proportions either across our output as a whole, or within a single programme, web page or item. Instead, we should seek to achieve ‘due weight’ ...”

The Committee agreed with the Adviser that the question to be considered was whether ‘due weight’ was accorded to the varying perspectives on the programme’s subject (Is Amanda Knox guilty?).

It was noted that the programme included video footage from an interview with Ms Knox, audio footage of Ms Knox’s explanation to the Prosecutor, a quotation from Ms Knox’s 6 November Note and several contributions from Ms Bremner of the *Friends of Amanda Knox* campaign.

The Committee noted the complainant’s assertion that “defendants are not usually the best advocates of their own innocence”. However, the Committee did think it was acceptable for the BBC to include or reflect assertions of innocence by defendants in order to achieve due weight with arguments of their guilt. It was noted too that Ms Knox’s case was advocated by a third party, namely Anne Bremner.

The Committee did not think the complainant had raised enough evidence to establish that aspects of the documentary were “insidious” or biased. Trustees noted that a variety of viewpoints had been expressed in the programme, and that this was not inconsistent with the requirements of due impartiality.

For these reasons, the Committee agreed with the Adviser that the programme had given due weight to Ms Knox’s perspective.

The Committee therefore concluded that were this point to come to it on appeal, it would be likely to conclude that the respective numbers of pro-Prosecution and pro-Defence interviewees did not give rise to any breach of the Impartiality guidelines, and that this point of appeal did not raise a “matter of substance”.

Conclusion

For all the reasons given above, the Committee concluded that there was no reasonable prospect of it finding there had been a breach of the Editorial Guidelines.

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

BBC Radio 5 Live

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 complaint

The complainant contacted the BBC on 16 April 2014 to express his concern that Radio 5 Live "frequently claimed that radio 5 is first for breaking news". He asked whether that statement could be backed up with factual evidence. If it could not, he considered that the BBC should "cease putting out this misleading advert".

On 29 April 2014 BBC Audience Services responded, stating that the term "first for breaking news" was used as a slogan and referred to "...the station being, hopefully, the first place listeners will think of to tune in to for breaking news".

The complainant did not find this response acceptable and made a follow-up complaint on 2 May 2014. He referred to the content as an "advert" and stated that it strongly implied a qualitative statement amounting to a "claim" that Radio 5 Live "breaks news ahead of other news media and agencies".

Audience Services responded at Stage 1b on 13 May 2014, closing down the complaint and stating that they felt they had responded as fully as they could and did not have anything further to add.

The complainant appealed to the BBC Trust, in accordance with the Stage 1b closedown referral procedure, on 13 May 2014. He appealed both on his substantive concern regarding Radio 5 Live's "unsubstantiated" claims about being "first for breaking news", and also on the "poor" handling of his complaint. He sent a further email to the Trust on 20 May 2014 clarifying the essence of his complaint:

"...if the BBC advertises its service, the claims made should be both true, demonstrable and not misleading. It is my belief the claim made by Radio 5 Live that it is 'First for breaking news and the best live sport', fails on all three counts. Either you can provide evidence to support the claim in which case my complaint does not stand up or you cannot. If the latter applies surely this is a breach of the BBC's editorial guidelines and the advert should be stopped."

Following a review of the Stage 1 correspondence, the Trust Unit replied to the complainant on 21 May 2014 advising that the BBC Executive should have provided the complainant with a further response.

Following consultation with the relevant editorial staff a further response from Audience Services was issued on 30 June 2014, which stated:

"Being 'the first for breaking News' is one of our main objectives and core priorities. Sometimes we do literally break the news first, but you are correct that we can't categorically factually confirm that we will do it on every occasion and across all platforms. Rather, it is a statement of intent and an aspiration, not a statement of fact. It is also not an 'advert' but a strap line and we believe there is an understanding amongst our audience about the context and meaning of such messages. This is demonstrated by the fact this is the first time we have received such a complaint since we adopted it a number of years ago."

The complainant was not satisfied with this further response and the complaint was escalated to Stage 2.

The Head of Editorial Standards, BBC News, responded at Stage 2 on 1 July 2014. He stated:

"I think there is a clear and obvious difference between a supermarket advertisement and the promotional phrase about which you are complaining on Radio 5 Live. 'The best live sport' is, self-evidently, a subjective statement and would be recognised by listeners as such. There is also an obvious difference between the clearly-defined content of news bulletins and the catch-phrases used by the station, both tonally and in terms of placement on the output."

Appeal to the BBC Trust

The complainant was unhappy with the Stage 2 response and escalated his complaint to the BBC Trust at Stage 3 of the complaints procedure on 7 July 2014.

He stated:

"It is my view that BBC's claims on being 'First for breaking news and the best live sport' output fails to meet the BBC Trust's standard on accuracy and is misleading for listeners."

The Trust Unit's decision

The Head of Editorial Standards, Trust Unit, carefully read the correspondence that had passed between the complainant and the BBC, and she acknowledged the strength of the complainant's feelings about this matter.

She noted that the complainant described the content at the centre of his complaint, "First for breaking news and the best live sport", as an 'advert'; whereas the BBC variously called it a 'slogan', 'catchphrase', 'strap line' and 'promotional phrase'.

She acknowledged that the complainant believed that the BBC should not be permitted to run content such as "First for breaking news and the best live sport" unless it could substantiate this phrase. She noted that the BBC Executive had, at times during the correspondence, said that it could not confirm that it would always break the news first.

In assessing whether this content was in contravention of the BBC Editorial Guidelines, the Head of Editorial Standards considered that it was important to establish, in regulatory terms, how the material was defined. This was because different rules apply to different material. For instance, the rules that applied to broadcast advertising content in the United Kingdom are different to the rules that applied to editorial material.

She therefore considered that there were two key questions to be answered in relation to the content containing the phrase "First for breaking news and the best live sport":

- What was the nature of this content (i.e. how should it be classified?)
- What rules applied to this content (as a consequence of how it was classified?)

Question 1: How should the content be classified?

The Head of Editorial Standards acknowledged that the complainant believed the content was, in effect, an advertisement, whereas the BBC variously referred to it as a 'strapline', 'promotional phrase' etc.

She considered whether or not the material could be classed as 'advertising'. Although the BCAP Code (the UK Code on Broadcast Advertising) does not apply to the BBC licence fee funded service, the BCAP (and Ofcom) definition of advertising was instructive in determining whether this material would be classified as advertising.

She noted that the UK definition of broadcast advertising is:

"... publicity by advertisers, including spot advertisements and broadcaster promotions with advertisers (outside programme time), that is broadcast in return for payment or other valuable consideration to a broadcaster or that seeks to sell products to viewers or listeners. The promotion of broadcasters' own-branded activities, goods and events (such as websites, T-shirts and concerts), which enhance audience involvement and are not designed to make a profit or promote commercial partnerships, are excluded."

Similarly, Ofcom's COSTA (Code on scheduling of television advertising) states:

"'television advertising' means any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertaking or natural person in connection with a trade, business, craft or profession in order to promote the supply of goods and services, including immovable property, rights and obligations, in return for payment."

COSTA also states with that

"This definition is derived from Article 1(i) of the AVMS Directive [the EU's Audiovisual Media Services Directive]. In accordance with Article 23(2) of the Directive, it does not include announcements made by a broadcaster in connection with its own programmes and ancillary products directly derived from those programmes, sponsorship announcements and product placements."

The Head of Editorial Standards believed it was clear from the above definitions that the content at the centre of the complaint was not advertising. The so-called promotional material was not transmitted in return for payment or other valuable consideration. Furthermore, the promotion of goods and services, in this case, was not in return for payment.

In regulatory terms, she considered that the content would be defined as a 'self-promotion'. She noted that self-promotions are often run by radio and television broadcasters as content to 'promote' their channel or station. They are often, but not always, used as 'space fillers' to ensure that programme transmission fitted the schedule (for instance, when a previous programme ended early). These self-promotions exist on commercial and non-commercial channels. On commercial channels they do not count towards advertising minutage and are considered to be editorial. By way of example, the Ofcom 'Cross-promotion Code' specifically states that:

“television broadcasters are able to promote programmes, channels...without such promotions being considered advertising and included in the calculation of advertising minutage”.

It also states that:

“Self-promotions are promotions on a channel for that same channel and/or for programmes broadcast on that channel.”

This Code is also clear that the Ofcom Broadcasting Code, which applies solely to editorial material, applies to self- and cross-promotions. These self- and cross-promotions are used frequently across the industry in both radio and television commercial and non-commercial sector.

Given the above, the Head of Editorial Standards considered that the content complained about was in fact a ‘self-promotion’ and not advertising.

Question 2: What rules apply to the content?

Given that the material was editorial (albeit a ‘self-promotion’), like all BBC editorial material, it was required to comply with the BBC Editorial Guidelines. These can be found in full at <http://www.bbc.co.uk/editorialguidelines/>.

The Head of Editorial Standards noted that the complainant had raised concerns that the output was inaccurate and misleading.

The Head of Editorial Standards considered that it would be clear to the listener that the material complained of was a self-promotion. This was because, for example, of underlying music, the manner in which it was delivered, the voice-over, and the fact that it tended to be transmitted at natural junctions in the programming.

It was within the above context that any rules such as “due accuracy” should apply. The BBC Editorial Guidelines stated that “the accuracy must be adequate and appropriate to the output”. The material’s purpose was to encourage listeners to continue to listen, brand the station and build some energy into the programming. The Head of Editorial Standards did not consider that listeners would view the self-promotion as an actual claim that could be substantiated – as would be expected from an advertisement – or, in fact, news reportage. It was, as has been previously explained, a strapline. However, given that it was editorial material and the audience would appreciate that fact, the content was not and should not be subject to the tests that fall upon advertising on commercial broadcasters.

The Head of Editorial Standards noted that it was common for UK television and radio broadcasters to use self-promotions. They often used the language of exaggeration such as “ITV, where drama lives”, “ITV News, we’re life from every angle”, “Sky News, 24 hours of Breaking News”, “More of the games that matter, this season on Sky sports”, “Leading Britain’s Conversation, LBC”, “The very best drama this Christmas, here on ITV1” and “CNBC, First in Business Worldwide”. Sky News currently uses the strapline “First For Breaking News”. In each of the cases mentioned above (and many others), it was clear that these were self-promotions and not to be viewed literally. These self-promotions would not withstand the sort of scrutiny which advertisements are subject to when aimed at selling products and services to members of the public. The use of hyperbole is common in television and radio self-promotions.

The Head of Editorial Standards noted that, in any event, the strapline “First for breaking news” was itself ambiguous and open to a number of interpretations. It could be argued that “First for...” is not actually claiming to be “First with” breaking news. It could, for example, be interpreted as the first place listeners turn to for breaking news as well as the meaning ascribed to it by the complainant.

Contrary to the complainant’s view, the Head of Editorial Standards considered that the term “best” was frequently used in advertising without being subject to substantiation. It could be a subjective term that was frequently used, for instance in respect of quality. For instance, Nescafe used to refer to its product as “Coffee at its best”. Of course, there are other occasions when such a term could be subject to substantiation such as “best price”. But in the context of self-promotion describing a service, she considered that it is unlikely to be problematic and should not require evidential and/or independent proof.

In summary, the Head of Editorial Standards considered that Trustees would be of the view that audiences would not expect the same sort of substantiation for a ‘self-promotion’ that they would for an advertisement or other kinds of editorial output such as a news item.

For the above reasons, the Head of Editorial Standards did not believe that Trustees would be likely to conclude that the content breached the Editorial Guidelines. She therefore did not consider that the appeal had a reasonable prospect of success and decided that it should not be placed before Trustees.

Request for review by Trustees

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

He felt the analysis that made a distinction between an advert and self-promotion material irrelevant. He said that even if the output was classified as self-promotion, it must be “true, demonstrable and not misleading”. Requiring material to be duly accurate did not mean these attributes should not apply. He felt the use of the word ‘due’ implied that the BBC had licence to be “flexible on truth”.

The complainant noted he had been offered three different interpretations of the phrase “first for breaking news” during the course of his complaint. He noted an instance on 30 August 2014, when a Radio 5 presenter followed up a story with a line paraphrased by the complainant as: “you’ll hear any further news first on Radio 5 Live”. The complainant expressed his view that this was not a strapline but actual radio output.

He considered that the natural interpretation of BBC audiences of a claim to be “first for breaking news” would be literal, i.e. that the BBC breaks news first. In addition, he noted that the BBC itself was unclear whether the words meant “first choice for listeners, an aspiration that news will break first, or, that the BBC guarantees it does break first”. In his view, if the BBC was confused then so would listeners be and so BBC Editorial Guideline 3.2.3 (which requires the BBC must not knowingly and materially mislead audiences, distort known facts or present invented material as fact or otherwise undermine audiences’ trust in content) had been broken.

He said that the examples given of other ‘self-promotions’ used by UK television and radio broadcasters were, in the main, feel good subjective assertions. They were not measurable, testable or refutable. He noted Radio 5 Live uses a strapline – “where football lives”. He said he had no objection to such straplines. But words such as ‘first’ or

'best' are strong testable assertions and a high standard of accuracy is required. He said he had not heard Sky News make the "First for breaking news" claim but that, if it did, he would consider it similarly misleading. A major supermarket store would not use such a claim as it would breach advertising standards unless provable.

The complainant noted the analysis provided by the Head of Editorial Standards which suggested an audience was capable of distinguishing fact from hyperbole was at odds with the BBC's approach at other times. The complainant maintained that the Radio 5 line constituted a breach of the Editorial Guidelines on Accuracy.

The Committee's decision

The Committee was provided with the complainant's appeal to the Trust, the reply from the Head of Editorial Standards and the complainant's response asking the Committee to review her decision.

The Committee noted the Radio 5 live phrase to which the complainant objected: "first for breaking news".

It was noted that the complainant considered that the BBC was in breach of the Editorial Guidelines on Accuracy.

Trustees noted the complainant felt that the analysis applied by the Head of Editorial Standards which suggested that this material was not an advertisement but a self-promotion was irrelevant. However, they considered that the reasoning advanced by the Head of Editorial Standards was correct. It was important to establish how the material was defined, because different rules apply to different material. The relevant content was a promotion on a service for that service. It was not broadcast in return for payment or a valuable consideration. This material was a self-promotion and it should be considered in that light.

It was in this context that the requirement for "due accuracy" applied. The Committee noted the BBC Editorial Guidelines, which state that "the accuracy must be adequate and appropriate to the output", and concluded that the level of accuracy required is dependent on the context in which content is broadcast. In this case, the terms about which the complainant complained – namely "first" and "best" – were frequently used without being subject to substantiation. The Committee felt that a self-promotion describing a service should not require evidential and/or independent proof.

The Committee noted that the complainant introduced a new point in his request for review of the decision of the Head of Editorial Standards, namely that there was an instance on 30 August 2014 when a Radio 5 presenter followed up a story with a line paraphrased by the complainant as: "you'll hear any further news first on Radio 5 Live". It noted the complainant's view that this was not a strapline but actual radio output. The Committee noted that it was not appropriate for the complainant to raise a new point at this stage in his complaint. Nonetheless, the Committee considered that had this point been raised at an earlier stage then it would also have categorised the particular content as a self-promotion, as its purpose was the same as the normal strapline.

Overall, the Committee agreed with the Head of Editorial Standards that audiences would recognise the use of the catch phrase "first for breaking news" as a self-promotion whose purpose was to define the aim of the station and to encourage listeners to listen. This would be clear from, for example, the underlying music, the manner in which it was delivered, and the fact that it tended to be transmitted at natural junctions in the

programming. Trustees did not accept the argument that because the BBC itself had acknowledged the content was open to a number of interpretations this would confuse audiences to such an extent as to undermine their trust in the BBC's content or to otherwise breach Editorial Guideline 3.2.3. They also disagreed with the complainant's view that the natural interpretation of BBC audiences would be a literal one.

It was noted that the complainant felt that, however it was described, the content should be "true, demonstrable and not misleading". However, the Committee was of the view that the test it should apply was whether the material was in breach of the BBC's Editorial Guidelines. In particular, the test was whether the accuracy of the content was "adequate and appropriate to the output".

Trustees agreed with the Head of Editorial Standards that the content at the centre of the complaint was of a similar style as that of slogans used by other broadcasters and that audiences would not expect such catchphrases to be precise in their meaning or expect them to be evidenced in the way an advertisement must be capable of being evidenced if it is to make certain claims. Neither would audiences expect this content to attain the same level of factual accuracy as a news story.

The Committee noted that the complainant questioned the expectation of the Head of Editorial Standards that audiences would recognise the content as a promotion. However, it felt that there were many such self-promotions in common use and that there were sufficient indications in the way they were broadcast to manage audience expectations effectively. The Committee therefore agreed that audiences would indeed recognise this content as a promotion.

The Committee therefore concluded that there was no reasonable prospect of it finding there had been a breach of the Editorial Guidelines.

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

Scott Mills, BBC Radio 1, 7 March 2014

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 complaint

The complainant contacted the BBC on 7 March 2014 to raise her concern at comments made on the Scott Mills programme which she alleged were "biphobic and lesbophobic". She said the comments were offensive, inaccurate and biased.

The comments were made during a conversation between Mr Mills and his colleague, Chris Stark, and are transcribed below:

Scott Mills: All Time Low are coming in soon, whenever they arrive. I told you, I knew it was going to be like a Friday show...

Chris Stark: It's a drop-in centre now!

Scott Mills: Yeah, come in, have some food. Have a drink, a hot drink there. Come in from the cold. We're also just discussing Michelle Rodriguez and Cara Delevingne. Actual lesbians or just loving the attention, I don't know? (laughter from co-host). Remember when you became bi once?

Chris Stark: Sorry?

Scott Mills: You became bi for the show, do you remember? Just to get a bit of attention....

Chris Stark: It was when you were saying it would make me trendier...

Scott Mills: ...Yeah, so I was like...

Chris Stark: ...and more fashionable.

Scott Mills: Yeah, become bi for a bit. You didn't actually. You just said it and that's what I'm sensing here. Just the stuff we talk about on a Friday. What's going on with Tinder please?

The complainant said it was never acceptable to say that lesbian and bi women were secretly straight; nor was it acceptable to say that bi people were straight people trying to be "trendier" and "more fashionable".

The complainant was sent an initial response on 15 March 2014 from Audience Services. This noted that the presenters were discussing a subject that was in the public domain and stated:

"...there was no suggestion that bi people are straight people trying to be 'trendier' and 'more fashionable'."

The complainant remained dissatisfied and renewed her complaint. She was sent a further response from Audience Services. This apologised for the offence which the complainant felt and stated:

“Whilst you personally found the comment about Michelle Rodriguez and Cara Delevingne offensive, there was no malice or hostility intended in my view – Scott was simply making a frivolous comment as a result of the recent publicity the two women had attracted.

“Similarly, the suggestion that his straight co-host should become bi to become trendier and more fashionable was clearly not intended to be taken seriously.”

The complainant remained dissatisfied, she considered the comments were offensive and harmful to lesbians and bisexuals and considered that: “...it is never ok to say that lesbian and bi women are secretly straight”. She was sent a response from the Complaints Director who had considered the probable expectations of the listeners, the nature of the comments that had been made and the extent to which any of the comments made had been derogatory. He did not uphold the complaint.

Appeal to the BBC Trust

The complainant escalated her complaint to the BBC Trust on 17 July 2014. She said the Editorial Complaints Unit’s (ECU) finding

1. Failed to take into account evidence on what constitutes biphobia and lesbophobia;
2. Failed to recognise the seriousness of biphobia and lesbophobia;
3. Failed to recognise the seriousness of BBC content featuring such discriminatory mistakes.

The Trust Unit’s decision

The Senior Editorial Complaints Adviser (the Adviser) carefully read the correspondence that had passed between the complainant and the BBC and listened to the section of the radio programme in question. She acknowledged the strength of the complainant’s feelings about this matter but she decided that the appeal did not have a reasonable prospect of success.

The Adviser noted that the complainant had raised concerns that the output was offensive. She considered the complaint against the BBC Editorial Guidelines on Harm and Offence which can be found in full at the following link:
<http://www.bbc.co.uk/guidelines/editorialguidelines>.

The Adviser noted that the guidelines did not state that BBC output should never cause offence – and noted too that this would be an impossible requirement. The guidelines stated that producers should bear in mind generally accepted standards and audience expectations, taking into account “the content, the context in which it appears and editorial justification”.

The Adviser acknowledged that the complainant had found the following comments offensive: firstly, the remark made by Scott Mills about Michelle Rodriguez and Cara Delevingne:

Michelle Rodriguez and Cara Delevingne. Actual lesbians or just loving the attention, I don't know?

Secondly, the exchange between Scott Mills and his colleague Chris Stark:

Scott Mills: You became bi for the show, do you remember? Just to get a bit of attention....

Chris Stark: It was when you were saying it would make me trendier...

Scott Mills: ...Yeah, so I was like...

Chris Stark: ...and more fashionable.

The Adviser noted that the ECU's Complaints Director had addressed the complainant's concerns in his Stage 2 response of 28 May 2014 and did not find that there were grounds to uphold the complaint. He had stated:

"The first point I would make is that it seems to me that the conversation between the two presenters was typical of the random musings, opinions and observations with which regular listeners will be familiar. It was, as Mr Mills put it, "Just the stuff we talk about on a Friday". The BBC's Editorial Guidelines on Harm and Offence recognise that material which might offend some members of the audience is more likely to be acceptable when it falls within the likely expectation of the audience. My impression was that this exchange was typical of the humorous banter between the two men and so I am not persuaded that most regular listeners would have regarded Mr Mills' reference to the relationship between Michelle Rodriguez and Cara Delevingne as anything more than a passing comment.

"Of course, even a comment made in passing can be extremely offensive but I do not believe that was the case on this occasion. Mr Mills' comments were specific to the two women and reflected media interest in their relationship at the time. I certainly don't think it could be taken to imply that other gay or bisexual women might be, to use your phrase, secretly straight. Mr Mills was simply making a light-hearted comment about a high-profile couple.

"The subsequent discussion about Mr Stark's brief pretence at being bisexual was clearly a reference to a previous conversation and reflected the kind of banter which I have already mentioned. There was no sense that Mr Mills was expressing any negative views about being bisexual. It seems to me that any negative connotation could only be taken to refer to the fact that Mr Stark, a straight man, could be trendier or more fashionable. I accept that you found this offensive but I do not believe it would have gone beyond generally accepted standards bearing in mind the nature of the programme and the context. I would also add that people should be free to experiment with their sexuality if they wish and I see no reason why anyone doing so (whatever their justification) should be the subject of discrimination as a result."

The Adviser noted and agreed with this argument. She considered Trustees would be likely to conclude the comments would have been within the expectations of the audience who would have considered this was a light-hearted exchange. She agreed that the first comment was specifically about two people whose relationship was in the public domain rather than a discussion generally about lesbians or bisexual people. She considered

Trustees would agree that the comments did not suggest that other gay or bisexual women might be “secretly straight” and that to the extent that any comments were derogatory, they only related to the idea that the co-host, Chris Stark, might be unfashionable.

She considered Trustees would be likely to conclude the output met the requirements of the Editorial Guidelines and was within the likely expectations of the audience. Therefore, she considered that the appeal did not have a reasonable prospect of success and she decided it should not proceed further.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with her appeal. She also asked that her previous correspondence with the BBC was brought to the Trustees’ attention.

The complainant felt her request for review by Trustees might not be successful due to

“structural lesbophobia and biphobia within the BBC (including guidelines not fit to resist biphobia and lesbophobia) and apathy over these issues from BBC staff”.

The complainant maintained that the exchange to which she objected in the Scott Mills show was “inaccurate, unfair, careless and stereotypical”. She also noted “It perpetuates prejudice and disadvantage that bi and lesbian women experience”. The complainant referred the BBC to The Bisexuality Report available on the Open University website.

The Committee’s decision

The Committee was provided with the complainant’s correspondence with the BBC, her appeal to the Trust, the response from the Senior Editorial Complaints Adviser and the complainant’s letter asking the Committee to review her decision which included a link to The Bisexuality Report.

The broadcast which was the subject of this complaint was also provided. The Committee particularly noted the exchange to which the complainant objected.

Trustees understood the complainant found this exchange was “biphobic and lesbophobic”.

The Committee agreed that the denial of bisexuality or lesbianism as a concept or suggesting a specific person was not bisexual or lesbian when they had made their sexuality clear publicly could cause offence or distress depending on context.

The response from the ECU’s Complaints Director was noted. The Committee agreed that, in this context, the comments to which the complainant objected were light-hearted. There was no reference to lesbian or bisexual people in general. The Committee agreed there was no genuine suggestion that sexuality was a fashion choice or that lesbianism or bisexuality did not exist.

The Committee therefore concluded that there was no reasonable prospect of it finding there had been a breach of the Editorial Guidelines on Harm and Offence.

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

Scotland 2014, BBC Two Scotland, 10 July 2014

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 complaint

The complainant initially contacted the BBC on 15 July regarding Scotland 2014, BBC Two Scotland, broadcast on 10 July 2014. The programme included a report into the finding of the Upper Tier Tax Tribunal. HMRC had argued that payments that had been made by Rangers to players and employees should have been liable for tax and had appealed against an earlier finding. The Upper Tier Tax Tribunal found in Rangers' favour and dismissed HMRC's appeal.

A pre-recorded report was followed by live interviews with two guests; an editor of a book on Rangers and a spokesman for a Rangers fan group.

The complainant noted that the broadcast included a factual error – in the introduction to the item: the presenter had wrongly stated that the club had been “stripped of its trophies”. The complainant considered that, while there had been an apology for this at the end of the programme, it was nonetheless evidence of bias at BBC Scotland against Rangers.

He considered that one of the interviewees (the editor of the book) was not an appropriate guest; that she was biased against Rangers and should not have been invited onto the programme. He referred to previous complaints he had made which all related to allegations of bias against Rangers by the BBC.

The complainant received responses at Stage 1 from Audience Services and at Stage 2 from the Head of Public Policy and Corporate Affairs, BBC Scotland. His complaint was not upheld.

Appeal to the BBC Trust

The complainant escalated his complaint to the BBC Trust, saying that he was unhappy with the response received at Stage 2. He said that one of the programme guests should not have been invited as she was known not to be impartial about Rangers. He said an apology issued by the programme for a factual error about the club was insufficient as he believed that what he saw as the many inaccuracies about Rangers showed either incompetence or institutional bias.

The Trust Unit's decision

The Senior Editorial Complaints Adviser (The Adviser) carefully read the correspondence that had passed between the complainant and the BBC, and she acknowledged the strength of the complainant's feelings. The relevant correspondence was reviewed by the Trust Unit and an independent editorial adviser watched the programme, read the correspondence and also carried out research into the BBC's reporting of Rangers Football Club.

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

She began by noting that the complainant believed that one of the programme guests should not have been invited on the programme because in his view, she was, amongst other matters, known to be biased against Rangers Football Club.

She noted that the Head of Public Policy and Corporate Affairs, BBC Scotland had responded to the complainant on 1 August 2014 and had addressed this point. He had stated that the guest had been invited to comment on the findings of a tax case about Rangers because she had edited a book which focussed on the financial troubles at the club. The Adviser also noted that a spokesman for a Rangers fan group had also been involved in the discussion.

The Adviser noted that the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. "The direction of the BBC's editorial and creative output" was specifically defined in the Charter (paragraph 38, (1) (b)) as a duty that was the responsibility of the Executive Board, and one in which the Trust did not get involved unless, for example, it related to a breach of the BBC's editorial standards, which did not apply in this case.

She noted that, as a result, decisions relating to which contributors should be invited onto a programme fell within the "editorial and creative output" of the BBC and were the responsibility of the BBC Executive.

The Adviser then considered whether an apology issued by the programme over an inaccuracy had been sufficient. She noted that in introducing the item on Rangers' legal appeal over a tax demand from the Inland Revenue, the presenter said:

"It has not been easy being a Rangers' fan in recent years: watching the club go broke, stripped of its trophies and relegated to the third division. Many people have been blamed for the club's demise. Today, furious fans say it is all the fault of the taxman for taking a case against the club for tax avoidance, as our sports correspondent ... reports:"

The Adviser noted at the end of the programme, the presenter said:

"Now before we go, we need to make a correction to our Rangers' report at the beginning of the show: Rangers were not stripped of their titles as we said earlier on."

The Adviser noted that in the introduction to the Accuracy guidelines, it states:

"The BBC is committed to achieving due accuracy. This commitment is fundamental to our reputation and the trust of audiences, which is the foundation of the BBC. It is also a requirement under the Agreement accompanying the **BBC Charter**.

"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 further noted that one of the principles of the Accuracy guidelines states:

3.2.4 We should normally acknowledge serious factual errors and correct them quickly, clearly and appropriately.

The Adviser noted that the presenter had acknowledged the error and corrected the inaccuracy whilst the programme in which it had been made was on air. The Adviser considered that Trustees would conclude the programme had acted quickly and in a clear and appropriate manner. As a result, she did not believe it had breached the Editorial Guidelines on Accuracy.

The Adviser then noted the complainant's concern that the inaccuracy on Scotland 2014 was an illustration of either incompetence or institutional bias against Rangers at BBC Scotland. She noted that the previous cases he had cited in his correspondence had been considered by the BBC Trust. She further noted that the Trustees had decided in March 2013 that there were not sufficient grounds for considering an appeal alleging general bias by BBC Scotland against Rangers Football Club. Their finding can be found via the following webpage:

http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc_bulletins/2013/mar_2013_2.pdf

The Adviser therefore considered the appeal did not have a reasonable prospect of success and she did not propose to put it before Trustees.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with his appeal. He asked Trustees to consider the whole picture, "not just [his] various complaints, but the whole story" when deciding if there was bias against Rangers.

The Committee's decision

The Committee was provided with the complainant's appeal to the Trust, the response from the Senior Editorial Complaints Adviser and the complainant's email asking the Committee to review her decision. The Committee was also provided with the relevant programme material.

The Committee noted that the complainant believed that one of the programme interviewees was not an appropriate guest because, he said, she was biased against Rangers. He referred also to previous complaints he had made which all related to allegations of bias against Rangers by the BBC.

The complainant had also complained about an inaccuracy within the programme.

On the point of inaccuracy, the Committee noted that the presenter had acknowledged the error and corrected it within the live programme, stating:

"Now before we go, we need to make a correction to our Rangers' report at the beginning of the show: Rangers were not stripped of their titles as we said earlier on."

The Committee therefore concluded that the programme had acted quickly and in a clear and appropriate manner in accordance with editorial guideline 3.2.4. As a result, the Committee agreed it would be likely to conclude that although there had been a breach of the Editorial Guidelines on Accuracy it would take the view that the complaint had been resolved by this swift on-air correction.

With regard to the programme guest invited to appear on this particular programme, and whom the complainant believed to be biased against Rangers Football Club, the Committee noted that decisions relating to which contributors should be invited onto a programme fell within the remit of the “editorial and creative output” of the BBC and were the responsibility of the BBC Executive according to the Royal Charter unless BBC Editorial Standards were breached.

The Committee noted that the Head of Public Policy and Corporate Affairs, BBC Scotland had addressed the editorial reason for selecting a contributor in his response to the complainant. He had stated that the guest had been invited to comment on the findings of a tax case about Rangers because she had edited a book which focussed on the financial troubles at the Club. The Committee noted that a spokesman for a Rangers fan group had also been involved in the discussion.

The Committee noted that the Editorial Guidelines allowed for a wide range of opinion to be included in output. It was not a requirement of the Editorial Guidelines that guests should be neutral in their views.

The Committee considered that there was an editorial reason for the contributor’s inclusion in the content. The Committee did not believe that it would be likely to conclude that it had seen evidence to suggest that there had been a breach of the Editorial Guidelines on Impartiality in relation to the contributor’s participation in the programme.

With regard to the allegation of general BBC bias against Rangers Football Club, the Committee noted that in March 2013 it had decided that there were insufficient grounds for considering an appeal alleging general bias by BBC Scotland against Rangers Football Club. This finding can be found via the following webpage:
http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc_bulletins/2013/mar_2013_2.pdf

Given that Trustees did not consider there had been a failure of due impartiality with regard to this particular programme, Trustees considered that it was not appropriate, proportionate or cost effective to consider and investigate a new allegation of general bias against Rangers.

The Committee did not consider that this complaint had a reasonable prospect of success and therefore decided that this appeal did not qualify to proceed for consideration.

The Committee decided that this appeal did not qualify to proceed for consideration.

Russia on Four Wheels, BBC Two, 20 January 2014

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.

Context

Pussy Riot is a feminist punk rock protest group from Moscow. In 2012 five members staged an unauthorised 'performance'/protest in the Cathedral of Christ the Saviour in Moscow. Later three members were convicted of "hooliganism motivated by religious hatred". They gained support from Human Rights campaigners in the West.

Russia on Four Wheels was a two-part series in which two presenters set off on road-trips across Russia, both beginning in Sochi.

The complaint

The complainant first contacted the BBC on 27 January 2014 to say that the first programme in the series was biased in favour of the Pussy Riot protesters. He said that the presenter had displayed personal bias, promoting the protesters' ideology and defending their controversial actions within a Moscow-based Russian Orthodox Church. The programme had not interviewed any members of the Russian Orthodox Church. He said that the programme had failed to acknowledge the "hurt and offence caused to the church and its members" by the protest.

In reply BBC Audience Services explained that the BBC did not think the piece was biased:

"The interview only lasted a short time in which [the presenter] provided a bit of background to the arrest of the band:

'It was this performance in Moscow's Orthodox Cathedral that finally prompted the authorities to act. Russia is a deeply religious society and many people were offended.'

"The only question that was asked was if they believe their 'protest' has 'made any difference,' there was certainly no personal bias prevalent throughout. [The presenter] did provide some explanation on what she took from [a Pussy Riot group member's] response, specifically:

'And from that, I take it she means that far from this country moving towards democracy; it's actually going back towards an autocracy where the state has a really tight grip on everything.'

"We apologise if you found this inappropriate or offensive however we feel it's made clear this was merely [the presenter] clarifying [a Pussy Riot group member's] response."

The complainant made contact again and explained his concerns further. He said that:

"[The presenter] spoke about the human rights of protesters and states it was a peaceful protest. So how on earth can the BBC say it was a peaceful protest? How can people go into a licensed place of worship and incite religious hatred and the BBC call that peaceful? What about the human rights of those who wish to

exercise their beliefs in religion? What about those with health issues, such as heart problems?"

In a further contact he added:

"[The BBC's reply] ignored other things that were stated by the presenter such as 'that what seems to us as outrageous sentences'."

In its reply the BBC said that:

"It is important to consider that although the 'Pussy Riot' protest took place in a church, the group's stated target was Putin and Russia's political regime rather than the Russian Orthodox Church itself. This point is reiterated during the interview with a member of the group. The offence caused to the religious community was clearly acknowledged, but as the focus of this section was to understand the reasons for the protest, rather than to provide a comprehensive analysis of the event itself, it was not deemed editorially necessary to include an interview with a church member.

"I note that you do not consider the protest to have been 'peaceful' due to the offence and disruption that it caused, however the term was used in the sense of 'non-violent', which we believe would have been clear to most viewers. It is also important to note that although [the presenter] discusses 'human rights' several times, she is not referring exclusively to the rights of the protesters, rather, she spoke about 'the issue of human rights in Russia'. In voicing these concerns, as well as describing 'what seems to us like outrageous sentences' [the presenter] was simply reflecting the widely held view in Britain that the outcome was harsh."

The complainant then went to Stage 2 of the BBC's editorial complaints system, the Editorial Complaints Unit (ECU).

The ECU did not uphold the complaint. The Complaints Director explained the nature of the programme which involved two presenters interviewing a wide range of people to find out how Russia had changed since the collapse of the Soviet Union. He said:

"It was often the case that a single voice was heard (rather than both sides of an argument) and it was left to the presenters to put such opinions in context and reflect other points of view where appropriate."

Taking into account the subject and nature of the programme the Complaints Director did not feel more needed to be said to explain why the protest was regarded as offensive or hostile to the Church. He noted the presenter did explain that the protest caused widespread offence:

"It was this performance in Moscow's Orthodox Cathedral which finally prompted the authorities to act. Russia is a deeply religious society and many people were offended."

He also added that the presenter went on to explain that three members of the group were "convicted of hooliganism motivated by religious hatred". He did not believe the views of parishioners who were harmed or offended by the protest needed to be reflected in the programme. It was a legitimate editorial decision to focus on the views of the protesters in considering Russia's recent attitude towards human rights.

He also did not consider it inaccurate to describe the action by members of Pussy Riot as “a peaceful protest”. The adjective in this context would suggest that the protest did not involve violence or physical confrontation. This did not mislead.

He later added:

“[The presenter] ...did say the three who were found guilty were ‘given what seems to us as outrageous sentences’ which I agree could have given the impression that she was sympathetic towards their aims and actions. I can see why you might regard this as evidence of bias but there are two points which I think are relevant. Firstly, presenters and correspondents are entitled to offer a professional judgement on such matters and secondly, the sentences were described as disproportionate by the UK government, the US administration and the EU, so [the presenter] was reflecting a widely held view.”

Appeal to the BBC Trust

The complainant appealed to the BBC Trust on 1 July 2014. The complainant complained that the section of the programme which discussed the Pussy Riots was biased. He said that the programme should have provided far greater detail on why the protests inside the church were deemed offensive and hostile to the Church, and how members of the congregation had suffered as a result of the Pussy Riot’s behaviour. Members of the Russian Orthodox Church in the UK had suffered hate crimes as a result. He argued that to describe Pussy Riot’s action as peaceful was inaccurate.

The Trust Unit’s decision

The Head of Editorial Standards, Trust Unit (the Adviser) read the relevant correspondence and watched the relevant section of the programme. She considered the appeal did not have a reasonable prospect of success.

The Adviser acknowledged the strength of the complainant’s feelings and his concerns for members of the Russian Orthodox Church in Russia and the UK.

Firstly, she considered the question of whether the programme was duly impartial. She referred to 4.1, 4.4.2 and 4.4.8 of the BBC’s Editorial Guidelines [<http://www.bbc.co.uk/editorialguidelines/page/guidelines-impartiality-introduction/>].

The Adviser felt that the BBC had offered a reasonable explanation as to why it was satisfied that the programme had adhered to the impartiality guidelines. The guidelines did not require programme makers to reflect every point of view or interested party on every subject they had explored within the overall programme. It was not necessary in this case to interview a member of the Russian Orthodox Church although it would doubtless have been very interesting. It was acceptable for presenters to use commentary or questions or provide insight into other views.

The Adviser noted that the programme had made clear both the deeply religious nature of Russian society and the offence caused by the protest.

She noted too that the programme had also made it clear that the group had been “convicted of hooliganism motivated by religious hatred” so explaining the views of the Russian court on the subject.

She was fully aware that the complainant was concerned by the line which said that the three protesters were “given what seems to us as outrageous sentences”.

But she did not consider this as evidence of personal bias by the presenter or bias in the programme. The presenter was expressing the perspective of the West and this had been evidenced by the ECU in describing the position of the UK government (and that of the EU and the US administration). The presenter was entitled to give her professional view.

She then turned to the issue of whether the description of the protests as peaceful had been duly accurate as explained in the BBC Editorial Guidelines:

“The BBC is committed to achieving due accuracy...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. Therefore, we do all we can to achieve due accuracy in all our output, though its requirements may vary.”

In considering the issue of whether it was fair to describe the protest as peaceful, the Adviser noted the importance of the term ‘due accuracy’ in the guidelines, and the expectation that programme makers must achieve a level of accuracy that is adequate and appropriate to the output. In this context she felt the BBC had offered a reasonable account of why the term ‘peaceful’ was, in its view, acceptable within the context used. She felt the BBC had good grounds for saying that ‘peaceful’ was an appropriately accurate, if abbreviated, description of the protests as being essentially non-violent. She understood the complainant’s view that the protests were highly disruptive, and seen as hostile and offensive by Church members. She noted that some congregation members had had health problems attributed to the protest and that the three group members had been convicted of religious hatred. However, she believed that, in general, a UK audience would consider the words ‘peaceful protest’ to mean no physical violence was used.

Overall, she felt that an appeal to the BBC Trust did not have a reasonable prospect of success.

Request for review by Trustees

The complainant raised a number of issues including reiterating that:

- The item was biased
- It was not a peaceful protest

He said with regard to the presenter’s comments on the nature of the sentences that he could produce people who thought and supported the view that the sentences were lenient. He considered that it was not a widely held view that the sentences were harsh. The complainant noted that groups had come forward to support him and to “support the clamp down on religious hatred”.

He considered this was a controversial subject. He questioned what weight should be given to minority views with regard to Guideline 4.4.2 which says that minority views should not necessarily be given equal weight to the prevailing consensus. He argued that the majority of the UK considers that religious hatred is wrong.

He also said that as this was a licensed place of worship this was incitement to hatred and this should have been taken into account.

He provided English translations of the words sung by Pussy Riot. He found the words deeply offensive and said they included obscenities about God which supported the view that the protests could not accurately be described as peaceful.

The Committee's decision

The Committee was provided with the complainant's appeal to the Trust, the response from the Head of Editorial Standards and a transcript that summarised the points made in four phone calls by the complainant asking the Committee to review the Adviser's decision. The Committee was also provided with the relevant programme material.

The Committee began by considering whether it was accurate to describe the protest as peaceful. The words of the protest were made available to the Committee. The Committee accepted that the original protest might have caused deep offence not only to the complainant, but also to those worshipping in the cathedral at the time and to those who belonged to the wider Russian Orthodox community worldwide. It noted too the evidence provided by the complainant that others not of that community had also been offended. Trustees were also aware that the complainant believed the offence caused had been exacerbated by the fact that, in the complainant's view, it amounted to incitement to religious hatred which had taken place in a place of licensed worship.

He had drawn parallels with what might have occurred had this taken place in the UK in the place of worship of another religion. The Committee considered this point but took the view that it was appropriate, proportionate and fair to confine its considerations to the content that was actually broadcast by the BBC, in order to determine whether this appeal raised a matter of substance.

Trustees took note of the words sung in the protest and the allegations that this led to medical consequences for some in the congregation. They also noted that there had been no violence, and Trustees agreed that 'peaceful protest' was a duly accurate description of what had occurred and that this aspect of the programme therefore complied with editorial guidelines 3.1 and 3.2.1. Further, the Committee concluded that the content, as appropriate to its subject and nature, had used clear and precise language in compliance with guideline 3.2.2.

The Committee then considered whether Pussy Riot and their protest in the Cathedral, or the conviction of members of Pussy Riot for "hooliganism motivated by religious hatred", was a controversial subject. In the Committee's view it was not. Trustees recognised the offence caused to members of the Russian Orthodox community but were of the view that the issues concerning Pussy Riot's protest were not subject to the same level of contention in the wider UK public. The Committee further considered that Pussy Riot's protest was not particularly topical or a matter of "intense debate". It did not therefore meet the test for a controversial subject as set out in editorial guideline 4.4.6.

The complainant had argued that the item was biased towards Pussy Riot. The Committee was aware the complainant considered that the majority of the UK public would be against religious hatred and so (as three members of the group had been convicted of religious hatred) in his view the BBC should have applied due weight to the majority view. The Committee noted that the complainant considered the sentence by the presenter that the three who were found guilty were "given what seems to us as outrageous sentences" as an expression of bias, and that in his view there were those who saw it as lenient.

The Committee agreed that, as a starting supposition, it could be assumed that the majority of the UK public, in accordance with UK law, would be opposed to the expression

of religious hatred and incitement to hatred in a place of religious worship. However, the Committee did not agree that this meant that in order to comply with the Editorial Guidelines the item should have been weighted towards the views of those who condemned Pussy Riot. The standard of impartiality applied by the programme makers (as set out in guideline 4.1) had to be:

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

In the Committee’s view the programme was a road trip exploring different aspects of Russian society. The subject of this brief section of the programme was to explain the original protest by Pussy Riot, their sentence, and the impact of that sentence in terms of Human Rights. This was used to make a point about Human Rights and the differences between the West and Russia. Trustees considered the programme had achieved due impartiality which was appropriate to the output. It had covered the views of those who opposed Pussy Riot and their protest, by giving the ruling of the courts and also by explaining the offence caused and that Russia was a deeply religious society. For these reasons, the Committee also considered that the programme makers had sought to achieve due weight in their presentation of Pussy Riot’s protest. Trustees were therefore unlikely to consider that guideline 4.4.2 was breached by the programme.

The Committee agreed with the Adviser that the guidelines did not require programme makers to reflect every point of view or interested party on every subject they had explored within the overall programme. It was therefore not necessary in this case to interview a member of the Russian Orthodox Church for this output to comply with the guidelines on impartiality.

It was observed that the complainant took issue with the presenter’s comments on the nature of the protesters’ sentences. It was considered that the view given by the presenter was a professional view and appropriately juxtaposed the perspective of the West towards a protest by a music group (even in a place of worship) with the conviction by the Russian courts.

Trustees were therefore not persuaded by the complainant’s arguments that the programme breached the editorial guidelines on impartiality or accuracy. The Committee considered this appeal had no reasonable prospect of success.

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

Blurred Lines: The New Battle of the Sexes, BBC Two and BBC Two HD, 9 May 2014

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 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.

Appeal to the BBC Trust

The complainant wrote to the BBC Trust on 8 August 2014, stating that he wished to appeal against the decision of the Editorial Complaints Unit (ECU) at Stage 2 of his complaint. In addition to various criticisms of the BBC's ethos and the fitness for purpose of its complaints process, the complainant made the following points of editorial complaint:

- The ECU's final decision was a re-statement of a non-evidenced, non-argued defensive position, and did not address the complainant's argument or evidence. The complainant requested an "actual response".
- There was neither evidence nor argument to support the ECU's position.
- The ECU had framed the issue "falsely".
- It was nonsensical (but revealing) that the ECU imagined that a programme titled *The New Sex War* (sic) was not about an ideological notion of generic interaction between the sexes (concerning extreme-feminist identity politics of a supposed patriarchal domination of men over women), but rather was about supposed minority behaviour.
- Current hegemonic ideology insisted that all male–female interaction exhibited, in every respect, a power imbalance. This was the programme's premise and the presenter's ideological position. It was also the BBC's position, because of both its institutional ethos and the sum of the individual political biases of its employees. Recent BBC statements admitted this, and there had been numerous confessions or complaints by senior BBC presenters.
- The programme was predicated upon, and did not question, the presumption of "conviction-feminists" that misogyny existed. The onus was on those who commissioned and made the programme to look at the evidence to support this presumption and, in particular, to check for evidence to the contrary.
- The BBC had wilfully ignored not only the absence of evidence to support the existence of misogyny, but also all logic, argument and evidence to the contrary. Misogyny did not exist, and its very assertion indicated deep-seated prejudice against males (i.e., misandry).
- The BBC's scientific, philosophical and historical illiteracy blinded it to the applicability of basic biological principles and psychology to explain the making of allegations of misogyny as evidence of misandry.²⁵
- The BBC should have commissioned an open-minded investigation into whether the concept of misogyny had any real basis, and into whether an insistence on the existence of misogyny (which lacked cogent argument or supporting evidence) was in fact misandry.

²⁵ The complainant cited his Stage 2 submission, which included a referenced history of the origin and development of 'identity politics', and which (if included in his appeal) would have exceeded the word limit prescribed by paragraph 5.4 of the BBC's Editorial Complaints and Appeals Procedures.

- The BBC owed viewers an apology for broadcasting the programme, which was grossly inaccurate, politically biased and deeply offensive to the complainant personally as a male, as it was to all males and females (the latter of whom had concerns for the males in their lives).
- The BBC's failure in this instance accorded with its consistent failure to accurately report and represent:
 - 'intimate-partner violence',²⁶ which was (like misandry, and unlike misogyny) real; and
 - the ideological presumption that intimate-partner violence was a male-on-female phenomenon, when in fact the data and converging lines of evidence revealed it to be essentially the reverse.
- All this was lost on the ECU, as it observed the politically correct imperative to pay lip-service to identity politics.

The Trust Unit's decision

The relevant correspondence was reviewed by the Trust Unit. An Independent Editorial Adviser viewed the programme and reviewed the correspondence.

The Head of Editorial Standards (the Adviser) acknowledged the strength of the complainant's feelings, but, for the following reasons, considered the appeal did not have a reasonable prospect of success.

The Adviser noted that this appeal raised issues concerning the Editorial Guidelines on Accuracy, Impartiality, Harm and Offence and Accountability. The full text of the Guidelines can be found at <http://www.bbc.co.uk/guidelines/editorialguidelines>.

Preliminary considerations

Applicable standard of 'due' accuracy and impartiality

The Adviser noted that the applicable standard of 'due' accuracy and impartiality varies according to certain factors relating to the nature and context of the output in question. With regard to due accuracy, Guideline 3.1 states:

"... 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.
..."²⁷

The Introduction to the Impartiality guidelines²⁸ is expressed in equivalent terms.

With regard to the subject and nature of the content, the Adviser noted that the programme sought to investigate recent developments in the sexualised abuse of, and the making of violent threats against, women – mainly (but not exclusively) by men. It asked whether a new culture was emerging in relation to men's attitudes to women. Matters covered by the programme included:

- the sexualised online abuse of a Professor, following her appearance on the BBC's *Question Time*

²⁶ Also known as 'domestic violence'.

²⁷ <http://www.bbc.co.uk/editorialguidelines/page/guidelines-accuracy-introduction/>

²⁸ <http://www.bbc.co.uk/editorialguidelines/page/guidelines-impartiality-introduction/>

- the sexualised online abuse of, and violent threats against, a journalist, following her campaign in support of the appearance of Jane Austen on banknotes
- the sexualised online abuse of, and violent threats against a blogger, whose video blogs critiqued the depiction of women in video games
- the public singing by male students of a sexually explicit song, and the lack of consensus among a vox pop of young people as to whether the song was derogatory towards women
- the depiction of females in pop videos and 'male-interest' magazines
- the depiction and treatment of female characters in certain popular video games
- the influence of 'geek culture' on the mores of the Internet in general and video games in particular
- sexualised comments by male gamers, directed at female gamers, in online multi-player video games
- the trend in 'rape jokes' among comedians
- the trend in 'rape jokes' at school
- the potential effects of online pornography on the psycho-sexual development of schoolchildren
- the role of social media in relation to the behaviours in question.

The programme included contributions from those who had been the targets of what they regarded as sexualised abuse and/or threats, from those who considered the phenomena in question to be part of a broader issue – which was not limited to inter-gender relations – from those who articulated the feminist and pro-male perspectives, and from others affected by the issues raised in the programme.

With regard to the likely audience expectation, the Adviser noted that the programme was broadcast on BBC Two, which is a mixed-genre channel appealing to a broad adult audience with programmes of depth and substance.²⁹ In the Adviser's estimation, recent events concerning the sexualised online abuse of and violent threats against women had been widely reported in the news media, and the target audience was likely to be aware of the fact of this phenomenon, but would not necessarily be familiar with the finer detail. The Adviser believed that viewers would expect the programme to help deepen and broaden their knowledge and understanding of the subject, but not necessarily to provide an exhaustive, forensic or academic analysis.

With regard to the signposting that may influence the audience's expectation, the Adviser noted that the programme's webpage states:

"From bomb threats sent to campaigners for more females on banknotes to sexually explicit pop videos. From extreme laddism at universities to rape jokes in the school yard... [presenter] explores whether there's a new culture abroad in which it's acceptable to write about, talk about, and feature women in a sexually offensive, even abusive way. Or whether the female of the species just needs to 'man up', learn to enjoy a gag, and get used to the 21st century world."³⁰

The Adviser noted that the programme was titled *Blurred Lines: The New Battle of the Sexes*. In her estimation, a proportion (though not all) of the target audience was likely to recognise the first element of the title as a reference to a song of that name (which was also referenced in the programme in relation to its controversial attitude towards the

²⁹ http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/service_licences/tv/2014/bbctwo_apr14.pdf

³⁰ <http://www.bbc.co.uk/programmes/b0436qlw>

boundaries of sexual consent and the depiction of women in its promotional video, which some considered exploitative).

With regard to the second element of the title, the Adviser took the view that the phrase "Battle of the Sexes" would be understood by viewers as a reference to archetypal inter-gender conflict. The Adviser therefore believed that the second element of the title would lead the audience to expect the programme to address "new" areas of conflict between the sexes. In the Adviser's view, the phrase "battle of the sexes" was not a term of art, but was used loosely – and often ironically – in common parlance. Given that archetypes could be confounded, the Adviser did not consider that viewers would regard the archetypal "battle" as a universal one, or every member of the opposite sex as an antagonist. She could not therefore agree with the complainant's contention that the phrase "Battle of the Sexes" indicated that the programme would deal with "an ideological notion of generic interaction between the sexes", as distinct from the behaviour of some people.

If this analysis was incorrect, the Adviser believed that the 'lead-in' left the audience in no doubt that the programme dealt with extremes of behaviour, and therefore the conduct of a minority:

"Shocking and thought-provoking now on BBC Two. [Presenter] uncovers an aggressive new trend towards sexism in a sometimes explicit investigation. From the start and throughout, there are scenes you may find upsetting and strong language, and there are some violent scenes too, in *Blurred Lines*."

In the Adviser's estimation, the lead-in made it clear to viewers that the programme would address atypical, not "generic", interactions between the sexes. She noted that it also contained a content warning.

Taking all the above matters into consideration, the Adviser concluded that the standard of 'due' accuracy and impartiality applicable to a factual programme such as *Blurred Lines: The New Battle of the Sexes* was not as high as that applicable to a scholarly or academic documentary for a specialist audience, and did not require the programme to offer a forensic, comprehensive analysis of the subject.

Controversial subjects

The Adviser noted that, under the Impartiality guidelines, particular considerations apply to 'controversial subjects'. Guideline 4.4.7 states:

"When dealing with 'controversial subjects', we must ensure a wide range of significant views and perspectives are given due weight and prominence, particularly when the controversy is active. Opinion should be clearly distinguished from fact."³¹

The Adviser noted that the sexualised abuse of, and the making of violent threats against, women was a matter of acrimonious debate on social media, and that opinions differed as to whether such conduct was essentially anti-female, or was symptomatic of a broader, non-gender-specific coarsening of modern discourse. However, it did not necessarily follow that the subject was a 'controversial' one within the meaning of the Editorial Guidelines. Guideline 4.4.6 sets out the various factors that should be taken into account when determining whether a given subject is controversial:

³¹ <http://www.bbc.co.uk/editorialguidelines/page/guidelines-impartiality-controversial-subjects/>

“In determining whether subjects are controversial, we should take account of:

- the level of public and political contention and debate
- how topical the subjects are
- sensitivity in terms of relevant audiences’ beliefs and culture
- whether the subjects are matters of intense debate or importance in a particular nation, region or discrete area likely to comprise at least a significant part of the audience
- a reasonable view on whether the subjects are serious
- the distinction between matters grounded in fact and those which are a matter of opinion ...”³²

In the Adviser’s view, there was no significant public contention or debate about the inappropriateness of threatening, violent or otherwise abusive conduct directed at women. She believed that the overwhelming majority of people, of both sexes, deprecated and condemned such conduct, regardless of whether they considered it to be gender-related or not. She noted that no politician, social commentator or person or organisation of any stature, reputation or authority had sought to defend, mitigate or excuse the extreme behaviours depicted in the programme.

Applying the criteria set out in guideline 4.4.6, the Adviser concluded that this was not a ‘controversial subject’ within the meaning of the Editorial Guidelines. It followed that the particular considerations in guideline 4.4.7 did not apply in this instance.

Substantive points of appeal

Accuracy

The Adviser noted the complainant’s arguments that:

- Current hegemonic ideology insisted that all male–female interaction exhibited, in every respect, a power imbalance. This was the programme’s premise and the presenter’s ideological position. It was also the BBC’s position, because of both its institutional ethos and the sum of the individual political biases of its employees. Recent BBC statements admitted this, and there had been numerous confessions or complaints by senior BBC presenters.
- The programme was predicated upon, and did not question, the presumption of “conviction-feminists” that misogyny existed. The onus was on those who commissioned and made the programme to look at the evidence to support this presumption and, in particular, to check for evidence to the contrary.
- The BBC had wilfully ignored not only the absence of evidence to support the existence of misogyny, but also all logic, argument and evidence to the contrary. Misogyny did not exist, and its very assertion indicated deep-seated prejudice against males (i.e., misandry).
- The BBC’s scientific, philosophical and historical illiteracy blinded it to the applicability of basic biological principles and psychology to explain the making of allegations of misogyny as evidence of misandry.
- The BBC should have commissioned an open-minded investigation into whether the concept of misogyny had any real basis, and into whether an insistence on the existence of misogyny (which lacked cogent argument or supporting evidence) was in fact misandry.

³² *Ibid.*

- The BBC owed viewers an apology for broadcasting the programme, which was grossly inaccurate.
- The BBC's failure in this instance accorded with its consistent failure to accurately report and represent:
 - 'intimate-partner violence',³³ which was (like misandry, and unlike misogyny) real; and
 - the ideological presumption that intimate-partner violence was a male-on-female phenomenon, when in fact the data and converging lines of evidence revealed it to be essentially the reverse.

Noting her reasoning with regard to the signposting of the programme, set out above, the Adviser could not agree that the programme's premise was that "all male–female interaction exhibited, in every respect, a power imbalance". In the Adviser's view, the programme did not seek to address generic forms of interaction, but rather the conduct of a minority. Similarly, the Adviser could not agree that this was the presenter's "ideological position", as the presenter had not adverted to generic interactions, but rather to the extreme behaviour of certain people (who were predominantly, but not exclusively male).

The Adviser did not consider unspecified recent BBC statements or the opinions of senior BBC presenters to be relevant to the editorial issues raised by this appeal.

The Adviser noted the content of the complainant's response to the ECU's provisional finding, but could not agree that it amounted to the comprehensive refutation that the complainant considered it to be. In the Adviser's view, the complainant's response was a contribution to the debate, articulating one of a number of possible perspectives, but was not the last word on a complex and evolving subject. In her estimation, the complainant's hypothesis represented a singular perspective that was not widely shared. In the Adviser's view, most people (of both sexes) would disagree strongly with the complainant, and would consider that his hypothesis did not accord with their lived experience.

The Adviser agreed with the ECU that the concept of misogyny existed. Therefore, in her view, the question to be considered was whether it had been applied correctly, i.e., whether the programme's use of the term was duly accurate. The Adviser noted that the word "misogyny" was in common parlance. She believed that there was wide consensus as to its meaning, and that the concept to which it referred was generally well understood. She noted that the online version of the Oxford English Dictionary defined misogyny as:

"Dislike of, contempt for, or ingrained prejudice against women:
'she felt she was struggling against thinly disguised misogyny' "³⁴

Noting that the programme was aimed at a broad adult audience, the Adviser believed that the programme used the term "misogyny" in the dictionary sense, which she believed was the sense in which viewers would understand it.

The Adviser was satisfied that the abusive and threatening behaviours depicted in the programme actually occurred, were part of a recent, and developing trend facilitated by recent technological developments, were directed against females *qua* females, and were duly accurately described by the word "misogyny". She therefore concluded that there was no evidence upon which the Trustees were likely to find that there had been any breach of the Accuracy guidelines.

³³ Also known as 'domestic violence'.

³⁴ <http://www.oxforddictionaries.com/definition/english/misogyny>

In the Adviser's view, it was within programme-makers' editorial discretion to make "an open-minded investigation into whether the concept of misogyny had any real basis, and into whether an insistence on the existence of misogyny ... was in fact misandry", if they believed there was editorial justification for doing so. However, editorial decisions concerning choice of subject matter lay beyond the Trust's remit (unless they gave rise to a potential breach of any relevant guidelines or policies, which was not the case in this instance).

The Adviser did not consider the complainant's comments on the BBC's coverage of 'intimate-partner violence' to be relevant to a programme that did not deal with that subject.

For these reasons, the Adviser concluded that Trustees would be likely to decide that the programme was duly accurate and was not misleading. She therefore decided that this point of appeal did not raise a 'matter of substance', and that it should not proceed for consideration by Trustees.

Impartiality

The Adviser noted the complainant's arguments that:

- The BBC owed viewers an apology for broadcasting the programme, which was ... politically biased.
- All this was lost on the ECU, as it observed the politically correct imperative to pay lip-service to identity politics.

The Adviser acknowledged that there was a debate about whether the abusive conduct depicted in the programme was, or was not, a manifestation of misogyny. The Adviser noted that, in addition to the perspectives of female contributors, the programme included contributions from contributors such as a male journalist, a *men's* magazine editor and a male comedian, all of whom offered alternative 'takes' on the subject. The male journalist believed that online abuse was distributed across both genders, the men's magazine editor argued that his magazine never set out to be sexist, and the comedian argued that either everything was funny or nothing was, and that women were a legitimate target of humour.

In the Adviser's view, the programme had acknowledged that there was a debate about whether the abusive conduct in question was, or was not, a manifestation of misogyny, had presented a range of perspectives on the matter, and was duly impartial in its treatment of the subject.

Having considered the content of the ECU's findings (discussed in greater detail below), the Adviser could not agree that the ECU had "observed the politically correct imperative to pay lip-service to identity politics". In her view, the ECU had applied the applicable editorial tests impartially.

For these reasons, the Adviser concluded that Trustees would be likely to decide that the programme was duly impartial. She therefore decided that this point of appeal did not raise a 'matter of substance', and that it should not proceed for consideration by Trustees.

Harm and Offence

The Adviser noted the complainant's argument that:

- The BBC owed viewers an apology for broadcasting the programme, which was ... deeply offensive to the complainant personally as a male, as it was to all males and females (the latter of whom had concerns for the males in their lives).

The Adviser noted that the Introduction³⁵ to the Harm and Offence guidelines states:

“The Agreement accompanying the BBC Charter requires us to apply ‘generally accepted standards so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material’. The understanding of what constitutes ‘generally accepted standards’ will evolve over time and will be informed by relevant research. Applying ‘generally accepted standards’ is a matter of judgement, taking account of the content, the context in which it appears and editorial justification.”

The Introduction goes on to state that “context includes, but is not confined to:

- the surrounding editorial material
- the service on which the content is available
- the time at which it is available
- other programmes or content that are available around the programme or content concerned
- the likely size and composition of the potential audience and likely expectation of the audience
- the harm or offence likely to be caused by the inclusion of the particular content in output generally, or in output of a particular nature or description
- the extent to which the nature of the content can be brought to the attention of the potential audience, for example, by signposting and content information
- the effect of the content on audiences who may come across it unawares.

When making our judgements, these factors will not necessarily carry equal weight.”

The Adviser noted her previous conclusions that the programme did not concern generic interaction between the sexes, but rather the conduct of a (mainly male) minority, and that it was duly accurate and duly impartial. She also noted her previous conclusions concerning the composition of the potential audience and viewers’ likely expectations, and that the ‘lead-in’ to the programme had contained a content warning.

The Adviser also noted that the programme was broadcast on BBC Two and BBC Two HD after the ‘watershed’, (i.e., post 9.00pm).

In the Adviser’s view, taking account of the programme’s content, the context in which it appeared and its editorial justification, the programme was not offensive by generally accepted standards.

For these reasons, the Adviser concluded that Trustees would be likely to decide that the programme was not in breach of the Harm and Offence guidelines. She therefore decided that this point of appeal did not raise a ‘matter of substance’, and that it should not proceed for consideration by Trustees.

³⁵ <http://www.bbc.co.uk/editorialguidelines/page/guidelines-harm-introduction/>

Accountability

The Adviser noted the complainant's arguments that:

- The ECU's final decision was a re-statement of a non-evidenced, non-argued defensive position, and did not address the complainant's argument or evidence. The complainant requested an "actual response".
- There was neither evidence nor argument to support the ECU's position.
- The ECU had framed the issue "falsely".

The Adviser noted that Editorial Guideline 19.4.2 states:

"When considering complaints on substantive matters the BBC must provide adequate reasoning for its decision, setting this reasoning within the context of any relevant BBC guidelines."³⁶

The Adviser considered the content of the ECU's acknowledgement of 1 July 2014, its provisional finding of 14 July 2014, the complainant's response of 27 July 2014, and the ECU's finalisation of its finding, dated 7 August 2014.

The ECU's acknowledgement summarised the complaint as follows: "the programme was inaccurate and misleading on the subject of misogyny, failing to present evidence to support the phenomenon, and also failed to present an appropriately balanced range of views on the subject". The ECU explained that it would consider whether the programme met the Editorial Guidelines' requirements for due accuracy and due impartiality.

The ECU's provisional finding first addressed the complainant's argument that the BBC had disseminated "wholly ideological nonsense with no evidence to support it... 'Misogyny' [sic] is not a phenomenon which exists..." The ECU disagreed with the argument's premise, holding that misogyny clearly existed as a concept and that the programme-makers were entitled to exercise their editorial discretion to make a programme on the subject. With regard to the argument that Internet 'trolling' was not due to misogyny but to "a critical mass of individuals no longer putting up with fatuous extreme-feminist cant", the ECU assumed the complainant would agree that people were entitled to hold and express their own point of view.

In the ECU's view, the question was whether the manner in which the programme considered the issue of misogyny (and whether it was increasing) was appropriately balanced and accurate. After quoting the presenter's introductory comments, the ECU noted that: the presenter spoke to contributors who gave examples of behaviour that might reasonably be described as misogynistic; argued that instances of such behaviour were increasing; and spoke about the negative consequences. The ECU noted that the presenter also spoke to contributors who questioned the impact of material that women might regard as offensive or derogatory: a male journalist had suggested that online abuse was aimed at men and women alike and was not gender-related, while a comedian argued that all groups should be considered fair game as targets for humour and women were not entitled to special treatment. The ECU was therefore satisfied that the programme met the requirements for due impartiality.

The ECU did not share the complainant's view that the programme accused "half the population of the UK of holding literally hateful prejudice towards the other half". In the ECU's view, the programme made it very clear that only some men might be accused of

³⁶ <http://www.bbc.co.uk/editorialguidelines/page/guidelines-accountability-feedback-complaints/>

having a negative attitude towards women, and there was no evidence that acknowledging that misogynistic behaviour may exist was the same as accusing all men of “literally hateful prejudice” against all women. The ECU concluded that it did not have grounds for upholding the complaint.

In the Adviser’s view, the ECU had provided adequate reasoning for its provisional finding, and had set its reasoning within the context of the relevant Editorial Guidelines. In her view, there was no substance in the complainant’s claims that there was neither evidence nor argument to support the ECU’s position, or that the ECU had framed the issue “falsely”. The Adviser believed that the complainant had indeed received an “actual response” from the ECU.

The Adviser noted that the complainant had submitted a detailed, referenced response, which sought to “comprehensively refute” the ECU’s provisional finding, by establishing through scientific analysis that misogyny did not exist, and that allegations of misogyny were in fact evidence of misandry.

In response to the complainant’s submission, the ECU stated that it had read and considered his additional points, but did not believe there were grounds for revising its provisional finding. While acknowledging that the complainant did not believe in the notion of misogyny, the ECU maintained that misogyny existed as a concept and that it was something to which some women genuinely felt they were subjected. In the ECU’s view, the examples cited in the programme could be taken as evidence (if not proof) of misogyny, and were understood to be such by those who had been abused. The ECU considered that to be sufficient justification for the programme to explore the suggestion that hatred towards women by some men was increasing, and that the Internet had played a part in making overt displays of misogyny more common. The ECU did not agree it was necessary to explore the issue of the abuse of men (by men and women), although this was acknowledged in the programme.

The ECU did not agree that the programme gave the impression that “there is some general hatred of females by males”, or that “the programme was driven by the tenaciously held conviction that misogyny [sic] is the universal attitude generically of the male”. In the ECU’s view, the programme was clear that only some men could be considered to be misogynists or might be regarded as exhibiting behaviour which could be reasonably described as misogynistic. The ECU saw no evidence, either in the contributors’ comments or in the script, which suggested that all men oppressed all women.

In the ECU’s opinion, much of the complainant’s response was an attempt to explain why misogyny was not “a real phenomenon”. The ECU understood the complainant’s thesis and arguments (e.g., male deference, male hierarchy and male sexual access, and consequent “abuse of males with bogus charges of misogyny”). However, the ECU believed the programme legitimately explored another point of view, and was satisfied that the range of opinions expressed in the programme supported the view that a small number of men may display attitudes towards women which could be described as misogyny. The ECU concluded that the programme achieved due accuracy and due impartiality, bearing in mind the nature and scope of the content.

The ECU added that the complainant’s comments on intimate-partner violence (and related extracts) did not appear to have any direct relevance to the content of the programme. The ECU had noted them, but did not believe they gave it cause to change its original finding.

In the Adviser's view, the ECU had provided adequate reasoning for its finalised finding, and had set its reasoning within the context of the relevant Editorial Guidelines. In her view, there was no substance in the complainant's claims that the ECU's final decision was a re-statement of a non-evidenced, non-argued defensive position, or that it did not address the complainant's argument or evidence.

For these reasons, the Adviser concluded that Trustees would be likely to decide that the programme was not in breach of the Accountability guidelines. She therefore decided that this point of appeal did not raise a 'matter of substance', and that it should not proceed for consideration by Trustees.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with his appeal. He advanced arguments to support his challenge to the Adviser's decision and a number of his key points are summarised below.

He considered his complaint had not been addressed and that the Adviser had adopted the ideology of which he complained.

The complainant said that the Head of Editorial Standards (the Adviser) and the ECU had argued that the programme was about extreme behaviour by a few but that the Adviser had in fact supported his key contention that the programme was about (the falsely supposed) universal oppression of women by men.

He referred to the Adviser's description of the title as being about an archetype. In his view the title of the programme made it clear this was not about an extreme few. He also said that the whole spirit and point of the programme was to exhibit minority behaviour as emblematic of a generic behaviour. In his view, suggesting that these were examples of extreme behaviour implied that it was on a continuum of such behaviour and present in men generically.

The complainant reiterated his position that there is no evidence to demonstrate that misogyny existed as the "essence of male behaviour" and that this was therefore discriminatory, offensive, inaccurate, and politically biased. He considered that the analysis by the Adviser against the guidelines was wrong.

He reiterated his position that the notion of misogyny is a cover for misandry and that the general perception of heinous behaviour by males towards females is a manifestation of pro-female and anti-male prejudice. He argued that misogyny had no scientific basis. In his view this was a controversial subject.

He argued that comments by BBC staff should be allowed as evidence.

The complainant also argued that his paper on the origin and development of identity politics should be considered by the Trust and not rejected on the grounds that there was a word limit.

The Committee's decision

The Committee was provided with the complainant's appeal to the Trust, the response from the Head of Editorial Standards and the complainant's email asking the Committee to review her decision. The Committee was also provided with the programme.

Preliminary issue

Trustees noted that the complainant wished to submit his paper on the origin and development of identity politics. The Committee noted the complainant's comments regarding the word limit.

The Committee noted that paragraph 5.4 of the Editorial Complaints and Appeals procedure states that an appeal request should not exceed 1,000 words. In exceptional circumstances, longer complaints may be entertained. If a complaint is over the 1,000 word limit, a one page summary should also be provided by the complainant.

The Committee noted that the Complaints Framework protocol at paragraph 3.1 states that the process must be appropriate, proportionate and cost effective, balancing the interests of all licence fee payers with the rights of individual complainants and the BBC.

Trustees agreed that they had the necessary material in order to determine this matter. The Committee agreed that the complainant's submission of an academic paper did not constitute exceptional circumstances which would lead the Committee to consider material outside the 1,000 word limit. Trustees considered that it was not appropriate, proportionate or cost effective to consider material over the word limit set out in the editorial complaints and appeals procedure in circumstances it did not regard as exceptional.

Finding

The Committee noted the points of challenge made by the complainant.

The Committee agreed that alleged comments by BBC employees were not relevant to its decision as to whether there was a reasonable prospect of success for an appeal that this content had breached the BBC's Editorial Guidelines.

The Committee agreed with the Adviser that the complainant's comments on the BBC's coverage of 'intimate-partner violence' were not relevant to a programme that did not deal with that subject.

The Committee considered that the Adviser had provided considered and convincing arguments as to the reasons why the complainant's complaint did not raise a matter of substance or have a reasonable prospect of being upheld as a breach of the editorial guidelines. The Committee agreed with the Adviser's response to the matters raised by the complainant.

The Committee considered that the programme was duly accurate in its exploration of a number of matters, including sexualised online abuse of women; the depiction and treatment of women in media; and the role that social media had to play in these trends. The Committee considered that the programme's reasonable use of the well understood term "misogyny" to describe some of the abusive and threatening behaviour depicted was duly accurate taking into account the subject and nature of the content, the likely audience expectation and the signposting provided by the programme. There was no evidence the Committee could rely on to find that there had been a breach of the editorial guidelines on accuracy.

The Committee agreed with the Adviser that it was within the BBC's editorial discretion to make "an open-minded investigation into whether the concept of misogyny had any real basis, and into whether an insistence on the existence of misogyny ... was in fact misandry", if they believed there was editorial justification for doing so. Trustees noted

that the complainant wanted such a programme to be made. However, the fact that the programme makers had produced a different programme exploring alternative views, did not mean that the editorial guidelines had been breached.

The Committee noted Article 38(1)(b) of the Royal Charter. Editorial decisions concerning a programme's choice of subject matter lay beyond the Trust's remit and were the responsibility of the Executive Board, unless they gave rise to a potential breach of any relevant guidelines or policies. The Committee believed there was no reasonable prospect that it would conclude that was the case in this instance.

The Committee agreed with the Adviser's analysis and her view that the matter covered by the programme was not a "controversial subject" because it did not meet the criteria set out in editorial guideline 4.4.6. It followed that editorial guideline 4.4.7 did not apply to this programme.

The Committee considered that the programme had acknowledged that there was a debate about whether the abusive conduct in question was, or was not, a manifestation of misogyny, and had presented a range of views and perspectives on the matter from a number of contributors.

The Committee noted that editorial guideline 4.2.5 gave the BBC editorial freedom to produce content about any subject, at any point on the spectrum of debate, as long as there were good editorial reasons for doing so. The Committee considered that there were good editorial reasons for making a programme that considered, amongst other matters, whether certain behaviour by some individuals constituted misogyny. It was noted that there was no credible evidence provided by the complainant to support the assertion that the programme was politically biased.

The Committee therefore considered that there was no reasonable prospect of concluding that the programme breached the editorial guidelines on impartiality.

The Committee agreed with the Adviser and her analysis, that taking account of the programme's content, the context in which it appeared and its editorial justification, the programme was not offensive by generally accepted standards and it had not breached the portrayal guidelines. Furthermore, there was no credible evidence to support the assertion that the programme was discriminatory. Therefore, the Committee concluded that there was no reasonable prospect of concluding that the editorial guidelines on harm and offence had been breached by the programme.

The Committee considered that the complainant had received adequate reasoning for the decisions taken by the ECU and the Trust's Adviser in compliance with editorial guideline 19.4.2 which stated that "when considering complaints on substantive matters the BBC must provide adequate reasoning for its decision, setting this reasoning within the context of any relevant BBC guidelines". Trustees therefore considered that there was no reasonable prospect of concluding that the guidelines on accountability had been breached.

The Committee did not consider that this complaint had a reasonable prospect of success and therefore decided that this appeal did not qualify to proceed for consideration.

The Committee decided that this appeal did not qualify to proceed for consideration.

Newshour, BBC World Service, 11 January 2014

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 complaint

On 11 January 2014 the former Israeli Prime Minister, Ariel Sharon, died after eight years in a coma. BBC World Service Radio's flagship news programme, *Newshour*, devoted the majority of both of its daily editions, at 1300 and 2100 GMT, to news of his death. The coverage featured a range of voices from within Israel, the Arab world and the wider international community.

This complaint concerned alleged inaccuracies in the following section of the news summary, broadcast within the 2100 edition of *Newshour*:

"One of the most senior figures from Israel's founding generation, the former prime minister Ariel Sharon, has died at the age of 85 after eight years in a coma. Mr Sharon played a major and controversial role: first as guerrilla fighter and soldier known for both bravery and occasional recklessness, and later as a politician.

"When he ordered the invasion of Lebanon in 1982, his Lebanese Christian allies massacred hundreds of Palestinian civilians in the Sabra and Shatila refugee camps. An Israeli commission of inquiry found he bore personal responsibility and he stood down as Defence Minister.

"His visit to Islam's holiest mosque in Jerusalem in 2000 sparked Palestinian uprising but Israelis voted him into power the following year. He defied domestic opposition by pulling Israel out of Gaza in 2005 but promoted West Bank settlements and commissioned a barrier to keep Palestinians out of Israel. President Obama said Mr Sharon had dedicated his life to Israel but Palestinians in Gaza celebrated by handing out sweets."

At Stage 1, the Editor of BBC World Service Bulletins said that in some instances "our writing should have been more precise".

Responding to the complainant's allegation that the invasion of Lebanon had not been ordered by Mr Sharon, he said:

"It would have been better to say that Mr Sharon 'oversaw' or 'led' the invasion of Lebanon in 1982. However, he is considered by many to have been the driving force behind the military action and he did order Israeli forces to exceed the 25-mile limit set by Prime Minister Begin."

Responding to the complainant's allegation that the Israeli Commission of Inquiry found there had been "no intention... on the part of anyone who acted on behalf of Israel to harm the non-combatant population" and that the report had given the exact opposite impression, the Editor of BBC World Service Bulletins said:

"...although our report was not incorrect, we could have provided more detailed information about the finding of the inquiry. Something along the lines of: An

Israeli commission of inquiry found Mr Sharon bore personal responsibility for failing to take measures to prevent the bloodshed."

Responding to the complainant's allegation that Mr Sharon's visit was to the Temple Mount and not the Al Aqsa Mosque, the Editor of BBC World Service Bulletins said:

"Although not inaccurate, our text could have made it clearer that the visit was controversial as the area is a contested holy site, sacred to Muslims and Jews, which is overseen by Muslim officials."

Responding to the complainant's allegation that the purpose of the fence was to curb attacks (into Israel) by "terrorists", the Editor of BBC World Service Bulletins said:

"We agree it would have been better to say that it was 'a security barrier built to prevent attacks by Palestinian militants'."

At Stage 2 the complainant reiterated his allegations. The ECU said it agreed that it had been "less than duly accurate" to say of Mr Sharon that he "commissioned a barrier to keep Palestinians out of Israel". The ECU finding said:

"Whatever the intention behind the commissioning of the barrier, I accept that this conveyed a misleading impression of its effect, for the reasons you give. I note, however, that (the Editor of BBC World Service Bulletins) has agreed that it would have been better to say that it had been built 'to prevent attacks by Palestinian militants'. In view of this acknowledgement, and the fact that the ECU's resolved findings are placed on record in the form of a summary on the complaints pages of bbc.co.uk, I think it would be appropriate and proportionate for me to conclude that this aspect of the complaint has been resolved."

The ECU did not uphold any of the complainant's remaining allegations.

Appeal to the BBC Trust

The complainant appealed to the BBC Trust on 9 August 2014 saying the report had been inaccurate and lacked impartiality.

Regarding Mr Sharon's role in the invasion of Lebanon and the subsequent massacres at Sabra and Shatila, the complainant noted these sentences from the news summary (emphasis added by the complainant):

"When **he ordered** the invasion of Lebanon in 1982, **his** Lebanese Christian allies massacred hundreds of Palestinian civilians in the Sabra and Shatila refugee camps. An Israeli commission of inquiry **found he bore personal responsibility** and he stood down as Defence Minister."

The complainant said:

"While the second sentence is individually correct, the way that it was juxtaposed together with the first misleads the audience, especially given the misleading statement in the previous statement about the massacre carried out 'by **his** Lebanese Christian allies'. It makes it seem that the massacre occurred either by his order or with his consent whether given in specific terms or not. In fact the Kahan Commission found that Sharon and others bore indirect responsibility for failing to anticipate violence on the part of the Phalangists. They also found 'that

in having the Phalangists enter the camps, no intention existed on the part of anyone who acted on behalf of Israel to harm the non-combatant population, and that the events that followed did not have the concurrence or assent of anyone from the political or civilian echelon who was active regarding the Phalangists' entry into the camps'. The bulletin made it appear that the report found exactly the opposite (of the passage of the report directly quoted in the previous sentence) to be true. While it is true that he was found to bear personal responsibility for failing to foresee that possibility and consequently not taking action to prevent it, the form of words used in the bulletin made it appear that it had found he had actually authorised the massacre."

Regarding the visit to the Temple Mount by Mr Sharon in 2000, the complainant said the following sentence from the news summary was "not true":

"His visit to Islam's holiest mosque in Jerusalem in 2000 sparked Palestinian uprising but Israelis voted him into power the following year."

The complainant quoted a number of sources, published after the event, which he said demonstrated that Palestinians had chosen the aftermath of Mr Sharon's visit to launch the second intifada, concluding:

"...the bulletin made it appear that the uprising was a consequence of Sharon's visit to the Temple Mount, which it clearly was not."

Regarding the West Bank barrier he said the news summary was "factually wrong":

"The barrier was built to prevent attacks by Palestinian terrorists and thereby to save lives, and it worked. At stage one they agreed that it would have been better to say that it had been built 'to prevent attacks by Palestinian militants', but did not acknowledge that the reason for the barrier was not 'to keep Palestinians out of Israel', but to save lives."

After his initial appeal was received by the Trust Unit, the complainant contacted the Trust by phone and email in relation to the ECU's decision to consider the complaint resolved. He initially telephoned the Trust Unit on 29 September. He did not consider the inaccuracy had been properly acknowledged in public. He felt the BBC had only acknowledged its mistake in a private email to him and had not given it what he considered to be adequate public airing.

He sent an email on 30 September 2014. He noted that the ECU agreed that it was misleading for the item to report that the security barrier had been built: "to keep Palestinians out of Israel". However, in terms of whether the programme makers concurred, he wrote: "...the programme makers hadn't acknowledged that it would have been more accurate to say that it had been built 'to prevent attacks by Palestinian militants' publicly or even privately, as far as I know, to anybody other than me..." He considered that a "resolved" finding would imply: "that there had been a public acknowledgement of the error, as far as I am concerned it still has not been resolved".

He wrote again later the same day to explain further why he considered the matter of the inaccurate reference to the security barrier had not been resolved.

"...most readers would come to the conclusion that there had been some form of public acknowledgement that the wrong wording had been used. In fact the only acknowledgement had been in a private email to me. That still left the public with

the uncorrected impression that the barrier had been built 'to keep Palestinians out of Israel'.

"While that impression may be dispelled to a very small extent by the hardly viewed publication the ECU finding, the finding stated that the private email to me resolved the issue. It did not. An error that is complained of can only be resolved by publication of the correction, not by a private email. The wording of the ECU finding was misleading in that it gave the false impression to the readers that such a public acknowledgement had been given. No reasonable person would assume from reading the finding as it was worded that the acknowledgement was sent in a private email."

The complainant wished to add those matters to his appeal to the Trust.

The Trust Unit's decision

The relevant correspondence was reviewed by the Trust Unit. The Senior Editorial Complaints Adviser listened to the relevant output. An Independent Editorial Adviser also reviewed the relevant output, noted the detail of the correspondence at Stages 1 and 2 and carried out further research. The Senior Editorial Complaints Adviser (the Adviser) considered the appeal did not have a reasonable prospect of success.

The Adviser considered first the complainant's allegation of inaccuracy concerning the description of the West Bank barrier as having been built "to keep Palestinians out of Israel". The Adviser noted that the ECU had stated in its finding that this was less than duly accurate and had conveyed a misleading impression of the barrier's effect. The Adviser noted that the ECU considered the matter resolved because the error had been acknowledged at Stage 1 and because the ECU action in a matter it considered resolved (as opposed to complaints that were not upheld) was for the finding to be noted on the complaints pages of the BBC website. The Adviser noted this finding had now been published and that the text included the programme's acknowledgement of its error and an indication of how due accuracy might have been achieved:

Newshour, World Service, 11 January 2014: Finding by the Editorial Complaints Unit³⁷

Complaint

A listener complained that a bulletin item on the late Ariel Sharon was misleading in a number of respects, particularly in relation to Mr Sharon's role in the 1982 invasion of Lebanon, the beginning of the second Intifada and the construction of the security barrier.

Outcome

Although some of the item's phrasing could have been more precise, in most respects it was not materially misleading (particularly as the bulletin was in the context of a longer programme about Mr Sharon and his legacy which covered the relevant events in some detail). It was misleading for the item to say that he had commissioned a barrier "to keep Palestinians out of Israel", but, as the programme-makers had already acknowledged that it would have been more accurate to say that it had been built "to prevent attacks by Palestinian militants", the ECU considered this aspect of the complaint to have been resolved.

³⁷ <http://www.bbc.co.uk/complaints/comp-reports/ecu/Newshour11january2014>

Resolved

The Adviser noted the complainant's assertion in his letter of appeal that the alternative wording did not go far enough and that he considered that it should have stated that the purpose of the barrier was to "save lives". The Adviser noted that in his Stage 1 response, the Editor, World Service Bulletins stated:

"We agree it would have been better to say that it was 'a security barrier built to prevent attacks by Palestinian militants'. We use the term 'barrier' to avoid a political interpretation and because the structure takes different forms."

The Adviser considered that Trustees would be likely to conclude that the form of words suggested by the Executive – that it was a "security barrier built to prevent attacks by Palestinian militants" was duly accurate and impartial. She did not consider it necessary to reach a view on an alternative form of words preferred by the complainant.

She noted that the complainant had supplemented his appeal to the Trust in terms of whether the matter had been given sufficient public airing. He considered that the response he had had from the ECU, "implied that there had been a public acknowledgement of the error, as far as I am concerned it still has not been resolved". She noted that his second email repeated his concern. It acknowledged the ECU finding was published but referred to this as "hardly viewed". He wrote:

"...the finding stated that the private email to me resolved the issue. It did not. An error that is complained of can only be resolved by publication of the correction, not by a private email. The wording of the ECU finding was misleading in that it gave the false impression to the readers that such a public acknowledgement had been given. No reasonable person would assume from reading the finding as it was worded that the acknowledgement was sent in a private email."

The Adviser noted the form of words used by the Head of Editorial Complaints. He had referred to the acknowledgement at Stage 1 that the BBC should have used a more accurate form of words and wrote:

"In view of this acknowledgement, and the fact that the ECU's resolved findings are placed on record in the form of a summary on the complaints pages of bbc.co.uk, I think it would be appropriate and proportionate for me to conclude that this aspect of the complaint has been resolved."

She considered that this explained to the complainant that there were two elements to the complaint being resolved, firstly, the Executive had accepted that it had made a mistake and secondly, the mistake and the measures taken to correct it were put on the public record on the BBC's webpage.

She did not consider that the complainant was right when he stated that any other reader would have assumed the BBC had published a correction separately to the ECU's finding. She noted that the complainant was aware from the ECU's letter of 24 June that its finding would be published and that he was incorrect to write on 30 September that the public had been left with the "uncorrected impression that the barrier had been built 'to keep Palestinians out of Israel'."

She noted that the Executive had accepted there had been a breach of the Guidelines and the published correction had put that into the public domain. She noted that this was in line with the Complaints Framework and considered Trustees would be likely to conclude

that the Editorial Complaints Unit had been right to consider the matter resolved. She therefore did not consider this element of the appeal had a reasonable prospect of success.

The Adviser then turned to the remaining allegations in the complainant's letter of appeal.

The Adviser noted the occasions at Stage 1 where the Editor of World Service Bulletins had acknowledged that in some instances the writing should have been more precise. She noted also that at Stage 2, with the exception of one allegation concerning the West Bank barrier as discussed above, the ECU did not consider there had been a failure of due accuracy on any of the remaining points raised by the complainant. She noted the ECU had taken the view that the instances identified where the writing could have been more exact would not have resulted in listeners being materially misled. The Adviser noted the ECU considered it relevant to its decision that the news report was contained within a longer programme about Mr Sharon and his legacy, which covered the relevant events in some detail.

The Adviser noted the *Newshour* began with the presenter signposting to the audience that the programme would include extended coverage of Mr Sharon's death:

"Our top story today and the story that will dominate much of our programme is the death of the former Israeli Prime Minister Ariel Sharon. He'd been in a coma since he suffered a severe stroke in January 2006. In the past few days his condition deteriorated and doctors had warned he was close to death. A soldier and politician from Israel's founding generation 85 year old Ariel Sharon played a decisive role in shaping Israel and the wider Middle East. At times of war, at times of peacemaking. For many Israelis he was a war hero, an ardent Zionist, the father of Jewish settlements. His critics, including the Palestinians say he left no good memories; a man they accuse of abuses and atrocities. In this programme we'll hear reaction: from Israelis, from Arabs and from the wider international community."

The Adviser acknowledged, as had the ECU, that notwithstanding the wider context reflected elsewhere in this edition of *Newshour*, it would not have been acceptable for the news summary which was the subject of this complaint to have misled listeners on material facts.

The Adviser considered the allegation that the news summary had wrongly stated that Mr Sharon "ordered" the invasion of Lebanon. She noted the Editor of BBC World Service Bulletins had acknowledged it would have been more exact had the bulletin stated "oversaw" or "led" rather than "ordered". The Adviser acknowledged the complainant's assertion that as Defence Minister Mr Sharon would not have ordered the invasion, and that such an act would formally have been a decision of the Israeli government.

However, she noted too the prevailing view amongst reputable historians both inside and outside Israel that Mr Sharon, a former commander in the IDF, defined the war's strategy, directed its course and on occasion during the progress of the war was found to have exceeded his authority as Defence Minister. The Adviser noted for example that Mr Sharon unsuccessfully brought a court case challenging a series of articles in an Israeli newspaper which alleged he had intentionally deceived the then Prime Minister, Menachem Begin about the operation's initial objectives and that he had continued to

mislead him as the war progressed. She noted that part of the Israeli Commission of Inquiry's report into the massacres at Sabra and Shatila in 1982 where it stated³⁸:

"As a politician responsible for Israel's security affairs, and as a Minister who took an active part in directing the political and military moves in the war in Lebanon, it was the duty of the Defense Minister to take into account all the reasonable considerations for and against having the Phalangists enter the camps..."

The Adviser therefore decided that the audience would not have been materially misled about the key role Mr Sharon played in the 1982 war in Lebanon and that the complainant's appeal on this allegation did not have a reasonable prospect of success.

The Adviser then considered how the bulletin summarised the Israeli Commission of Inquiry's findings in relation to Mr Sharon's role in the Sabra and Shatila massacres. She noted the complainant's assertion that the wording implied that the massacres occurred "either by his order or with his consent". The Adviser noted again the relevant script:

"When he (Ariel Sharon) ordered the invasion of Lebanon in 1982, his Lebanese Christian allies massacred hundreds of Palestinian civilians in the Sabra and Shatila refugee camps. An Israeli commission of inquiry found he bore personal responsibility and he stood down as Defence Minister."

The Adviser noted the relevant sections from the Israeli Commission of Inquiry's report³⁹:

"...It is impossible to justify the Minister of Defense's disregard of the danger of a massacre. We will not repeat here what we have already said above about the widespread knowledge regarding the Phalangists' combat ethics, their feelings of hatred toward the Palestinians, and their leaders' plans for the future of the Palestinians when said leaders would assume power. Besides this general knowledge, the Defense Minister also had special reports from his not inconsiderable [number of] meetings with the Phalangist heads before Bashir's assassination.

"Giving the Phalangists the possibility of entering the refugee camps without taking measures for continuous and concrete supervision of their actions there could have created a grave danger for the civilian population in the camps even if they had been given such a possibility before Bashir's assassination; thus this danger was certainly to have been anticipated – and it was imperative to have foreseen it – after Bashir's assassination... In the circumstances that prevailed after Bashir's assassination, no prophetic powers were required to know that concrete danger of acts of slaughter existed when the Phalangists were moved into the camps without the I.D.F.'s being with them in that operation and without the I.D.F. being able to maintain effective and ongoing supervision of their actions there..."

"As a politician responsible for Israel's security affairs, and as a Minister who took an active part in directing the political and military moves in the war in Lebanon, it was the duty of the Defense Minister to take into account all the reasonable considerations for and against having the Phalangists enter the camps, and not to disregard entirely the serious consideration mitigating against such an action,

³⁸ <http://www.mfa.gov.il/mfa/foreignpolicy/mfadocuments/yearbook6/pages/104%20report%20of%20the%20commission%20of%20inquiry%20into%20the%20e.aspx>

³⁹ <http://www.mfa.gov.il/mfa/foreignpolicy/mfadocuments/yearbook6/pages/104%20report%20of%20the%20commission%20of%20inquiry%20into%20the%20e.aspx>

namely that the Phalangists were liable to commit atrocities and that it was necessary to forestall this possibility as a humanitarian obligation and also to prevent the political damage it would entail. From the Defense Minister himself we know that this consideration did not concern him in the least, and that this matter, with all its ramifications, was neither discussed nor examined in the meetings and discussion held by the Defense Minister. In our view, the Minister of Defense made a grave mistake when he ignored the danger of acts of revenge and bloodshed by the Phalangists against the population in the refugee camps."

The Adviser noted the Inquiry's conclusions regarding Mr Sharon:

"Mr. Sharon was found responsible for ignoring the danger of bloodshed and revenge when he approved the entry of the Phalangists into the camps as well as not taking appropriate measures to prevent bloodshed."

The Adviser noted the detail of the complainant's allegation and in particular the complainant's assertion that the wording in the news summary implied that Mr Sharon had authorised the massacre. The Adviser considered whether it bore this interpretation and decided it did not. Neither did she agree with the complainant's assertion that the reference to "his (i.e. Mr Sharon's) Lebanese Christian allies" made such an interpretation more likely. The Adviser noted the paragraph was acknowledged as factually accurate by the complainant. The issue therefore hung on the complainant's assertion that there ought also to have been a reference to the fact that the Israeli inquiry found that "that in having the Phalangists enter the camps, no intention existed on the part of anyone who acted on behalf of Israel to harm the non-combatant population, and that the events that followed did not have the concurrence or assent of anyone from the political or civilian echelon who was active regarding the Phalangists' entry into the camps." While the Adviser acknowledged this would have been relevant additional detail she did not agree that the omission of the specific content would likely have led to the audience being misled about the inquiry's view of Mr Sharon's failures.

The Adviser noted also that while the allegation concerned a brief reference to Mr Sharon and the Sabra and Shatila massacre, it was in a news summary which was effectively a headline recap of the main story; the subsequent substantive item which followed the recap – a location report from Shatila – was able to provide greater context. The Adviser noted how the segment began (emphasis added):

Studio Introduction:

A little more than 30 years ago the brutal actions of a pro-Israeli militia acting under the control of the then Israeli Defence Minister Ariel Sharon have left deep scars. [Name of correspondent] has been to one of the camps today to gauge reaction to his death.

Correspondent:

Back in September 1982 Christian militiamen allied to Israel came in here and perpetrated a massacre of hundreds of defenceless civilians. **The Israelis themselves of course were not directly involved.** They were controlling the surrounding area and holding the ring as their Christian militia allies went in. The following year the Kahan Commission in Israel concluded that the Defence Minister Ariel Sharon was personally responsible for what happened.

The Adviser considered that Trustees would be likely to conclude that the headline was duly accurate; however, she considered the content which followed that summary would

have served to clarify further the basis on which the inquiry ruled that Mr Sharon bore personal responsibility.

The Adviser therefore concluded that were this allegation to proceed to appeal Trustees would likely conclude that the article had achieved due accuracy and due impartiality.

The Adviser then considered the complainant's final allegation, that the following sentence from the news summary in relation to Mr Sharon's visit to the Temple Mount was "not true":

"His visit to Islam's holiest mosque in Jerusalem in 2000 sparked Palestinian uprising but Israelis voted him into power the following year."

She noted the range of sources provided by the complainant in his submission for this appeal which he said demonstrated that it was not Mr Sharon's visit which provoked the renewed violence, that it had been long planned by Yasser Arafat:

"Arafat had clearly planned the uprising well in advance. He chose the aftermath of Sharon's visit as the time to launch it, but the bulletin made it appear that the uprising was a consequence of Sharon's visit to the Temple Mount, which it clearly was not."

The Adviser noted she had previously been asked to consider an allegation in similar terms submitted by the same complainant regarding a profile about Mr Sharon which had been published on the BBC website. The Adviser noted that while the wording on that occasion was different ("Palestinians rioted and the second intifada ensued"), she considered the sentiment was broadly the same as in the news summary.

She noted the following extract from her finding on that occasion:

"...regardless of whether the Palestinians had been planning the second intifada, and notwithstanding the range of sources quoted by the complainant, Mr Sharon's visit to the Temple Mount was clearly capable of being viewed as controversial and provocative, hence the presence of 1000 riot police. Secondly, regardless of whether the precise timing of the riots and subsequent uprising were stage-managed, that the event could be used as a credible pretext to start an uprising in the Adviser's view meant the formulation of the wording in the article would likely be regarded as duly accurate."

The Adviser considered that her conclusions on that occasion applied equally to the allegation here. The Adviser concluded that were Trustees asked to consider the allegation on appeal they would be likely to find the programme was duly accurate in stating in the news summary that Mr Sharon's visit was the spark which led to the second intifada.

The Adviser therefore concluded that the allegation would not have a reasonable prospect of success and should not proceed to appeal.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with his appeal. He reiterated his key points and challenged the Adviser's analysis. A number of his key points are summarised below.

He argued that the matter regarding the barrier had not been resolved at the point he made his appeal to the ECU and the point at which the ECU made its finding as it had not been published.

He responded to the Adviser's point regarding Mr Sharon's unsuccessful court cases and noted that Israeli law put a premium on freedom of the press. He considered that the fact that Mr Sharon did not succeed in suing a newspaper was of no great significance.

He reiterated his argument that Ariel Sharon "did not 'order' the 1982 invasion of Lebanon".

He noted the Kahan report (which had been quoted by the Adviser) had not said that Ariel Sharon bore personal responsibility for the killings in the refugee camps and noted that it had also said: "We have no doubt that no conspiracy or plot was entered into between anyone from the Israeli political echelon or from the military echelon in the IDF and the Phalangists, with the aim of perpetrating atrocities in the camps." He considered that this statement was relevant to the Adviser's analysis.

He mentioned the news report referred to by the Adviser and critiqued the report. He considered it made the complained of news summary even more misleading and lacking in impartiality.

He reiterated his complaint that saying Ariel Sharon's visit "to Islam's holiest mosque in Jerusalem in 2000 sparked Palestinian uprising" was incorrect and noted that the wording in the previous case referred to by the Adviser which had not been upheld by the Trust was not the same as the wording in this article. He quoted a number of sources to support his view that the riots that followed Mr Sharon's visit were planned.

The Committee's decision

The Committee was provided with the complainant's appeal to the Trust, the response from the Senior Editorial Complaints Adviser and the complainant's emails asking the Committee to review her decision. The Committee was also provided with the relevant programme material.

Preliminary issue

The Committee noted the issues raised by the complainant about the reference in the Adviser's decision to content elsewhere in the same edition of *Newshour*, which the Adviser said had provided additional context. Trustees confirmed that in reaching their decision on whether the allegation qualified to proceed to appeal they would not consider the additional content in their analysis of the news summary complained of. Trustees took this decision because the additional content had not been considered by the BBC Executive in the first instance.

Finding

The Committee noted that the first issue for it to consider was the handling of an allegation about the purpose of the West Bank separation barrier. It noted that the programme had accepted that its description of the barrier's purpose had not been accurate, and that the ECU had acknowledged there had been a breach of the guidelines. The Committee noted that the complaint was that the matter had been incorrectly characterised as "resolved" by the Editorial Complaints Unit at Stage 2. It noted the complainant's contention that the admission of inaccuracy had initially been made only in private correspondence between himself and the programme. The Committee took

account of the complainant's view that it was wrong for the ECU to have characterised the issue as "resolved".

The Committee did not take the complainant's view that the critical issue in considering whether a matter could be judged to have been resolved was whether there had been a public airing of the outcome prior to the point at which the "resolved" finding was made. The Committee noted that classifying a matter as "resolved", in the context of the BBC complaints procedure, carried the meaning of acknowledging that the BBC, having received a complaint, had accepted that it had made an error and that no further action in respect of that complaint remained outstanding. It noted that the complainant was advised by the ECU when it issued its finding that the outcome on this matter would be placed in the public domain and that this was what had happened.

It was not appropriate, proportionate or cost effective to grant further consideration to a matter that had already been resolved. The Committee therefore agreed with the Adviser that this element of the complaint did not have a reasonable prospect of success and should not proceed to appeal.

The Committee then considered the complainant's assertion that Ariel Sharon had not ordered the invasion of Lebanon. The Committee noted the relevant commentary:

"When he ordered the invasion of Lebanon in 1982, his Lebanese Christian allies massacred hundreds of Palestinian civilians in the Sabra and Shatila refugee camps. An Israeli commission of inquiry found he bore personal responsibility and he stood down as Defence Minister."

The Committee noted the BBC's acknowledgement at Stage 1 that it would have been better if the news summary had been more exact in the wording on this point. It noted, however, that the issue for them to consider was whether the audience would have been left with an impression of Mr Sharon's role in the invasion of Lebanon that was not duly accurate. It noted the Adviser's citing of a passage from the Israeli Commission of Inquiry report into the massacres at Sabra and Shatila which referred to the Defence Minister⁴⁰:

"As a politician responsible for Israel's security affairs, and as a Minister who took an active part in directing the political and military moves in the war in Lebanon..."

The Committee noted how the commentary stated that at the time of the invasion Mr Sharon occupied the position of Defence Minister in the Israeli Government; in itself this would suggest he would have played a central part in the political decision-making. This fact, coupled with the evidence cited by the Adviser regarding the strategic hands on role he played during the war, led the Committee to conclude that were this allegation to proceed to appeal it would likely conclude that due accuracy had been achieved. The Committee also considered that there was no evidence to support the view that audiences were "knowingly and materially misled" by the BBC in breach of editorial guideline 3.2.3.

The Committee then considered the allegation that BBC content should have made it clear that Ariel Sharon did not bear personal responsibility for the killings at Sabra and Shatila. The Committee noted the complainant's assertion that the Israeli inquiry into the massacres did not say that Ariel Sharon bore personal responsibility for the killings and that it had explicitly stated that the IDF had not conspired with the Phalangists nor facilitated their entry into the camps in the knowledge that a massacre would ensue.

⁴⁰<http://www.mfa.gov.il/mfa/foreignpolicy/mfadocuments/yearbook6/pages/104%20report%20of%20the%20commission%20of%20inquiry%20into%20the%20e.aspx>

The Committee noted the extract from the report quoted by the complainant:

“We have no doubt that no conspiracy or plot was entered into between anyone from the Israeli political echelon or from the military echelon in the IDF and the Phalangists, with the aim of perpetrating atrocities in the camps.”

The Committee also noted the extract quoted by the Adviser:

“...it was the duty of the Defense Minister to take into account all the reasonable considerations for and against having the Phalangists enter the camps, and not to disregard entirely the serious consideration mitigating against such an action, namely that the Phalangists were liable to commit atrocities and that it was necessary to forestall this possibility as a humanitarian obligation and also to prevent the political damage it would entail.”

The Adviser had also noted the Israeli Inquiry’s conclusions regarding the role played by Mr Sharon:

“Mr. Sharon was found responsible for ignoring the danger of bloodshed and revenge when he approved the entry of the Phalangists into the camps as well as not taking appropriate measures to prevent bloodshed.”

The Committee noted the factors from the Adviser’s decision relevant to its decision.

- the relevant content was part of a very brief summary recapping the main points of the breaking story of Mr Sharon’s death and the audience would not have looked to it for any greater detail on this point.
- the news summary unambiguously stated that the killings were carried out by Christian militias; this would not have left the audience with the impression that Mr Sharon ordered or directed the killings.
- the Israeli Inquiry unequivocally concluded that Mr Sharon should have foreseen the likely consequences of allowing the Phalangists to enter the camps without ensuring the IDF was able to maintain effective and continuous supervision, and that without such supervision they were liable to commit atrocities.

The Committee did not accept there was an additional requirement that the programme include information on what Mr Sharon was not held responsible for. The Committee agreed with the Adviser’s view that were it to consider this allegation on appeal it would likely conclude that due accuracy had been achieved.

The Committee next considered the allegation that it had been incorrect to state that Ariel Sharon’s visit “to Islam’s holiest mosque in Jerusalem in 2000 sparked Palestinian uprising”. The Committee noted the complainant’s argument that the uprising was pre-planned and would have occurred anyway.

“Arafat had clearly planned the uprising well in advance. He chose the aftermath of Sharon’s visit as the time to launch it, but the bulletin made it appear that the uprising was a consequence of Sharon’s visit to the Temple Mount, which it clearly was not.”

The Committee then noted the Adviser’s reasoning as to why this part of the complaint did not qualify to proceed to appeal. It noted in particular the Adviser’s citation of a previous finding where the Committee had considered a complaint in similar terms. It

recalled that the content it considered on that occasion was from an article on BBC Online which included the phrase "Palestinians rioted and the second intifada ensued". The Committee acknowledged the complainant's view in his challenge to the Adviser's decision that the wording on this occasion was sharper and more precise. Nevertheless, the Committee agreed with the Adviser that its conclusion on that occasion applied equally to the allegation here.

It concluded that:

- Mr Sharon's visit was capable of being viewed as controversial and provocative
- Whilst the subsequent uprising may have been stage-managed, the fact that the visit could be used as a credible pretext to start an uprising meant that the reference to it "sparking" the uprising would have been likely to have achieved due accuracy.

It was noted by Trustees that the complainant had considered the content to have breached the guidelines on impartiality. The Committee noted the Editorial Guidelines on Impartiality, and in particular, the requirement for due impartiality as set out in editorial guideline 4.2.1. The Committee noted the subject and nature of the content and the audience expectation and their view was that there was no reasonable prospect of concluding that the content breached the guidelines on accuracy. The Committee also noted that there had not been any credible evidence or arguments advanced that suggested that the content was not duly impartial. In light of those considerations, the Committee considered that there was no reasonable prospect of concluding that the content in question breached the guidelines on impartiality.

The Committee therefore did not consider that this complaint had a reasonable prospect of success and therefore decided that this appeal did not qualify to proceed for consideration.

The Committee decided that this appeal did not qualify to proceed for consideration.

Cold War Hot Jets, BBC Two, 15 November 2013

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 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.

Background

The complainant felt the programme *Cold War, Hot Jets* on BBC Two, 15 November 2013 (the second of a two-part series) contained historical inaccuracies and that it was biased in favour of the government/arms industry. He considered it did not properly reflect the dangers faced by airmen who piloted the newly developing aircraft. He stated that his father had been among the many pilots killed during the development of new aircraft – the complainant had devoted a great deal of time investigating the subject and felt very strongly about it. His appeal to the Trust related both to the editorial content of the programme and to the way his complaint had been handled by the BBC Executive.

Correspondence summary

Stage 1

19 November 2013: the complainant contacted Audience Services. He considered the programme contained too many historical inaccuracies to describe in 1500 characters and that it was therefore not his full complaint.

The complainant said the programme was biased. He considered the British people had been deceived about the actual Russian threat and that western intelligence and diplomatic sources of the time considered this to be non-existent. He considered this should have been explored by the programme. He said the programme seemed to him to be an attempt to promote UK weapons manufacture whilst deflecting blame for failure on Government, in particular the Wilson Government, whilst Churchill's propaganda was presented as truth.

The complainant provided links to material he claimed supported his allegations. The first was a link to a mixture of 208 daily and weekly summaries, intelligence memoranda and special evaluations dating from 14 June 1946 to 17 November 1950 inclusive. It was called "Assessing the Soviet Threat: The Early Cold War Years" and totalled 416 pages. Dr Woodrow J. Kuhns of the Central Intelligence Agency History Staff compiled it. The second link was to a Guardian comment piece – "The Soviet threat was a myth" – published on 19 April 2002 and written by a journalist who was writing a book about the Cold War at the time.

The complainant also quoted two specific comments from a memo about defence expenditure dated 23 March 1956 and written by the then Chancellor of the Exchequer Harold Macmillan to the Prime Minister Sir Anthony Eden. The two quotes highlighted by the complainant are shown below in bold and in the context of the paragraph in which they were originally written:

“We also know that it is defence expenditure which has broken our backs. We also know that **we get no defence from the defence expenditure. When the story of the aeroplanes finally comes out it will be the greatest tragedy, if not scandal, in our history”.**

The complainant said Macmillan’s view “perhaps best summed up” the actual record of post war military jet development and he asked why the programme had not reflected this view: “Where was the tragedy and scandal – the greatest in our History – in this programme?”

The complainant was sent two holding responses on 19 and 27 November 2013 which included a link to the BBC’s complaints website.

11 December 2013: Audience Services responded at Stage 1a. They acknowledged the complainant’s dissatisfaction with the programme; they noted the complainant had not provided any examples of historical inaccuracies or other evidence to support his complaint. Audience Services said their response was therefore general – but that they had raised the complainant’s concerns with the programme makers who stood by the series as a fair and accurate overview of the post-war jet industry, given the breadth of the subject and the limited time available.

11 December 2013: The complainant remained dissatisfied and renewed his complaint. He stated the Macmillan note about defence expenditure was the specific historical document he referenced. He requested an email address so that he could correspond directly with Audience Services. He stated that he considered the programme was not “history” but “infotainment”. He informed Audience Services that his father had died in one of the jets.

11 December 2013: Audience Services sent an auto-response which included a link to the full complaints procedure.

17 December 2013: Audience Services explained the reasons for the 1500 character limit for BBC online complaints and suggested that it was open to the complainant to put his concerns in writing to the postal address provided.

18 December 2013: The complainant remained dissatisfied. He queried why the production team had ignored Macmillan’s memo to Eden (referred to above) as a historical source for its programme. He considered this best: “summed up the actual record of post war military jet development”.

20 December 2013: Audience Services responded, they stated that the complainant had been given information about how he could pursue his complaint in more detail; however, they considered that the key point he had wished to have addressed was the programme’s failure to reflect the quote from Macmillan. This had been raised with the writer/presenter of the series who had provided a detailed response. The writer/presenter explained the context for the two programmes and how the production team had tried to make them as layered and nuanced as possible whilst making hard editorial choices about the content.

He referred specifically to the Macmillan note and said, whilst it was fascinating and he was not sure that the programme was denying its view, he could find plenty of other one-line sound bites that painted quite a different take. He added that as an historian it was “important not to cherry pick choice one-liners to support a pre-conceived view”. He also said that Macmillan was not the only voice on the subject and pointed out that comments

from his grandson had been included in the programmes. He concluded that in his view: "to say the post-war aviation industry was the 'greatest tragedy and scandal in our history' is over-stating the case. The intentions were sound. They simply didn't work out and for a number of highly convoluted reasons".

Audience Services informed the complainant that if he remained unhappy he could escalate his complaint to Stage 2 of the complaints process by contacting the BBC's Editorial Complaints Unit (ECU) and pointed out that in accordance with the BBC's Complaints Framework, the ECU could not accept new points of complaint not previously considered at Stage 1.

21 December 2013: The complainant sent a letter to Audience Services which responded both to the comments of the programme team at Stage 1b as well as providing his "complaint in full". He alleged that describing *Cold War, Hot Jets* as a history programme breached accuracy guideline 3.1 because it looked at the past from a biased and personal point of view. The complainant said the programme ignored too much documentary evidence, including technical reports on aircraft safety, and presented a biased picture of the demise of the UK aircraft industry because little culpability was placed with the aircraft industry itself. He also alleged that the programme presented a very warped image of the Cold War because what was at the time anti-communist propaganda was represented as truth by the programme.

The complainant again referenced the same two documents previously mentioned to support his complaint. The complainant said there was nothing nuanced or layered about the treatment of propaganda in the programme. The complainant commented on the Stage 1b response from the writer/presenter. He said that the writer/presenter's thesis was flawed because "having won the war with a 'highly advanced aircraft industry', 'modern factories' and 'some of the brightest minds in the land' " did not guarantee success in what was a paradigm shift in aircraft development, that is jet powered, transonic, high altitude flight, using new materials that were poorly understood. He added that "the methods used to produce war winners like the Spitfire and Lancaster did not apply in the jet era, it took the industry until 1956 to realise this and at least another 20 years to develop first 'fail safe' and then 'fault tolerant' structures and therefore safer aeroplanes in that time thousands died". The complaint said that the writer/presenter mentioned the "failure of the Comet" which was a very public set of disasters that essentially killed the UK's civil aviation industry but that he missed the equally disastrous failures in the military arm of the industry. He also alleged that the programme was biased because the aircraft industry itself was not held to account for the failures. The complainant again asked where was the tragedy and scandal – the greatest in our history – in the writer/presenter's programme. He said that his research showed that there was a massive loss of life in the RAF in this period and that according to Hansard in 1952 and 1953 620 lives were lost and therefore what Macmillan said was an accurate picture of what was happening at the time. The letter concluded with examples of alleged historical inaccuracies in the programme and detailed eight points that had not been mentioned before.

This letter was dated 21 December 2013, stamped as received by Audience Services on 7 January 2014.

15 January 2014: Audience Services responded to the complainant and noted that he was still unhappy with the response provided by the writer/presenter but that he had also raised a number of new points. It acknowledged his strength of feeling and the deeply personal reasons for his views but said that it could not engage with him further at this stage of the complaints process. Audience Services told the complainant that he could

escalate to the ECU the aspect of his complaint that dealt with the programme's failure to mention a particular quote from Harold Macmillan but that new points he had raised in his letter of 21 December 2013 constituted a new complaint which could not be investigated because it was received after the 30 days outlined in the BBC Complaints Framework. Audience Services said the complainant could request a review of this decision by writing to the BBC Trust within 20 working days, explaining why he believed their decision to be inconsistent with the BBC's complaints procedures.

17 January 2014: The complainant responded to Audience Services and said: "Your response is 'gatekeeping'. You haven't answered my complaints. It's inadequate – you boiled down my response to just a quote from Harold Macmillan." He criticised the complaints procedure and asked that his points be addressed.

24 January 2014: Audience Services contacted the complainant and noted that he was still unhappy with their response because it did not address his full complaint and he wanted Audience Services to go back and handle it again. Audience Services again informed the complainant that he could escalate the original issue handled at Stage 1 to the ECU – namely the programme's failure to mention a particular quote from Harold Macmillan. Audience Services also noted that on 17 December 2013 they had encouraged the complainant to put his full complaint in writing but that in his response of 18 December 2013 he had indicated that the only point he wished Audience Services to investigate was the Macmillan quote. Therefore, according to the BBC Complaints Framework, the further points made in his correspondence dated 21 December 2013 constituted a new complaint and as that complaint was received after the 30 days outlined in the framework, it could not be investigated. Finally, Audience Services advised the complainant that he could request a review of this decision by writing to the BBC Trust within 20 working days explaining why he believed the decision was inconsistent with the BBC's complaints procedures.

Stage 2

20 January 2014: The complainant escalated his complaint to the ECU and summarised his four main points of complaint as:

1. The presentation of Cold War propaganda was skewed and there was no examination of the fear mongering and distortion of the Soviet threat. He again referred to two documents to support his allegations – the CIA reports and Guardian comment article – together with a telegram from George Kennan the US Ambassador for Moscow dated 8 September 1952, that he had previously quoted in his letter of 21 December 2013.
2. The presentation of the post-war British Aircraft industry was biased in favour of the industry because the problems identified that led to the demise of that industry were skewed to hide the culpability of the industry itself. He referred to the evidence supplied in his letter of 21 December 2013 that included technical papers, The Journal of the Institute of Metals, the magazine 'Flight', and other sources including books and BBC documentaries.
3. The programmes were historically inaccurate as detailed in his letter of 21 December 2013.
4. Audience Services' approach to the handling of his complaint was "gate-keeping, deflection and deliberate misunderstanding" and the complainant said they had

been wrong to sum up a 14-page letter of complaint as simply “the programme’s failure to mention a particular quote from Harold Macmillan”.

The ECU acknowledged receipt of the complaint the following day. On 7 April 2014 the ECU informed the complainant that he had been copied in error into an email sent to the BBC Trust and that the ECU now had information it required to complete a letter that would be sent out later that day. Although an email was sent out that day, the ECU letter was unfortunately not attached to it.

22 April 2014: The complainant contacted the ECU and said that he had not received the letter referred to on 7 April 2014.

22 April 2014: The ECU explained that the letter should have been attached to the email sent out to the complainant at 17.22 on 7 April 2014; it forwarded the ‘missing’ letter and apologised for its previous omission. The letter explained that the Head of Editorial Complaints intended to visit the Public Record Office to read the Macmillan note in full. It also explained that initially the ECU had not seen Audience Services’ letter of 24 January 2014 which declined to consider any new points of complaint on the grounds that they had been made out of time, and which referred the complainant to the BBC Trust if he wished to challenge Audience Services’ decision. It concluded that unless the Trust directed otherwise, the ECU had to confine itself to the issue of the Macmillan note. The ECU also said in its 22 April e-mail that its Head of Editorial Complaints had now visited the Public Records Office at Kew and would contact the complainant again soon.

22 April 2014: The complainant contacted the ECU and said he disagreed that he was out of time for the four key points of his complaint because the basic gist of it had been included in his first 2 web-form 1500 character complaints. He summarised the four as: (1) treatment of the Cold War – Manichean propaganda; (2) treatment of “tragedy if not scandal” perhaps best summing up post WW2 military aircraft development; (3) historical inaccuracies and (4) programme does not deserve the epithet history.

25 April 2014: The ECU sent a covering note with its provisional finding attached. The note said that “My difficulty is that the judgement that you raised issues out of time isn’t mine. It’s a judgement made by BBC Audience Services and, although I’m not without sympathy for your arguments I don’t have the authority to reverse them. It can only be reversed by the Editorial Standards Committee of the BBC Trust”.

The ECU’s provisional finding concentrated on the aspect of the complaint which it said it could consider, namely Harold Macmillan’s note of 23 March 1956 to Anthony Eden and whether the view it expressed should have been represented in the programmes (because it “perhaps best summed up” the history of postwar military jet development).

The ECU did not uphold this aspect of the complaint. It informed the complainant he could request a review of Audience Services’ decision not to consider all aspects of his complaint by writing to the BBC Trust.

28 April 2014: The complainant responded to the ECU with 15 pages of correspondence including new evidence to support his complaint first submitted on 19 November 2013.

3 June 2014: The complainant contacted ECU because he had not had an acknowledgement of his letter of 28 April 2014.

4 June 2014: The ECU responded and apologised for the delay and said it would respond by the end of the week.

30 June 2014: The complainant contacted the ECU and asked when its response would be forthcoming.

15 July 2014: The complainant contacted the ECU and said “It is now nearly 170 days since we established email contact. I commented on your provisional response on 28th April this year. I would appreciate some idea of when your final decision will be sent to me.”

17 July 2014: The ECU apologised for the length of time it had taken to respond to the complainant’s letter of 28 April 2014. It detailed how the complainant could appeal the finding to the BBC Trust and said specifically that the appeal should not exceed 1000 words; it should identify the points the complainant raised with the ECU and those that he wanted the Trust to address with his reasons. The ECU also pointed out to the complainant that the Trust would not normally consider new points and gave the complainant the link to the current Editorial Complaints and Appeals Procedures document dated 26 June 2012.

17 July 2014: The complainant wrote to the ECU and complained that Audience Services, without consultation with him, had redefined his complaint to the point of misrepresentation. He said his complaint was never about whether *Cold War, Hot Jets* should have included Macmillan’s memo somewhere in the two episodes of the programme. He said his complaint was formally laid out in his letter of December 2013. He ended by saying the programme was not duly accurate and that it should not have been categorised as history.

21 July 2014: The complainant informed the ECU that he intended to appeal its decision with the BBC Trust and asked the ECU to “inform him of the gist of the material” it had relied on when it responded to his complaint, as offered in the old version of the complaints and appeals procedure.

21 July 2014: The ECU replied and said the gist of the material consisted of the programmes themselves, complaint correspondence and the contents of the Public Record Office file containing Macmillan’s note of 23 March 1956 to Eden (as described in the letter of 25 April 2014).

23 July 2014: The complainant contacted the ECU and quoted from the old complaints procedure document namely: “The ECU will reply, usually within 10 working days, setting out the editorial guidelines against which the complaint will be considered. If the ECU considers it helpful, the ECU will also summarise your complaint. You will be given the opportunity to comment on both the summary and selected guidelines and you are asked to do this usually within 10 working days.”

The complainant asked whether there had been a breach of process in this case as he had not received a reply setting out the editorial guidelines against which his complaint would be considered or a summary of his complaint and had not therefore been given a chance to comment on them.

29 July 2014: The complainant again asked the ECU to investigate his “original complaint” and not Audience Services’ misrepresentation of it. The complainant said that it was quite clear from the current complaint and appeal procedures document that the complainant outlines the complaint to the ECU and not Audience Services. He provided arguments as to why the ECU should investigate all four points of his original complaint.

29 July 2014: The ECU responded to the complainant and said its 7 April 2014 letter had explained why it could not investigate any aspect of the complaint other than the Macmillan note. It added that the decision that other aspects of the complaint had not been lodged in time was not the ECU's and could only be challenged by asking the BBC Trust to review it. It added that on the basis of the complainant's comments on the ECU's provisional finding, as well as what the complainant had previously written "I took it to be common ground that the Macmillan note issue was an aspect of the complaint rather than a misrepresentation of it". The ECU then apologised for the misunderstanding if it had been mistaken about the matter.

29 July 2014: The complainant contacted the ECU and said he was appealing to the BBC Trust. He said that at no time had he wanted to appeal Audience Services' decision and he wanted his "original complaint" investigated, which was set out at Stage 1a and consisted of 4 explicit propositions.

30 July 2014: The ECU said there was nothing useful it could add to its explanation in its letters of 7 April and 27 July (sic) 2014.

30 July 2014: The complainant contacted the ECU and explained again why he believed the ECU should investigate the four points of his complaint. He said that Audience Services said in its contacts on 15 January and 24 January 2014 that "If you wish to take your original complaint further, you can contact the Editorial Complaints Unit. They can investigate the issue you raised at Stage 1 of the complaints process, namely the programme's failure to mention a particular quote from Harold Macmillan." The complainant said that Audience Services use of the singular "issue" was a misrepresentation of his complaint as he had raised four issues at Stage 1.

31 July 2014: There was an exchange of correspondence between the complainant and the ECU.

1 August 2014: The complainant highlighted that 4.4 of the Editorial Complaints and Appeals Procedure 26 June 2012 said: "Your complaint should clearly and concisely set out why you remain dissatisfied. It should: include the points that you raised at Stage 1b that you want the ECU to reconsider. The ECU will not consider new points unless, exceptionally, it is necessary to do so in the interests of fairness."

1 August 2014: The ECU explained that the discretion allowed to it by 4.4 applied to points which had not been made at Stage 1 but did not apply to points which were deemed out of time at Stage 1 and the decision that parts of his complaint had been made out of time could only be overruled by the BBC Trust's Editorial Standards Committee.

1 August 2014: The complainant asked the ECU to confirm that he had until 14 August 2014 to appeal to the BBC Trust.

1 August 2014: The ECU confirmed the 14 August deadline and promised to raise the issue of the old version of the complaints procedure still being available online with the Trust Unit.

Appeal

4 August 2014 - The complainant appealed to the BBC Trust and said his "original complaint" had not been considered at Stage 2 by the ECU. He summarised the four points of his complaint as:

1. Many historical inaccuracies – too many to be listed.
2. Manichean propaganda – uncritically repeated – links to CIA primary sources and an article by a journalist given in support.
3. Bias in favour of the arms industry – illustrated – though character limit precluded full discussion.
4. Post-war jet development best summed up by Macmillan memo – No defence for the defence expenditure – it is the defence expenditure that has broken us. Story of the aeroplanes greatest tragedy if not scandal in our history. Where was the greatest tragedy and scandal in our history in this programme?

The complainant said at Stage 2 he had argued that these four points amounted to a breach of the BBC's Editorial Guidelines on due accuracy and that the ECU had only investigated point 4 despite his requests for it to answer his "original complaint" i.e. points 1-4.

The Trust Unit's decision

The Trust Unit reviewed the relevant correspondence and the Senior Editorial Complaints Adviser viewed the two episodes of *Cold War, Hot Jets*. An independent Editorial Adviser also reviewed the relevant output and carried out further research. The Senior Editorial Complaints Adviser (the Adviser) considered the appeal did not have a reasonable prospect of success.

The Adviser carefully read the correspondence that had passed between the complainant and the BBC and she acknowledged the strength of the complainant's feelings and the personal nature of his interest in the *Cold War, Hot Jets* programmes.

The Adviser noted that the complainant escalated his complaint to the BBC Trust and that he said: "Please treat this as an appeal for the use of reason over the blind following of rules". She noted that the complainant was unhappy that at Stage 2 the ECU could not use its "reason, judgment and discretion" in the interests of fairness to overturn a Stage 1b decision that he alleged contained a clear misrepresentation of his original complaint.

The Adviser noted that the complainant asked the Trust to provide the ECU with the authority it needed to investigate the three outstanding points from his original complaint. She also noted that the ECU had investigated point 4 and had not upheld this aspect of the complaint.

The Adviser noted that in his appeal to the Trust the complainant said: "I think it is my right to define my complaint as long as it is supported in the evidence of correspondence. It is not for BBC AS to misuse Stage 1b to create straw man fallacies out of original complaints....Please be reasonable. How the BBC defines what a history is, depends on reasoned dialogue not on failures of real refutation based on straw man fallacies or arbitrarily set bars, unduly wide scopes for interpretation and authoritarian rules."

The Adviser noted that the complainant also said that "This situation has been aggravated by my use of guidelines [complaints procedure] available on your website that did not contain a Stage 1b e.g. I would probably not have informally used 'joke' to indicate that none of the four issues had been addressed and 'Kindly answer my complaint' to indicate that I wanted all four explicit propositions of my complaint answering."

She also noted that in his appeal to the Trust the complainant alleged that the four points of his original complaint taken together amounted to a breach of the BBC's Editorial

Guidelines on accuracy and in particular guideline 3.1 which says:

“The BBC is committed to achieving due accuracy. This commitment is fundamental to our reputation and the trust of audiences, which is the foundation of the BBC. It is also a requirement under the Agreement accompanying the [BBC Charter](#).”

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.”

As the complainant had also stated that he considered the output was biased, the Adviser also noted the following excerpt of the Editorial Guidelines relating to Impartiality:

“Impartiality lies at the heart of public service and is the core of the BBC’s commitment to its audiences....

The Agreement accompanying the BBC Charter requires us to do all we can to ensure controversial subjects are treated with due impartiality in our news and other output dealing with matters of public policy or political or industrial controversy. But we go further than that, applying due impartiality to all subjects. However, its requirements will vary.

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

The Adviser noted that the requirements for due accuracy and due impartiality varied depending on the output. She considered this was broadly understood by audiences so that, for example, a news report and a topical comedy programme could both refer to the same subject – but the level of accuracy and impartiality required for the news output was higher than that required for the comedy output.

She noted that, when considering the requirement for due accuracy and impartiality, output producers had to bear in mind how programmes were signposted and what the audience expectations were.

The Adviser noted that the programme broadcast on BBC Two on 15 November 2013 was the second of two programmes called *Cold War, Hot Jets* and that it was broadcast as part of BBC Two’s season of drama and documentaries to explore the Cold War. The BBC Media Centre announced The Cold War Season in the following way:

“Fifty years after Britain lived in the shadow of the Cold War, BBC Two is set to explore the cultural and political upheaval of a tumultuous period in history that divided the world in half and shaped modern politics.”

The Adviser also noted that the BBC Two Cold War Season featured the single film *Legacy* as well as a series of history and documentary commissions including *Strange Days – Cold War Britain*, a three-part series with a historian who looked back over the strange years of the Cold War; the two-part series *The Silent War* which was the story of the underwater war between US, UK and Soviet submarines in the second half of the 20th century; *The Secret Life of Uri Geller* and the two-part series *Cold War, Hot Jets* which was described by the BBC Media Centre in the following way:

"The jet engine was one of the most important inventions of the 20th century. A triumph of British engineering born out of conflict; it accelerated life and revolutionised the world. In post war Britain, the jet plane and its daredevil pilots were doing victory rolls over Europe, wowing adoring crowds, and pushing technology to its limits to break the sound barrier.

But by 1950 the jet had become the focus of intense rivalry and one-upmanship between superpowers – a platform for unleashing nuclear Armageddon, a vehicle for undertaking espionage and the most sought after technology of the Cold War."

The two episodes of *Cold War, Hot Jets* were both an hour long and were described on BBC Two's The Cold War Season web pages as:

"Cold War, Hot Jets - Episode 1 of 2

Britain emerged from the Second World War in financial crisis, but one technological innovation provided hope for the future – a world-leading jet aviation industry. During the Cold War, the jet engine became a lucrative export and a powerful piece of military hardware, but selling to the wrong buyer could alter the balance of power.

Cold War, Hot Jets - Episode 2 of 2

As an 'Iron Curtain' fell across Europe, the jet bomber came to define how the Cold War was fought. Able to fly faster, higher and further than ever before, and armed with a devastating new weapon, Britain's V Force became the platform for delivering nuclear Armageddon."

The Adviser considered that this signposting by BBC Two made it clear that the purpose of the two programmes was to explore the role the jet played in the Cold War and discover how Britain embraced, adapted and improved the technology to face up to the realities of the new era.

The Adviser noted that the Stage 1b response from BBC Audience Services highlighted the context of the programme and explained that difficult editorial decisions had to be made about what to include and what to exclude in the two hours of broadcast television. The Adviser noted that the military historian who wrote and also presented the programmes provided the response, and in doing so thanked the complainant for taking the time and trouble to write in and said he was sorry that the complainant did not agree with the content of the two films. He said:

"...We tried to make the films as layered and nuanced as possible, but hard editorial choices have to be made. We included the Duncan Sandys White Paper of 1957, for example, but had to cut both the piece on the Fairey Delta 2 and the more extensive piece on the TSR2. We also had to make the hard decision not to focus heavily on the development of surface-to-air missiles. As a historian, these are sometimes hard decisions to have to make, but the films were true to the overall thesis, and I remain very happy that we stuck to that... Britain's post-war aviation industry contains many, many layers and nuances and no two-part series is ever claiming to be the last word on a particular subject. The point is to open people's eyes and hopefully provoke debate, discussion and further interest."

The Adviser noted that in his letter dated 21 December 2013 the complainant had agreed with the writer/presenter that:

"...it was impossible to go through every single significant event in a history in a two hour television documentary, a History however should still reflect the 'whole' as much as it can."

But he went on to say:

"If one is to call a two-hour television documentary 'history' then by definition one has to include the 'whole' and be 'well read'. I realise it's not easy, but that's the job one is faced with. Failure to do the job in the way [the writer/presenter] has failed in this program means the program cannot be described as 'history' it is too skewed in favour of the industry to be that."

The Adviser noted that the complainant's full complaint dated 21 December 2013 referred to his personal understanding of the "tragedy" described by Macmillan in a memo he wrote about defence expenditure to Eden in March 1956. She also noted that the letter referred to technical reports available at Cranfield University's Aerade Archive that discussed amongst other things aircraft safety issues. The Adviser then noted that the first *Cold War, Hot Jets* programme broadcast on 8 November 2013 referred to safety issues and loss of life during this period, both of military personnel and civilians. She noted that the programme specifically referred to the death of pilot John Derry when he demonstrated the De Havilland 110 fighter at the 1952 Farnborough Air Show when the aircraft disintegrated in the air and the engines and debris crashed into the crowd and killed 28 spectators and injured more than 60 people. The programme also set out how the RAF Meteor Jet was a 'killer' and described a Meteor crash into a Sussex village before going onto explain:

[Presenter]: By the early '50s the RAF was losing a pilot almost every other day. The Meteor became known as the meat box.

[Contributor]: We didn't have ejector seats in those days and it was difficult to bail out, a lot of bail outs were not successful, it was more or less standard, each course of say 20 people would lose at least 2 sometimes 3 or 4 and usually at least 2 were killed in accidents. Must have been 200 killed.

[Presenter]: But the appalling death rate didn't diminish the number of recruits willing to fly the jets. ...In 1952 as Cold War tensions intensified, the RAF reached its post war operational peak, almost 10 times the size it is today.

The Adviser also noted that the programme detailed why the Comet failed:

Archive footage: It was with dismay that we learned that the first of the Comets had crashed into the Mediterranean off Alba with the loss of 35 lives.

[Presenter]: The Comet's fuselage couldn't cope with the repeated air pressure changes between take off and high altitude cruising.

Archive footage: This is the tragic scene of the Comet disaster near Calcutta; the aircraft carried 37 passengers and a crew of 6. All lost their lives.

[Presenter]: There were other fatal crashes, sales of the aircraft plummeted...With huge government investment, the plane was eventually redesigned and strengthened but by then American manufacturers had developed their own airliner – the Comet was swept from the market place. The Comet air disasters

meant Britain lost its lead in jet transport and with it all the riches that had been promised."

The Adviser noted that the second programme broadcast on 15 November 2013 mentioned how an aircraft company had built the World War 2 Halifax bomber and they were working on an aircraft with crescent shaped wings designed for high altitude cruising whose design was the brainchild of the chief aerodynamicist, a German. But the plane's development was dogged with accidents and delays and the government decided another less advanced aircraft was required as back up. It also referred to safety issues and the Valiant:

[Presenter]: The heavy turbulent air was playing havoc with the integrity of the Valiant, cracks in the rear spar of the wings began to appear. In the end the entire Valiant fleet had to be scrapped. A sad ending to a plane that had served its country well.

The Adviser noted that the complainant included in his full letter of complaint of 21 December 2013 a number of examples of alleged inaccuracies in the programme. One said: "The claim that Jets defined how the cold war was fought is questionable."

The Adviser noted that the script said: "This is the story of how Britain embraced, adapted and improved its jet technology to face up to the terrifying realities of the new era and to define how the Cold War was fought".

The Adviser noted that another example of an alleged historical inaccuracy provided by the complainant in his letter dated 21 December 2013 said that "Spend on defence was never 'more than 10% GDP' it was 10% for 1 year '53 (or 52) it was less than 10% every other year (George Peden)."

The Adviser noted that in programme one the Presenter had said: "By the early 50's the Cold War was driving Britain's defence spending to a staggering 10% of the national budget. The country was rebuilding its armed forces across the globe and at the same time developing its own weapon of mass destruction".

And in programme two, an aviation consultant and vice president of Aviation and Aerospace Professionals had said: "Britain was spending more than 10% of gross domestic product on warfare in the early 1950's, quite extraordinary, historically unprecedented for peace time and right across the political spectrum from right to left it's recognised that Britain simply can't afford to, to maintain this level of defence expenditure in the long run, it's undermining the civilian economy."

The Adviser also noted that in Keith Hartley's book "The Economics of Defence Policy: A New Perspective it said "...the long-term trend in the share of defence in national output has been downwards from a peak of some 10 per cent in the early 1950's to 2.2% in 2008." And that the [ukpublicspending.co.uk](http://www.ukpublicspending.co.uk) website includes a chart which indicated that UK defence spending in 1951 was just below 10% of GDP whereas in 1952 and 1953 it rose above 10% before dropping back down just below 10% in 1954. The chart is available here:

http://www.ukpublicspending.co.uk/spending_chart_1940_1960UKp_14c1li111mcn_30t

The Adviser noted the complainant's other comments relating to his allegations that the programme contained historical inaccuracies including those about the Vulcan being the fantasy of every schoolboy; Sandys' Defence Review; Lightning; Javelin; The Hunter; other industry bloopers and Cuba.

The Adviser considered that it was not practicable or possible to include every view and every fact on the subject of the development of the UK aircraft industry and in particular the jet engine, as well as the Cold War, in these two linked programmes *Cold War, Hot Jets*. The Adviser noted that the complainant held strong views about what should have been included and omitted from the programme and would have preferred a deeper investigation of government policy and the actions of the aircraft industry. However, she noted that the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. "The direction of the BBC's editorial and creative output" was specifically defined in the Charter (paragraph 38, (1) (b)) as a duty that was the responsibility of the Executive Board, and one in which the Trust did not get involved unless, for example, it related to a breach of the BBC's editorial standards, which the Adviser considered did not apply in this case.

She considered the two programmes duly reflected the high mortality rates among pilots and significant crashes suffered by new aircraft. She considered that, bearing in mind the context of the programmes and their signposting, this would have met audience expectations for these documentaries which were intended for a broad, non-specialist audience.

The Adviser therefore considered that decisions relating to the choice of material to include in the programme fell within the "editorial and creative output" of the BBC and were the responsibility of the BBC Executive.

In terms of complaints handling, the Adviser noted that the complainant had appealed to the BBC Trust on the issue of complaints handling and that he had specifically asked the Trust to give the ECU the authority it needed to investigate his "original complaint" because only one of the four points of his complaint was investigated at Stage 1 of the complaints process. She noted that the complainant had been advised of his Stage 3 right of review to this complaint handling point within 20 working days by Audience Services on 15 and 24 January as well as the ECU on 7 April 2014. She noted that he had not taken up these options.

The Adviser noted that the BBC Editorial Guidelines on Accountability were applicable in this case and specifically 19.4.2 that summarises key practices for complaints handling as laid out in the BBC Trust Complaints Framework. The Adviser noted this says:

- Complainants should be treated politely and with respect.
- A complainant...who contacts the BBC at Stage 1 with a...complaint should be informed in the reply that there is a complaints process...
- Any response to a complainant should inform the complainant of the next step in the process for taking the complaint further if applicable.

The Adviser considered that Audience Services had treated the complainant with respect throughout the complaints process, even after it had received his response to its Stage 1a which contained potentially offensive internet slang and offensive language in its description of the original programme. She noted that Audience Services' responses of 11 and 17 December 2013 had both been referred to as "joke emails" by the complainant. She also noted that in his appeal to the Trust the complainant referred to his "joke" dismissal of these two Audience Services' replies saying that "This situation has been aggravated by my use of guidelines ... that did not contain a Stage 1b e.g. I would probably not have informally used 'joke' to indicate that none of the four issues had been

addressed and 'kindly answer my complaint' to indicate that I wanted all four explicit propositions of my complaint answering."

The Adviser noted at Stage 1 that the complainant had been informed of the complaints process and how to access full details about it on 19 November 2013; 27 November 2013; 11 December 2013 – which also included a link directly to the [then] current BBC Complaints framework document dated 26 June 2012; and 17 December 2013. She also noted that both Audience Services and the ECU had consistently informed the complainant of the next step in the process for taking his complaint further. In particular the Adviser noted that in its Stage 1b responses dated 20 December 2013; 15 January 2014 and 24 January 2014 Audience Services had informed the complainant that if he was unhappy about the way it had addressed his concerns he could escalate his complaint to Stage 2 to the ECU pointing out that, in accordance with the BBC's complaints framework, the ECU could not accept new points of complaint which had previously not been considered at Stage 1. The Adviser noted that the complainant first contacted the ECU on 20 January 2014.

The Adviser also noted that it was in its contact of 15 January 2014 that Audience Services said:

"Although on 17 December we invited you to put your full complaint in writing, in your response on 18 December you indicated that the only point you wished us to investigate was the one outlined above (the programme's failure to mention a particular quote from Harold Macmillan). Therefore, according to the BBC Complaints framework, the further points in your most recent letter would constitute a new complaint. I'm sorry to tell you that this complaint was received after the 30 days outlined in this framework, and therefore cannot investigate it."

The Adviser noted that Audience Services went on to inform the complainant that he could request a review of its decision not to engage in further correspondence on the complaint by writing to the BBC Trust explaining why he believed the decision was inconsistent with the BBC's complaints procedures. The Adviser noted that this offer of a review of the decision by the BBC Trust was made again in Audience Services' response of 24 January 2014 as well as by the ECU in its letter dated 7 April 2014 (sent on 22 April 2014) and a further contact on 25 April 2014. Finally the Adviser noted that the complainant was informed that he could appeal the decision of the ECU by writing to the Trust. The ECU finalised its finding on 17 July 2014 and did not uphold the aspect of his complaint relating to the Macmillan memo.

The Adviser noted that the complainant did not make a request for a review of the Audience Services decision to the Trust even though he was informed of his right to do so on four separate occasions. She noted that Audience Services had interpreted the complainant's contacts of 11 and 18 December 2013 as a request for it to investigate the key point of his complaint that specifically related to a quote from Macmillan. On 11 December he said "Would you care to answer this question" referring exclusively to the Macmillan memo and in his 18 December contact he said: "for the third time of asking. Yawn" and again reiterated his concerns that the programme makers should have made use of the Macmillan memo as an historical source as well as reflecting its sentiments in the programme i.e. that the story of the aeroplanes was the greatest tragedy if not scandal in our history. The Adviser noted that Audience Services had confirmed on a number of occasions in writing that they were only considering one of his four points of complaint because his contacts of 11 and 18 December 2013 had made it quite plain that he only wished one point to be considered at 1b and that it had done so in its response to him of 20 December 2013.

The Adviser noted that there may have been a misunderstanding on both sides in relation to this matter but also noted that on 11 December 2013 the complainant was referred to the [then] current Editorial Complaints Procedure which at point 2.7 says: "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 Adviser noted that at Stage 1 the complainant did not provide anything other than generalised allegations of bias and historical inaccuracies in the programme and that the evidence he provided in his three contacts with Audience Services on 19 November, 11 and 18 December 2013 was restricted to links to the CIA archived reports and to a newspaper opinion piece. She noted there would have been room to provide additional detail in the second and third emails.

The Adviser acknowledged that the complainant said in his appeal that "this situation has been aggravated by [his] use of guidelines [complaints procedure] available on [the BBC] website that did not contain a Stage 1b" and that he said he had initially referred to the out of date Complaints Procedure that he had accessed on the Internet. The Adviser noted this document does not make reference to the issue of the consideration of new or different points at any stage of the complaints process. The Adviser noted that searching "BBC complaints procedures" through the Google search engine produces at least four different ways of accessing a BBC's Complaints Framework document – she discovered that at least three of these ways eventually takes you to the current document and one of them to the out of date document. The Adviser noted that there are indeed complexities involved in navigating through to the Editorial Complaints and Appeals Procedures 26 June 2012 document but that Audience Services do routinely provide the direct link to it in its Stage 1b auto-acknowledgement to complainants, as it did in this case. The Adviser concluded that given the impossibility of removing all links on Internet search engines to PDFs of the old document it is particularly important that Audience Services and the ECU continue to provide direct links to it at appropriate points in the complaints process, as they did in this case.

The Adviser concluded that both Audience Services and the ECU had provided the complainant with appropriate and sufficiently detailed information about and links to the BBC's practices for complaints handling at all stages of the process and that he had ample opportunity to access the most up to date documents relating to the BBC's Complaints Framework.

The Adviser noted that point 2.1 of the BBC Editorial Complaints Procedure says that:

"You should make your complaint within 30 working days of the date which the content was broadcast...If you write 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."

The Adviser noted that the 30 working days deadline for a complaint about episode two of *Cold War, Hot Jets* would have been Tuesday 31 December 2013. As well as weekends, 25 and 26 December 2013 and 1 January 2014 were non-working days for the handling of complaints by the BBC Executive. The Adviser noted that Audience Services had confirmed that the Royal Mail delivered the complainant's letter dated 21 December 2013 on Tuesday 7 January 2014, because, like all post, it was date stamped on the day of its arrival at the BBC. She also noted that this was four working days late and that any delays relating to its late arrival would have depended upon when the complainant's letter was actually posted, whether first or second class postage was used and any possible delivery delays by Royal Mail itself. The Adviser noted that Audience Services did not consider there "was a good reason for the delay" and this was because its reason for

ceasing Stage 1 correspondence did not turn solely on the chronology but also on the background of the correspondence. The Adviser noted that Audience Services had supplied three Stage 1 replies by 20 December 2013 to the Macmillan memo complaint point that the complainant had stressed on three separate occasions he wanted addressed. She also noted that the complainant had not supplied any specific examples of inaccurate output despite having at least three opportunities to do so.

The Adviser concluded that Audience Services did not decline to correspond further with the complainant purely on the basis of new points being raised in his letter of 21 December 2013 which had been submitted out of time but also because it felt it had dealt with the one point the complainant himself had indicated he specifically requested it to address. The Adviser concluded that Audience Services had responded reasonably to the complainant given the generalised nature of his original complaint by providing a detailed Stage 1b response on the wider issue of the context of the programme; the difficult editorial choices that had to be made about what material to include and what to omit and the Macmillan memo which the complainant had indicated in all three of his contacts dated 19 November and 11 and 18 December 2013 was the key point he wanted Audience Services to investigate. The Adviser noted this response came from the programme team in the form of a letter from the historian who had written and presented the programmes. The Adviser considered therefore that, given its Stage 1b responses, it was reasonable for Audience Services to say it could not engage in further correspondence on new points of the complaint made out of time.

The Adviser noted that the complainant said: "My approach to the complaints procedure is as an informal dialogue of reasoned arguments"; she also noted that the complainant was referred to the BBC Complaints website "What happens to your complaint" on two occasions and there it states that "We will investigate possible breaches of standards, but in order to use your licence fee proportionately will not reply in detail to other points such as comments, further questions or matters of opinion." She also noted that the BBC Complaints procedure says: "In order to use your licence fee proportionately we do not investigate minor, misconceived, hypothetical, repetitious or otherwise vexatious complaints which have not suggested evidence of a breach of standards, or are gratuitously abusive or offensive. When handling your complaint we will treat you courteously and with respect."

The Adviser considered that Trustees would be likely to conclude the output met the requirements of the Editorial Guidelines for Accuracy and Impartiality and she did not consider the substantive complaint had a reasonable prospect of success. Therefore she did not propose to put it before Trustees. She also considered Trustees would be likely to conclude the complainant had received appropriate and considered responses at Stages 1 and 2 of the complaints process and had been repeatedly given information about how to challenge a decision or escalate his complaint. She noted that where there were delays, the complainant had been given an apology for them. Therefore, on the complaint of complaints handling too, she considered the appeal did not have a reasonable prospect of success and she did not propose to put it before Trustees.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with his appeal. His request covered several points over the course of 30 pages. In summary he reiterated his view that his complaint had raised a matter of substance. He said the programme should not have been signposted as "history" because this had set up an expectation that it would be academically rigorous, which he claimed it was not. He considered the programme had breached accuracy and impartiality guidelines. His

challenge to the Adviser's decision included, but was not limited to, his view that the programme:

- contained a number of historical inaccuracies
- included repetition of "Cold War Manichean Propaganda" and "propaganda techniques"
- demonstrated bias in favour of the arms industry
- should have reflected or explored statements made by Macmillan in a memo to Eden.

He also presented a number of criticisms of the BBC complaints procedure in general and the way his complaint had been handled at each stage of the complaints process.

The Committee's decision

The Committee was provided with the complainant's appeal to the Trust, the response from the Senior Editorial Complaints Adviser (the Adviser) and the complainant's email asking the Committee to review her decision. The Committee was also provided with episodes one and two of the series, together with transcripts.

The Committee noted the context and signposting of the programme – that it was the second of two programmes called *Cold War, Hot Jets* broadcast as part of BBC Two's Cold War Season. The subject was the development of the UK aircraft industry and in particular the jet engine, as well as the Cold War, and it had been covered in two linked programmes.

The Committee agreed that the level of accuracy and impartiality required for a programme of this nature was not as high as that required for e.g. a news bulletin or a current affairs programme. This was not a controversial subject. It was a historical programme made for a general audience where a great deal of ground was covered on a subject that many in the audience might be unfamiliar with. Inevitably the BBC had to choose what facts and views were included.

The Committee reviewed and considered all of the points that the complainant had raised in his appeal to the Trust and his challenge to the Adviser's decision not to put this matter before the Trust.

The Committee agreed with the Adviser's conclusion that it would be likely to find that the two programmes duly reflected the high mortality rates among pilots and significant crashes suffered by new aircraft and that the nature and subject matter of the programmes had been adequately signposted and would therefore have managed audience expectations for these documentaries which were intended for a broad, non-specialist audience. The Committee also considered that there was no credible evidence that the BBC had knowingly and materially misled its audience, distorted known facts, presented invented material as fact, or otherwise undermined audiences' trust in BBC content. The Committee therefore considered that it was unlikely to find that the programmes breached the editorial guidelines on accuracy.

The complainant considered that the programmes were biased and not impartial in a number of ways including, but not limited to, the complainant's view that the programme was biased in favour of the arms industry. The Committee also noted the complainant's view that the programmes included "Cold War Manichean propaganda". The Committee reviewed the guidelines on impartiality, focusing on paragraphs 4.1, 4.2.1, 4.2.2, and 4.2.3. The Committee acknowledged that there were a number of different ways of exploring the subject that the programmes looked at. However, the Committee did not

consider that there was any credible evidence to support the assertion that the programme was biased, lacked impartiality, or included material that could be classed as propaganda. Therefore, the Committee considered that there was no reasonable prospect of concluding that the programmes breached the editorial guidelines on impartiality.

The Committee noted the complainant's personal interest in the programme's subject matter and his strong views about what should have been included in the programmes. It was observed that the complainant considered that the programme should have included, amongst other matters, an exploration of the sentiments expressed by Macmillan in a memo to Eden. It was also observed that the complainant questioned the way certain material was explored in the programmes.

The Committee noted that the Royal Charter and the accompanying Framework Agreement drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. "The direction of the BBC's editorial and creative output" was specifically defined in the Charter (Article 38(1)(b)) as a duty that was the responsibility of the Executive Board, and one in which the Trust did not get involved unless, for example, it related to a breach of the BBC's editorial guidelines. As previously noted, the Committee considered that it was unlikely to conclude that there had been a breach of the editorial guidelines if it took this complaint on appeal. Therefore, the Trust did not consider it appropriate to interfere or critique the direction of editorial output of the BBC.

The Committee noted that the complainant was not content with the BBC's complaints process and he criticised, amongst other matters, the character limit on the complaints webform. The Committee observed that complainants could send complaints by post if they were unable to fit their complaint into the webform limit. As a result, Trustees considered that this aspect of the complaint did not raise a matter of substance. In addition, the Committee did not consider it appropriate, proportionate or cost effective to consider the complainant's generalised concerns with the structure and features of the complaints procedure.

Complaints handling

The Committee also noted the complainant felt that three of the four aspects of his original complaint had been ignored on a procedural technicality at Stage 1 which had resulted in only one aspect of his complaint being considered at Stage 2. It was noted that Audience Services rejected aspects of the complaint because they were received outside the time limit set in the complaints procedure.

Trustees noted that, contrary to the opinion of the Trust's Adviser, the complainant had in fact been in time to make his complaint at Stage 1 as he had written within 30 working days although his complaint had been received after that period. Trustees observed that the complainant did not make a request to the BBC Trust for a review of the Audience Services' Stage 1 decision to reject aspects of his complaint for being out of time. They further noted that he was informed of his right to do so on four separate occasions and provided with the relevant contact details for the Trust. It was further observed that the complainant had not given a reason for not challenging Audience Services' decision in time.

The Committee noted that programme teams frequently disband shortly after the programme is made and that approximately one year had passed since the programme had been broadcast. The Committee reviewed paragraph 5.10 of the editorial complaints and appeals procedure. Trustees considered, in fairness to the interests of all licence fee

payers in general, that it would not be appropriate, proportionate or cost effective to consider this aspect of the complainant's complaint on appeal. Trustees considered, in particular, that it would be disproportionate to ask Audience Services to reconsider this complaint a year after the programme had been broadcast and in light of the opportunities that the complainant was given to challenge the decision that aspects of his complaint were out of time.

The Committee reviewed the BBC Editorial Guidelines on Accountability and noted in particular guidelines 19.1.1 and 19.4.2. It agreed with the Adviser that Audience Services and the ECU had both treated the complainant politely and with respect throughout the complaints process.

The Committee agreed with the Adviser's conclusion that the complainant had been given accurate and timely information about how to challenge a decision or escalate his complaint and that, with the exception of the error noted above, he had received appropriate and considered responses at Stages 1 and 2 of the complaints process. Trustees also noted that Audience Services had provided a link to the BBC complaints webpage, which contained hyperlinks to the up to date editorial complaints and appeals procedure. In addition, it was noted that the BBC had acknowledged and apologised for any delays in the complaints process where appropriate.

The Committee did note that Audience Services had made a mistake when they decided that aspects of the complainant's complaint were out of time. The Trust Unit had also made the same mistake when it agreed with Audience Services' analysis. The Committee would bring this matter to the attention of Audience Services and the Trust Unit, to ensure that this mistake is learned from. However, Trustees considered that this mistake did not constitute evidence of the BBC or the BBC Trust acting in breach of guideline 19.1.1. It was considered that Audience Services misinterpreted the complaints procedure when they received correspondence 30 working days after the content had been broadcast. Trustees noted that this mistake could have been remedied promptly had the complainant taken the opportunity to appeal Audience Services' decision.

The Committee noted that the complainant considered that Audience Services should have investigated his initial complaint along with the points that he raised in a letter sent on 21 December 2013. He considered that Audience Services had misinterpreted his initial correspondence and that their substantive reply was characterised by an "informal logical fallacy".

Trustees reviewed the correspondence between Audience Services and the complainant.

The Committee agreed with the Trust Adviser's analysis and considered that Audience Services had reasonably interpreted the complainant's emails of 11 and 18 December 2013 to constitute a request to consider his point about Macmillan's memo to Eden. Therefore, the Committee did not consider that Audience Services had breached the editorial guidelines on accountability or handled the complaint inappropriately by interpreting his complaint in this manner.

The Committee therefore concluded that there was no reasonable prospect of it finding there had been a breach of the guidelines in relation either to the content of the programme or the handling of the complaint.

The Committee decided that this appeal did not qualify to proceed for consideration.

Decision of the Editorial Complaints Unit not to respond further to a complaint about PM, BBC Radio 4, 24 June 2014

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 complaint

The complainant contacted the BBC on 24 June 2014 to express his concern about the BBC's coverage of the trial of the Al Jazeera journalists in Egypt compared with the coverage of the trial of Andy Coulson. He felt that the difference in approach to the trials demonstrated the BBC's political bias and that the BBC was "following Labour's line".

BBC Audience Services responded to the complaint at Stage 1a on 12 July 2014, thanking him for his feedback and stating the BBC's position on impartiality as set out in the Editorial Guidelines.

The complainant did not feel the response addressed his concerns and made a follow-up complaint on 13 July 2014 asking for his original complaint to be read again and dealt with properly.

Audience Services responded at Stage 1b on 24 July 2014 stating:

"The conviction in Egypt of the Al Jazeera journalists and the conviction of Andy Coulson were both newsworthy stories, which merited the coverage that we gave them.

"The stories were covered extensively across the wider media. It is important to note that the BBC did not make a judgement or take a viewpoint on either of these stories, as we are committed to reporting with impartiality. This is not representative of a 'volte face'. Covering the conviction of Andy Coulson does not represent 'following Labour's line'.

"This was the culmination of the News of the World phone hacking scandal, which led to the closure of the paper and the Leveson Inquiry, to examine culture, practices and ethics of the press, so this was a story which had very serious implications."

The complainant did not feel his concerns had been adequately addressed at either stage and made a further complaint on 24 July 2014. He disagreed that the BBC did not make a judgement or take a viewpoint on either of the stories. He said his complaint was that "once again you were not being impartial and you did make a judgement and you did take a viewpoint".

Audience Services sent a further response at Stage 1b on 12 August 2014 following consultation with the relevant editorial news team which stated:

"This was one of the longest criminal trials in history involving two of the most important media figures of the last twenty years, one of whom worked as a close advisor to the Prime Minister, paid for by taxes. The penalty for being found guilty

was a custodial sentence. Part of the job of journalism is to ensure that the public knows what goes on in our courts.”

Audience Services gave the complainant a Stage 2 referral to the Editorial Complaints Unit (ECU).

The complaint was escalated to the ECU at Stage 2 on 12 August 2014. However, the ECU said in its 13 August 2014 response that it could not investigate the complaint.

The Complaints Director stated:

“I appreciate that you have been referred to the Editorial Complaints Unit (‘ECU’) but unfortunately the ECU is only able to investigate complaints which raise a potential breach of the BBC’s editorial standards, such as the accuracy or impartiality of a particular report. Your complaint appears to be about the decision to report the trial (rather than the manner in which it was reported) and that is a matter of legitimate editorial discretion for programme-makers.

“I have asked BBC News if they have anything further to add to their previous responses and they have told me that they do not. If you wish to pursue your complaint, you should therefore contact the Editorial Standards Committee of the BBC Trust who can take a view on the complaint you have made and the manner in which it has been handled.

“I am sorry to pass you to yet another BBC department but I hope you can understand that it would be inappropriate for me to look into a complaint which falls outside the remit of my unit.”

Appeal to the BBC Trust

The complainant escalated his complaint to the BBC Trust following the decision of the ECU not to investigate the complaint at Stage 2.

He said his complaint was about the way the trial was reported and he wished to challenge the impartiality of the editorial standards.

The Trust Unit’s decision

The Senior Editorial Complaints Adviser (the Adviser) carefully read the correspondence that had passed between the complainant and the BBC, and she acknowledged the strength of the complainant’s feelings. However, she decided that the appeal did not have a reasonable prospect of success.

The complainant had appealed on the substance of his complaint, alleging that the way the BBC had reported the trial of the Al Jazeera journalists and the way it had reported the trials of former News of the World journalists Andy Coulson and Rebekah Brooks had displayed a lack of impartiality and indicated political bias.

The Adviser noted, however, that the BBC’s editorial complaints system had three stages. The first two stages lay with the BBC; the third and final stage was an appeal to the Trust.

Complaints were answered at Stage 1 by BBC Audience Services. Where complainants remained dissatisfied after a Stage 1 response, they could request a further response at

Stage 1. If they were still dissatisfied they might escalate their complaint to Stage 2. Complaints at Stage 2 were either answered by the BBC's Editorial Complaints Unit (ECU), or they were considered by a senior manager within the BBC.

However, under the Complaints Framework, it was open to the BBC to close down correspondence – this meant the BBC notified the complainant that it did not wish to respond further and the complainant could appeal to the Trust if they considered the BBC was wrong to close down the correspondence. This was the procedure the ECU followed in this case. The ECU notified the complainant on 13 August 2014 that it did not intend to investigate the complaint further as it did not consider the complaint raised a potential breach of the BBC's Editorial Guidelines such as the accuracy or impartiality of a particular report. Where a complainant appealed to the Trust in these circumstances, if Trustees upheld the appeal, the complaint was sent back to the BBC for a further response.

The Adviser therefore decided that the point she should consider was whether an appeal against the decision of the BBC not to respond further had a reasonable prospect of success.

The Adviser noted the ECU's statement:

"Your complaint appears to be about the decision to report the trial (rather than the manner in which it was reported) and that is a matter of legitimate editorial discretion for programme-makers."

The Adviser acknowledged the complainant's disagreement with the ECU's interpretation of his complaint and noted that his concern focused on a comparison between the coverage of two different trials; he believed that the difference in the coverage displayed a lack of impartiality by the BBC.

However, she noted that it was not within the ECU's remit to make comparative editorial decisions about news coverage. She noted that the ECU had stated in its response of 13 August 2014 that it could only "investigate complaints which raise a potential breach of the BBC's editorial standards, such as the accuracy or impartiality of a particular report". She believed Trustees would be of the view that the ECU had correctly pointed out that the manner in which each trial was reported was a matter of legitimate editorial discretion for programme-makers.

The Adviser noted that the complaint had also been discussed at Stage 2 with BBC News who had stated that they had nothing to add to their previous response which had been communicated to the complainant in the Stage 1b response from Audience Services dated 12 August 2014:

The Adviser acknowledged that the complainant did not agree with that response from BBC News.

The Adviser noted that the Agreement accompanying the BBC Charter gave specific information about impartiality and how the BBC was required to be "duly impartial". In particular, it stated that:

"...due impartiality does not require absolute neutrality on every issue or detachment from fundamental democratic principles."

She noted that the conviction and imprisonment of three journalists in Egypt had been widely condemned. For example, she noted the Daily Telegraph had reported that David

Cameron was “completely appalled” at the court finding and also had reported that the then Foreign Secretary had contacted the Egyptian Ambassador expressing his displeasure at the verdict. The report can be found here:
<http://www.telegraph.co.uk/news/worldnews/africaandindianocean/egypt/10919226/Al-Jazeera-journalists-working-in-Egypt-sentenced-to-seven-years-in-prison.html>

She noted that Radio 4 *PM*s coverage referred to by the complainant had, similarly, reflected that the UK government had “condemned” the verdicts and had reported the views of their employer, Al Jazeera, that the finding was unjust. She did not consider she had seen any evidence to suggest the report did not meet the requirements of the Editorial Guidelines to be duly impartial. She noted that the coverage of the phone hacking trial was a highly significant news story that had been followed by the BBC and other news organisations for many months and, again, considered she had not seen any evidence to indicate the coverage was not duly impartial.

The Adviser noted that the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. “The direction of the BBC’s editorial and creative output” was specifically defined in the Charter (article 38, (1) (b)) as a duty that was the responsibility of the Executive Board, and one in which the Trust did not get involved unless, for example, it related to a breach of the BBC’s editorial standards, which the Adviser believed Trustees would conclude did not apply in this case. Decisions relating to the way in which a news story was reported fell within the “editorial and creative output” of the BBC and were the responsibility of the BBC Executive. In this instance the Adviser considered that Trustees would be of the view that those decisions rested with the *PM* editorial news teams.

The Adviser considered that Trustees would be likely to take the view that the complainant had received a reasoned and reasonable response from BBC Audience Services (in consultation with BBC News) at Stage 1b, and that the ECU had responded appropriately in declining to investigate the complaint at Stage 2 because it was outside its remit.

For these reasons she considered that the appeal did not have a reasonable prospect of success and she did not propose to put it before Trustees.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with his appeal. He said his complaint had been misrepresented. He had not complained about the decision to cover the trials. His complaint was about the manner in which they were covered. He suggested there was “obvious glee” in voices in discussing Mr Coulson’s downfall whilst there was dismay and horror in discussing the result of the Egyptian trial.

The Committee’s decision

The Committee was provided with the complainant’s appeal to the Trust, the response from the Senior Editorial Complaints Adviser (the Adviser) and the complainant’s email asking the Committee to review her decision. The Committee was also provided with the relevant programme material.

The Committee noted that the ECU had stated that:

“Your complaint appears to be about the decision to report the trial (rather than the manner in which it was reported) and that is a matter of legitimate editorial discretion for programme-makers.”

The Committee noted that the complainant believed his complaint had been misinterpreted by the ECU at Stage 2; he had not complained about the decision to cover the trials, but about the manner in which they were covered and that he had referred to the tone of voice.

The Committee noted that the Adviser had acknowledged the complainant's disagreement with the ECU's interpretation of his complaint and noted that his concern focused on a comparison between the coverage of two different trials.

The Committee agreed with the Adviser that it was not within the ECU's remit to make comparative editorial decisions about news coverage.

The Committee noted that the complaint had also been discussed at Stage 2 with BBC News who had stated that they had nothing to add to their previous response which stated:

“The stories were covered extensively across the wider media. It is important to note that the BBC did not make a judgement or take a viewpoint on either of these stories, as we are committed to reporting with impartiality.”

The Committee observed that the Royal Charter and the accompanying Framework Agreement drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. “The direction of the BBC's editorial and creative output” was specifically defined in the Charter (article 38 (1) (b)) as a duty that was the responsibility of the Executive Board, and one in which the Trust did not get involved unless, for example, it related to a breach of the BBC's editorial standards.

The Committee noted editorial guideline 4.2.5 which gave the BBC the editorial freedom to produce content about any subject as long as there were good editorial reasons for doing so. The Committee agreed with the Adviser's analysis that there were good editorial reasons for covering the phone hacking trial and the imprisonment of journalists in Egypt.

The Committee acknowledged that the complainant did not consider that the response from the Trust's Adviser addressed his view that it was the manner of the coverage which displayed a lack of impartiality, not the fact that the trials were covered at all.

The Committee reviewed the editorial guidelines on impartiality, focusing in particular on guidelines 4.1, 4.2.1, and 4.2.2. The Committee reviewed the complainant's arguments but did not consider that he had presented any credible evidence to suggest that the news coverage failed to meet the requirements of due impartiality as defined in guideline 4.1. The Committee took the view that the complainant had not presented any convincing arguments that the BBC had failed to give due weight to events, opinion and main strands of argument and had therefore breached guideline 4.2.2.

Trustees believed that it was not appropriate, proportionate or cost effective to undertake a comparative editorial investigation into the coverage when there was no reasonable prospect of upholding a complaint that the relevant coverage breached the guidelines on impartiality.

Therefore, in light of that analysis, the Committee did not consider that there was any reasonable prospect of this complaint being upheld as a breach of the editorial guidelines.

The Committee was of the view that the complainant had received a reasoned and reasonable response from BBC Audience Services (in consultation with BBC News) at Stage 1b, and that the ECU had responded appropriately in declining to investigate the complaint at Stage 2 because it was outside its remit.

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

BBC One, Panorama: Saving Syria's Children, 30 September 2013

BBC One, Ten O'Clock News, 29 August 2013

BBC One, Ten O'Clock News, 30 September 2013

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 complaint

In the summer of 2013 a BBC team travelled to Syria with two British doctors who were working with a charity, to bring medical care to the war-affected region. This is the programme billing on the BBC website:

"In a special edition, Panorama travels with British doctors inside Syria to exclusively reveal the devastating impact of the war on children caught in the conflict. The doctors witness the aftermath of the bombing of a school by a suspected napalm-like incendiary device and medical facilities constantly under attack – both war crimes under international law. Filmed in the north of the country after the chemical weapons attack in Damascus which inflamed world opinion and brought America, Russia and the UN to the table, the film shows how the conventional war is intensifying with children bearing the brunt of this humanitarian catastrophe."

The complainant alleged that sequences depicting the aftermath of the incendiary bomb attack contained "a large degree of fabrication".

The two news reports included in the appeal were items about the incendiary attack; they both used material shot by the Panorama team, most of which also appeared in the documentary.

In its response at Stage 2, the Editorial Complaints Unit (ECU) advised it was incorporating into one response the allegations concerning the reports which appeared on the Ten O'Clock News and the allegations about Panorama. The same approach was adopted for this decision.

None of the issues raised by the complainant were upheld at Stage 1 or Stage 2.

Appeal to the BBC Trust

The complainant appealed to the BBC Trust on 11 June 2014.

The complainant appealed on the substance of his complaint that, in his view, the programme had breached the BBC's and Ofcom's guidelines in the following ways:

Right of reply and fairness

The complainant considered that the BBC had made the supremely serious allegation that the Syrian government had deliberately targeted schoolchildren with an incendiary device, yet had at no point requested or published a response from the Syrian government as required by section 6.4.25 of the BBC Editorial Guidelines and section 7.11 of the Ofcom Broadcasting Code.

Misleading audiences

The complainant considered that 'Saving Syria's Children' misled audiences in a number of ways and the programme breached the BBC Editorial Guidelines in the misleading chronology presented in its first half, the editing out of all chronology of the scenes of the "napalm bomb" "victims" from 30:38 onwards and, above all, in the staging of an atrocity.

The complainant presented a number of points to support his view that the programme misled audiences. He argued that there were discrepancies between the Panorama programme and third party content. The discrepancies he highlighted related to, but were not limited to, the casualty figures, the date and time of the attack, images and details of victims. The complainant considered that the inconsistencies suggested that the incident had been fabricated.

He raised the following additional points:

- An audio edit of an interview with a doctor was misleading.
- The nature and severity of the injuries of some of the victims seemed to be fabricated.
- The location of the attack appeared to be a private home and not a school, which suggested the incident had been fabricated.
- There had been recycling of "costumes" between two "actors", which suggested the incident had been fabricated.
- The affiliations between one of the doctors, the charity featured on the programme, and the Syrian Opposition Movement were not scrutinized.

The complainant asked the Trust to review the decision of the ECU not to uphold his appeal. He also asked for points he had raised in previous correspondence to be considered and included some additional information to support those points.

The Trust Unit's decision

The relevant correspondence was reviewed by the Trust Unit. The Senior Editorial Strategy Adviser (the Adviser) watched the relevant programme and news reports. An Independent Editorial Adviser (IEA) also reviewed the relevant output, read the correspondence and carried out further research. The Adviser considered that the appeal did not have a reasonable prospect of success following: analysis of the arguments raised by the complainant; consideration of the IEA's research; and a review of the explanations provided to the complainant by the BBC at earlier stages in the complaints process.

A brief summary of the reasons for the Adviser's decision is set out below.

Right of reply and fairness

The Adviser noted paragraph 1.5 of the Editorial complaints and appeals procedure, and noted that fairness complaints can only be made by a first party complainant, or by someone who has the authority to represent them.

The Adviser considered that, as the complainant did not have authority to complain on behalf of the Syrian Government, he could not bring a complaint about the fairness of not offering the Syrian Government a right of reply.

Misleading audiences

The Adviser noted the detailed investigations carried out by BBC Complaints at Stage 1 and the ECU at Stage 2 and their respective reasoning for rejection of the complaint. The

Adviser noted the ECU had viewed all of the rushes of the incident filmed by the Panorama team in considering its decision at Stage 2.

The Adviser reviewed the allegations and responses; additional questions were put to the ECU about the nature and content of the rushes prior to the Adviser reaching her decision.

The Adviser considered each of the complainant's accuracy allegations in turn over the course of approximately 14 pages of her letter to the complainant. Her responses are set out in full in the Annex. She considered that there was no reasonable prospect of concluding that any of the matters raised by the complainant would be upheld as breaches of the editorial guidelines.

In particular, the Adviser was of the view that the complainant had not raised sufficient evidence to support his allegation that the footage broadcast by Panorama had been fabricated.

The Adviser further noted that the cameraman and the reporter were both BBC employees, with considerable experience in the region and in war reporting. She noted that the ECU had spoken at length to the reporter and was confident that he had no reason to doubt that what he was witnessing was the aftermath of a genuine and horrific incident. The Adviser noted also that the material was filmed in a conflict zone. The degree of sophistication that would be required to have staged an incident such as this for the benefit of the cameras, and to have deceived such an experienced team, would, in the Adviser's view, likely have been impossible on the frontline of an ongoing conflict.

Therefore, the Adviser believed Trustees would be likely to agree with the ECU's conclusion that there was no substantive evidence of fabrication, and overwhelming evidence to the contrary that what the Panorama team had witnessed was genuine.

She therefore did not consider the appeal had a realistic prospect of success and did not propose to put it before Trustees.

Request to review the Trust Unit's decision

The complainant wrote to the BBC Trust on 2 September 2014 following the decision by the Adviser that none of the issues he had raised qualified to be heard on appeal and that his complaint would not therefore be put in front of Trustees.

The complainant said there were strong grounds for reassessing the Adviser's decision. He summarised his position thus:

"In the first instance, I believe that a major procedural error and a number of other serious oversights and mistakes have been made by the Adviser.

"Furthermore, there is compelling new evidence strongly supporting my complaint, including the likely identification of a participant in the fabricated sequences of 'Saving Syria's Children', as well as further evidence supporting my previous observations and suggestions. I am therefore confident that my complaint stands an excellent chance of success should it be put before Trustees."

This is a summary of the key points made by the complainant in his response to the Adviser's decision:

- His appeal had been misinterpreted; he had asked for a review of the ECU's decision but instead the Adviser had considered only the subsidiary points he had raised in his letter of appeal; the Adviser had disregarded a supplementary submission to the complainant's original appeal.
- The complainant had new evidence "identifying a possible participant in the napalm bomb event"; the complainant asserted that she appeared to be Dutch and he could find no explanation as to why she would have been in Aleppo.
- A team of local investigators in and around Urm Al-Kubra could not find anyone who was aware of a "napalm bomb" in the town last August.
- The list of victims of the alleged event compiled by the Violations Documentation Center in Syria was not accurate.
- A doctor who had worked in trauma and orthopaedics for four months and said he had worked with burns victims first hand was quoted by the complainant as saying the images in Panorama did not depict how a burns victim would present. According to the complainant, the doctor observed that they would have been in more pain, would have been unable to talk or to sit down and would have had trouble breathing; the flesh beneath the burnt skin was not convincing and looked like more skin.
- The complainant did not accept the Adviser's view regarding the inconsistencies he had identified in the sequences featuring the woman in the black dress.
- It was clear that the "alleged eyewitness" who was shown appealing to the UN was reading from a cue card.
- The "Iqraa Institute" had been identified elsewhere in the media as the location for the "alleged" bomb and from the complainant's inquiries Iqra schools were generally proselytising Islamic educational centres. But the images of the "school" and the demeanour and dress of the headmaster interviewed by the BBC, along with the fact that girls appeared to be being taught alongside boys was not consistent with how such a school would be set up. Also from his investigation there were no Iqra schools in Aleppo province.
- There was abundant evidence documenting formal links between the charity featured in the Panorama report and the Syrian opposition
- BBC Worldwide had been blocking YouTube copies of the Panorama programme.
- There was fresh uncertainty about images of a victim taken from a photojournalism website.
- There was still no consensus over the number of casualties
- Nobody from the Trust Unit had viewed the rushes, but had relied on the ECU's interpretation and its claims regarding the rushes were "notably weak".
- A reference to summer 2012 in the Adviser's report should have been 2013.
- The complainant did not assert the Panorama team had been deceived, rather he believed they had been complicit (in fabricating the event).
- Questions remained as to the chronology and location of events.
- A number of retrospectives broadcast on the BBC in August 2014 contained factual inaccuracies which cast doubt on the BBC's editorial standards.

On 15 September 2014, the complainant sent a further submission. He sought additional information about the interview conducted with an eyewitness in the report and raised further questions about the footage of an injured baby and the burns apparently sustained by another child in the footage. He stated that some of those identified in the report were, according to the "Digital Registry of the Syrian Civilian Status Service" in Damascus, still alive. He considered that there were discrepancies in the responses he had been sent by the BBC at Stage 1 and Stage 2.

The Trust Unit's decision

The Adviser reviewed and fully considered the points raised in the complainant's challenge of 2 September 2014 and the complainant's further submission of 15 September 2014. In particular, the Adviser considered first the assertion that she had misinterpreted the complainant's appeal and as a consequence had based her decision only on a number of supplementary points he had raised in his appeal and had not conducted a review of the ECU's decision as he had requested. She confirmed that her decision had considered the range of issues also considered by the ECU at Stage 2. In particular she noted the nine substantive points highlighted in her decision relating to the Accuracy guideline, each of which included a detailed discussion of both the allegation and of her reasoning why on each occasion the allegation did not qualify to proceed to appeal.

The Adviser noted that she was not normally able to consider new evidence or new allegations subsequent to her decision, such as the "identification" of a new "participant", the alleged blocking by the BBC of YouTube content, and allegations concerning content which had not previously been included in the complaint and which post-dated Stages 1 and 2 of the complaint. The Adviser did not agree with the complainant that he had demonstrated why exceptionally on this occasion, this new material required to be considered. By way of guidance the Adviser noted, however, that even had the new material been admissible she did not consider any of the new points raised would have had a bearing on her decision.

The Adviser noted also the complainant's clarification, in his challenge to her decision not to proceed, alleging that the Panorama team had not been duped, but had in fact been a party to the fabrication of the event. She considered this was among the most serious allegations a programme maker could face.

The Adviser therefore commissioned the IEA to conduct a proportionate investigation. In undertaking her investigation the IEA:

- viewed the rushes
- posed a series of questions to the Panorama team who had been to Syria and to Turkey
- asked a consultant plastic surgeon with training and experience in the presentation, prognosis and outcome of traumatic burns injuries to review the footage
- interviewed and corresponded with an independent journalist who had met with the father of one of the victims and had spoken with a number of other eye witnesses
- read the report on the Urm Al-Kubra incident published by Human Rights Watch following their independent investigation
- interviewed and corresponded with a representative from Human Rights Watch.

The IEA's conclusion, taking into account this evidence, was that the incident depicted in Panorama took place as described and that the presentation of the victims' injuries and the outcome were wholly consistent with what would be expected following an incendiary bomb attack of this nature.

The Adviser reviewed the authoritative body of evidence substantiating the Panorama programme and concluded that were this complaint to proceed to appeal, Trustees would not be likely to uphold the allegation. She therefore did not consider the appeal had a reasonable prospect of success and did not propose to put it before Trustees.

Request for review

The complainant wrote to the BBC Trust on 13 October 2014 requesting once again that his complaint be put before Trustees and explaining why he felt that contrary to the Adviser's view it had a "reasonable prospect of success". He asked that all his previous submissions on the matter be considered. The complainant made further submissions on 28 October and 5 November with additional points.

This is a summary of the key additional points made by the complainant in response to the Trust Unit's second consideration of the allegations:

- A team of local Syrian investigators had contacted a former Commander in the Free Syrian Army who had stated that the "napalm bomb" "story" was false; the former Commander was willing to provide a full statement subject to appropriate assurances that his identity would be protected.
- The lead Syrian investigator had spoken to an "emissary". This emissary had interviewed a resident of Urm Al-Kubra and the resident had been astonished at reports of an attack, which he would have heard about if it had actually occurred.
- The BBC had failed to investigate further the apparent appearance of a Dutch woman in footage shot at Urm Al-Kubra which had been brought to its attention in the complainant's earlier challenge.
- Each individual interview with a doctor had breached the editorial guidelines on accuracy.
- The variant versions of a section of interview with a doctor in different news reports fundamentally undermined the necessary trust that audiences should be able to repose in BBC news reports; neither the ECU nor the Adviser appeared to have considered the likely effect on the audience of being presented with the same interview on different occasions, but with the words "chemical weapons" substituted for "napalm".
- Video footage which appeared on the Ten O'Clock News on 29 August 2013 showed a boy near a truck outside the hospital "looking into the camera and grinning broadly"; the complainant asked what possible reason someone who had just been sprayed with a "napalm-like substance" might have for amusement.
- The Trust should consider requesting the metadata from Panorama's footage in order to resolve the discrepancies in the reported time of the attack.

The complainant also reinforced points he had made earlier – sometimes with additional observations – particularly in relation to where the reporting of the story in other media and by other authorities cast doubt, in his opinion, on the veracity of how events were portrayed in Panorama.

The Committee's decision

The Committee was provided with:

- the complainant's appeal to the Trust
- the initial response from the Senior Editorial Strategy Adviser (the Adviser) informing the complainant of the Trust Unit's decision not to proceed

- the complainant's challenges to that decision
- the Adviser's further decision following the investigation by the Independent Editorial Adviser (the IEA)
- the complainant's substantive request to the Trust to review the Adviser's expanded decision as well as his further submissions
- a submission from lawyers representing the owners of a cable and satellite broadcast channel that expressed, amongst other matters, an interest in the outcome of the appeal.

The Committee considered the allegations could be grouped into the following general points:

1. The incendiary bomb attack did not happen and the BBC Panorama team was complicit in fabricating footage.
2. There were a number of matters that required investigation and would provide further support to the view that the incendiary bomb attack did not occur.
3. The editing of an interview with a doctor in the Panorama programme and the BBC Ten O'Clock News segments breached the guidelines on accuracy.
4. The different versions of interviews with a doctor taken as a whole misled audiences and undermined the audience's trust in the content.
5. There was evidence of links between the Syrian opposition and the charity and the doctor featured on the programme and viewers should have been informed of this.
6. There were a number of additional factors that raised concerns about BBC content or the complaints procedure in general.

The Committee noted the test for appeals as set out in paragraph 5.10 from Procedure No.1: Editorial complaints and appeals procedure:

The Trust will only consider an appeal if it raises "a matter of substance". 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.

The Committee took each issue in turn.

The complainant considered that the incendiary bomb attack did not happen and the BBC Panorama team was complicit in fabricating footage.

The Committee reviewed and considered the range of arguments presented by the complainant to support his claim that the Panorama footage of the injured victims was fabricated because the incendiary bomb attack did not happen. The Committee noted in particular the following key points, which although not an exhaustive list, in the Committee's opinion captured the main points as identified by the complainant:

1. A team of local Syrian investigators had contacted a Commander in the Free Syrian Army who stated that the "napalm bomb" "story" was false. The Commander is willing to provide a full statement to the BBC provided that his identity is protected.
2. Local Syrian investigators had conducted independent research and discovered that no-one was aware of the attack; the lead Syrian investigator had spoken to an "emissary". This emissary had interviewed a resident of Urm Al-Kubra and the

resident was reported as being astonished at reports of an attack, which he would have heard about if it had actually occurred.

3. Local Syrian investigators had questioned the authenticity of the list of victims of the incident.
4. A Dutch Armenian woman appeared to have “participated” and “fraudulently performed” the role of a victim in the “napalm bomb event”.
5. An unnamed practising medical doctor had offered his view that the footage of injuries had been fabricated, based on a review of the behaviour of the patients, footage of their injuries and the treatment offered to them.
6. Two women in the Panorama footage were both wearing the same “distinctive dress with gold flower design and blue headscarf”. This suggested that they were amateur actors who had shared the same costume.
7. The representation of the school in the footage did not accord with academic research or the local Syrian team’s investigations into the nature of Iqra schools.
8. The Syrian investigation team had informed the complainant that there were no Iqra schools in the Aleppo province.
9. The interview with an eyewitness on the Panorama programme suggested that he was reading from text or a cue card.
10. This eyewitness was listed by the Violations Documentation Center as a 15-year-old who was killed in the incident.
11. The BBC had broadcast two different versions of an interview with a doctor which had undermined confidence in the authenticity of the programmes.
12. Footage in the programme had not been shown in chronological order, which raised questions about the authenticity of the programme.
13. There were discrepancies in reports regarding the timing of the attack between the statements made by a Panorama journalist, Human Rights Watch and the Violation Documentation Center in Syria.
14. Some of the footage in the Panorama report suggested that the report was faked or choreographed e.g. the footage of men in pain at the hospital was a scene of “amateur dramatics”.
15. An unnamed Syrian observer had noted privately that the clothing of all the participants in the “playground napalm bomb” footage was not typical of the local area.
16. Images from a photojournalism website appeared to come from a different hospital than that which was shown on Panorama, yet they showed some of the same victims as had appeared in Panorama.
17. There was still no consensus over the number of casualties.

18. Third party reports and content on the incident conflicted with the BBC's account and the Panorama footage.

The Committee noted the range of arguments presented by the Adviser in both the original decision not to proceed and the final decision, which took into account also the investigation by the IEA and further submissions by the complainant. The Committee noted in particular the following key points, which although not an exhaustive list, in the Committee's opinion captured the main points of rebuttal:

1. The ECU's investigation considered over 30 separate points raised by the complainant in turn and concluded that there were no grounds to uphold any aspects of the complaint. The ECU's investigation was based on:
 - a review of all of the material filmed by the cameraman and producer of the Panorama programme at the site of the incident and at a hospital in Turkey
 - a review of the relevant programmes
 - discussions with the producer and the reporter involved in the Panorama programme
 - a review of relevant footage online, including links provided by the complainant and the programme makers
 - additional research.
2. An IEA, who had worked as a television producer in war zones, had viewed the unedited rushes and concluded that:
 - the events did not unfold in a materially different way from how they were subsequently portrayed in the programme
 - there was no evidence that any of the scenes were directed in any way
 - in the final edit, Panorama had been deploying a standard montage device to give the viewer a flavour of what they were about to see. She did not consider that the use of the device which on occasion depicted scenes out of strict chronological sequence would have misled the audience in any way
 - there was no evidence that the eyewitness had been giving staged or rehearsed responses
 - there was no evidence that the patients were acting for the camera or that their injuries were fabricated.
3. The charity, Human Rights Watch (HRW), independently documented the attack as part of a wider investigation into Syria's use of incendiary weapons.
4. Correspondence between HRW and the IEA indicated that individuals at HRW had no doubts as to the authenticity of the images – either relating to the bomb fragments and debris or of the victims' injuries.
5. The IEA interviewed and corresponded with an independent journalist. The independent journalist had written an article for an American news website describing the bombing of Urm Al-Kubra and he had spoken to a father of one of the victims.
6. The IEA discussed the footage with a consultant plastic surgeon from a leading London teaching hospital. The consultant plastic surgeon reviewed the footage and concluded that:

- he was wholly convinced that the footage was genuine
 - the doctors shown in the programme had done everything correctly within the context of what was available
 - he saw nothing to suggest that anything was staged or exaggerated
 - the serious outcomes in many cases were entirely consistent with how burns injuries invariably present.
7. The IEA posed a series of questions to the Panorama team. The Panorama team indicated that their visit to the hospital was not planned or part of a scheduled itinerary.
 8. A member of the Panorama team considered that the discrepancies between the victims discussed on the programme and the Syrian government's database could be explained. He considered that it was unrealistic to imagine that the Syrian government was capable of maintaining such a database in the middle of violent civil war and in light of the fact that the Syrian government had not had any representatives in the areas where the victims lived for at least two years.
 9. The Committee noted that a number of other organisations had reported on the bomb attack, including the United Nations.

The Committee weighed the arguments presented by the complainant against the details presented by the Trust's Adviser, investigation carried out by an IEA, analysis of the footage by a consultant plastic surgeon, Human Rights Watch's independent investigation, and reports by other independent organisations and individuals.

The Committee concluded that:

- the Adviser's initial letter (see Annex for an extract) and the Adviser's second letter to the complainant both provided comprehensive and convincing rebuttals to the complainant's allegations.
- the rushes did not appear to provide any support for the allegation that the footage was fabricated and in fact supported the programme makers' narrative of events in that there was no indication that journalists were "directing" action or influencing events.
- the opinion of the consultant plastic surgeon answered any queries the Committee might have had about the nature and presentation of the victims' injuries.
- the Panorama team had provided credible and verifiable information about the commissioning process and about their movements in Syria and Turkey which would suggest that a conspiracy of the nature alleged by the complainant could not have taken place.
- the detailed independent investigations by others, including Human Rights Watch and the United Nations, provided further support that there had been an incendiary bomb attack broadly as Panorama had reported.
- the evidence supporting the occurrence of the event included independent named and verifiable sources, whereas the complainant relied largely on his own analysis of the footage, and unnamed and unidentified sources e.g. the team of local Syrian investigators.

The Committee were satisfied that this aspect of the complainant's complaint did not raise a matter of substance because there was no reasonable prospect of concluding that the Panorama team fabricated footage of an incendiary bomb attack. The Committee considered that if it took this matter on appeal it would be likely to conclude that the content had achieved due accuracy.

The Committee noted that the complainant had raised a number of additional matters that could not have been fully assessed without substantial further investigation. It had in mind in particular the suggestions that an unnamed former Commander from the Free Syrian Army had denied the incident took place, that a Dutch woman had "participated" in the "scenes" as an actress; and that metadata from the Panorama team's footage should be analysed to resolve discrepancies in the reported time of the bombing. The Committee also noted that the Commander from the Free Syrian Army was claimed to have invited BBC journalists to Turkey, where he would be willing to provide "safe transit to Urm Al-Kubra where the BBC [could] conduct an investigation and speak to witnesses assembled by the Syrian team". In light of the Committee's view that there was compelling evidence that the incident happened broadly as depicted in Panorama and the associated Ten O'clock News reports, the Committee decided that it would not be appropriate, proportionate or cost effective to conduct an investigation into these additional matters.

The Committee therefore concluded that this aspect of the complainant's complaint did not raise a matter of substance and had no reasonable prospect of success.

The Committee then considered the allegations that:

- **the different edits of an interview with a doctor breached the guidelines on accuracy**
- **the different versions of an interview with a doctor, taken together and considered in the round, undermined audiences' trust in BBC content.**

The Committee noted that the complainant used a hypothetical scenario based on a board game to support his analysis of the impact of the edits to the interview.

The Committee noted the unedited interview extract from the rushes:

Unedited interview

Doctor: I need a pause 'cos it's just absolute chaos and carnage here. ...umm...we've had a massive influx of what look like serious burns... Er it seems like it must be some sort of chemical weapon; I'm not really sure... maybe napalm, something similar to that

The Committee noted the clip used in the Ten O'Clock News on 29 August 2013 and how it differed from the clip in the subsequent Panorama and the associated news report (variant clause highlighted):

Ten O'Clock News - 29 August 2013

Doctor: I need a pause 'cos it's just absolute chaos and carnage here...umm...we've had a massive influx of what look like serious burns... Er... it seems like it must be **some sort of... not really sure, maybe napalm, something similar to that.**

Ten O'Clock News - 30 September 2013 & Panorama - Saving Syria's Children

Doctor: It's just absolute chaos and carnage here...umm...we've had a massive influx of what look like serious burns...seems like it must be **some sort of chemical weapon; I'm not really sure**

The Committee noted that the different internal edits were not signposted to audiences by the use of a visual cut-away because the doctor was wearing a medical face mask throughout the interview, making a visual edit unnecessary.

The Committee noted that cut-aways were a visual production technique to ensure the action flowed freely and that the absence of any visual editing on this occasion was not likely to have misled the audience. It was considered that the programme team had taken the opportunity afforded by the medical face mask to treat the audio as it would a radio clip, and in doing so had improved the flow of the action; the choice not to use a cut-away had no impact on the meaning of the doctor's contribution.

Turning to the audio edits, the Committee did not consider there was any material difference between the two broadcast versions in terms of the information which was being communicated: it was a legitimate editorial decision by producers on one occasion to select one part of the doctor's answer and on another a different part. Trustees considered that it was normal custom and practice when the same interview was used in different output and the producers had access to the rushes and that it did not suggest any intention to mislead. The test was whether each version of the interview, in its context, was duly accurate, and Trustees concluded that it was. They noted too that the audio came from within the same sentence of the doctor's original contribution and was therefore used in the original context. Trustees considered that the BBC had not changed the words used by the doctor and in light of the reasoning provided above, the Committee considered that it was unlikely to conclude that the requirement for due accuracy was breached by interviews that were broadcast.

The Committee considered that the use of the production technique was in line with editorial guideline 3.4.16 because the audience was not materially misled as to the nature of the doctor's contribution or the events. Finally in relation to each individual edit of the interview in the three programmes, Trustees noted that there was no evidence that would lead to the conclusion that the BBC "knowingly and materially" misled audiences in breach of guideline 3.2.3.

The Committee therefore decided that there was no reasonable prospect of concluding that the editing of the interviews with a doctor in the Panorama programme and the news report breached the editorial guidelines on accuracy.

Trustees noted that audiences viewing the three programmes would have been given a similar impression of the events that took place in Northern Syria, namely that an incendiary weapon, similar to napalm but not chemical, had been used.

Taking the interviews as a whole, Trustees could also see no evidence that would lead to the conclusion that the BBC "knowingly and materially" misled audiences or that the edited interviews, taken as a whole, materially misled audiences about the reality of the narrative or events in breach of guideline 3.4.16. The Committee also considered that the interviews, whether viewed separately or as a whole, did not undermine audiences' trust in BBC content. Trustees also noted that elsewhere in the Panorama programme and in the two news bulletins, additional information was provided about what was known about the nature of the attack, such that the audience would not be relying solely on this one contribution from the doctor for their information in that regard. Trustees considered that this was an important distinguishing factor from the hypothetical scenario used by the

complainant to support his arguments. Therefore, it was considered that it was unlikely that audiences would draw the conclusion that there was an intention to mislead or to distort the interview, even if the three relevant programmes had been viewed side by side.

The Committee therefore concluded that taking the interviews either separately or as a whole, there was no reasonable prospect of concluding that the interviews had undermined audiences' trust in BBC content or breached the editorial guidelines on accuracy.

The complainant considered that the BBC should have informed viewers of what, he considered to be:

- **the links between the charity featured on the programme and the Syrian opposition**
- **the "pro-Syrian opposition affiliations" of the doctor interviewed on the programme**
- **the links between the doctor's father and the Syrian opposition.**

The Committee reviewed the arguments presented by the complainant. The Committee also noted the detailed response by the Adviser in her first decision for this complaint. The Committee agreed with the following comments made by the Adviser:

- the political allegiances, if any, of a relative of a contributor were not a relevant consideration in judging whether the Panorama programme had been duly accurate within the meaning of the editorial guidelines
- no evidence had been produced that the doctor who was interviewed on the programme had either formal or informal links to the Syrian opposition
- the doctor's personal interest in the conflict (beyond her medical role) had been clearly signposted in both the commentary and in her contributions
- no evidence had been produced to support the complainant's assertion that the charity featured on the Panorama programme was formally linked to the Syrian Opposition
- commentary in the programme explained the context in which the filming was taking place, namely that the team could film only in rebel-held areas and that sectarian differences and extremism had taken hold on both sides after three years of war.

Trustees considered that there was no evidence to suggest that the audience had been misled about the doctor or the charity. The Committee agreed with the Adviser that were this allegation to proceed to appeal it was unlikely that Trustees would conclude that there had been a breach of the editorial guidelines.

BBC Content and the Complaints Process

Trustees noted that the complainant raised a number of further matters which did not raise a matter of substance or have a reasonable prospect of being upheld as a breach of the editorial guidelines. The Committee noted the matters detailed below in particular.

Right of Reply

The complainant considered that the Panorama programme had failed to provide a right of reply to the Syrian Government. It was noted that this was a fairness complaint. The Committee noted that paragraph 1.5 of the Editorial complaints and appeals procedure states that fairness complaints can be made only by a first party complainant or by someone who has the authority to represent them. The Committee noted that there was no indication to suggest that the complainant was authorised to represent the Syrian government and therefore considered that he could not bring this complaint.

Copies of YouTube videos blocked by BBC Worldwide

The complainant considered that BBC Worldwide had blocked YouTube copies of 'Saving Syria's Children' at a faster pace than other more recent Panorama programmes. The Committee noted that this was an operational matter for BBC Worldwide and was not relevant to determining whether BBC content had breached the editorial guidelines.

The handling of another individual's complaint

The complainant noted that BBC Audience Services had rejected another individual's complaint about the programme because it was out of time; the complainant requested that complaint be considered alongside his own. Trustees considered that it was not appropriate to circumvent the complaints procedure in the manner suggested by the complainant. Trustees further considered that the handling of another individual's complaint was not relevant to determining whether the complainant's concerns raised a matter of substance.

Complaints regarding other BBC content

The complainant noted that a recent BBC programme had chosen to "selectively obscure" background "performances" which, when scrutinised in the original programme, "appear unconvincing to the point of risibility". He also outlined his view that a recent edition of Newsnight contained footage which suggested there was "clear evidence of editorial chicanery".

Trustees noted that the complainant had not previously raised this allegation with the BBC and that they were not able to consider complaints about BBC content in the first instance, in accordance with paragraph 2.2 of the Complaints Framework and clause 90 of the Framework Agreement between the Secretary of State for Culture, Media and Sport and the BBC.

Application of complaints procedure

The complainant considered that the rejection of additional material submitted to the Trust (for this complaint) and the rejection of another individual's complaint for being out of time, were in danger of inhibiting the BBC's ability to secure compliance with editorial standards and could be in breach of Article 52 of the Royal Charter.

The Committee noted that the complaints framework sets out that the complaints process "must be appropriate, proportionate and cost effective, balancing the interests of all licence fee payers with the rights of individual complainants and the BBC".

The Committee also noted that Article 52 states that: "The BBC's complaints handling framework (including appeals to the Trust) is intended to provide appropriate, proportionate and cost effective methods of securing that the BBC complies with its obligations..."

Trustees considered that it was appropriate, proportionate and cost effective for the editorial complaints and appeals procedure to set out rules that included time limits for

raising a complaint regarding BBC content and rules that governed the submission of material from complainants.

It was noted that the complainant had not submitted any evidence to suggest that the BBC Trust had breached the terms of the Royal Charter.

Additional Matters

The Committee noted that the complainant had raised other concerns relating to BBC content and the complaints process to support his substantive allegations. It did not consider that any of these additional issues qualified to proceed to appeal. Trustees considered that these ancillary matters did not raise a matter of substance and it was not appropriate, proportionate or cost effective to consider these issues, in light of the Committee's conclusions regarding the substantive complaints.

Conclusion

In relation to the main allegation that the Panorama team was complicit in fabricating footage of an incendiary bomb attack, Trustees wanted to emphasise that none of the substantive evidence provided by the complainant had been persuasive, and that any attempt to investigate his unsubstantiated claims that third parties might provide such evidence would incur further cost to the BBC which could not be justified. The Trust was concerned at the resources the BBC had already had to devote to defend itself against this complaint. The Editorial Standards Committee wanted to put on record that, on the basis of the credible evidence it had seen, it had no reason to doubt the authenticity of a programme which had played an important role in bringing home to UK audiences the realities of the civil war in Syria, and which could only have been made with the personal courage and commitment of the Panorama team.

Annex

An extract of the Adviser's initial response to the complainant's allegation that the Panorama programme misled audiences is set out below:

1.1. There were problems with the date and victims attributed to the incident, which was proof that the incident was staged:

1.1.1 There were discrepancies between the date in the Panorama programme and the date on a third party website

The Adviser noted the complainant's allegation that a set of images taken by a freelance photographer had appeared on a third party website [Website name] which had originally suggested that the incident had happened a day earlier than was stated in the Panorama programme.

The Adviser investigated the [Website], and noted that it currently shows the date of its images as 26 August 2013, i.e. the same date given by the Panorama team for the incident. The Adviser also noted that the Facebook page of the photographer who filmed the images had a posting dated 28 August in which the photographer said the incident happened two days earlier, i.e. 26 August.

The Adviser noted that in his letter of appeal the complainant rejected the ECU's invitation for him to supply evidence that the [Website] photographs were published before 26 August, the date of the alleged attack:

"I have already provided evidence that they were originally published dated 25 August; it is incumbent upon the BBC to provide proof this was not the date of their publication on [Website name]. Clearly this matter can only be settled by accessing the metadata of [the photographer]'s original photographs.

"[the Website] refuses to respond to me; a request from the BBC may be received differently."

The Adviser noted the only evidence for the earlier date for his images was from what the complainant said were screenshot captures of the [Website] which he had made in December 2013 and which were no longer available. The Adviser also noted evidence supplied by the complainant, that he wrote on 16 December 2013 to [the Website] to inquire about the upload date and time of those images and that [the Website] had declined to respond on the matter.

The Adviser did not consider there was any justification for a direct approach to [the Website] as suggested by the complainant as she did not consider the detail of a now corrected error which it is alleged appeared on a third party website was a legitimate matter for investigation in the context of this complaint.

The Adviser took the view that, given the photographer's Facebook posting, even if the complainant was right about the original date on the [Website], it could reasonably be concluded that [the Website] had simply posted the wrong incident date when the photographs were uploaded onto their site and, having been alerted to the error, had changed the images to reflect the correct date.

Therefore, the Adviser considered that, were this allegation to proceed to appeal, it would not have a reasonable prospect of success and she did not propose to put it before Trustees.

1.1.2 The Panorama programme was internally inconsistent in how it presented the date of the alleged attack

The Adviser noted the allegation that the Panorama programme was internally inconsistent in how it presented the date of the alleged attack: that according to one reference in the narrative it would have been 26 August, and to another it would have been 29 August.

The Adviser noted the ECU's explanation of the apparent discrepancies, having reverted to the Panorama team:

"In the course of the programme, the doctors were variously filmed in a refugee camp, delivering food aid to villages, visiting a frontline clinic run by [the charity featured on the programme] and treating victims of the attack on the school. The programme did not purport to present a neat, chronological timeline where every event shown followed the one that had been shown previously.

"A Panorama journalist has confirmed that his 'journey' began on 23 August 2013. The visit to the frontline clinic occurred on the morning of 26 August (not 23 August as you have assumed) and when the Panorama journalist said 'Four days later we see the area being pounded by the Syrian air force' he was referring to a return trip he made to the area on 30 August without the two doctors. When he said at 17.48 'The next morning, we moved to a village...' the footage showed children at the refugee camp and the Panorama Journalist was referring back to

the previous sequence from the camp which was featured at the start of the programme (filmed on 23 August). The 'next morning' was therefore 24 August. I accept that you may have found this confusing but I hope I have been able to explain why there was no discrepancy in the timeline of what the Panorama journalists filmed and when."

The Adviser noted the complainant's rejection of the ECU's explanation in his letter of appeal:

"This is incorrect. The section from 17:35 to 18:22 does not show 'children at the refugee camp', it plainly shows children at the village well. There is therefore no reference whatsoever to the 'camp which was featured at the start of the programme', either in the narration or the visuals, and therefore no indication that the 'next morning' does not follow on from the immediately preceding footage of rebel casualties arriving at the frontline clinic. Indeed [the Panorama journalist] describes the village (17:48) as being 'a few miles west of the front line', strongly suggesting proximity to the clinic."

The Adviser noted the relevant section of commentary:

REPORTER

On the both sides of the divide children are becoming orphans and refugees. The next morning we move to a village a few miles west of the frontline. It's home to hundreds of families who've been uprooted. 11-year-old Wahda joins the scramble at the village well for dwindling resources.

WAHDA subtitles

Bashar Assad orphaned these kids. There's no-one to raise them now. He killed them. He destroyed our houses and burned them.

The Adviser noted the complainant's view that the section did not show children at a refugee camp but rather at the village well. The Adviser considered a less literal translation of a refugee camp than that understood by the complainant was necessary. The commentary made it clear that the children at the well were orphans and had been uprooted. Therefore while it may have been a village, the location now also served a wider purpose, as a temporary home (refugee camp) for those displaced in the conflict. The commentary made it clear that the newcomers – whose homes had been destroyed – were having to share scarce resources with the villagers.

The Adviser considered the complainant had been given an adequate and credible explanation for what might at first have appeared to be an inconsistency in the timeline of the Panorama programme. She did not think that the way the programme had been presented was misleading in this regard.

The Adviser concluded Trustees would be of the view that this allegation did not provide any reliable evidence to support the assertion that the timeline in the programme was misleading. The Adviser therefore did not consider this aspect of the complainant's complaint had a reasonable prospect of success, and she did not propose to put it before Trustees.

1.1.3 There were discrepancies in images of victims between Panorama and third party output, and this suggested the incident had been fabricated

The Adviser noted the complainant's allegation that photographs of the Panorama victims at a different hospital (published by [a third party website]) was evidence that the incident had been fabricated.

The Adviser noted that there had been some initial confusion in the correspondence about whether the [third party website] images were of the same victims as had appeared in the BBC coverage. The Adviser noted the [third party website] images were taken at a different hospital, Bab al-Hawa, which may have been the reason the BBC team initially concluded they portrayed different victims. However, the Adviser observed that the hospital where the [third party website] pictures were taken was just two miles from the Turkish border, and that it was stated in the Panorama programme that some of the victims from the hospital where the Panorama team had been filming had been taken to Turkey for specialist treatment. As the incident happened close to a lightly-equipped frontline "field hospital" it would seem reasonable to conclude that the casualties may have stopped off at an intermediary hospital en route, such as Bab al-Hawa.

The Adviser therefore agreed with the ECU's explanation for the [third party website] images of the individuals:

"It is my opinion that at least some of the individuals photographed by [the freelancer] at the Bab al-Hawa hospital were also filmed by the BBC at the hospital in Syria. I think that is clear from a study of the relevant material. I am aware that a [a Panorama journalist] has previously offered a different view but I do not believe that undermines the credibility of the material filmed by the BBC at the [a charity] hospital or can be regarded as evidence that the victims were not genuine."

The Adviser therefore did not consider Trustees would be of the view that this allegation provided any reliable evidence to support the assertion that the incident had been fabricated. The Adviser did not consider this aspect of the complaint had a reasonable prospect of success, and she did not propose to put it before Trustees.

1.1.4 Panorama's claim that the attack happened at 5.30pm was inconsistent with third party pictures taken outdoors in daylight

The Adviser noted the complainant's view that Panorama's claim that the attack happened at 5.30pm was inconsistent with several of the images in [a third party website's] pictures which were taken outdoors in daylight.

However, the Adviser understood from the ECU investigation that there is daylight footage in the BBC rushes of hospital staff discussing the transfer of patients to hospitals in Turkey and shots of an ambulance waiting outside the hospital at the same time. The Adviser therefore concluded that Trustees would be of the view that the daytime images of victims were not inconsistent with the material filmed by the BBC, nor could they be regarded as evidence that the BBC material was faked.

The Adviser concluded that were this allegation to proceed to appeal it would not have a reasonable prospect of success, and she did not propose to put it before Trustees.

1.2 Material broadcast out of chronological sequence was evidence that the episode had been fabricated

The Adviser noted the complainant's contention that a number of instances in which material was broadcast out of chronological sequence was evidence that the entire episode had been fabricated.

The Adviser noted the allegations concerned the following observations by the complainant:

- the same victims were shown on more than one occasion out of chronological sequence, as evidenced by their dress and their behaviour
- identical scenes were shot from different angles suggesting either two cameras or different "takes", as in a film
- a woman in a black dress was seen arriving twice at the hospital
- a chair appeared to have moved from its original position in successive shots.

The Adviser also noted the complainant's view that the doctors' movements during a 10 minute section of the Panorama programme were presented as a chronological sequence, but that the lack of continuity in times of day, clothing and locations suggested otherwise.

The Adviser noted section 3.4.16 of the Accuracy guideline discussing Production Techniques (relevant sections only):

There are very few recorded programmes that do not involve some intervention from the production team, but there are acceptable and unacceptable production techniques. Consideration should be given to the intention and effect of any intervention. It is normally acceptable to use techniques that augment content in a simple and straightforward way for example by improving clarity and flow or making content more engaging... It is usually unacceptable to use production techniques that materially mislead the audience about the reality of the narrative or events.

For news and factual content, unless clearly signalled to the audience or using reconstructions, we should not normally:

- inter-cut shots and sequences to suggest they were happening at the same time, if the resulting juxtaposition of material leads to a misleading impression of events.

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

The Adviser noted the second Stage 1 response:

"There is no chronological detail in the editing of the film or the news piece that misleads. The editing has been done to show the mayhem and the mood of what was happening around. This event happened in a 4 to 5 hour period and everything that was filmed happened within that time frame, but not everything was edited in exact chronological order other than the start and end of the day. At no point does this mislead or change the context of the event. What filmed is what happened. The context, scale, or events shown have not been changed or altered because the order of the edit is not in keeping with the chronological time frame."

The Adviser noted the response from the reporter via BBC Complaints to the specific allegation that there appeared to be multiple takes in the same location:

"There were many victims being treated in this room so we were trying to film them all, which obviously means filming from different angles and of course at slightly different times. During these times they are moved around from bed to bed, have different treatment, all of which is chaotic ... We do not stay in one place at all times and as you can imagine we also had to try and stay out of the way of the doctors and nurses when they required us to so they could do their work... We were moving around capturing many different things all of the time so that we could try and show the story that was unfolding around us."

The Adviser noted that the BBC accepted the footage had been broadcast out of sequence on a number of occasions. However, the Adviser considered that this was justified by the chaotic scene that the programme was trying to capture. The Adviser was not of the opinion that the editing decisions in the programme had misled the audience. For this reason, the Adviser concluded that were this allegation to proceed to appeal it would not have a reasonable prospect of success, and she did not propose to put it before Trustees.

1.3 An audio edit of an interview with a doctor was misleading

The Adviser noted the complainant's allegation that an audio edit of an interview with [a doctor] (who featured in the output), in which some of her words were edited out, was misleading. The Adviser observed that because the doctor was wearing a medical face mask throughout the interview the programme had been able to edit out some of her words without the audience being able to notice, because there was no need to resort to a "cut-away" edit shot to avoid a jump cut in the vision.

The Adviser noted that the editing had resulted in only a very minor change to the image that appeared on the screen at the point a certain word was spoken, and that the programme team had chosen to make this change because [the doctor] referred to a "chemical weapon" when it was known by the time of broadcast that the bomb was an incendiary device. The Adviser considered that the change would have had no effect on the audience's understanding of what was happening at the time, and she considered that the change was editorially justified.

The Adviser believed Trustees would be likely to agree that there was no evidence that the editorial decision to edit the audio of the doctor in the way it had was likely to have resulted in viewers being misled and she therefore decided that the allegation would not have a reasonable prospect of success were it to proceed to appeal. She did not propose to put it before Trustees.

1.4 There were discrepancies between the Panorama account and a third party account of the first victim to arrive at hospital

The Adviser noted the complainant's allegation that in an interview given by one of the British doctors to [a radio programme] in Australia three months after the incident she suggested that the first victim to arrive at the hospital was a boy who was covered in "strange white dust", and that this contradicted information in the Panorama programme. The Adviser noted that in Panorama, and by the complainant's acknowledgement "in several other accounts", the first victim was a baby.

The Adviser was of the view that one inconsistency between the Panorama programme and an interview of unknown accuracy, given on a different network, after the event, did not raise sufficient evidence that the BBC content was not duly accurate.

The Adviser concluded that Trustees would be likely to be of the view that this allegation also did not provide any reliable evidence that BBC output was inaccurate or misleading.

1.5 The nature and severity of the injuries of some of the victims seemed to be fabricated

The Adviser noted the allegation from the complainant's Stage 2 submission:

"It is self-evident that the section of the BBC News report of 29 August from 03:02 to 03:19, in which the tableau of male alleged victims are static and quiet until spotting that the camera is on them, at which point (03:05) they begin to groan and writhe in unison, is fabricated..."

"If one of the hospital scenes is staged, presumably they all are."

The Adviser noted the complainant's assertion that the BBC was obliged to investigate and to solicit independent medical opinion regarding the following:

- a baby claimed to have 80% burns by [a doctor on the programme] did not appear in the images to have suffered severe burns; they would have covered his whole body and be unmistakable
- the baby's father seemed entirely unscathed but a BBC News report described him as "also burnt ... sat helplessly on a stretcher clutching his son"; [a doctor] described him as having had a burnt face.
- the eyebrows of alleged victims are pristine, despite white cream suggesting treatment for facial burns
- a reference in the programme to victims having been burnt by a "napalm-type" substance was implausible in light of the demeanour of the victims; napalm, according to sources from Vietnam "is the most terrible pain you can imagine"
- the plausibility or deterioration of alleged injuries to a number of named victims; teenagers who allegedly died appeared amongst the least injured
- injuries to the hands of two of the victims had the appearance in both cases of a prosthesis.

The Adviser noted that:

- Panorama made no specific reference to the extent of the baby's burns; the reference to 80% burns was made by [a doctor] in a debate organised by [the charity featured on the programme].
- The ECU had confirmed that the rushes show that the individual described by Panorama as the baby's father had sustained some burns.
- Contrary to the suggestion that victims had not suffered damage to their eyebrows, the reporter had related to BBC Complaints that he could smell burnt hair and flesh and there were ashes on the hospital beds from the hair of some of the victims, but on other victims their eyebrows were not burnt.
- The commentary made clear the substance was not napalm, but something like napalm.
- With regard to the deterioration of the teenagers, the ECU had provided a credible explanation that

"the effect of a burn can go well beyond damage to the skin. Muscle, bone and tissue can all be affected and subsequent pain can be caused by injury to surrounding nerves. Significant damage can be caused to airways which may not be apparent. Depending on the location and severity of the injury,

burns can also cause life threatening complications. Hospitals specialising in burns frequently have intensive care units and sterile areas where the risk of infection and fluctuations in temperature can be carefully controlled to help prevent infection...

"Burns of this nature get worse as time goes by, not only do they affect the outside but whatever was inhaled affects the inside organs as well, causing severe internal burns."

- The complainant had not provided any evidence to support his claim that the hands of two of the victims had "the appearance... of prosthesis".

The Adviser was of the view the complainant had not raised sufficient evidence to support his allegation that the footage broadcast by Panorama had been fabricated.

The Adviser noted that the cameraman and the reporter were both BBC employees, with considerable experience in the region and in war reporting. She noted that the ECU had spoken at length to the reporter and was confident that he had no reason to doubt that what he was witnessing was the aftermath of a genuine and horrific incident. The Adviser noted also that the material was filmed in a conflict zone. The degree of sophistication that would be required to have staged an incident such as this for the benefit of the cameras, and to have deceived such an experienced team, would, in the Adviser's view, likely have been impossible on the frontline of an ongoing conflict.

Therefore, the Adviser believed Trustees would be likely to agree with the ECU's conclusion that there was no substantive evidence of fabrication, and overwhelming evidence to the contrary that what the Panorama team had witnessed was genuine.

1.6 There was a discrepancy between the casualty figure given in Panorama and elsewhere

The Adviser noted the complainant's allegation that there was a lack of clarity across the media as to the numbers injured. The complainant asserted that most reports had put the number of fatalities as between eight and ten students or children, but that it was not clear, across the media, whether these were of people who had died at the scene, or later as a result of their injuries. The complainant also referred to quotes from [a doctor] (one of the two doctors filmed by Panorama) in third party media, in which she gave slightly different figures to those in Panorama itself.

The Adviser noted the programme's response to this allegation:

"As far as we were aware three died instantly at the scene – we were shown the crisp, blackened corpses. A further seven died either on their way to hospital or once in Turkey. It is possible more may have died subsequently. More than thirty were injured. The figure was given to us by the hospital at the time. We know some of the victims did not come to this particular hospital and so the actual figure is probably higher."

The Adviser noted the guideline on Accuracy requires that BBC output is well sourced, based on sound evidence, thoroughly tested and presented in clear, precise language. The Adviser noted the team had witnessed for themselves the immediate aftermath of the event, had seen some of the fatalities with their own eyes and had followed their initial visit up with a subsequent visit to Turkey to try to ascertain what had happened to some of those who had been injured. At least one of those victims, [name], who was alive at the time of that visit, according to information in the correspondence for this complaint,

subsequently died. She would not have been one of the ten included in the figure of fatalities in the commentary in the Panorama programme. The Adviser noted too that the BBC did not suggest a number in its output of those injured overall, and that the fatalities noted were those known to the team at the time the Panorama programme was broadcast. The Adviser considered there was nothing to suggest the way in which the programme and related BBC output had reflected the casualty figure was not duly accurate, based on what was known at the time.

The Adviser therefore concluded that were this allegation to proceed to appeal it would not have a reasonable prospect of success.

1.7 The location of the attack appeared to be a private home and not a school, which suggested the incident was fabricated

The Adviser noted the complainant's allegation that the location of the attack appeared to have been a private home rather than a school, and that this suggested the event had been fabricated. The Adviser noted the information provided to the complainant at Stage 2:

"My understanding is that the vast majority of schools in Syria have shut down as a result of the ongoing conflict within the country. Many students have not been to school for many, many months. Some private schools have been set up and these are often run from any available premises. In this case I have been informed that the venue was a residential home hired by the headmaster and his colleagues, and they were holding summer courses at the time of the attack."

The Adviser considered that the BBC had explained why the school in the programme appeared to be a private home, and did not consider the complainant had provided evidence to support his contrary assertion.

The Adviser therefore concluded that were this allegation to proceed to appeal it would not have a reasonable prospect of success.

1.8 There had been recycling of costumes between two "actors", which suggested the incident was fabricated

The Adviser noted the complainant's allegation that:

"Two different women at the [charity] hospital are filmed wearing the same black dress with the distinctive gold flower pattern, and seemingly also the same blue headscarf.

"The older woman is seen rushing through the hospital gate at around 36 minutes in Panorama with a man claiming to be her father (they in fact appear of similar age) and proceeds to engage in a bizarre combination of mournfulness and angry ranting. In the very next scene, in what the BBC has stated is chronologically earlier footage, she is seen being transported by stretcher from an ambulance into the hospital.

"The younger woman is featured from 0:17 in this [broadcaster's] video [a link was attached] where her words are translated "...all I saw was people on fire, I was on fire, my friends were on fire", presumably indicating that she is intended to represent a student at the alleged school. The younger woman also appears in the

longer of the two You Tube videos you cite, from 01:35 to 01:52, 02:16 to 2:20 and 04:35 to 04:40.

“Why would two different alleged victims share the same clothes? Was the [charity] hospital operating a ‘wardrobe department’?”

The Adviser noted that there had been some confusion at Stages 1 and 2 about whether the complainant was suggesting that the same woman in the black dress had been shown arriving twice at the hospital, or that two different women had been wearing the same clothes. However, she noted the following assertion from the complainant’s letter of appeal to the Trust:

“My point... is not whether they are the same person – they are not – but why it should be that they are wearing not merely similar, but identical dresses and headscarves. My suggestion, which I had plainly stated, is that this was a costume recycled among the amateur actors used in the fabricated episode.”

The Adviser therefore considered the allegation she should consider was whether the same clothes had been worn by two amateur actors, and whether this was evidence that the events shown in the Panorama programme had been fabricated.

The Independent Editorial Adviser viewed the relevant sequences in the Panorama programme and also the YouTube footage, and reported her findings to the Adviser. Whilst the Adviser was of the view that the third party footage from [a broadcaster] was not relevant to her consideration of the allegation that BBC output was inaccurate, having viewed the material on YouTube, she understood that it was clearly the same individual who appeared in all three sequences, contrary to the complainant’s assertion in his letter of appeal. Therefore neither the third party footage nor the sequences which appeared in the Panorama programme offered any evidence to support the assertion that there were two female actors who had swapped costumes and that this was evidence that the incident had been fabricated.

The Adviser therefore concluded that this allegation would be unlikely to succeed should it proceed to appeal.

1.9 The affiliations between one of the doctors, her charity, and the Syrian Opposition Movement should have been scrutinised

The Adviser noted the complainant’s allegation that the backgrounds of both [a doctor] and the [charity featured on the programme] were “worthy of scrutiny”:

“Why has the BBC at no point in its coverage... felt it necessary to inform its viewers of the pro-Syrian opposition affiliations of [the doctor] and of her [charity]?”

The Adviser also noted the complainant’s allegation that [the doctor’s] father had links to the Syrian opposition. He pointed to an article written by [name] in February 2013 that states that [the doctor’s] father is “involved politically with the Syrian National Council”.

The Adviser noted the ECU’s response in its provisional finding at Stage 2:

“I think it was implicit that the charity was working in an area of Syria controlled by the opposition and would therefore be likely to share its aims and objectives (as opposed to supporting the Syrian government).

Secondly, there were various comments from [the doctor] which would have left the viewers in little doubt as to where her sympathies lay. For example, at the end of the day of the attack, she said:

'I feel so angry right now, I feel so, so angry. The whole world has been watching us for two and a half years. We feel like some sort ... of, not even a second class citizen, like we just don't matter, like of all these children and all of these people who are being killed and massacred, we don't matter. The whole world has failed our nation and it's innocent civilians who are paying the price. It's an absolute disgrace on the United Nations and all of humanity.'

"I do not believe you have presented any persuasive evidence to support your claim about [the doctor's] father and I would regard any such evidence as circumstantial at best and of no relevance to any assessment of your complaint. I would add, though, that the political affiliations of [a doctor] and her father, whatever they may be, are immaterial to the facts of what occurred and to the question of whether those facts were reported accurately."

The Adviser noted also the following sections of commentary from the programme, particularly how they helped signpost for the audience [the doctor's] personal interest in the conflict (beyond her medical role). The Adviser noted too how the commentary signposted that the film was shot entirely in rebel-controlled areas:

- In the first few minutes of the programme, [the doctor] was introduced thus:

"[doctor's] family is from Syria and she lived here as a child."

- A few minutes later reporter [Panorama reporter] stated:

"By travelling with the doctors I'm hoping to see the humanitarian crisis through their eyes – but we can only film their work in rebel held areas."

- [The doctor] referred to Syria in the possessive:

"...the last couple of years the focus has been so much on trauma and war injuries that actually everything else had gotten forgotten. And now, we found ourselves like two and a half years down the road, our whole healthcare system has essentially been destroyed."

The Adviser noted too how the reporter explained the context in which the filming was taking place: that the violence was not only from the Government side, or only perpetrated by the Government on rebel-held areas. She noted the following amongst many such examples and wider context which were included in the commentary throughout the programme:

- The war in Syria is now in its third year. Sectarian differences and extremism have taken hold on both sides. And the conflict threatens the stability of the region...
- Rival rebel factions now fight each other as well as the government
- On the both sides of the divide children are becoming orphans and refugees.

The Adviser considered that no evidence had been produced that [the doctor] had either formal or informal links to the Syrian opposition. The Adviser considered the audience had

been accurately informed that [the doctor] was of Syrian extraction and agreed that viewers would have been able to judge for themselves on the basis of [the doctor's] contributions in the programme, where her loyalties might lie. Contrary to the complainant's contention, the Adviser was not aware of any information that had been withheld from the viewer which required to be included.

The Adviser considered also whether there was any evidence to support the complainant's implicit allegation that the [charity featured on the programme] was formally linked to the Syrian Opposition, such that the programme was obliged to mention the fact in order to achieve due accuracy and due impartiality. The fact that the charity was founded by members of the Syrian diaspora did not, in the Adviser's view, provide any information to support the allegation.

The Adviser also thought it likely Trustees would agree with her that, regardless of whether [the doctor's] father had any links to the Syrian opposition or not, his political allegiances were not a relevant consideration in deciding whether facts were presented accurately in the programme.

The Adviser was of the view that the programme had referred to [the doctor's] beliefs and those of the [charity] in a duly accurate manner in the programme, and she saw no evidence to suggest that the audience had been misled in that regard.

The Adviser therefore concluded that there would be no reasonable prospect of success were this allegation to proceed to appeal.

For all the reasons above, the Adviser concluded that were this complaint to proceed to appeal, Trustees would not be likely to conclude that the events presented had been fabricated. She therefore did not consider the appeal had a realistic prospect of success and did not propose to put it before Trustees.

“Climate change ‘helps seas disturb Japanese war dead’”, BBC Online, 7 June 2014

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 complaint

The complainant contacted the BBC about an article published on the BBC website which reported claims made by the Foreign Minister of the Marshall Islands (in the Pacific Ocean) that rising sea levels had disturbed the skeletons of Japanese soldiers who had died on the islands during World War Two. The complainant took issue with a sentence which stated:

“Driven by global warming, waters in this part of the Pacific have risen faster than the global average.”

The complainant stated that there had been no global warming for 17.5 years therefore global warming could not be the cause, and that the author of the article had failed to consider – and report – that there were more probable causes for the exposure of the skeletons.

Appeal to the BBC Trust

The complainant appealed to the BBC Trust on 2 August 2014, saying that he was unhappy with the response received at Stage 2 and that the article was inaccurate in that it failed to report other causes and omitted essential information. The complainant also complained about amendments made to the original article.

The Trust Unit's decision

The relevant correspondence was reviewed by the Trust Unit. The Senior Editorial Complaints Adviser read the relevant article. An Independent Editorial Adviser also reviewed the article and carried out further research. The Senior Editorial Complaints Adviser (the Adviser) considered the appeal did not have a reasonable prospect of success.

The Adviser noted that the article, which was originally published on 7 June 2014, reported the comments of the Marshall Islands' Foreign Minister (the Foreign Minister) who was speaking at UN climate talks in Bonn. The Minister stated:

“These last spring tides in February to April this year have caused not just inundation and flooding of communities but have also undermined regular land, so that even the dead are affected... There are coffins and dead people being washed away from graves, it's that serious.”

The Foreign Minister gave details of an island in his constituency where a mass grave with 26 bodies had been exposed and stated that these were “probably Japanese soldiers”.

The article noted that, with a high point of just two metres above sea level, the Marshall Islands were vulnerable to variations in sea level. It stated:

“Driven by global warming, waters in this part of the Pacific have risen faster than

the global average.”

The Adviser noted that when the article was first published it stated:

“According to a recent report from the UN Environment Programme, sea level is rising in the Pacific around the Marshall’s at a much higher rate than elsewhere in the world. The rate of rise between 1993 and 2009 was 12mm per year, compared with the global average of 3.2mm.”

This statement was removed on 18 July 2014 and the following paragraph was substituted:

“Sea level gauges in the Marshalls show that the waters around the islands have risen by about 50% more than the global average in the period between 1968 and 2011.”

The article can be found at <http://www.bbc.co.uk/news/science-environment-27742957>, with the following notice:

“Correction 18 July 2014: This report has been amended to remove an inaccurate figure concerning sea levels in the Marshall Islands and to further attribute information to [the Foreign Minister].”

The Adviser noted that this correction was made during the investigation by the Editorial Complaints Unit (ECU), who stated in their provisional finding that:

“...the correspondent who wrote the article...accepts that some of the information included was not as accurate as it should have been and that rather too much emphasis was placed on the claim made by the foreign minister of the Marshall Islands. Accordingly, the article has now been amended to correct a factual error about the extent of sea level rise in the Marshall Islands. It has also been edited to ensure the suggestion that high tides caused by climate change were responsible for the exposure of the skeletons is attributed directly to the foreign minister.”

The ECU stated that the mistakes identified in the course of the investigation were not issues directly raised by the complainant and they did not uphold the complaint.

“My understanding of your complaint, which I summarised in my letter of 2 July, was that any suggestion that rising sea levels have contributed to the discovery of the skeletons on the Marshall Islands must be misleading because there has been no global warming for seventeen and a half years. You said other factors such as post-war construction and the weather were much more likely to be responsible. I am unaware of persuasive evidence to support either of these claims.”

The Adviser noted that the complaint focused on the statement:

“Driven by global warming, waters in this part of the Pacific have risen faster than the global average.”

She noted that the complainant had stated that there “had been no global warming for 17.5 years” therefore global warming could not be the reason for a rise in sea levels in the Pacific.

The Adviser noted the conclusions of the United Nations' Intergovernmental Panel on Climate Change (IPCC) which published its Fifth Assessment Report⁴¹ in September 2013:

"Warming of the climate system is unequivocal, and since the 1950s, many of the observed changes are unprecedented over decades to millennia. The atmosphere and ocean have warmed, the amounts of snow and ice have diminished, sea level has risen, and the concentrations of greenhouse gases have increased."

She noted the complainant's reference to the so-called pause or slow-down in global temperature rise since 1998. She noted that the 'pause' related to one component of the climate system – the global mean surface temperature – and that other indicators such as the melting of sea ice had continued during the 'pause'.

She noted that the Fifth Assessment Report of the IPCC had acknowledged the slow-down in global temperature rise since 1998 and stated that this period began with a very hot El Nino year which impacts upon global weather and climatic conditions across the globe.

The Adviser noted that the BBC article had stated that sea levels in this part of the Pacific had risen faster than the global average and that this was driven by climate change. She noted that there had been no reference to the period of time over which sea levels had risen, and that the Foreign Minister's reference to the skeletons of Japanese soldiers suggested the period could be as long as 1945-2014.

She noted that the IPCC report had stated that it was "virtually certain" (the term used by the IPCC to describe 99-100% certainty) that the upper 700m of the Earth's oceans had warmed during the period from 1971 to 2010, and "very likely" (90-100% likely) that the mean rate of global averaged sea level rise was 1.7mm per year between 1901 and 2010, 2mm per year between 1971 and 2010 and 3.2mm per year between 1993 and 2010.

She noted that the report attributed (with high confidence) about 75% of the observed global mean sea level rise to shrinking glaciers and to ocean thermal expansion since the early 1970s, and that this was "consistent with the sum of the observed contributions from ocean thermal expansion due to warming... from changes in glaciers... Greenland ice sheet... Antarctic ice sheet... and land water storage".

The Adviser noted that when it was originally published the BBC article quoted a UN Environment Programme report⁴² as stating that sea levels around the Marshall Islands had risen by 12mm per year compared with a global average of 3.2mm.

This report was widely reported by the media, including the statistic which is quoted here in its original context:

"Although SIDS [Small Island Developing States] themselves emit negligible amounts of greenhouse gases, they face a disproportionately high level of impact from climate change. For example, while the global mean sea level rise is 3.2 mm per year, in the island of Kosrae in the Federated States of Micronesia sea level is rising at a rate of 10 mm per year (Monnereau and Abraham 2013). In the tropical western Pacific, where many small islands are located, the rate of sea level rise was 12 mm per year between 1993 and 2009, that is, about four times the global average (IPCC 2014)."

⁴¹ <http://www.ipcc.ch/report/ar5/>

⁴² <http://www.sidsnet.org/>

The Adviser noted that many of the Marshall Islands fell technically outside the tropical western Pacific, and that more precise data was available from the National Tidal Centre of Australia's Bureau of Meteorology which had set up a SEAFRAME monitoring station on Majuro in the Marshall Islands in May 1993. The Adviser noted that this provided a useful but relatively short period for the assessment of trends. She noted that individual weather events such as cyclones or tsunamis can unduly influence short-term trends, as can the behaviour of El Nino in the Pacific. For this reason she considered that longer trends were preferable but in this case high quality data for such a small area had only been available fairly recently. The 17-year sea level trend for the Marshall Islands was +4.3mm per year⁴³ and the most recent report, published in 2011⁴⁴, noted a rise of +4.7mm and stated:

"Although the sea level trends are not yet indicative of long-term sea level rise across the region, they do demonstrate coherent short-term sea level changes across the region."

The Adviser considered that Trustees would be likely to conclude that the BBC was right to amend the article to provide more specific data for the Marshall Islands. She considered that Trustees would be likely to conclude that there was evidence to support the statement that "waters in this part of the Pacific have risen faster than the global average".

The Adviser noted the complainant's argument that the article had failed to report other likely causes of the exposure of the skeletons, such as population growth, increased tourism, and the effects of weather such as high rainfall and typhoons, and that "the damage that has occurred so far is far more likely to be due to post-war construction and the weather, rather than Climate Change".

The Adviser noted that the Foreign Minister's comments were very widely reported in the global media. She noted that several sources stated that approximately twenty skeletons had been washed from their graves on an island which formed part of the Kwajalein Atoll. A Japanese official was quoted by the news agency Agence France Presse as saying:

"The government of the Marshall Islands has informed us that remains of about 20 human bodies have been exposed on the seashore of Enniburr island... The remains, believed to be those of Japanese soldiers, surfaced after waves eroded a cemetery built on the seashore, according to the Marshall Islands government."⁴⁵

The Adviser noted that the skeletons appeared to have been exposed by very strong King tides, which had caused flood damage in the Marshall Islands during spring 2014.

The Adviser noted that the complainant had referred to an academic of the University of Auckland as having found that:

"Many islands are growing larger and that the shrinking shoreline along coastal villages was caused largely by commercial development, building of seawalls and land reclamation etc."

The Adviser noted that the University of Auckland academic was currently carrying out research on reef island shoreline change in the Marshall Islands and that he had noted

⁴³ <http://www.bom.gov.au/ntc/IDO60025/IDO60025.2010.pdf>

⁴⁴ http://www.bom.gov.au/ntc/IDO60102/IDO60102.2011_1.pdf

⁴⁵ <http://phys.org/news/2014-06-sea-uneearth-wwii-japan-soldiers.html>

that the picture was a complex one, with some sections of islands eroding by over a hundred feet, yet other nearby sections being completely stable. She noted that in several different newspaper interviews the University of Auckland academic had noted other possible causes of erosion being inappropriate development, poorly constructed sea defences and increasing population, but he had also confirmed that climate change was causing sea levels to rise at an increasing rate, that this phenomenon would pose a serious threat to the islands and he called for sound scientific data to support any adaptation plans.

The Adviser considered that Trustees would be likely to conclude that they would have preferred the correspondent to have considered the other factors which may have contributed to the exposure of the bodies. However, she noted that the complainant had stated that these factors were “more probable causes” than rising sea levels as “there had been no global warming for 17.5 years”. She noted the BBC’s guidelines for due accuracy which state:

“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 considered Trustees would be likely to consider:

- the claims about the impact of climate change upon the Marshall Islands were specifically sourced to the Foreign Minister
- The Foreign Minister was a reputable source of information about the Marshall Islands and was entitled to his view, and to have his view reported
- whilst there may have been other factors in exposing the bodies, there was insufficient evidence that these were “more probable” than that of climate change
- there was an underlying trend of rising sea levels, and these rises outstripped the global average.

She therefore considered that, in relation to the complainant’s claim that there were more probable causes of the exposure of the bodies than rising sea levels “driven by global warming”, the Trustees would be likely to conclude that there was no breach of the BBC’s guidelines on accuracy.

The Adviser noted that the complainant has also raised the following concerns about the published amendment:

- that the wording was “disingenuous” and “specifically worded to maintain worry” in that a 50% higher rise sounded significant, whereas the global average rise was 3.2mm per annum so an additional 1.6mm rise was “much less disconcerting”.
- that the further attribution to the Foreign Minister was “an excuse to palm-off responsibility for the original attention-catching headline of a BBC Environment correspondent, onto a relative unknown”.

The Adviser considered that Trustees would be likely to conclude that the BBC was right to amend the article to provide more specific data for the Marshall Islands. She noted the complainant’s view that rises of 50% might sound disconcertingly large when the data related to millimetres, but she considered Trustees would be likely to conclude that this would not constitute a breach of the BBC’s guidelines on accuracy as the statement related to islands where the average land elevation was 2 metres above sea level, and therefore very small rises in sea level could have a disproportionately large effect.

The Adviser considered that Trustees would be likely to conclude that the BBC had been right to attribute claims to the Foreign Minister as this provided transparency about the sources of its information.

The Adviser also noted the complainant's view that the web page erroneously displayed an incorrect 'Last Updated' date and time. She agreed with the complainant that this had the potential to cause confusion, but she noted that the footnote to the article made it clear that the article had been updated on 18 July 2014.

She considered Trustees would be unlikely to conclude there had been a breach of the BBC's guidelines on accuracy in relation to the corrections to the published article.

In summary, the Adviser considered that Trustees would be likely to conclude that there was insufficient evidence that the article had breached BBC guidelines on accuracy.

She therefore concluded that the appeal did not have a reasonable prospect of success and she did not propose to put it before Trustees.

Supplementary response from the Senior Editorial Complaints Adviser

The Adviser responded to the complainant's request for a review of the decision not to put his complaint in front of Trustees with a supplementary response. An extract of the response follows below.

Extract

You have asked that I review my decision not to proceed with your complaint, and you have referred to a point in your appeal letter of 2 August 2014 which you do not feel we have answered to your satisfaction. This point related to the decision of the ECU [Editorial Complaints Unit] issued on 21 July 2014, which stated:

"my research indicates that the skeletons were discovered in an islet on Kwajalein Atoll by a resident digging for coral gravel on the beach at the base at the local landfill. The remains were between 2cm from the surface and 50cm. The bodies of least eight people have been recovered by the island's Historic Preservation Office and more are thought to be still in situ. My understanding is that sea level rises, in particular high 'King' tides in spring, have contributed to significant erosion of the area and more likely contributed to the discovery of the remains."

You have suggested that the credibility of the article is undermined by the omission of information that the bones were discovered by someone digging for gravel. You have also noted that the site was near a local landfill, and that landfill sites are often subject to disturbance by humans and wildlife.

My research indicated that the Marshall Islands' government had suggested that the skeletons had been exposed after waves eroded a cemetery built on the seashore, and that this had followed very strong "King" tides which had caused flood damage in the Marshall Islands during spring 2014.

The ECU has provided me with a copy of an email from the local Historic Preservation Office. This confirms the circumstances of the discovery, as described in the ECU finding.

"[The Foreign Minister] was correct in his comments that rising sea levels and erosion are partially responsible for the discovery of the human remains on

Eninburr Islet in Kwajalein Atoll. We have been comparing aerial photographs from 1945, 2009, and 2014 that show a noticeable change in the Eninburr shoreline especially in the period between 2009-2014.

The remains were discovered by a local resident digging for coral gravel on the beach at the base of the local landfill. However, the remains were extremely shallow (2 cm to 50 cm). Significant erosion has occurred at the site and the recent king tides in March likely contributed to the erosion and discover [sic] of the human remains."

It would appear that rising sea levels and wave erosion by "King" tides had made the discovery of the remains much easier than would have been the case if there had been no such erosion.

I have therefore determined that my original decision not to proceed with your complaint is unaffected.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with his appeal. A non-exhaustive summary of the points the complainant raised follows below. The complainant noted that the remains were in fact discovered, still buried, by someone digging for coral gravel. He considered it pure supposition that any other factor had contributed to their discovery. He wanted to know why the first reply from the Adviser had not dealt with this point.

The complainant requested geographical coordinates of an islet referred to in the Adviser's supplementary response. Once he had received the requested information, the complainant said that satellite and aerial photos showed just how densely populated the islet had become and that it was inconceivable that the housing and associated infrastructure would not have contributed to shoreline change.

He supplied an article about the Marshall Islands – Majuro, Kwajalein, and Wake Island. This concluded that there is no evidence for or against an acceleration in sea level rise in the three Marshall island records. He noted the "lively debate" in comments beneath the article and concluded that no expert knows within 99% confidence what is happening and so nobody knows if Climate Change may affect it.

The Committee's decision

The Committee was provided with the complainant's appeal to the Trust, the responses from the Senior Editorial Complaints Adviser and the complainant's various emails asking the Committee to review her decision. The Committee was also provided with the relevant article.

The Committee reviewed and considered the complainant's arguments. Trustees noted the complainant's concern that a sentence in the BBC Online article: "Climate change 'helps seas disturb Japanese war dead'" was not duly accurate because there were more probable causes for the exposure of the skeletons of Japanese soldiers than rising sea levels.

The sentence at the centre of the complaint was:

“Driven by global warming, waters in this part of the Pacific have risen faster than the global average.”

The Committee noted that a correction had been made to the article during the ECU’s investigation into the complaint but that the mistakes which had been corrected were not as a result of issues raised by the complainant and the ECU had not upheld the complaint. The ECU stated in its provisional finding that the article had been amended:

“...to correct a factual error about the extent of sea level rise in the Marshall Islands. It has also been edited to ensure the suggestion that high tides caused by climate change were responsible for the exposure of the skeletons is attributed directly to the foreign minister.”

The Committee was of the view that the BBC had been right to amend the article to provide more specific data for the Marshall Islands, and believed it would be likely to conclude that there was evidence to support the statement that “waters in this part of the Pacific have risen faster than the global average”.

In relation to the complainant’s claim that there were more probable causes of the exposure of the bodies than rising sea levels “driven by global warming”, the Committee acknowledged that there may have been other factors which helped to expose the skeletons, but the Committee did not consider that compelling evidence had been presented to suggest that these factors were more probable than that of climate change. It noted that the first letter from the Trust’s Adviser had not addressed the complainant’s argument concerning the fact that the remains were found by a resident digging for coral gravel. It was considered that this error had been appropriately rectified by her second letter, which focused solely on this issue.

It was considered that the BBC had been right to attribute claims to the Foreign Minister as this provided transparency about the sources of its information, and did not in any way give rise to a breach of the editorial guidelines.

The Committee approved of and agreed with the Adviser’s analysis in her initial and supplementary responses to the complainant, which are set out in part in the earlier section of this finding. In light of that fact, the Committee considered that it was unlikely to conclude that editorial guidelines 3.1 and 3.2.1, which together explained the requirement of due accuracy, were breached by the relevant BBC content. Furthermore, Trustees considered that no persuasive material had been presented by the complainant to support the view that the relevant BBC content had breached any of the Editorial Guidelines on Accuracy.

The Committee considered it would be likely to conclude that neither the original article nor the amended article breached the BBC Guidelines on Accuracy.

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

News at Ten, BBC One, 26 May 2014

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 complaint

In May 2014 the Pope visited Jerusalem. The report by the BBC's Middle East Editor focussed on what he referred to as the Pope's "carefully calibrated gestures" as he visited sites of religious and symbolic significance to each side. During the item, in a sequence where the Pope was filmed at the Temple Mount and the Western Wall, the Western Wall was referred to in the script as the "holiest place Jews can pray".

The complainant alleged that the commentary was inaccurate. He argued that the Temple Mount is far holier to Jews, and that although the Muslim authorities who supervise the area forbid Jewish prayer in the compound precinct, Jews do pray there privately.

The complainant received responses at Stage 1 from BBC Audience Services and at Stage 2 from the ECU. The complaint was not upheld.

Appeal to the BBC Trust

The complainant appealed to the BBC Trust on 2 September 2014 alleging the report had been inaccurate and that it lacked impartiality as it implied that the Temple Mount compound was holier to Muslims than Jews.

The complainant said that the holiest place for Jews was in fact the Temple Mount, which is the traditional site where Abraham bound Isaac and the location of the "holy of holies" (where the Ark of the Covenant was housed during the First Temple). But until 1967 Jews had no access to the Temple Mount. Therefore the Western Wall, as the only part of the original Herodian era structure accessible at that time from the Israeli side, became the holiest place for Jews to pray.

The complainant said that since 1967 that has no longer been the case:

"Jews who visit the Temple Mount can pray silently and unobtrusively without being noticed, and on occasion... they pray there in a group."

The complaint said that even outside of the Temple Mount, the Western Wall is not the holiest place that Jews can pray:

"Now there is a place far closer to the original Western Wall of the Holy Temple where Jews can pray openly and communally. That place is at what is now known as Warren's Gate. It is an ancient passage, now blocked, at the closest point in the Temple compound wall to the original Western Wall of the temple. Access to it is through the Western Wall tunnels and it is indeed the site of a gate in the Western Wall of the Temple compound, but much further north along it than the Kotel. (Warren's gate is) ...The holiest place that a Jew can pray OUTSIDE of the Temple Mount ... because it is the closest part of the Temple compound wall to the original Western Wall of the Holy Temple itself."

The complainant gave a detailed explanation of his understanding of the relative significance of various areas within the Temple Mount compound in the context of where was considered most holy for Jewish prayer.

He concluded his appeal:

“The holiest place where Jews can pray is most definitely not at ... or even by the western wall. By tradition Jews have to ritually cleanse themselves before they enter the Temple compound... We have never had to ritually cleanse ourselves to pray at the Western Wall simply because it is not so holy as the Temple compound itself. Jews are however free to enter the Temple compound and there is nothing to stop them praying privately there.”

The Trust Unit’s decision

The Senior Editorial Complaints Adviser (the Adviser) considered the complaint in the context of the requirement for “due accuracy”, defined in the Editorial Guidelines as that which is:

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

The Adviser noted the newsreader’s introduction to the report by the BBC’s Middle East Editor:

“In his tour of the Middle East Pope Francis has visited some of the most important religious sites in Jerusalem and urged people of all faiths to work together for justice and peace. He also travelled to Israel’s national holocaust memorial where he met some survivors.”

The Adviser noted the editorial focus of the item was an explanation of how in the selection of destinations and during each stop, the Pope demonstrated his respect for each party’s point of view and an understanding of the issues considered important by each side. All this, the viewer was told, was to establish the Pope’s credentials as someone who could be trusted to be even-handed as a potential mediator, which had culminated in both the Israeli and Palestinian presidents accepting the Pope’s invitation to come to Rome and pray for peace.

The Adviser noted therefore that whilst the Pope is a religious leader and he visited a number of sites of religious significance, as well as more secular sites such as the separation wall and the holocaust memorial, the visit was not about theology but about politics. The Adviser considered this was clearly signposted in the introduction and throughout the item. Therefore, while there remained a requirement that the audience was not misled on the religious relevance of the sites he visited, there would not have been any expectation at any of the locations, of more than the basic detail.

The Adviser noted part of the commentary which referred to the Western Wall:

“Taking shoes on and off when you visit an Islamic building is the conventional sign of respect. But when a Pope does it at the Dome of the Rock, the great Muslim shrine in Jerusalem, it’s more than that. And every day of this trip he’s made carefully calibrated gestures to deliver messages.

“At the western wall – the holiest place in the world where Jews can pray – he touched the stones then followed tradition by placing his own prayer between them.

“24 hours earlier the Pope chose the same symbolic gesture at the barrier Israel has built to separate Bethlehem, run by Palestinians, from Jerusalem.”

The Adviser considered this allegation:

“The impression was left with the viewers that the area inside the Temple Mount compound was holier to the Muslims than to the Jews. In fact the holiest place that there is for Jews is the Foundation Rock ‘Even HaShtiyah’, the traditional site of where Abraham bound Isaac and also the site of the Holy of Holies of the Holy Temple. Jerusalem is only the third holiest city for Muslims.”

Whilst the Adviser acknowledged the significance of the Temple Mount to Jews, she did not agree that the commentary would have led the audience to form any view on its significance to the Jewish people, nor did she agree in the context of this item that the audience should have been provided with that information in order that the content could be considered duly accurate and duly impartial. She noted that the Temple Mount was not mentioned by name, the BBC’s Middle East Editor referred only to the Dome of the Rock, which is inside the Temple Mount precinct and which he accurately referred to as a Muslim shrine.

The Adviser noted that the allegation was made in the context of the complainant’s assertion that “anywhere on the Temple Mount is a holier place to pray than anywhere outside it”. Whilst she acknowledged this was the case, she did not see where the commentary suggested otherwise. Whilst the Adviser noted the complainant’s contention that Jews may choose on occasion to try to pray privately at the Temple Mount, there is no evidence that even if it is done, it is with either the permission of the Waqf (the Arab-Jordanian authorities who administer the Temple Mount) or the encouragement of the rabbinical authorities. The Adviser noted the complainant’s reference to a dawn visit by 400 Jews in March 2014 and the link to an article reporting the event on an Israeli news website. The Adviser accepted that on a limited number of specific occasions each year Jewish prayer has taken place on the Temple Mount; always amid tight security and often cancelled due to security concerns. The Adviser noted the opening paragraphs of a story in The Times of Israel, published on 19 May 2014⁴⁶, a week before the news item which is the subject of this complaint:

“Knesset members from the Likud and Labor parties are set to push forward a new bill that would allow Jews to pray at the Temple Mount, a practice currently forbidden.

“The Temple Mount compound, which holds the Dome of the Rock and Al-Aqsa Mosque, is considered the third holiest site in Islam and the holiest site to Jews as the site of the two ancient Jewish temples.

“By law, under arrangements Israel instituted after capturing the area in 1967, Jews are not allowed to pray at the site.”

The Adviser noted that it is the Waqf authorities which police the ban on Jews praying on the Temple Mount, rather than any Jewish law or rabbinical command forbidding it. But

⁴⁶ <http://www.timesofisrael.com/mks-propose-law-allowing-jews-to-pray-at-temple-mount/>

whatever the reason, the commentary in the News at Ten report appeared to have taken account of the practical result of the ban, with its reference to the Western Wall being the “holiest site in the world where Jews **can** pray” (emphasis added by adviser).

The Adviser then considered the complainant’s final assertion in support of his submission that the commentary was inaccurate in relation to the Western Wall:

“The holiness of the Kotel (the Western Wall) was always derived from its proximity to the original Western Wall of the Holy Temple. Now there is a place far closer to the original Western Wall of the Holy Temple where Jews can pray openly and communally. That place is at what is now known as Warren’s Gate. It is an ancient passage, now blocked, at the closest point in the Temple compound wall to the original Western Wall of the temple. Access to it is through the Western Wall tunnels and it is indeed the site of a gate in the Western Wall of the Temple compound, but much further north along it than the Kotel. The holiest place that a Jew can pray OUTSIDE of the Temple Mount is by Warren’s Gate, because it is the closest part of the Temple compound wall to the original Western Wall of the Holy Temple itself.”

The Adviser acknowledged that what is now known as Warren’s Gate is accessible to Jews, and that it is closer to the Holy of Holies than the main area of prayer at the Western Wall. But she noted also that Warren’s Gate is the modern day name given to what was once an entrance to the Temple Mount, and more importantly, that it is situated within the brickwork of the original Western Wall, albeit some distance from the instantly familiar prayer area where the Pope was filmed for the news item. The Adviser noted that the commentary states simply that the “Western Wall” is the holiest place in the world where Jews can pray. She took the view that, even taking the complainant’s argument that Warren’s Gate is “holier” than the iconographic image of the prayer area of the Western Wall, the commentary also encompassed Warren’s Gate in the way it was worded.

However, the Adviser accepted that the impression viewers would most likely have taken from the commentary was that the part of the Wall depicted in the news item, i.e. the large open plan area reflected in so many images of Jewish Jerusalem, was the holiest place that Jews could pray. Notwithstanding that Warren’s Gate is technically part of the Western Wall, the Adviser nevertheless noted that for the vast majority of Jews the spot visited by the Pope is understood to be the most important place of prayer, as evidenced by the millions who visit it to do just that each year.

She considered that Trustees would be likely to conclude the commentary met the requirements for due accuracy under the Editorial Guidelines. She therefore did not consider the appeal had a reasonable prospect of success and did not propose to put it before Trustees.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with his appeal and presented a number of arguments to support this request. He reiterated his argument that the Kotel where the Pope touched the stones is not the holiest place in the world where Jews can pray. He argued again that it is possible to pray quietly within the Temple compound. He also argued again that Warren’s Gate is the holiest part outside the Temple compound as it is the closest point in the Temple compound wall to the original Western Wall of the temple.

He argued that by saying the Pope “touched the stones” at the “holiest place in the world where Jews can pray” the Middle East Editor was inaccurate and seemed to be saying more emphatically that the site of the Dome of the Rock was of less significance to Jews than anywhere else in the Temple compound.

The complainant noted that the Middle East Editor referred to the Pope removing his shoes as a sign of respect “at the Dome of the Rock, the great Muslim Shrine in Jerusalem”. He said that by mentioning the site only as a Muslim shrine the Editor was minimising the significance of the site to Jews. He noted that this was the holiest site in Judaism and that taking off shoes was also a sign of respect.

The complainant said the report was biased and inaccurate.

The Committee’s decision

The Committee was provided with the complainant’s appeal to the Trust, the response from the Senior Editorial Complaints Adviser (the Adviser) and the complainant’s emails asking the Committee to review her decision. The Committee was also provided with the relevant programme material.

The Committee reviewed the complainant’s arguments. The Committee noted the complainant’s assertion in his challenge to the Adviser’s decision not to proceed, that she had failed to acknowledge

“... the significance of the location of the Dome of the Rock to Jews. **It is the holiest site to Jews by far.**” (emphasis added by complainant)

The Committee accepted the significance of the site for the reasons the complainant had outlined, but did not agree that the news report would have been required to mention the fact. The Committee noted the requirement for due accuracy and editorial guideline 3.1 which acknowledges audience expectation as a key element of determining whether content is duly accurate. Due accuracy is defined as that which is:

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

The Committee noted the Adviser’s detailed analysis of the editorial purpose of the item and her conclusion that viewers would not have expected any greater detail on the religious significance of individual sites, nor would they have needed it in order to gain an accurate and impartial understanding of the story, i.e. the Pope’s diplomatic initiative in the Middle East.

The Committee noted the complainant’s assertion that by mentioning that the Pope had taken off his shoes as a sign of respect “at the Dome of the Rock, the great Muslim shrine in Jerusalem” the reporter had minimised the significance of the fact that it is also a sign of respect at the holiest site by far in Judaism. The Committee noted the complainant’s assertion that it was only the third holiest site to Muslims, after sites in Mecca and in Medina. The Committee did not accept that the comparison was a relevant consideration and agreed with the Adviser that in mentioning the significance of the site to Muslims, it suggested nothing about what significance it had, if any, in the Jewish religion. There was a clear editorial purpose in framing the significance of the site in relation to the Muslim religion as this was a news story, depicting a news event, and the pictures showed the Pope taking off his shoes as he entered a Muslim place of worship.

The Committee then noted the points made by the Adviser in concluding that the following sentence was accurate:

“At the western wall – the holiest place in the world where Jews can pray – [the Pope] touched the stones....”

The Committee noted the Adviser’s account of the practical difficulties which faced a Jew who might wish to pray close to the Holy of Holies. The Committee noted why this effectively meant that the western wall had become the focal holy point of Jewish worship.

The Committee noted the complainant’s assertion that Warren’s Gate was accessible, that Jews could pray there, and that it was holier than the western wall by virtue of its proximity to the assumed location of the Holy of Holies. The Committee noted the Adviser’s decision in which she explained that Warren’s Gate referred to a now blocked off opening within the structure of the western wall. It therefore concluded, as had the Adviser, that the formulation of the wording in the news report encompassed Warren’s Gate.

The Committee noted the carefully nuanced wording in the news report, in which it referred to the western wall as the holiest place where Jews can pray. The Committee concluded that were this complaint to proceed to appeal it would be likely to conclude the content had been duly accurate.

The Committee reviewed the editorial guidelines on impartiality, paying particular attention to guidelines 4.1, 4.2.1 and 4.2.2. Trustees took the view that there was no evidence or convincing arguments presented which suggested that the news report was biased or that the report had failed to meet the requirement for due impartiality. The report had presented the Pope’s diplomatic visits to sites of religious and symbolic significance in a manner that was likely to be considered duly accurate. Furthermore, there was no requirement for additional background information or context to the religious sites in light of the audience expectation created by the article. The Committee therefore considered that were this allegation to proceed to appeal it would be likely to conclude that the content had been duly impartial.

The Committee did not consider that this complaint had a reasonable prospect of success and therefore decided that this appeal did not qualify to proceed for consideration.

The Committee decided that this appeal did not qualify to proceed for consideration

Decision of BBC Audience Services not to respond further to complaint about BBC Breakfast, BBC One, 23 May 2014

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 complaint

In a report for BBC Breakfast about the European and local elections which had taken place the previous day, the BBC's political editor, Nick Robinson referred to himself as a trainspotter using the words:

"There may be people who are slightly less of a trainspotter variety when it comes to politics than I am, and they may think..."

The programme host, Naga Munchetty, then picked up on his "trainspotter" remark, saying:

"Political trainspotter you may be Nick, also a man full of stamina, staying up all night and I know you going to be busy throughout the day as well. Good to talk to you, thanks very much and see you soon."

The complainant contacted Audience Services and the BBC Trust Unit on 29 May 2014 to express his concern about the use of the terms "trainspotter mentality" and "political trainspotting". He felt that the use of these terms was offensive to railway enthusiasts like him. He also complained that the use of the word "anorak" in the same context was abusive. (The word anorak was not used in this item.)

He requested that the BBC place a ban on the words "trainspotter" and "anorak" when used in "insulting negative ways".

The Trust Unit responded on 6 June 2014 informing him that his email would be forwarded to Audience Services for response.

Audience Services responded to the complainant's direct communication on 13 June 2014 assuring the complainant that no offence was intended. They stated:

"The reference was made concerning those more experienced political followers and not in direct relation to the hobby itself. We strive to provide an impartial outlook on all issues and we regret you feel this comment was denigrating to railway enthusiasts."

Audience Services then responded on 18 June 2014 to the complainant's email which had been forwarded to them by the BBC Trust. They stated:

"I understand you feel it was offensive to use the term 'trainspotter' during a report on the recent gains by UKIP in the elections.

I appreciate your concern and having reviewed the programme and given the context the use of the term wasn't used in an offensive manner quite the opposite.

Nick Robinson was talking about UKIP's gains in the local elections and the reaction of the 'three main parties' and what they've 'learned' from these results....

The term being used wasn't as you suggest offensive rather in the context of someone very interested in the specifics of politics, the finer details if you will. However I appreciate you felt this wasn't the case."

The complainant was not happy with the response of 13 June 2014 and made a follow-up complaint to Audience Services on 27 June 2014. However, he said it was impossible "to reply properly in full using the restrictive online webform". He said the BBC had tried to dismiss his complaint and he requested that he be given the means to reply more fully. He said that if need be, he would escalate his complaint to the next level.

The complainant also wrote to the BBC Trust in response to the BBC Trust Correspondence Co-ordinator's email of 6 June 2014. He expressed his concern about the lack of space on the complaints webform which he considered was hindering his ability to make his follow-up complaint in full. He also asked whether he should wait to hear from Audience Services again, or if he had reached a higher level.

Audience Services responded at Stage 1b on 1 July 2014 stating that they could not engage in further correspondence with the complainant on this issue. They explained that, in order to use licence fee resources appropriately, they would not normally investigate further unless evidence was provided to suggest a possible breach of Editorial Guidelines which they did not consider to be the case in this instance. They felt they had responded as fully as they could and had nothing further to add to their previous response.

The BBC Trust Unit also responded to the complainant, on 9 July 2014, noting his comments about the webform and clarifying the formal complaints procedure.

Appeal to the BBC Trust

The complainant appealed to the BBC Trust on 8 July 2014. He reiterated his complaint about "the abusive and insulting use of the expressions 'trainspotter mentality' and 'political trainspotting'" on BBC Breakfast by Nick Robinson and Naga Munchetty respectively.

He made the following points in his appeal:

- He quoted the BBC Editorial Guidelines on Harm and Offence, section 5.4.32 which deals with Intimidation and Humiliation:

"BBC content must respect human dignity. Intimidation, humiliation, intrusion, aggression and derogatory remarks are all aspects of human behaviour that may be discussed or included in BBC output. Some content can be cruel but unduly intimidatory, humiliating, intrusive, aggressive or derogatory remarks aimed at real people (as opposed to fictional characters or historic figures) must not be celebrated for the purposes of entertainment. Care should be taken that such comments and the tone in which they are delivered are proportionate to their target."

- He said there was no connection between being a trainspotter and politics.

- No interpretations of “trainspotter mentality” and “political trainspotting” were possible other than as terms of gratuitous insult and abuse.
- He accepted that no offence was intended, but offence was caused because “trainspotter mentality” and “political trainspotting” have nothing but offensive meanings.
- He queried what Audience Services had meant by “experienced political followers” in their response to his complaint. He asked what the connection was between “experienced political followers” and being a railway enthusiast?
- He said that “indirect racism” and “indirect sexism” were rightly condemned. He believed that “trainspotter mentality” and “political trainspotting” should be construed as being both direct and indirect insults.
- He also quoted the BBC Editorial Values on Fairness, section 1.2.7 which state that BBC “output will be based on fairness, openness, honesty and straight dealing. Contributors and audiences will be treated with respect”.
- He referred to an incident where a member of the BBC had left his post because of the use of a racially offensive word.

The Trust Unit’s decision

The Head of Editorial Standards, Trust Unit (the Adviser) carefully read the correspondence that had passed between the complainant and the BBC. She acknowledged the strength of the complainant’s feelings but did not believe that the appeal had a reasonable prospect of success.

The complainant had appealed on both the substance and the handling of his complaint about the use of the terms “trainspotting mentality” and “political trainspotting” in an item about the European elections on BBC Breakfast. The Adviser noted, however, that BBC Audience Services had ceased handling this complaint at Stage 1 and that the complaint had not gone to Stage 2. She therefore decided that the point she should consider was whether an appeal against the decision of BBC Audience Services not to correspond further with the complainant had a reasonable prospect of success.

The Adviser noted that the complainant believed that the output engaged the Editorial Guidelines on Harm and Offence. The guidelines can be found in full at <http://www.bbc.co.uk/guidelines/editorialguidelines>)

The Adviser did not consider that the Fairness guidelines applied as they deal with fairness to people or organisations who are the subject of programmes. She also noted that the guideline 5.4.32 referred to references to individuals and did not apply in this case either.

The Adviser acknowledged that the complainant had found the use of the terms “trainspotting mentality” and “political trainspotting” abusive and offensive. She noted that although he accepted the assertion by Audience Services in their response of 13 June 2014 that there had not been a deliberate intent to cause offence, he did not feel that the lack of intention to cause offence resolved his complaint.

The Adviser noted that the Oxford English dictionary defined the noun, “trainspotter” as follows:

"A person who collects train or locomotive numbers as a hobby."

She further noted that the term "trainspotter" in the Breakfast report at the centre of the complaint was used in the context of the informal definition of the word as published by the Oxford English Dictionary:

"A person who obsessively studies the minutiae of any minority interest or specialised hobby."

She acknowledged the question put by the complainant in his appeal asking for the link between politics and trainspotting to be explained to him, but she noted that when the word "trainspotting" was used in the context of "a person who obsessively studies the minutiae of any minority interest or specialised hobby", there would be no need for there to be a direct link between politics and trainspotting.

She acknowledged that the complainant believed that the term "trainspotter" was insulting to railway enthusiasts, but she noted that dictionary definitions of "trainspotter", both formal and informal, did not refer to railway enthusiasts as a whole, or to the volunteers who put in a great deal of valuable time and effort into preserving heritage railways for others to enjoy. The word "trainspotting" was generally used to describe the hobby of collecting train numbers. It could also be used in a derogatory way – when it referred to obsessive attention to minute detail on obscure topics which were not of general popular interest.

The Adviser noted that the complainant had not included the word "anorak" as part of his appeal but it had formed part of his original complaint. She agreed that "anorak" and "trainspotter" were words which were often applied in a derogatory way in similar contexts. She noted, however, that the word "anorak" did not feature in the report which was the subject of the complaint and this part of the complaint would not be addressed here.

She also noted that the complainant had made comparisons between the words "trainspotter" and a racially abusive word, and had raised concerns about fairness in terms of the way the BBC considered both these words in relation to Harm and Offence. She did not believe it was appropriate to consider comparisons between levels of abusiveness of unrelated words in the context of the substantive complaint, which was about a piece of BBC output that contained the word "trainspotter". The Adviser believed that in accordance with the Complaints Framework, her response should appropriately focus on the specific use of the term "trainspotter" in the context of this complaint, and the point of appeal relating to comparison between a racially abusive word and the term "trainspotter" would not be further addressed here.

The Adviser noted that the term "trainspotter mentality" was not used in the report. The actual term used by Nick Robinson was "trainspotter variety". He applied this term to himself, in the context of his concern about portraying the significance of the results to viewers in a way which gave an accurate overall picture of UKIP's achievement. In the interests of absolute clarity and accuracy, he did not want to give the impression to "people who are slightly less of trainspotter variety when it comes to politics than I am" that UKIP's success in the wider political arena was greater than it actually was.

The Adviser noted that Nick Robinson's use of the word "trainspotter" in his report was made with reference to his own detailed political knowledge. She noted that he made the comment in a slightly self-deprecating way, in the context of conveying to viewers,

without patronising them, that he did not assume they were all as familiar with the wider significance of UKIP's showing in the polls as he was. She agreed that the statement in the 13 June response by Audience Services which referred to "those more experienced political followers" was not as clear as it might have been, but she believed it was a reference to people with detailed political knowledge who, like Nick Robinson, understood the full significance of UKIP's gains in the elections.

For ease of reference, the transcript of this section of the programme is included below:

"One little note of caution, Naga. There may be people with slightly less of a train spotter variety when it comes to politics than I am, and they may think 'Oh, is that it? Are UKIP going to win a general election then? Is Nigel Farage going to be Prime Minister?' Remember, even after all this success, all these gains, they haven't got a single Member of Parliament here at Westminster. They won't control, almost certainly, a single council in the land, and they will still have far fewer councillors than all the other big three parties. What's changed though, is they've now become not just a pressure group, not just a one act wonder, or one night wonder, they are now an established fourth political party throughout the United Kingdom; less so of course in Scotland, but in England and Wales in particular they are now a fourth political party."

The programme host, Naga Munchetty, then rounded off Nick Robinson's report succinctly in her link from the studio. She picked up on his "trainspotter" remark, acknowledging that he had applied the term to himself, stating:

"Political trainspotter you may be Nick, also a man full of stamina, staying up all night and I know you are going to be busy throughout the day as well. Good to talk to you, thanks very much and see you soon."

She noted that in their response of 13 June 2014 Audience Services had explained that the reference to trainspotting was not made in direct relation to the hobby itself, and expressed their regret that the complainant felt this comment was denigrating to railway enthusiasts. She also noted that in their next response on 18 June 2014 they stated:

"The term being used wasn't as you suggest offensive rather in the context of someone very interested in the specifics of politics, the finer details if you will. However I appreciate you felt this wasn't the case."

The Adviser agreed with this view. In this context she felt the use of the words in this item had been editorially justified and although she accepted the words had offended the complainant she did not feel that they breached the requirement that BBC content meet generally accepted standards.

The Adviser believed Trustees would be of the view that Audience Services had provided a reasoned and reasonable response to the complaint and that it was appropriate for them to say that they could not respond further to the complainant's correspondence on this issue. For these reasons she did not believe the appeal had a reasonable prospect of success and she decided that it should not proceed further.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with his appeal. He provided a 12-point response outlining his dissatisfaction with the Trust Unit's decision, which included, in summary:

- Whether the phrase was “trainspotter mentality” or “trainspotter variety” was largely irrelevant. The negative use of “trainspotter” showed an ingrained disrespect for members of the hobby as well as to other ordinary people.
- Language was being used without reflecting on how such usage affects the people or the group of people named; he called this “institutionalised lingualism”.
- “Trainspotting” was just part of being a railway enthusiast and to try and say otherwise was simply wrong.
- Audience Services’ response (which the Adviser agreed with) that Nick Robinson’s use of the word trainspotting did not relate to the hobby was nonsensical.
- Dictionary definitions were no longer prescriptive; they had become simply records of how words were used – regardless of the rightness of that use.
- He objected to the use of the word “obsessively” in the OED definition.
- He compared the use of the word “trainspotter” with an everyday phrase that was in use at one time which used a racially offensive word.
- It was not relevant that Nick Robinson did not intend to cause offence. No one used “trainspotter” metaphorically in anything other than a negative way and usually as an insult. It was insulting whether or not he was referring to himself.
- The fairness guideline should apply to people who are not the subject of a programme but to whom the programme refers negatively and guideline 5.4.32 should refer to groups as well as individuals.
- The gratuitous use of negative and insulting terms should not be accepted by the BBC. The comment was denigrating.
- The thoughtless and insulting use of “trainspotter” rebounds on anyone involved in railways as an amateur.
- The suggestion that some points are not valid because of the way the Editorial Guidelines and complaints procedures are drafted is illogical.

The Committee’s decision

The Committee was provided with the complainant’s appeal to the Trust, the response from the Head of Editorial Standards and the complainant’s email asking the Committee to review her decision.

Preliminary issue

Trustees noted that the Adviser did not consider that the fairness guidelines applied to this appeal and that the complainant rejected this reasoning. The Committee agreed that the fairness guidelines were irrelevant. The complainant was not a person directly affected by the output in the sense that it was about him personally, as envisaged by the Complaints Framework for fairness complaints. They also agreed that Editorial Guideline 5.4.32, which states that “Some content can be cruel but unduly intimidatory, humiliating, intrusive, aggressive or derogatory remarks aimed at real people (as opposed to fictional characters or historic figures) must not be celebrated for the purposes of entertainment” was not applicable in this case as it was about specific individuals.

Finding

The Committee noted the item on BBC Breakfast which was the focus of this complaint. Trustees understood the complainant found the use of the word “trainspotter” to be offensive in that it was insulting and denigrating.

The Committee noted that the complainant felt the BBC had failed to fully consider the people affected by the use of the word and that he felt the word was inextricably linked to railway enthusiasts and those involved in the railways as an amateur.

Trustees agreed with the Adviser that making comparisons with other words on their respective levels of abusiveness was not useful in the context of this complaint.

The responses from Audience Services were noted. The Committee also noted that the complainant accepted that Nick Robinson did not intend any offence; however, the complainant felt this did not mean the usage was acceptable.

The Committee noted the Adviser's reference to the dictionary definition of "trainspotter". Trustees noted that in previous correspondence with Oxford University Press, the complainant said he had been told that dictionaries record usage and not whether this usage was correct and that he objected to the word "obsessive" in the OED definition. However, the Committee agreed with the Adviser that the notion of a trainspotter being an expert in detail was the definition intended in the report.

The Committee agreed with the Adviser that Audience Services had provided a well-reasoned response to the complaint. This did not raise a possible breach of Editorial Standards. Consequently, the Committee did not consider that this complaint had a reasonable prospect of success.

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

Decision of BBC Audience Services not to respond further to complaint about BBC News Online regarding “Hidden ruins of Monte Cassino monastery bombed in WWII” (and other articles)

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 complaint

The complainant contacted the BBC on 19 May 2014 to raise his concerns about the lack of acknowledgement given to the Polish contribution in the battle for the monastery at Monte Cassino in BBC News Online articles published in May 2014 at the time of the 70th anniversary of the end of the battle. The main article and embedded video that was the main subject of his complaint can be found at <http://www.bbc.co.uk/news/world-europe-27429702>

He stated:

“Yet again the BBC fails to mention that it was Polish troops that captured the monastery from the Germans. This is bias and inaccuracy. Most other news organisations covered the story about Prince Harry paying tribute to Polish soldiers. Instead the BBC shows some broken stone and other artefacts. No context of the 70th anniversary or acknowledgement of the Polish contribution. This is not impartial BBC coverage (again).”

He also cited several other links to BBC News Online articles in support of his complaint.

<http://www.bbc.co.uk/news/uk-england-sussex-27453525>

<http://www.bbc.co.uk/news/uk-england-nottinghamshire-27412958>

<http://www.bbc.co.uk/news/entertainment-arts-19109836>

<http://news.bbc.co.uk/1/hi/world/europe/3487075.stm>

The last one mentions Polish troops as follows:

The allied forces were very mixed. As well as Americans and British, there were French from North Africa, Indians and Gurkhas, New Zealanders, Canadians and Poles.

He also referred to this article which begins with the Polish troops entering the abbey:

http://news.bbc.co.uk/onthisday/hi/dates/stories/may/18/newsid_3544000/3544047.stm

1944: Monte Cassino falls to the Allies

The Polish flag is flying over the ruins of the ancient Italian monastery which has been a symbol of German resistance since the beginning of the year.

Polish troops entered the hill-top abbey this morning, six days after the latest attacks began on this strategic stronghold at the western end of the German defensive position known as the Gustav Line.

BBC Audience Services responded on 31 May 2014 acknowledging the complainant's concerns and stating:

"I was sorry that you were disappointed with the story. This was a short piece and its purpose was to look at the artefacts found in a room beneath the monastery rather than to discuss specific details about the battle which occurred there back in 1944. However, I can assure you that there was absolutely no intention to exclude the Polish contribution in this part of World War Two. Indeed, Alan [Johnston] did not mention any of the nations involved in the Battle of Monte Cassino, mentioning only that 'thousands of soldiers died on both sides in that conflict'.

"What to include in a piece such as this is frequently a very difficult decision for our producers. It's not always possible or practical to cover every single aspect of a particular subject within an individual item, but we do appreciate the feedback when members of our audience feel we may have neglected to cover a particular aspect of a story such as this."

The complainant was not happy with this response and submitted a follow-up complaint on 31 May 2014. He disagreed with the editorial choice of story. He said the "actual news story", which the BBC should have covered, was the attendance of Prince Harry at the 70th anniversary event; he said that most responsible media had covered that aspect. He cited online news articles from the Telegraph and ITV as evidence of this. He believed it was an insult to veterans only to have footage of the ruins of the monastery and to overlook the 70th anniversary ceremony. He also believed that the editorial choice seemed "rooted in the BBC's continued antipathy towards Polish people."

He also cited a further BBC News online article (not mentioned in his Stage 1a complaint) in support of his view that the Polish contribution was barely mentioned:

http://www.bbc.co.uk/history/worldwars/wwtwo/battle_cassino_01.shtml

He noted that one article he had cited previously contained inaccuracies:

<http://news.bbc.co.uk/1/hi/world/europe/3487075.stm>

He said it was not correct that it was "Algerian, Moroccan and Tunisian troops of the French Expeditionary Corps who made the decisive breakthrough". He believed that more mention of the Poles should have been made. He said that all the web pages he had listed in both his Stage 1a and Stage 1b complaints needed fixing to correct omissions.

Audience Services replied at Stage 1b on 1 July 2014. They stated that they believed they had responded as fully as they could and did not have anything further to add. They said they could not engage in further correspondence on the issue and that they did not believe that the points raised by the complainant suggested a possible breach of standards.

Appeal to the BBC Trust

The complainant appealed to the BBC Trust on 11 July 2014. He made the following point:

- Audience Services had not provided a response to his actual complaint and their referral to the BBC Trust seemed to be a departure from the BBC

Complaints Procedure since he felt the next stage should have been an escalation to the Editorial Complaints Unit.

The Trust Unit's decision

The Head of Editorial Standards, Trust Unit (the Adviser) carefully read the correspondence that had passed between the complainant and the BBC and she read the articles referred to by the complainant, and watched the accompanying video of the BBC News Online article in question. She acknowledged the strength of the complainant's feelings about this matter; however, she decided the complainant's appeal did not have a reasonable prospect of success.

The complainant appealed with regard to the way in which his complaint was handled by Audience Services. He believed that he should have been offered a referral to Stage 2 of the Complaints Procedure.

The Adviser noted that BBC Audience Services had ceased handling this complaint at Stage 1b and that the complaint had not gone to Stage 2. She therefore decided that the point she should consider was whether an appeal against the decision of BBC Audience Services not to correspond further with the complainant had a reasonable prospect of success.

The Adviser noted that the complainant had raised concerns that the BBC News Online content engaged the BBC Editorial Guidelines on Impartiality and Accuracy. The Guidelines can be found in full at www.bbc.co.uk/guidelines/editorialguidelines.

The Adviser acknowledged that the complainant considered that for BBC News Online not to specifically acknowledge the Polish contribution in the battle for the Monastery of Monte Cassino in its output at the time of the 70th anniversary of the end of the battle showed an anti-Polish bias. The complainant considered this meant that the output was inaccurate.

The Adviser also acknowledged the complainant's view that the News Online article at the centre of the complaint should have focused on Prince Harry paying tribute to Polish soldiers instead of focusing on the destruction of the monastery and artefacts found amidst the rubble. She acknowledged his belief that, by focusing on these elements rather than the "actual news story", the BBC was not being impartial.

She noted that the guidelines did not contain an expectation that the BBC would cover all elements of a news story within every report or article about that story. Within the context of reporting on the 70th anniversary of the Allied victory at Monte Cassino, the BBC had chosen, in the particular News Online articles cited by the complainant, to focus on certain elements which did not receive the same kind of general news coverage given to the anniversary by other media organisations specified by the complainant.

In the article which was the main subject of the original complaint, which can be found at <http://www.bbc.co.uk/news/world-europe-27429702>, BBC News had chosen to feature a report by Alan Johnston showing a room in the Monte Cassino monastery which had never been filmed before and is not shown to the public. The text accompanying the video report states:

Prince Harry is attending events to commemorate the 70th anniversary of the end of the World War II battle for the monastery at Monte Cassino in southern Italy on Sunday.

Tens of thousands of Allied troops, many of them British, died in the effort to drive the Germans out of the area and the monastery itself - founded 1,500 years ago - was almost completely destroyed.

In the period after the war the abbey was magnificently restored on its mountaintop perch.

But traces of its wartime destruction can still be found.

Hidden in a dark corner of the monastery is a room containing the last of the rubble from the bombing of Monte Cassino.

It is not shown to the public, and it has never been filmed before, but Alan Johnston was given access.

The Adviser appreciated that the complainant would have preferred the article to contain a specific mention of the Polish contribution to the battle, and to make clear that it was Polish troops who entered Monte Cassino and raised the Polish flag. She noted, however, that the military actions of the campaign were not the subject of this article.

She noted that several related stories, which did feature further information on the battle, appeared on the BBC News Online website, and that one of these linked to the following story:

<http://www.bbc.co.uk/news/uk-england-nottinghamshire-27412958>

This was a BBC Nottingham local news story about a Newark veteran of the battle and his personal story of the battle. A link in that story took interested readers to another online article, which was about the making of a new film about the battle for Monte Cassino by John Irvin; another related web link was provided on that page to the BBC History web pages at:

http://www.bbc.co.uk/history/worldwars/wwtwo/battle_cassino_01.shtml

She noted that the BBC History link provided interested readers with further information about the history of the Battle of Monte Cassino. A short excerpt from a much longer article, by Professor Richard Holmes, and accessed via this link, is included below:

"It was not until May that the Allies at last brought their full might to bear on Cassino. They did it by moving much of the 8th Army from the Adriatic coast, while 5th Army shifted its weight to reinforce the Anzio beachhead, now under the command of Major General Lucian Truscott.

The new offensive, Operation Diadem, smashed through the neck of the Liri valley by sheer weight, and **the Polish Corps took Monte Cassino**. Between the Liri and the sea, the French Corps made rapid progress through the Aurunci Mountains, and by the third week in May the Germans were in full retreat."

The Adviser noted that a link to this same historical account was also published on another web page, which had been cited by the complainant:

<http://www.bbc.co.uk/news/entertainment-arts-19109836>

She noted two other web pages also cited by the complainant:

<http://www.bbc.co.uk/news/uk-england-sussex-27453525>

<http://www.bbc.co.uk/news/uk-england-nottinghamshire-27412958>

She noted that these were links to regional news web pages which reported stories about local veterans who were going back to Monte Cassino for the anniversary after 70 years. These were personal interest local news stories in which veterans from these regions gave first-hand accounts of their own experiences.

The Adviser appreciated that the complainant would have preferred to see more BBC coverage of Prince Harry and his comments on the final taking of Monte Cassino by Polish troops. However, she did not believe that Trustees would be likely to conclude that evidence had been presented which suggested that BBC News Online had breached Editorial Guidelines in the way it chose to report or contextualise the 70th anniversary of the end of the months' long battle for Monte Cassino which involved Allied troops from many nations and resulted in an enormous number of casualties on both sides of the conflict. That being the case she did not believe that Trustees would consider that corrections to the online articles, as requested by the complainant, would be an appropriate matter for them to consider.

She noted that BBC Audience Services, in their response of 31 May 2014, had explained the context of the BBC News Online article which had been the main subject of the original complaint:

"This was a short piece and its purpose was to look at the artefacts found in a room beneath the monastery rather than to discuss specific details about the battle which occurred there back in 1944. However, I can assure you that there was absolutely no intention to exclude the Polish contribution in this part of World War Two. Indeed, Alan [Johnston] did not mention any of the nations involved in the Battle of Monte Cassino, mentioning only that 'thousands of soldiers died on both sides in that conflict'.

"What to include in a piece such as this is frequently a very difficult decision for our producers. It's not always possible or practical to cover every single aspect of a particular subject within an individual item..."

The Adviser agreed with that view, and also noted that the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. "The direction of the BBC's editorial and creative output" was specifically defined in the Charter (paragraph 38, (1) (b)) as a duty that was the responsibility of the Executive Board, and one in which the Trust did not get involved unless, for example, it related to a breach of the BBC's editorial standards which did not apply in this case. Decisions relating to the choice of story and the manner in which it was reported fell within the "editorial and creative output" of the BBC and were the responsibility of the BBC Executive. The Adviser acknowledged the complainant's view that BBC News Online had made "a strange editorial choice" but she believed that Trustees would consider that responsibility for the selection of stories for inclusion in BBC News Online web pages rested with the editorial news teams rather than the Trust.

With regard to the complainant's concern that his complaint should have received a referral to Stage 2 of the Complaints Procedure, the Adviser noted that the BBC's editorial complaints system had three stages. The first two stages lay with the BBC; the third and final stage was an appeal to the Trust.

Complaints were answered at Stage 1 by BBC Audience Services. Where complainants remained dissatisfied after a Stage 1 response, they could request a further response at Stage 1. If they were still dissatisfied they might be able to escalate their complaint to Stage 2. Complaints at Stage 2 were either answered by the BBC's Editorial Complaints Unit, or they were considered by a senior manager within the BBC.

However, under the Complaints Framework, it was open to the BBC to close down correspondence – this meant the BBC was notifying the complainant that it did not wish to respond further and the complainant could appeal to the Trust if they considered the BBC was wrong to close down the correspondence. That was the procedure Audience Services followed in this case. BBC Audience Services notified the complainant on 1 July 2014 that they did not intend to correspond further as they had nothing to add to their earlier correspondence and they did not consider the complaint related to a breach of the BBC's Editorial Guidelines. Where a complainant appeals to the Trust in these circumstances, if Trustees uphold the appeal, the complaint is sent back to the BBC for a further response.

The Adviser believed that Trustees would be of the view that it was reasonable for the BBC to say that it could not respond further to the complainant's correspondence on this issue. She believed they would consider that Audience Services had provided a reasoned and reasonable response to the complaint. For these reasons she did not believe the appeal had a reasonable prospect of success and decided that it should not proceed further.

Further, the Adviser noted that, in his follow-up complaint of 31 May, the complainant had stated that one BBC online article (<http://news.bbc.co.uk/1/hi/world/europe/3487075.stm>) had reported that it was: "Algerian, Moroccan and Tunisian troops of the French Expeditionary Corps who made the decisive breakthrough". He stated this was "wrong & inaccurate".

However, the Adviser noted that the BBC's Complaints Framework referring to editorial complaints stated:

2.7 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.

She considered that the complaint of inaccuracy had not been made at Stage 1a. She considered that the framework did not allow new elements of complaint to be added later in the process for good reason – the framework was intended to allow complaints to be addressed in an effective and timely way in the interests of all licence fee payers, and this became increasingly difficult if complaints acquired new elements during the time they were being considered. She therefore considered that Trustees would be likely to conclude that it was reasonable for Audience Services not to address this separate element of complaint.

Therefore, for all the reasons set out above, the Adviser did not consider the appeal had a reasonable prospect of success and she did not propose to put it before Trustees.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with his appeal. He acknowledged the Adviser's explanation of the BBC's complaints procedure, and expanded on the previous experience he has had with the complaints procedure.

The complainant queried how many complaints got through the initial stages of the complaints procedure without the necessity of an appeal; and the transparency of the process.

He reiterated his view that his complaint raised issues relating to accuracy and bias in BBC output. He questioned News Online's editorial judgement in choosing a story about 'rubble' instead of an important anniversary. He argued that the story that was covered was a waste of money. The complainant provided a link to the anniversary story covered by .gov.uk

The complainant outlined the significance of the event and noted:

"Sadly, many veterans will not live to see another such ceremony. The BBC totally ignored the commemoration event which may be considered insulting to all veterans and their descendants regardless of nationality."

The complainant felt the failure to cover the anniversary could be an editorial oversight or a deliberate oversight that exemplifies the negative BBC attitude to coverage of Polish issues.

The Committee's decision

The Committee was provided with the complainant's appeal to the Trust, the response from the Head of Editorial Standards and the complainant's email asking the Committee to review her decision.

The Committee noted that the complainant queried how many complaints were successful at the initial stages of the complaints process. Trustees were of the view that the ability of the BBC and the Trust to close down correspondence where applicable is essential to keeping the complaints process proportionate. The Committee did not think that the complainant had raised any evidence to suggest that his complaints had been closed down unreasonably and noted that a right of appeal to the Trustees exists as an important safeguard wherever correspondence is closed down.

The Committee noted the main article and embedded video which was the focus of this complaint: Hidden ruins of Monte Cassino monastery bombed in WWII. It was noted that the complainant questioned why this story was covered rather than focusing on the 70th anniversary event.

Trustees noted that while the News Online article did not develop the story about Prince Harry's visit, the visit was mentioned at the start of the article. They also noted that the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. "The direction of the BBC's editorial and creative output" was specifically defined in the Charter (paragraph 38, (1) (b)) as a duty that was the responsibility of the Executive Board, and one in which the Trust did not get involved unless, for example, it related to a breach of the BBC's editorial standards.

The Committee agreed that the choice of which story to cover was a matter for the BBC Executive and not the Trust.

Trustees noted the complainant's view that the BBC failed adequately to acknowledge the Polish contribution in the battle for the monastery at Monte Cassino in BBC News Online

articles at the time of the 70th anniversary of the end of the battle and his view that this breached accuracy and impartiality guidelines.

Trustees noted the complainant's view that the fact that the article did not contain a specific mention of the Polish contribution to the battle was either an unusual editorial decision or a deliberate tactic to give insufficient coverage to Polish interests.

The Committee agreed with Audience Services and the Adviser that the military actions of the campaign were not the subject of this article. It was, therefore, not necessary to mention the Polish contribution to the battle in order to achieve due accuracy or impartiality.

It was noted that coverage of the Polish contribution was acknowledged in other articles mentioned by the Adviser. The Committee was satisfied that there was no indication of bias against Poland or the Polish people in these articles.

The Committee concluded that Audience Services had provided a reasoned response to the complainant and there was no reasonable prospect of success for this appeal.

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

Decision of BBC Audience Services not to respond further to complaints about coverage of the anti-austerity march, 21 June 2014

Two complainants asked the Editorial Standards Committee to review the decision of the Trust Unit that their appeals did not qualify to proceed for consideration by the Committee.

Background

On 21 June 2014 a demonstration organised by the People's Assembly took place in London. It was advertised on the internet as follows:

(http://www.thepeoplesassembly.org.uk/national_demo_21_june)

"No more Austerity
demand the alternative: Saturday 21 June

National demonstration and free festival

Assemble 1pm, BBC HQ, Portland Place, London W1A 1AA (Tube: Oxford Circus)

March to Parliament Square

The People's Assembly, Trade Unions and campaign groups are organising a national demonstration and free festival to demand the alternative.

Living standards continue to drop, forcing millions into poverty, yet the politicians remain addicted to austerity.

This demonstration will assemble right on the BBC's doorstep and march to Parliament to demand that the alternative to austerity is no longer ignored. Join us.

Invite your friends on Facebook

Speakers and performers:

We have two stages (one each at the beginning and the end) with great lineups of people from across the movement, incl (in no particular order at the moment): Owen Jones, Chris Bough, Russell Brand, Caroline Lucas, Doncaster Care UK strikers, Ian Lawrence NAPO, Mayor Lutfur Rahman, Lindsey German Stop The War Coalition, John McDonnell MP, Lee Jasper - BARAC, Matt Wrack - FBU, Diane Abbott MP, Rehana Azam - 999 Call, People's March for NHS, Sam Fairbairn People's Assembly, Kate Hudson CND, Christine Blower NUT, Jasmin Stone - E15 Mothers, Jeremy Corbyn MP, Francesca Martinez, Len McCluskey Unite, Mandy Brown - Lambeth College Strike, Ritzy Cinema Workers campaign, John Hilary - War on Want, Jackie Davis - KONP, Sean McGovern - TUC disabled workers' committee.

Festival: In no particular order: Leon Rosselson - (folk), Tony Cannam (funky jazz), Stephen Morrison-Burke (poet), The Farm (All Together Now), Logic MC, comedian Kate Smurthwaite, Sean Taylor."

The organisers reported that 50,000 people joined the demonstration.

A number of complainants contacted the BBC to complain that the event had not been given sufficient coverage. The BBC Trust received seven appeals between 27 June and 18 July 2014 on the matter.

In all these cases, Audience Services had informed the complainants that they would not be corresponding further because the points raised had not suggested a possible breach of editorial standards and there had been nothing to add to the response that had already been given.

The following piece relating to the demonstration was on the BBC London website:

<http://www.bbc.co.uk/news/uk-england-london-27962963>

[film clip of demonstration (no commentary) included]

Caption: The march was organised by the People's Assembly group

Thousands attend People's Assembly's first austerity protest

22 June 2014 Last updated at 10:37 BST

The first austerity protest organised by the People's Assembly campaign group has taken place in London.

Organisers say tens of thousands of people met at Portland Place and marched to Parliament Square on Saturday.

The group included politicians and union leaders and was protesting about the impact of cuts around the country.

The complaints and appeals to the BBC Trust

As all of the complainants had raised the same substantive issues, the Trust Unit considered it appropriate to consolidate the appeals in accordance with paragraph 5.6 of the Editorial Complaints and Appeals Procedure.

The allegations made by the complainants (in both complaints and appeals correspondence) included the following:

1. The anti-austerity march was an important event and the BBC had ignored it

- 50,000-plus people marched on the capital to demonstrate against the Government's austerity programme.
- Demonstrators and speakers included well-known names from the media, celebrities, unions etc.
- The demonstrators reflected widespread popular discontent.
- The event should have been a lead story, and there should have been interviews with speakers and accompanying reports into the effects of austerity measures.

2. The BBC chose to report other, less important events

- There seemed to be room to report sport and celebrity gossip but not space for the march.
- Were reports on the length of the grass at Wimbledon, a picture of a man trying to snatch a baton, and visitors to Stonehenge more pressing?
- Stories from overseas might have been important but people cared more about what was happening in the UK and such reports should have been given priority.

3. As a public broadcaster, the BBC had a particular role in reporting the truth and the voice of ordinary people

- The BBC, as a public broadcaster, had a responsibility to report the truth and by not reporting an important event, was in breach of its own guidelines.
- An important social movement had been airbrushed out by the BBC.
- The public had the right to expect more from the BBC, especially given it paid the licence fee.
- It was not acceptable in a democracy to freeze out the voices of ordinary people who were trying to make their views known.
- Voices from outside the political establishment were rarely heard on BBC programmes.

4. What coverage there was, was paltry

- The BBC claimed there was coverage of the demonstration but, in reality, it was almost non-existent.
- The broadcast reports mentioned by the BBC could not be found on the internet.
- There was a short piece on the website but this was published the following day only after pressure from complainants and was accompanied by a brief film clip with no commentary.
- What limited coverage there was, was not on mainstream channels.
- With 24-hour news coverage, there was surely more time to report on the demonstration.

5. Ignoring the event was a deliberate decision made by the BBC

- The march started right outside the BBC's headquarters, so the BBC could not say it was unaware of the demonstration.
- The march was about, among other things, BBC bias and that was the reason it had started there.
- The BBC deliberately chose to pretend that the event had not happened.

6. The BBC had a political agenda

- By censoring coverage of the march, the BBC demonstrated its political bias.
- The BBC's political agenda was to support the Government's harmful policies which were making poor people pay for the mistakes of the bankers who had caused the financial crisis.
- The BBC was censored by Number 10 and it had been stated on social media that the march had not been covered because that was the price the BBC had to pay for keeping the licence fee.
- The BBC censored the march in order to quell potential public disorder as people became increasingly angry about inequalities.

- The biased underreporting demonstrated that the BBC was nothing but a Government mouthpiece, a “Ministry of Truth”.

7. The BBC should apologise and provide assurances it would cover large demonstrations in future

- Given the strength of feeling and the number of complaints, the BBC should take the feedback it had had seriously and learn from it.
- The BBC should apologise and undertake to cover such demonstrations properly in future.

Audience Services had sent the following first reply (Stage 1a of the complaints procedure) to complainants:

“Thanks for contacting us about coverage of the People’s Assembly anti-austerity demonstration on 21 June.

We understand you feel there was insufficient coverage of this demonstration by BBC News.

We have received a wide range of feedback about our coverage of this story. In order to use our TV licence fee resources efficiently, this general response aims to answer the key concerns raised, but we apologise in advance if it doesn’t address your specific points in the manner you would prefer.

Your concerns were raised with senior editorial staff at BBC News who responded as follows:

‘We covered this demonstration on the BBC News Channel with five reports throughout Saturday evening, on the BBC News website on Sunday, as well as on social media. We choose which stories we cover based on how newsworthy they are and what else is happening and we didn’t provide extensive coverage because of a number of bigger national and international news stories that day, including the escalating crisis in Iraq, British citizens fighting in Syria and the death of Gerry Conlon.

We frequently report on the UK economy and what it means for the British public. We also reflect the concerns of people such as those demonstrating, and others who hold opposing views, across our daily news output on TV, radio as well as online, and we also explore them in more depth including in our political programming and current affairs investigations, debates on “Question Time” and during interviews and analysis on programmes such as “PM” and “Newsnight”. Inevitably, there may be disagreements over the level of prominence we give to stories, but we believe our coverage of this subject has been fair and impartial.’

We hope this goes some way to explaining our position, and thanks again for taking the time to contact us.”

When complainants wrote a second time to Audience Services (Stage 1b of the complaints procedure), they were informed that:

“We appreciate that you felt strongly enough to contact us again and have noted your points. We feel that we responded as fully as we could, given the nature of

your complaint, and do not have more to add. This reply is therefore to explain that we do not consider the points you raised suggested a possible breach of standards. We reported them to the BBC staff responsible but are not able to engage in more correspondence or address new complaints and questions at this stage of the BBC's complaints procedures."

The complainants were also told they could ask the BBC Trust to review the decision. Seven complainants then contacted the BBC Trust to ask it to review the decision.

The Trust Unit's decision

The relevant correspondence was reviewed by the Trust Unit. The Head of Editorial Standards carefully read the correspondence that had passed between the complainants and the BBC, as did an Independent Editorial Adviser.

The appeals were considered individually on their merits when making the decision about whether each qualified for consideration by the Trust. The consolidated decision of the Head of Editorial Standards (the Adviser), dealt with all the issues that had been raised and was intended to ensure that the key reasons for the decisions were communicated to the complainants in an efficient manner.

The Adviser noted that BBC Audience Services had ceased handling the complaints at Stage 1 of the complaints procedure and that the complaints had not gone to Stage 2. She therefore decided that the point she should consider was whether appeals against the decision of BBC Audience Services not to correspond further with the complainants had a reasonable prospect of success.

The Adviser began by considering whether Audience Services had been justified in its assessment that the complainants had not offered evidence of a possible breach of the BBC's editorial standards. The Adviser noted that these standards were set out in the BBC's Editorial Guidelines (<http://www.bbc.co.uk/guidelines/editorialguidelines>), with the most applicable being the Guidelines relating to Impartiality, and Editorial Integrity and Independence from External Interests.

The Adviser examined those areas of complaint first that clearly related to the Editorial Guidelines. She thought those were points 5 and 6 and part of point 3 that, taken together, alleged that the BBC had made a deliberate decision to ignore this important demonstration and so had revealed its political agenda. This agenda was, according to some of the complainants, dictated by the Government, in support of austerity measures aimed at poor people, and was designed to suppress public unrest. Some complainants pointed to the BBC's role as a public broadcaster, its particular obligation to remain unbiased and reflect a range of views, and to report the truth.

The Adviser fully appreciated the strength of feeling of complainants, particularly those who might themselves have participated in the march or who had been following its organisation on social media and were hoping to see more coverage by the BBC. She also appreciated that some of the complainants considered the demonstrators to be representative of a groundswell of public opinion.

The Adviser also agreed that the Editorial Guidelines on Impartiality and Editorial Integrity and Independence from External Interests clearly required the BBC to remain impartial, to reflect a range of views, and to remain independent of influences, including political pressures, when editorial decisions were made.

However, she thought it was a considerable leap to conclude that because coverage of the demonstration was not as extensive as complainants would have liked that that, of itself, was sufficient to indicate bias and lack of political independence by the BBC. She could not see other evidence in the correspondence of a breach of the Guidelines.

The Adviser thought that what had been shown was that the news judgements of BBC editors, given the other competing stories on news lists on that particular day, was different to the judgements that would have been made by complainants, and that this also applied to points 1, 2, parts of point 3, and point 4, as summarised, above.

She noted that Audience Services had made this point and explained that the demonstration was competing with what had been a number of “bigger national and international news stories that day, including the escalating crisis in Iraq, British citizens fighting in Syria and the death of Gerry Conlon”. She also noted what the BBC had said about the reports of the march that had actually been broadcast, and the other opportunities that were provided on a continuing basis for various viewpoints to be heard.

The Adviser appreciated that some complainants had opinions about coverage given to what they considered to be more trivial stories and noted the view expressed in one complaint that the demonstration should have been ranked above any international story.

She thought it would be impracticable for the BBC to commit itself to substantial coverage of a similar demonstration in future, as set out under point 7, because the need for judgements to be made about the day's news priorities would always apply.

The Adviser noted that it was not for the BBC Trust to challenge the news priorities of the BBC Executive in relation to any particular day or coverage of a specific story. The Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General.

She noted that “the direction of the BBC's editorial and creative output” was specifically defined in the Charter (paragraph 38, (1) (b)) as a duty that was the responsibility of the Executive Board, and one in which the Trust did not get involved unless, for example, it related to a breach of the BBC's editorial standards, which the Adviser had no evidence had applied in this case.

The Adviser concluded that decisions relating to the news list priorities on a given day fell within the “editorial and creative output” of the BBC and were the responsibility of the BBC Executive.

The BBC Trust did, however, have a duty to ensure the BBC fulfilled its obligation to deliver duly impartial news overall, and one of the ways this was done was to commission reviews of specific subject areas: a review of the breadth of opinion as reflected in BBC output was one example relevant to these complaints:
http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/our_work/breadth_opinion/breadth_opinion.pdf.

These reviews, which were commissioned on a continuing basis, included wide consultations with individuals and organisations, and provided a balanced view across the BBC's output, rather than attempting to come to judgements about the BBC's impartiality and independence based on coverage of one event on one day.

Overall on these points, the Adviser judged that the Trustees would be likely to consider

Audience Services had been justified in its assessment that the complainants had not offered evidence of a possible breach of the BBC's editorial standards in this matter.

The Adviser then looked at whether it appeared to be reasonable for Audience Services to have said at Stage 1b that it had responded as fully as it could, that it had no more to add, and that it was not able to engage in further correspondence on the issue.

The Adviser noted that under the Complaints Framework the BBC was required to consider the interests of all licence fee payers and was entitled to close down correspondence if it had nothing further it wished to say and considered the complaint did not raise an issue of substance. The Adviser noted that this was what had happened in relation to these complaints and the BBC had closed down the correspondence at Stage 1b.

The Complaints Framework stated:

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

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

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

1.9 If the BBC Executive decides not to investigate your complaint for one or more of the reasons set out in paragraphs 1.7 and 1.8 above, you can write to the BBC Trust (address below) and ask the Trust to review that decision...

1.10 If the Trust agrees with you, the Executive will be directed to investigate your complaint. If the Trust does not agree with you, the Trust's decision is final.

The Adviser considered that Audience Services had provided a sufficiently detailed response to the complaints at Stage 1a and any further correspondence would have been likely merely to have repeated many of the same points.

She appreciated that not every complainant had had all their specific, detailed questions answered – for example, the exact nature of competing stories on the day and the total time allocated to each of them – but she considered that, within the bounds of what was reasonable in a consolidated response, the BBC had engaged with the main points that had been made by the complainants.

The Adviser considered Trustees would be likely to conclude that BBC Audience Services had given a reasoned and reasonable response to the complaints and had acted appropriately in declining to enter into further correspondence. She therefore did not consider the appeals had a reasonable prospect of success and did not propose to put them before Trustees.

The Adviser also noted that in one case a complainant was concerned that they had not been able to fit their complaint in to the number of characters allowed in the webform. The Adviser noted this issue had been considered by the Trustees when they approved the reviewed Complaints Framework and Associated Procedures in 2012. It was open to the complainant to complain by letter if they were not able to fit their full complaint in to the webform.

Request for review by Trustees

Two complainants requested that the Trustees review the decision by the Trust Unit not to proceed with their appeals. They made the following points:

- The BBC had not adequately covered a march of 50,000 people and had not provided links to prove the exact extent of the coverage it did provide and that the amount matched the importance the marchers were trying to convey. This was control of the media by the government.
- One complainant said his complaint was about the BBC's lack of coverage of the austerity cuts mainly regarding the bedroom tax. He wanted all his complaints put together and raised as an overall appeal about bias. He noted there were time limits in which to complain about output but he believed there was evidence of cumulative long term bias. He wanted answers to all his questions raised in each complaint.

The Committee's decision

The Committee was provided with the complainants' appeals to the Trust, the response from the Head of Editorial Standards and the complainants' emails asking the Committee to review her decision.

The Committee acknowledged the complainants' view that the anti-austerity march had received insufficient BBC coverage.

It was noted that one complainant asked for all his individual complaints to be reviewed together as his overall complaint concerned a lack of reporting by the BBC over time about issues related to austerity cuts in general, mainly regarding the bedroom tax. The Committee did not consider it appropriate to consider all his complaints together or answer all his questions as part of this appeal. A complainant who wanted to raise complaints of bias could do so through examples that took place within the six weeks given to raise a complaint.

The Committee agreed that its decision would be confined to the specific issue of whether BBC Audience Services had been correct in not responding further to the complaints about BBC news coverage of the anti-austerity march in accordance with the BBC Complaints Procedure.

Trustees noted that the Stage 1 consolidated response had included a statement by senior editorial BBC News staff which explained that:

"We didn't provide extensive coverage because of a number of bigger national and international news stories that day, including the escalating crisis in Iraq, British citizens fighting in Syria and the death of Gerry Conlon."

With regard to longer term reporting about the economy, BBC News stated:

"We frequently report on the UK economy and what it means for the British public. We also reflect the concerns of people such as those demonstrating, and others who hold opposing views, across our daily news output on TV, radio as well as online, and we also explore them in more depth including in our political programming and current affairs investigations, debates on 'Question Time' and during interviews and analysis on programmes such as 'PM' and 'Newsnight'. Inevitably, there may be disagreements over the level of prominence we give to

stories, but we believe our coverage of this subject has been fair and impartial.”

It was noted that the Editorial Guidelines on Impartiality and Editorial Integrity and Independence from External Interests required the BBC to remain impartial, to reflect a range of views, and to remain independent of influences, including political pressures, when editorial decisions were made.

The Committee noted that the complainants had not raised any evidence that the BBC had allowed its coverage to be affected by political pressure.

Trustees noted that the BBC Trust had a duty to ensure that the BBC fulfilled its obligation to deliver duly impartial news overall. However, individual decisions relating to news priorities such as how much coverage to give and on what outlet were the responsibility of the BBC Executive – in this case BBC News editorial staff. This was because the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. “...the direction of the BBC’s editorial and creative output” was specifically defined in the Charter (Article 38, (1) (b)) as a duty that was the responsibility of the Executive Board, and one in which the Trust did not get involved unless, for example, it related to a breach of the BBC’s editorial standards.

The Committee acknowledged the complainants’ views that the coverage of the anti-austerity march should have been more extensive, but it agreed with the Trust’s Adviser that this view, of itself, was not evidence of a breach of editorial standards. It considered that the response from Audience Services had been reasoned and reasonable and was of the view that Audience Services had been justified in its assessment that the complainants had not offered evidence of a possible breach of the BBC’s editorial standards.

The Committee believed that Audience Services had acted appropriately within the BBC Complaints Procedure in closing down the complainants’ correspondence on this issue at Stage 1b.

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

Decision of BBC Audience Services not to respond further to complaint about BBC Online profile of Hamas

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

The complaint

The complainant wrote to BBC Audience Services on 10 July 2014 alleging that material detail about Hamas had been omitted from the profile of the organisation published on the news pages of BBC Online at <http://www.bbc.co.uk/news/world-middle-east-13331522>

The complainant noted this extract from the article:

"Hamas's charter defines historic Palestine – including present-day Israel – as Islamic land and it rules out any permanent peace with the Jewish state.

"The charter also repeatedly makes attacks on Jews as a people, drawing charges that the movement is anti-Semitic."

The complainant said that Article 7 of the Hamas charter states:

"'The Day of Judgement will not come about until Moslems fight the Jews (killing the Jews), when the Jew will hide behind stones and trees. The stones and trees will say O Moslems, O Abdulla, there is a Jew behind me, come and kill him. Only the Gharkad tree, (evidently a certain kind of tree) would not do that because it is one of the trees of the Jews' (related by al-Bukhari and Moslem)."

The complainant alleged that the article had "materially understated the official violent intentions of Hamas".

BBC Audience Services responded on 21 July 2014 noting that (as well as the extract of the article quoted by the complainant) the article also stated that "Hamas is committed to the destruction of Israel" and that it included a link to a website where the Hamas charter, including the quote highlighted by the complainant, was readily available to read.

The complainant responded on 21 July 2014 suggesting that the Hamas charter called for the death of Jews everywhere, not just in Israel. He said:

"Their violently bigoted stance is fundamental to their own description of themselves - why would BBC edit that out?"

BBC Audience Services responded on 4 August 2014 stating:

"Whilst we appreciate your concerns, we can only reiterate that we don't believe our description or the wider article in which it appears 'has materially understated the official violent intentions of Hamas', and we believe the group and its aims were put into context."

BBC Audience Services noted the part of the BBC complaints procedures where it states that, in order to use licence fee resources appropriately, the BBC will normally investigate

only where evidence is provided to suggest a possible breach of Editorial Guidelines and otherwise will not normally investigate further.

The complainant was advised of his option to request a review by the BBC Trust of the decision not to respond further to the complaint.

Appeal to the BBC Trust

The complainant wrote to the BBC Trust on 4 August 2014. He reiterated his earlier points that Article 7 of the Hamas charter was a material fact in the context of the Hamas profile on the BBC website. He added:

“BBC has edited out this important fact. I do note that the link to the charter is there but my question is why does BBC feel that this is not material enough to discuss in detail in the description? The BBC description mentions many other less important points. Hamas’s claim is a fact from their charter and it is stated in numerous of their public addresses and supported by their actions. This fact and racist goal by the organization requires no editorial overlay. By editing it out the BBC has decided to apply a layer of political correctness to an extremist and xenophobic organization the result of which is that the BBC description hides and understates their true violent intentions.”

“If calling for the death of a minority is not a material detail for the BBC then I really do not know what a sufficiently material detail is. As you can guess, I am Jewish and I am indeed offended when there is an organization which calls for my death in such a racist manner and the BBC has decided that this is not a material detail and avoids mentioning this point specifically - not to mention highlighting it, analyzing it and addressing it in detail. I therefore believe there has been a grave breach of BBC’s own editorial guidelines.”

The complainant noted that “the BBC editorial guidelines of 2010 say very clearly that the BBC is committed to: ‘the need to be duly accurate and impartial and to avoid causing audiences unnecessary offence’” and said that he considered there had been “a grave breach” of the guidelines.

The complainant also raised a new issue in relation to this paragraph in the BBC Online article:

“The charter also repeatedly makes attacks on Jews as a people, drawing charges that the movement is anti-Semitic.

“Hamas has, however, offered a 10-year truce in return for a complete Israeli withdrawal from territories occupied in 1967: the West Bank, Gaza Strip and East Jerusalem.”

The complainant said:

“The statement ‘Hamas has however’ is problematic for me and tries to draw a parallel between the negotiations with Israel and the charges of general anti-Semitism – what is the connection? I believe this is also offensive. Racism is racism and the civilized world should have zero tolerance to all forms of racism.”

The Trust Unit’s decision

The relevant correspondence was reviewed by the Trust Unit. The Trust Unit's Senior Editorial Complaints Adviser (the Adviser) also carefully read the correspondence that had passed between the complainant and the BBC and she acknowledged the strength of the complainant's feelings.

The Adviser noted that BBC Audience Services had ceased handling this complaint at Stage 1 and that the complaint had not gone to Stage 2. She therefore decided that the point she should consider was whether an appeal against the decision of BBC Audience Services not to correspond further with the complainant had a reasonable prospect of success.

The Adviser considered firstly whether the complainant had received an adequate and appropriate response to his allegation. The Adviser therefore noted the grounds on which BBC Audience Services had declined to respond further to the allegation, that in not specifically referring to Article 7 of the Hamas charter, the BBC Online profile of Hamas had omitted a material fact. In its responses to the complainant BBC Audience Services made the following points:

- that the article included a link to a translation of the Hamas charter which included the exact words in the complainant's allegation;
- that the article noted that Hamas was committed to the destruction of Israel;
- that BBC Audience Services believed that "the group and its aims were put into context".

The Adviser noted that, as a rule, how programme makers choose to report an issue was an editorial decision, which rested with the BBC Executive as set out in the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC. "The direction of the BBC's editorial and creative output" was specifically defined in the Charter (paragraph 38, (1) (b)) as a duty that was the responsibility of the Executive Board, and one in which the Trust did not usually get involved unless, for example, it raises broader issues of breach of the Guidelines.

The Adviser noted that in his submissions at Stage 1 the complainant had alleged there was a broader issue arising out of the omission: that the content of Article 7 of the Hamas charter was a material fact because, said the complainant, it called for the death of Jews everywhere and that Hamas' "bigoted stance is fundamental to their own description of themselves" and material in trying to understand the situation. The Adviser noted too the complainant's assertion that the BBC had "edited out" the reference "to apply a layer of political correctness".

The Adviser noted the following sentence from the article:

"The charter also repeatedly makes attacks on Jews as a people, drawing charges that the movement is anti-Semitic."

In the Adviser's view this was a clear reference to the sentiment of Article 7 and went beyond just a reflection of Hamas' anti-Zionist stance. Whilst the Adviser appreciated that in the complainant's view the article may not have gone as far, or included as much detail, as he would have liked in delineating Hamas' views on the Jewish people, she did not think the allegation that the BBC was deliberately avoiding the issue was sustainable. Nor did she take the view – taking into account the article overall – that the audience

would have been misled as to Hamas' violent intent towards either the state of Israel or the Jewish people as a whole. She noted in addition that the link in the article to the Hamas charter itself was in a prominent position in the introductory paragraphs of the text.

The Adviser noted that the guideline requirement is for due accuracy and due impartiality defined in the editorial guidelines thus:

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

The Adviser noted that the Hamas charter is a lengthy document, and in the context of an article profiling the movement as a whole, there would be neither the requirement nor the audience expectation for greater detail on any one part of the charter.

The Adviser hoped she had been able to demonstrate, with reference to the responses from Audience Services, the article as a whole and the applicability of the Editorial Guidelines in relation to the issues raised, why in her opinion BBC Audience Services had responded appropriately and given adequate reasoning for closing down the complaint at Stage 1B. She therefore did not consider the appeal had a reasonable prospect of success and did not propose to put it before Trustees.

Request for review by Trustees

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

- He said there had been a material misstatement and breach of the Editorial Guidelines.
- He said that the essence of his complaint was that he had requested the BBC's description to make specific and direct reference in the main body of the article to the charter point calling for the death of Jews, but that the BBC had decided that this was not sufficiently a "matter of substance" to refer to the Trustees.
- He said the BBC had taken the view that all the information was actually there (hence no "substantial" breach) and any reader could find it by following the link or inferring from the "destruction of Israel" phrase that their ideology extends beyond Israel to the Jewish people at large. He believed that by not making specific distinction between the "destruction of Israel" and the "murder of Jews", the BBC description made a material factual error.
- He said that by excluding direct reference to the charter point, readers would be misled. Anyone clicking on that page after reading a headline about Hamas would not understand the true nature of their intentions without a detailed study.
- He said that excluding direct reference to the charter point would also send a "message of sanction which would undoubtedly be a material breach of any ethical guidelines, not to mention Editorial Guidelines".

The Committee's decision

The Committee was provided with the complainant's appeal to the Trust, the response from the Senior Editorial Complaints Adviser and the complainant's letter asking the Committee to review her decision.

Trustees noted the complainant's view that the BBC Online profile of Hamas was misleading and amounted to a breach of the Editorial Guidelines because, by not stating specifically that the Hamas charter called for the death of Jews everywhere, it "materially understated the official violent intentions of Hamas".

The Committee noted that the Editorial Guidelines require due accuracy and due impartiality. When considering the article's "due impartiality" and "due accuracy", it took into account whether there would be a requirement or an expectation on the part of the reader for greater detail on any one part of the Hamas charter. The Committee noted that the link to the Hamas charter was provided in the introduction to the article for any readers who wanted to read further.

Trustees noted that in the Stage 1 response, BBC Audience Services had stated the BBC's belief that Hamas and its aims were put into context within the article, which profiled the Hamas movement as a whole and did not set out to examine the detail of the Hamas charter.

The Committee agreed with that view and did not consider that readers of the article would have been misled. It noted the points made by the Trust's Adviser in relation to Article 7 of the Hamas charter and noted the sentence from the article referred to by the Adviser in her decision:

"The charter also repeatedly makes attacks on Jews as a people, drawing charges that the movement is anti-Semitic".

The Committee agreed with the Adviser's view that this was a clear reference to the sentiment of Article 7 and went beyond just a reflection of Hamas' anti-Zionist stance. Taking into account the article overall, the Committee considered that the audience would not have been misled as to Hamas' intent.

The allegation that the article sent a "message of sanction" was rejected by the Committee as the article did not make any qualitative statements indicating approval. It provided and set out to provide a brief overview of the Hamas movement and accompanied this with a link to further information to enable readers to draw their own conclusions.

In the context of an article which sought to provide an overview profile of the Hamas movement, the Committee believed it would be likely to conclude that the article met the guideline requirements for due accuracy and due impartiality.

The Committee considered that Audience Services had provided a reasoned and reasonable response to the complaint and was justified in its decision not to engage in further correspondence on the issue.

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

Decision of BBC Audience Services not to respond further to complaint about the BBC Online interactive map of Auschwitz

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 complaint

The complainant contacted the BBC on 20 May 2014 to express his concern at what he considered to be factual errors in a BBC Online series of slides associated with an interactive map of Auschwitz.

He considered that the slides contained errors and inaccuracies by omission, and also displayed bias against the Polish people.

BBC Audience Services responded on 25 May 2014, acknowledging the complainant's comments and saying that the BBC had contacted the site owners about the complainant's observations but explained they were unable to guarantee a response.

The complainant was not happy with this response and made a further complaint on 25 May 2014 as he felt the BBC was dismissing his complaint by "passing the buck". He said it was a BBC web page and therefore the BBC was responsible for the content on it.

Audience Services acknowledged the complaint on 2 June 2014 and explained that it could take longer than the target 20 working days to investigate further and respond at Stage 1b.

The complainant contacted the BBC again on 27 July 2014 to complain about the delay in answering this complaint. He said that two months had passed and he had still not received a response.

Audience Services sent a response on 5 August 2014 apologising for the delay and said a further response would be sent as soon as possible.

Audience Services sent their final response at Stage 1b on 11 August 2014 explaining that they would be unable to take the complaint any further as it was submitted beyond the 30 day time frame for considering complaints. The response stated:

"The content for this site was created to support the BBC series 'Auschwitz: The Nazis and the Final Solution'. I'm aware that the content has no creation date marked on it, but a cursory internet search using the text which appears on the first slide 'Auschwitz: the Nazis and the Final Solution' will bring up the BBC title and the year as 2005. As the content has been there for quite a long period of time it does mean that your complaint about it falls outside any agreed handling period – please see Clause 2.1 at the following link:
http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2012/complaints_fr_work_ed_complaints.pdf"

The complainant was advised that he could appeal against this decision to the BBC Trust.

Appeal to the BBC Trust

The complainant appealed to the BBC Trust on 11 August 2014. He said that the Stage 1b response was factually incorrect in stating that complaints about online content should be made within 30 days. He cited the following paragraph from the BBC Complaints Framework:

"2.2 If you make a first party complaint about content currently published on a BBC website there is no time limit, but the BBC may decline to consider it if it is no longer practicable and cost-effective to investigate it and adjudicate upon it fairly."

The complainant therefore considered that it was incorrect to state that his complaint could not be investigated and he also considered that his complaint had been handled poorly with delayed and dismissive replies.

In terms of the substantive complaint, the complainant stated that the online content "Interactive map of Auschwitz" contained harmful inaccuracies which were misleading and offensive. He complained about the following inaccuracies:

- The slides 'Anti-Jewish Policy' and 'Crematoria' did not mention Polish (non-Jewish) victims despite that being the second highest category of victims; Jehovah's Witnesses and homosexuals were mentioned despite the total number of victims in those categories being far fewer.
- Slide 'Mobile Killing Units' stated that "Local volunteers and police were organized by the SS...into execution squads". He said this was offensively inaccurate given that the slides concerned Auschwitz in Nazi occupied Poland; there was no Polish collaboration or surrender; there were no "local" Polish volunteers – the pre-war Polish police force had been disbanded by the Germans with many of the Polish officers executed or imprisoned.
- Slide 'Anti-Jewish Policy': use of the term "political opponents" was misleading and inaccurate. The people described in this way were predominantly Polish and were considered enemies by the invading and occupying Nazi regime, and victims included 149 Catholic priests. He felt it was "ridiculous and ignorant" to call them "political opponents". He also felt it was pandering to German Nazi propaganda.

He said the online content at the centre of the complaint was "yet another example of how Poland is disparaged or ignored. In this case the BBC content is factually inaccurate which again reveals the BBC's anti-Polish attitudes, bias and unfairness".

The Trust Unit's decision

The Senior Editorial Complaints Adviser (the Adviser) carefully read the correspondence that had passed between the complainant and the BBC, and she acknowledged the strength of the complainant's feelings; however, she decided the appeal did not have a reasonable prospect of success.

The complainant appealed both on the substance of his complaint which concerned his view that the BBC online content at the centre of the complaint had breached Editorial Guidelines on Accuracy and Impartiality. He also appealed on the matter of the handling of his complaint by BBC Audience Services.

In terms of the substance of the complaint, the Adviser noted that Audience Services had ceased handling the complaint at Stage 1 and that the complaint had not gone to Stage 2. She therefore decided that the point she should consider was whether an appeal against the decision of BBC Audience Services not to correspond further with the complainant had a reasonable prospect of success.

The Adviser acknowledged the complainant's concern that Audience Services had not interpreted the BBC Complaints Framework correctly with regard to online content.

In their response of 11 August 2014 Audience Services provided a link to paragraph 2.1 of the BBC Editorial Complaints and Appeals Procedures which states:

"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 write 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."

The Adviser noted that the complainant believed this not to apply to his complaint because paragraph 2.2 states:

"If you make a first party complaint about content currently published on a BBC website there is no time limit, but the BBC may decline to consider it if it is no longer practicable and cost-effective to investigate it and adjudicate upon it fairly."

The Adviser noted that paragraph 2.2 applied to "first party" complaints. Paragraph 1.5 of the Editorial Complaints and Appeals Procedures states that a first party complaint:

"...is a complaint alleging that someone ('the first party') has personally been treated unfairly, or suffered an unwarranted invasion of their privacy, in BBC content, or in the making of BBC content. **Such complaints can be brought only by the first party or by someone who has the authority to represent them.**"

The Adviser acknowledged that the complainant felt very strongly on the issues he had raised but she believed Trustees would be of the view that this was not a first party complaint, and therefore this provision was not relevant in this instance.

She noted too that the complaints framework allowed for either the BBC or the Trust to "exceptionally" consider complaints that were made out of time. However, she noted that timeframes were set out throughout the complaints process. She considered this was done with good reason in that it allowed complaints to be responded to in an efficient and reasonable way – and that it became increasingly difficult to address complaints as time passed. She considered Trustees would be likely to conclude the Executive had acted reasonably in informing the complainant he was out of time and that there was no good reason why they should, "exceptionally", consider the complaint about output that had been published online nine years previously.

She therefore considered Trustees would be likely to conclude that Audience Services had interpreted the Complaints Procedure correctly when making the decision to close down the complaint because it was submitted out of time and that BBC would not engage in further correspondence on the issue.

The Adviser noted the complainant had additionally complained about the way his complaint had been handled. He considered the first response he had been sent was “a total brush off” and that subsequently he had been referred to part of the complaints procedure that he did not consider applied.

She noted that Audience Services’ first response had informed the complainant:

“I’ve contacted the site owners regarding your observation, however, I am unable to guarantee a response.”

He had also been notified that his concerns would be registered on the audience log.

The complainant had been sent two holding responses which acknowledged the delay before being sent the final response which informed him that as the site had been published in 2005, the BBC would not be able to consider the complaint as it was out of time.

The Adviser noted that BBC Audience Services had sought to pass on the complaint to the author of the webpages – but had advised the complainant in its first response that it was possible they would not be able to respond. She considered that while Audience Services had been unable to assist with the substance of the complaint, their responses had given appropriate reasoning and had sought to be helpful.

She considered the complainant’s comments about delays in responding to his complaint. She noted that Audience Services had acknowledged when there were delays in responding and had apologised for these. She considered the complainant might be interested in a report published by the Trust in 2014 following a year-long “mystery shopping” exercise which was designed to test the BBC complaints system. The report can be found at http://www.bbc.co.uk/bbctrust/news/press_releases/2014/mystery_shopping_2014.html.

She noted that for the vast majority of complainants at Stage 1 the BBC was providing a timely reply.

Therefore, for all the reasons set out above, the Adviser considered the appeal did not have a reasonable prospect of success and she did not propose to put it before Trustees.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with his appeal. He considered the replies from Audience Services to be blasé and that the complaints system not fit for purpose.

The complainant considered that the BBC content on Auschwitz was misleading and inaccurate. He reiterated his point which was that Auschwitz was started by Nazi Germans as a place for Polish prisoners. Non-Jewish Poles constituted the second biggest category of victims killed in the camp. The BBC listed other victims on one slide but not Poles.

The complainant objected to the time limit on complaints about web content (30 working days except for first party complainants on whom there is no time limit). He considered the BBC should deal with obviously incorrect, misleading, biased, harmful and offensive or untruthful material even after the time limit had expired.

The complainant considered that "...as the complainant [he was] actually the first party in the complaint". He further argued that "as a person of Polish descent [he had] been treated unfairly by the BBC". He also noted that the BBC and the Trust Unit had not established whether he was in fact an "Auschwitz survivor (or a descendant etc.)". He argued that first party is not defined in the complaints procedure and that the procedure uses the wording 'may' as opposed to 'shall' when it says "you may be making a first party complaint about unfair treatment ... that has directly affected you." He commented on the different meanings of 'may' and 'shall'.

The complainant added that the BBC had failed to produce evidence of any positive content regarding Poles and Poland. He considered he had evidence to show the BBC was anti-Polish.

The Committee's decision

The Committee was provided with the correspondence with the BBC and with the Trust Unit including: the complainant's appeal to the Trust; the response from the Senior Editorial Complaints Adviser; and the complainant's emails asking the Committee to review her decision. The Committee was also provided with a link to the series of slides which were the focus of this complaint.

The Committee noted the complainant's comments about the BBC Complaints Procedure as well as those concerning his substantive complaint about the BBC Online interactive map of Auschwitz. The Committee also noted the complainant's assertion that the BBC was anti-Polish.

The Committee did not consider that the complainant had presented any evidence which suggested he was a first party complainant as defined by paragraph 1.5 of the Editorial Complaints and Appeals Procedure. It was noted that the complainant had not personally been treated unfairly or suffered an unwarranted invasion of his privacy, in BBC content or in the making of BBC content and could therefore not be considered a first party complainant. The Committee concluded that Audience Services had acted reasonably in informing the complainant that his complaint fell outside the time frame as set out in the Complaints Procedure. The Committee noted that the material had been published some years previously and did not believe there were exceptional reasons to consider the complaint outside the stipulated time frame.

The Committee did not consider that any credible evidence had been presented to suggest that the BBC was anti-Polish.

The Committee considered that Audience Services had issued a reasoned and reasonable response to the complaint and it had been appropriate for them to say that they could not investigate further as it had been submitted outside the time frame stipulated in the Complaints Procedure. As a result of that conclusion, the Committee did not consider it appropriate, proportionate or cost effective to uphold the appeal.

The Committee did not consider that this complaint had a reasonable prospect of success and therefore decided that this appeal did not qualify to proceed for consideration.

The Committee decided that this appeal did not qualify to proceed for consideration.

Decision of BBC Audience Services not to respond further to complaint about BBC News Online, “What weapons are being used in the Israel-Gaza conflict”, 10 July 2014

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 complaint

The complainant emailed the BBC on 12 July 2014 about an online article by the BBC Diplomatic Correspondent. The article is available here: <http://www.bbc.co.uk/news/world-middle-east-28245343>. She considered the article was inaccurate in its headline (“What weapons are being used in the Israel-Gaza conflict”) as it did not examine the details of Israel's weaponry and firepower in the same detail as given to the Palestinians' military capability. She complained that the only Israeli equipment examined was the Iron Dome and this was essentially defensive and therefore not relevant. The complainant concluded that this was very one-sided.

BBC Audience Services replied on 15 July 2014 with a standard response to the many pieces of feedback, complaints and queries coming into the BBC about the conflict in Gaza at that time. This did not address the specific points made by the complainant.

The complainant pointed out the lack of specific response in her email of 23 July 2014. She said the response had ignored her complaint and had actually referred her back to the complained-about article as an authority. She said that the article included 12 paragraphs about Palestinian weaponry, detailing all their rockets, but there had been nothing comparable about Israel's army, air-force or navy equipment.

BBC Audience Services responded on 31 July 2014. The response apologised for the first, generic reply and agreed that it had not addressed the complainant's points. The reply went on to state that the article had not purported to be an exhaustive list of every weapon but that there was a comparison between the two sides' accuracy of targeting. It added:

“The article does also discuss Palestinian rockets, their type, range and names but in doing so reflects the lack of sophistication of many of these rockets, both in technology and the logistics around transporting and firing them, as well as their dependence on key smuggled parts and general inaccuracy.”

And the response pointed out that this had been compared to the “full panoply of Israeli air power”. The reply continued:

“Taken as a whole we believe the fact of Israel's modern weapons systems and air power has not gone unreported either in this article or in our wider coverage and we have also clearly covered the damage inflicted by Israeli air strikes, including

images and footage from the aftermath of some of these strikes and interviews with civilians on the ground, across a range of reports.”

The reply stated that Audience Services had answered as fully as they could and had nothing to add to their earlier correspondence. It also stated that they did not consider the complaint raised an issue that might relate to a breach of the Editorial Guidelines. Audience Services informed the complainant they would not correspond further on the subject and notified the complainant that she could appeal against this decision to the BBC Trust.

Appeal to the BBC Trust

The complainant appealed to the BBC Trust on 13 August 2014. The complainant appealed on the substance of her original complaint, that this online report had an inaccurate headline in that Israel's weaponry was not described in any detail and that the article was one-sided in not doing so.

The complainant concluded by raising two other concerns about this article:

- “1. The article refers to ‘Israel's response to the upsurge in rocket fire...’. As Israel is the occupying power in Gaza, surely the rocket fire is fundamentally a response to that (illegal) occupation?
2. The context of the situation, ie the illegal occupation and blockade are not mentioned at all in the article, let alone the breaches of international law made by Israel so the article is devoid of extremely important context.”

The Trust Unit's decision

The relevant correspondence was reviewed by the Trust Unit. The Senior Editorial Complaints Adviser (the Adviser) also carefully read the correspondence that had passed between the complainant and the BBC. The Adviser decided that the complainant's appeal did not have a reasonable prospect of success.

While the complainant had appealed on the substance of her complaint, the Adviser noted that BBC Audience Services had ceased handling this complaint at Stage 1 and that the complaint had not gone to Stage 2. She therefore decided that the point she should consider was whether an appeal against the decision of BBC Audience Services not to correspond further with the complainant had a reasonable prospect of success.

The Adviser noted that the BBC's editorial complaints system had three stages. The first two stages lay with the BBC; the third and final stage was an appeal to the Trust. Complaints were answered at Stage 1 by BBC Audience Services. Where a complainant remained dissatisfied after a Stage 1 response, they could request a further response at Stage 1. If they were still dissatisfied they could be advised to escalate their complaint to Stage 2. Complaints at Stage 2 were either answered by the BBC's Editorial Complaints Unit, or they were considered by a senior manager within the BBC.

The Trust represented the third and final stage in the complaints process. Complainants appealed to the Trust if they remained dissatisfied after their earlier correspondence with the BBC.

Under the Complaints Framework, the BBC was required to consider the interests of all licence fee payers and was entitled to close down correspondence if it had nothing further

it wished to say and considered the complaint did not raise an issue of substance. The Editorial Complaints and Appeals Procedures stated:

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

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

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

1.9 If the BBC Executive decides not to investigate your complaint for one or more of the reasons set out in paragraphs 1.7 and 1.8 above, you can write to the BBC Trust (address below) and ask the Trust to review that decision. If the Trust agrees with you, the Executive will be directed to investigate your complaint. If the Trust does not agree with you, the Trust's decision is final.

The Adviser noted that this was what had happened in this instance – the BBC had closed down the correspondence at Stage 1b. BBC Audience Services notified the complainant on 31 July 2014 that they did not intend to correspond further as they had nothing to add to their earlier correspondence. Where a complainant appealed to the Trust against a 1b closedown, if Trustees upheld the appeal, the complaint was sent back to the BBC for a further response.

The Adviser's assessment of the merits of the appeal therefore focussed on whether the complainant had received an appropriate response to the issues she had raised. She noted that the complainant had raised new issues on appeal and noted too that the Complaints Framework stated:

2.7 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.

She therefore did not consider it appropriate to address the new points raised in appeal, as they had not been raised with the Executive and had not had a response from the BBC.

The complainant stated in her appeal:

"I read the 12 paragraphs of the article which detailed Palestinian weaponry (rockets - as is known there is no army, navy or airforce) and I was keen to learn in a similar way about the weaponry used by Israel, especially as in an early paragraph we are expected to believe that the article will consider both Palestinian and Israeli weaponry:

'So what resources are the two sides using in this conflict...'

but was very disappointed as the audience were only told that

'The full panoply of Israeli air power has been used...'

without detailing **any** of it; not even the names of any of the aircraft used, let alone their capabilities, and any weaponry to be used by ground forces or the navy was completely ignored. The response from [the Complaints Adviser, BBC News website] advised me that the article

'did not purport to be an exhaustive list of every weapon being used'."

The Adviser noted that Audience Services had stated:

"I think it's worth pointing out that your expectations of the article notwithstanding it did not purport to be an exhaustive list of every weapon being used in the conflict ...

"[the article] makes the point both that Israel is engaged [in] an intense air campaign and that this includes the deliberate targeting of homes in Gaza.

"The article does also discuss Palestinian rockets, their type, range and names but in doing so reflects the lack of sophistication of many of these rockets, both in technology and the logistics around transporting and firing them, as well as their dependence on key smuggled parts and general inaccuracy.

"By contrast we describe how 'The full panoply of Israeli air power has been used in a steadily escalating series of attacks against rocket launch sites, weapons stores, and the command elements of Hamas and other groups'."

The Adviser noted that the response also drew the complainant's attention to the fact that the article referred to the "asymmetric" burden of casualties and that it had stated:

"...The death toll among Palestinians is rising markedly as the Israeli air campaign intensifies. The Gaza Strip is a relatively small area. Much of it is densely populated."

For completeness, the Adviser noted the requirements for due accuracy and due impartiality within the Editorial Guidelines:

<http://www.bbc.co.uk/editorialguidelines/guidelines/>

The Adviser noted the opening paragraphs of the article stated:

The struggle between the Israeli military and the armed wings of Hamas and other Palestinian groups in the Gaza Strip is a classic asymmetrical conflict. The two sides are far from evenly matched but each can nonetheless bring considerable pressure to bear upon the other.

Inevitably, though, the burden of casualties is asymmetric too. The death toll among Palestinians is rising markedly as the Israeli air campaign intensifies. The Gaza Strip is a relatively small area. Much of it is densely populated.

Israel claims that a significant proportion of the Hamas infrastructure is located in civilian areas.

The Israel Defense Forces (IDF) say they take great care in targeting to try to reduce civilian casualties to a minimum, but there are controversial aspects to their targeting policy: for example, the decision to strike at the homes of known Palestinian military commanders, condemned not least by Israeli human rights groups.

Israel's extraordinary practice of calling up the residents of such homes to warn them to vacate the premises ahead of any attack does not alter the fact that deaths have occurred.

The article established that [by bringing the population of major Israeli cities under threat, Hamas] brought “considerable pressure to bear on Israel”.

Conversely, the article noted that “The full panoply of Israeli air power has been used” in Gaza and also stated that: “Israel is also building up its forces for a ground operation if necessary”.

The Adviser agreed there was more detail in the online article about the weapons used by Palestinians to attack Israel. She noted the graphic in the article that explained the relevance of this: that each rocket had a different range, so that the least powerful rockets had a range of approximately 17km while the most powerful rockets could reach 160km – that is, potentially reaching virtually every part of Israel. She noted too that the article, in stating that Israel had the potential to carry out a ground invasion, was also illustrated with an image of Israeli soldiers on a tank.

[The article had stated that the rockets caused “disruption and fear” and that central to that was the range of the rockets] – the article had described this point as “crucial”: [The article said:

Range here is crucial. Bringing the population of major Israeli cities under threat, however inaccurate the weapon, causes huge disruption and fear.]

She noted that the article stated the Israeli response to incoming rocket fire from Gaza had been both “defensive and offensive”. She agreed that the article gave considerable detail about the “Iron Dome” defensive system but she did not agree with the complainant that this was irrelevant. She noted that the article set out the extent to which the Iron Dome system failed to stop rockets and considered that Trustees would be likely to conclude this would have had a bearing on Hamas’s ability to spread fear in Israel.

The Adviser considered how the article “signposted” its scope. The Adviser, noting the complainant’s point, accepted that the headline, “What weapons are being used in the Israel-Gaza conflict”, might have suggested it would be an article that would literally detail weaponry. But she considered that a headline is not intended to be read in isolation from the item as a whole, rather it should be considered alongside the content which follows.

The Adviser noted that the starting point for the article was clarified in the opening two paragraphs (set out above) and its focus was then explicitly defined in the final sentence of the same section:

So what resources are the two sides using in this conflict and are they locked into a cycle of escalation that makes a new ground war more likely?

The Adviser took the view that the relevant consideration was not whether the detail included on each side’s weaponry was equivalent, but whether the article as a whole was a fair reflection of the material facts about the military strengths and aims of each side.

The Adviser acknowledged that Israel’s offensive arsenal was not detailed in the same way as the Palestinian arsenal, but she did not share the complainant’s view that such an approach was necessary in order that the article could be judged duly impartial, as required by the Editorial Guidelines.

[The article clearly set out that the rockets cause fear] – albeit that they were imprecise and covered very different ranges; while Israel’s military approach involved having far

more precise fire power, greater protective systems, the use of air power and the possibility of sending in ground troops.

The Adviser noted that, as a rule, how output producers choose to report an issue, or whether to report it at all, was an editorial decision, which rested with the BBC Executive as set out in the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC. "The direction of the BBC's editorial and creative output" was specifically defined in the Charter (paragraph 38, (1) (b)) as a duty that was the responsibility of the Executive Board, and one in which the Trust did not usually get involved unless, for example, it raised broader issues of breach of the Guidelines.

The Adviser did not consider she had seen evidence that suggested the Guidelines had been breached and considered that Trustees would be likely to conclude that BBC Audience Services had given a reasoned and reasonable response to the complaint and had acted appropriately in declining to enter into further correspondence. She therefore did not consider the appeal had a reasonable prospect of success and did not propose to put it before Trustees.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with her appeal. The complaint asked (in response to the Adviser citing a Stage 1 reply) to be directed to coverage of "Israel's modern weapons systems and air power" which Stage 1 had said "had not gone unreported either in this article or in our wider coverage".

The complainant believed that in not providing this information the article was biased and that in terms of not providing this information in the output as whole, editorial guidelines 4.2.2, 4.2.3, 4.4.1, 4.4.2, and 4.4.7 had been breached.

The complainant noted that the Adviser had decided that two points made on appeal by the complainant had not been raised at Stage 1 and that it was not appropriate to address the two points as they had not had a response from the BBC.

These were

- "The article refers to 'Israel's response to the upsurge in rocket fire...' As Israel is the occupying power in Gaza surely the rocket fire is fundamentally a response to the illegal occupation."
- "The context of the situation i.e. the illegal occupation and blockade are not mentioned at all in the article let alone the breaches of international law made by Israel so the article is devoid of externally important context."

The complainant noted that she had said at Stage 1 that "there are other issues with the article but there is inadequate space where to raise them effectively eg no mention of the occupation nor the illegality of Israel's actions in targeting civilian areas".

The complainant also argued that it was disingenuous to justify not answering the questions posed by the headline "What weapons are being used in the Israel-Gaza conflict" and also in the text "So what resources are the two sides using in the conflict..." by saying "a headline is not intended to be read in isolation from the item as a whole, rather it should be considered by the content which follows".

She further argued that the Senior Editorial Complaints Adviser had made a mistake in her reading of the following part of the article concerning Palestinian rockets:

“Range here is crucial. Bringing the population of major Israeli cities under threat, however inaccurate the weapon, causes huge disruption and fear” [Changes have been made to this finding so that the article is correctly reflected].

The complainant ended by saying that the article was one-sided and biased. She noted that it included the statement: “Israel claims that a significant proportion of the Hamas infrastructure is located in civilian areas” without mentioning the rules of war that govern bombing civilian areas or that the people of Gaza are an occupied population and have a right to resist the occupying force (even by taking up arms). The article detailed only the weaponry of those under occupation.

The Committee’s decision

The Committee was provided with the correspondence with the BBC and with the Trust Unit, including: the complainant’s appeal to the Trust; the response from the Senior Editorial Complaints Adviser; and the complainant’s email asking the Committee to review her decision. The Committee was also provided with the relevant article.

The Committee acknowledged the complainant’s view that the article was one-sided and biased and that the headline of the article, “What weapons are being used in the Israel-Gaza conflict”, was misleading. The Committee agreed that it was possible to infer from the title that a list of weapons being used in the conflict might be itemised within the article, but considered that, in this case, the headline should not be judged in isolation from the article, when assessing the content against the guidelines on impartiality.

The Committee noted that Editorial Guideline 4.2.5 provides that “We [the BBC] exercise our editorial freedom to produce content about any subject, at any point on the spectrum of debate, as long as there are good editorial reasons for doing so”. The Committee agreed that the relevant consideration was whether the article as a whole was a fair reflection of the material facts about the military strengths of each side and the consequences of those military strengths. It was observed that there was good editorial reason to analyse these issues at the time the article was written.

The Committee agreed that Israel’s weaponry was not detailed in the same way as the Palestinian arsenal, but this did not automatically mean the article breached Guidelines on Impartiality and Accuracy.

The terms of the Editorial Guidelines on Impartiality were considered by the Trustees. It was observed that guideline 4.1 states that “due” means that impartiality must be adequate and appropriate to the output, taking account of the subject and nature of content, the likely audience expectation and any signposting that may influence that expectation. Trustees considered that audiences would have expected an overview, but not necessarily an exhaustive one, of the military capability of each side in the conflict.

The Committee agreed with the Adviser’s analysis that key factors in the conflict were examined in the article in an impartial manner including the following matters:

- this was a “classic asymmetrical conflict” but that nonetheless each side could bring “considerable pressure to bear upon the other”
- casualties were asymmetric

- the Israeli air campaign was intensifying and the Palestinian death toll was rising markedly
- the Gaza strip is densely populated
- Israel claims that a significant proportion of Hamas's infrastructure is in civilian areas
- the population of Israel's major cities is under threat because of the range of Palestinian rockets and that the range is an important factor
- the types of rockets, their range and the impact of the range of the rockets
- attacks by "the full panoply of Israeli air power" on rocket launch sites, weapons stores and the command elements of Hamas and other groups
- the defensive system Iron Dome made up of interceptor missiles
- radar and command systems
- the growing likelihood of a ground incursion.

Having reviewed these key points Trustees considered that the article presented an appropriate and duly impartial overview of the military capability of each side in the conflict.

The Committee noted the complainant's point that she had mentioned at Stage 1 that there had been no mention of the occupation nor of the "illegality of Israel's actions in targeting civilian areas" and the Trust's Adviser was wrong to treat these issues as new points and disbar them. Trustees agreed with the complainant that she had mentioned and alluded to these points at Stage 1. However, Trustees were clear that in an article of this type which focused on the military strengths of each side it was not necessary to mention the occupation (or the provisions of international law) to achieve due accuracy and due impartiality.

For completeness, the Committee noted that the description of weaponry in the article was duly accurate and there was no evidence that the guidelines on accuracy and in particular guidelines 3.1, 3.2.1, 3.2.2 and 3.2.3 were breached.

The Committee believed it would be likely to conclude that the article was duly accurate and impartial.

The Committee noted that the complainant wished to be directed to specific information about Israeli weapons and the complainant's view that, by not providing this information, the BBC was in breach of guidelines 4.2.2, 4.2.3, 4.4.1 4.4.2, and 4.4.7.

Trustees agreed (as they had found that they would be likely to conclude that this article was duly impartial and duly accurate without a specific list of Israeli weaponry) that it would not be appropriate, proportionate or cost effective to ask the BBC to produce evidence that it had listed Israeli weaponry elsewhere in BBC output.

The Committee considered that Audience Services had given a reasoned response to the complaint and had acted reasonably in declining to enter into further correspondence on the matter.

The Committee did not consider that this complaint had a reasonable prospect of success and therefore decided that this appeal did not qualify to proceed for consideration.

The Committee decided that this appeal did not qualify to proceed for consideration.

Decision of BBC Audience Services not to respond further to complaint about “Pope Francis cements reputation for deft diplomacy”, BBC Online, 26 May 2014

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 complaint

The complainant wrote to BBC Audience Services on 10 June 2014 about a caption to a photograph in a BBC Online article showing Pope Francis praying at Israel's separation wall in Bethlehem. The article can be found at this link:

<http://www.bbc.co.uk/news/world-middle-east-27576656>

The complainant said the description of the separation wall as a “barrier that separates the Palestinian territories of the West Bank from Israel” was inaccurate. She said the accepted UN description was “ ‘occupied’ Palestinian territories” and that 85% of the wall is built within the territories, separating Palestinians from their own land, and from other Palestinians in the West Bank and East Jerusalem.

The complainant noted also this sentence from the article:

“Just to show that he was not capitulating to Palestinian propaganda while visiting Bethlehem on Sunday, Pope Francis on Monday stopped briefly, again off-schedule, to pay his respects at a monument to Israeli victims of Palestinian attacks.”

The complainant said:

“The Pope did not capitulate to anything/anyone when visiting Bethlehem (by visiting the wall) - his advisors made it quite clear that he had chosen himself to make this unscheduled stop and this was what was reported by other news outlets - why use this emotive and inappropriate language (including the use of the term propaganda) - please explain? On the other hand the other off-schedule stop mentioned in the second part of the paragraph (to see a memorial plaque in West Jerusalem) was actually asked for by the Israeli prime minister and yet a phrase like ‘capitulation to Israeli propaganda’ was not used there, even though it would have been more accurate than where it was used!”

BBC Audience Services responded on 15 July 2014 stating in relation to the complainant's first point that it had changed the wording. Regarding the second allegation, the response said:

“[The reporter's] article does not say that he ‘was capitulating to Palestinian propaganda’ in deciding to stop off at the barrier. The line in question alludes to the fact that the Pope was photographed praying at a section of the barrier replete with graffiti such as ‘Free Palestine’ and ‘apartheid wall’, providing the Palestinians with an undeniably powerful image. The Israelis requested that the Pope visit the memorial as a counter to his visit to the barrier, which the Pope agreed to. It is

perfectly reasonable therefore for [the reporter] to conclude that the Pope wanted to be seen to be fair.”

The complainant responded on 22 July 2014 reiterating her concerns. She stated that the picture caption referred to the “Israeli security barrier” and she stated this was “Israeli terminology”. In terms of the text, she stated:

“... it is still described as ‘the barrier that separates Palestinian towns and villages in the West Bank from Israel’ which is almost exactly the same as before and remains inaccurate: it separates Palestinians, under occupation, from their own land, and other Palestinians, under occupation, in the West Bank and East Jerusalem, not Israel. Israel’s occupation of these towns and villages and its annexation of East Jerusalem is considered illegal, so this part of Jerusalem MUST NOT be called Israel.”

In relation to her second allegation about the Pope’s visit to the barrier in Bethlehem, the complainant said the reply had not addressed her question about the use of emotive and inappropriate language, nor had it addressed why the article had not mentioned that the stop at the monument to Israeli victims was at the request of the Israeli government.

BBC Audience Services responded on 11 August 2014 stating that it had reviewed the wording of the caption, that it should have used more neutral terminology and that it had now been amended. The caption now refers to the “Israeli barrier” rather than the “Israeli security barrier”. Regarding her second point, the response said that it did not feel the language used was either emotive or inappropriate.

BBC Audience Services said it had responded as fully as it could and that it had nothing further to add. The complainant was advised of her option to request a review by the BBC Trust of the decision not to respond further to the complaint.

Appeal to the BBC Trust

The complainant wrote to the BBC Trust on 20 August 2014 stating that whilst a change had been made to the photo caption, the following paragraph in the text remained inaccurate (emphasis added by complainant):

“First in Bethlehem, an 8m-high, graffiti-covered concrete section of the barrier that separates Palestinian towns and villages in the West Bank from Israel”

The complainant reiterated the substantive points she had made in her response of 22 July 2014 and included a weblink to an article published by a UN body which was about a village she herself had visited and which she said demonstrated her point that there are Palestinian villages and Palestinian land on the Israeli side of the barrier⁴⁷.

In relation to her second allegation the complainant said:

“It is inappropriate, and rather disingenuous to suggest that the Pope’s visit to the Wall in Bethlehem would have shown capitulation to Palestinian propaganda had he not also visited the Israeli memorial, particularly as he was already scheduled to visit a number of sites important to Israelis (eg Western Wall, Mount Herzl, Yad Vashem). There is no evidence to suggest that Pope Francis had capitulated to Palestinian propaganda, nor that it was anything other than at his own request to break his

⁴⁷ http://www.ochaopt.org/documents/ocha_opt_Khirbet_Khamis%20case_study_2013_11_08_english.pdf

schedule and to stand by the Wall in Bethlehem. The paragraph, again rather disingenuously, implicitly suggests that it was the Pope's decision to visit the Israeli monument whereas this was at the invitation of the Israeli prime minister. What was wrong with printing the facts, rather than supposition encased in emotive language?"

The complainant also suggested wording that she felt would be clearer and more accurate.

The Trust Unit's decision

The relevant correspondence was reviewed by the Trust Unit. The Trust Unit's Senior Editorial Complaints Adviser (the Adviser) also carefully read the correspondence that had passed between the complainant and the BBC and she acknowledged the strength of the complainant's feelings.

The Adviser noted that BBC Audience Services had ceased handling this complaint at Stage 1 and that the complaint had not gone to Stage 2. She therefore decided that the point she should consider was whether an appeal against the decision of BBC Audience Services not to correspond further with the complainant had a reasonable prospect of success.

The Adviser noted that the BBC's editorial complaints system has three stages. The first two stages lie with the BBC; the third and final stage is an appeal to the Trust. Complaints are answered at Stage 1 by BBC Audience Services. Where a complainant remains dissatisfied after a Stage 1 response, they can request a further response at Stage 1. If they are still dissatisfied they can be advised to escalate their complaint to Stage 2. Complaints at Stage 2 are either answered by the BBC's Editorial Complaints Unit, or they are considered by a senior manager within the BBC.

The Trust represents the third and final stage in the complaints process. Complainants appeal to the Trust if they remain dissatisfied after their earlier correspondence with the BBC.

Under the Complaints Framework, the BBC is required to consider the interests of all licence fee payers and is entitled to close down correspondence if it has nothing further it wishes to say. The Editorial Complaints and Appeals Procedure states:

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

The Adviser noted that the complainant believed some elements of the online report were in breach of the Editorial Guidelines on Accuracy. These can be found in full at <http://www.bbc.co.uk/guidelines/editorialguidelines>. The section relevant to the complaint states:

3.1 - The BBC is committed to achieving due accuracy. This commitment is fundamental to our reputation and the trust of audiences, which is the foundation of the BBC. It is also a requirement under the Agreement accompanying the BBC Charter.

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

The Adviser noted that judgements about what was duly accurate would vary depending on the nature of the output and the context of what was reported. She considered this was generally understood by the audience. She noted that the principal concern of the article was to consider the unusual behaviour of the Pope in intervening personally on the matter of Middle East diplomacy.

The Adviser noted that BBC Audience Services had accepted the terminology in the photo caption should have been more neutral and that, in response to this complaint, it had now been amended.

The Adviser noted that in her letter of appeal the complainant acknowledged the amendment to the photo caption, but alleged that inaccuracies remained in the text in relation to the following paragraph (emphasis added by complainant):

"First in Bethlehem, an 8m-high, graffiti-covered concrete section of the barrier that separates Palestinian towns and villages in the West Bank from Israel"

The Adviser noted the essence of the complainant's allegation, that the wording failed to reflect that there were Palestinian towns and villages on the Israeli side of the barrier and that the Israeli side of the barrier included east Jerusalem, which was considered occupied territory and should not therefore be termed "Israel".

The Adviser considered the context, in relation to whether the content would likely have achieved due accuracy and due impartiality. She noted that it was an article about the visit by the Pope to the Holy Land, written by the BBC's Vatican expert, and that its focus was on the Pontiff's style of diplomacy and his decision to personally intervene rather than using usual Vatican departments. The Adviser considered the audience would not have expected any detail about the wall beyond what was included in the article. Nevertheless she noted the requirement remained that it should not mislead the audience on material facts.

The Adviser noted the phrase which was the subject of the allegation described the barrier as a structure which "separates Palestinian towns and villages in the West Bank from Israel". While the Adviser acknowledged that the barrier did not follow the exact route of the Green Line, and also that east Jerusalem is considered occupied territory, she did not agree that the omission of this specific information on this occasion would have misled the audience; in her view these were not material facts in the context of the editorial purpose of the article. The Adviser observed also that whilst the text did not include the information highlighted by the complainant, neither did it preclude these additional facts from being true alongside what was also demonstrably true and probably the most significant effect of the wall, that it separated Israel from Palestinian towns and villages in the West Bank. The Adviser noted that B'Tselem, the Israeli human rights groups which has closely monitored the barrier's construction, stated in a report published in 2012 that less than 10% of the West Bank (including East Jerusalem) remains on the Israeli side of the barrier.⁴⁸

The Adviser noted the second allegation raised by the complainant in her appeal related to this paragraph from the text of the article:

⁴⁸ p13 http://www.btselem.org/download/201210_arrested_development_eng.pdf

“Just to show that he was not capitulating to Palestinian propaganda while visiting Bethlehem on Sunday, Pope Francis on Monday stopped briefly, again off-schedule, to pay his respects at a monument to Israeli victims of Palestinian attacks.”

The Adviser noted the grounds on which Audience Services had rejected the allegation that the phrase about “not capitulating to Palestinian propaganda” was inappropriate and emotive:

- the reference was an allusion to the fact that the Pope was photographed at the barrier in Bethlehem in front of graffiti which included phrases such as “Free Palestine” and “apartheid wall”
- the Israelis had requested the Pope visit the memorial as a counter to the barrier visit and the Pope had agreed to do so; it was therefore reasonable for the reporter to conclude that the Pope wanted to be seen to be fair.

The Adviser noted that contrary to the complainant’s assertion in her second response at Stage 1 that her allegation had not been addressed, the response from Audience Services had noted the factual basis for [the reporter’s] observation. The Adviser noted also that [the reporter] was a veteran BBC correspondent, who was travelling with the Pope and would have had access to first hand, reliable sources for his article. Whilst the article could have mentioned the visit to the memorial had been an Israeli request, or that the Pope went to the wall in Bethlehem at his request, there would have been no requirement that it did so in order for the content to have achieved due accuracy and due impartiality. The Adviser considered that in providing the detailed explanation of the background to the Pope’s visit to the memorial Audience Services had demonstrated it would likely be considered duly accurate and duly impartial for [the reporter] to have characterised his motivation in the way he did.

The Adviser noted that, as a rule, whether and how journalists choose to report an issue, is an editorial decision, which rests with the BBC Executive as set out in the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC. “The direction of the BBC’s editorial and creative output” is specifically defined in the Charter (paragraph 38, (1) (b)) as a duty that is the responsibility of the Executive Board, and one in which the Trust does not usually get involved unless, for example, it raises broader issues of breach of the Guidelines.

The Adviser considered the context was particularly relevant. The article was entitled “Pope Francis cements reputation for deft diplomacy” and there had been a demonstrable editorial purpose in this context for [the reporter’s] report to have framed the event from the perspective of the Pope’s motivation, rather than to focus on either the Palestinian or the Israeli viewpoint.

The Adviser considered that Trustees would be likely to conclude Audience Services had provided reasoned and reasonable responses to the concerns raised by the complainant. She did not, therefore, consider the appeal had a reasonable prospect of success and she did not propose to put it before Trustees.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with her appeal. The complainant considered the issues she had raised were pertinent but decided

to focus on why the wording “the barrier that separates Palestinian towns and villages in the West Bank from Israel...” was inaccurate because the issue was so important.

She said:

- suggesting that because the barrier was not the focus of the article an inaccuracy was duly accurate was disturbing. The barrier was significant or the Pope would not have stopped there.
- the part of the barrier the Pope stopped at was in Bethlehem and separates Palestinian towns and villages in the West Bank from Palestinian villages on the other side of the barrier (all the way to East Jerusalem). This area is identified as part of the Occupied Territories by the UN.
- in response to the Adviser’s assertion that it was “demonstrably true and probably the most significant effect of the wall that it separated Israel from Palestinian towns and villages in the West Bank” she noted that the International Court of Justice in an advisory opinion took the view that the barrier served the political aims of the state of Israel. She quoted from the Court’s opinion including : The Court said that it “has been traced in such a way as to include within that area the great majority of the Israeli settlements in the Occupied Palestinian Territory including East Jerusalem”. And that if the wall and regime became permanent “it would be tantamount to de facto annexation”. And that the construction of the wall and the establishment of settlements “is tending to alter the demographic composition of the Occupied Palestinian Territory”.
- in response to the Adviser noting that B’Tselem stated in a report that less than 10% of the West Bank (including East Jerusalem) remains on the Israeli side of the barrier, she gave a fuller quote which says that “approximately 15% of the Barrier will be constructed on the Green Line or in Israel. approximately [sic] 85% of its route will run inside the West Bank, isolating approximately 9.4% of West Bank territory, including East Jerusalem and No-Man’s Land”.

She further outlined the view that there was no room for inaccurate statements in any BBC reports about the barrier given the “illegality of the barrier, and its importance with regard to the Israeli occupation of the Palestinian Territories”.

The Committee’s decision

The Committee was provided with the complainant’s appeal to the Trust, the response from the Senior Editorial Complaints Adviser (the Adviser) and the complainant’s letter asking the Committee to review her decision.

The Committee noted that the complainant had asked Trustees to review the Adviser’s decision with regard to one element of her appeal but that her initial letter of appeal had raised two issues. The Committee considered the complainant’s key challenge to the Adviser’s decision. However, for completeness, Trustees considered that it was also appropriate to consider the issue that the complainant had raised in her initial appeal to the Trust.

The Committee considered the complainant’s main concern regarding the description of the barrier, noting the relevant wording in the article:

“the barrier that separates Palestinian towns and villages in the West Bank from Israel”

It noted the complainant’s view that the most significant effect of the barrier was to separate “Palestinian towns and villages in the West Bank from Palestinian villages on the other side of the barrier”. It noted too the complainant’s citation of the conclusions of the International Court of Justice in 2004 which she said “took the opinion that the wall was rather more than a simple barrier between two peoples’ territories but more importantly served the political aims of the state of Israel”.

The Committee noted this paragraph from the complainant’s request to review the Trust Unit’ decision:

“That the statement I have emphasised is inaccurate does not seem to be in contention, the adviser chose to concentrate on what the BBC term ‘due accuracy’ and seemed to conclude that, because the barrier itself was not the focus of the article, it was quite in order for the article to contain this inaccurate information. This is a very disturbing and unacceptable view.”

The Committee did not share the complainant’s interpretation of the Adviser’s decision and noted that nowhere in her decision had the Adviser suggested that the statement in the article was inaccurate. The Committee noted the focus of the Adviser’s decision had been on the subject and nature of the article, the likely audience expectation, and signposting, i.e. how much detail about the effects of the barrier would have been necessary or expected in the context of an article where the clearly stated editorial purpose was to report the Pope’s “deft diplomacy”.

The Committee considered the statistics and information which had been submitted by the complainant to support her view that the article had failed to note the most significant effect of the barrier.

The Adviser’s arguments were considered by the Trustees. It was noted that the Adviser had drawn attention to a human rights group’s report which had reported that less than 10% of the West Bank (including East Jerusalem) remained on the Israeli side of the barrier.

The Committee agreed with the Adviser that the information highlighted by the complainant was not precluded by another fact that was also generally correct, namely that the wall did indeed separate Israel from Palestinian towns and villages.

The Committee noted that this was a brief reference to the wall and agreed with the Adviser that readers would not be looking to the article for further insights on the issue, such as those suggested by the complainant. Nor did the Committee agree that such information would have been necessary in order to avoid misleading audiences.

The Committee considered the article’s description of the barrier against the Editorial Guidelines and focused in particular on paragraphs 3.1, 3.2.1, 3.2.2 and 3.2.3 of the Editorial Guidelines. In light of the reasons and the analysis given above, Trustees considered that they would be likely to conclude that the article was duly accurate in its description of the barrier, taking into account the subject and nature of the article; the likely audience expectation of an article considering the Pope’s “deft diplomacy”; and the signposting that influenced that expectation.

The Committee then considered the complainant's second point, about references in the article to the Pope's motivation in paying his respects at a monument to Israeli victims of Palestinian attacks, the day after he had prayed in Bethlehem.

The Committee noted how in her decision the Adviser had explained the factual basis on which the BBC's veteran Vatican observer, who was travelling with the Pope and who had direct access to Vatican sources, had chosen to phrase the article in the way he did.

The Committee noted the complainant's contention that rather than frame the Pope's visit to the Israeli memorial in the way it had, it should instead have noted that the Israelis had requested he visit it and that it should also have stated that there was no evidence that the Pope had capitulated to Palestinian propaganda, because it was he who had requested to visit the wall in Bethlehem.

The Committee noted the response received by the complainant at Stage 1:

"The line in question alludes to the fact that the Pope was photographed praying at a section of the barrier replete with graffiti such as 'Free Palestine' and 'apartheid wall', providing the Palestinians with an undeniably powerful image. The Israelis requested that the Pope visit the memorial as a counter to his visit to the barrier, which the Pope agreed to. It is perfectly reasonable therefore for [the reporter] to conclude that the Pope wanted to be seen to be fair."

The Committee noted that the complainant had been given a detailed and reasoned response to the allegation.

The Committee agreed with the Adviser's analysis that there was a demonstrable editorial purpose for the reporter's focus on the Pope's motivation in an article about the Pope's "deft diplomacy". The Committee considered the phrasing in the article against the Editorial Guidelines, in particular focusing on paragraphs 3.1, 3.2.1, 3.2.2 and 3.2.3. The Committee considered that it was unlikely to conclude that the language used breached the requirement for due accuracy, and that there was no possibility of concluding that the language used was knowingly and materially misleading. Furthermore, there was no credible evidence that the reporter had distorted known facts in his presentation of the Pope's diplomatic efforts. Therefore, the Committee considered that there was no reasonable prospect that this aspect of the complaint would be upheld as amounting to a breach of the Editorial Guidelines.

The Committee decided that the complaint did not raise an issue of substance and should not therefore proceed to appeal.

The Committee decided that this appeal did not qualify to proceed for consideration.

Decision of BBC Audience Services not to respond further to complaint about *Woman's Hour*, Radio 4, 25 June 2014

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 complaint

The complaint, sent on 28 June 2014, related to a cookery item on *Woman's Hour* in which the presenter interviewed the chefs at a London restaurant whilst they cooked falafel. The original complaint was titled: "Stolen Palestinian culture" and the complainant's arguments included her view that the programme made out that "...falafel/tamiya and tabbouleh used to be unknown in London" and her view that the programme did not observe that the food being discussed was Middle-Eastern and not specifically Israeli. Later in the correspondence, at Stage 1 of the complaints procedure, the complainant acknowledged that this had not been claimed in the item:

"...they did not say explicitly that falafel, hummus, tabbouleh and the like were exclusively 'Israeli', but all the same, they offer these in their own eating place, without saying once that their recipes were copies or adaptations of traditional Middle Eastern recipes."

The complainant said that as the interviewees were not challenged about the history of falafel and its accompaniments and the presenter did not point out that these dishes were Arab in origin, the BBC was failing in its accuracy and impartiality requirements.

BBC Audience Services responded substantively on 8 July 2014. The response stated that the presenter had introduced the item by saying she had first tried falafel in Israel in 1971 when it had not been available in Barnsley. BBC Audience Services also noted that the presenter did not state that falafel was not available in London or anywhere else. The response added that one of the interviewees had said you could find falafel makers all over the Middle East (not solely in Israel). The response said that nowhere in the item had it been said that falafel was solely Israeli.

In her reply also of 8 July 2014, the complainant accepted that the programme had not said explicitly that falafel and other ingredients were exclusively Israeli but she argued that when the interviewee mentioned other Middle Eastern falafel-makers:

"...she sees herself and Israelis as belonging to that part of the world and entitled to steal its food to make it theirs, as they have done with the land of Palestine which was ethnically cleansed, wiped off the map and renamed 'Israel' in 1948"

The complainant also said that the interviewee, in saying she and her partner did not realise that people would want to eat the sort of food she cooked at home, implied that this sort of food was unknown in Britain.

On 21 July 2014, BBC Audience Services responded saying that this had been a cooking item, which had not been intended to explore the wider historical origins of falafel. It added that it had been the interviewee's earlier view that the food they cooked at home would not prove popular enough to be a viable business and that this was her opinion, for which the BBC was not responsible. The response re-iterated that the item at no point

said that falafel originated in or was exclusively associated with Israel. The communication ended by saying the BBC had nothing further to add, that no possible breach of standards had been raised by the complainant's points and suggesting that, if the complainant was not satisfied, she should complain to the BBC Trust.

Appeal to the BBC Trust

The complainant appealed to the BBC Trust on 24 August 2014. The complainant appealed on the substance of her complaint; she made a number of points, including the argument that the presenter should have explained for the sake of accuracy and impartiality that her interviewees were simply cooking Middle Eastern food. The complainant did acknowledge that the programme had not stated that falafel was Israeli in origin.

The Trust Unit's decision

The relevant correspondence was reviewed by the Trust Unit. The Senior Editorial Complaints Adviser (the Adviser) carefully read the correspondence that had passed between the complainant and the BBC. She also listened to the item in question and decided that the complainant's appeal did not have a reasonable prospect of success.

While the complainant appealed on the substance of her complaint, the Adviser noted that Audience Services had ceased handling this complaint at Stage 1 and that the complaint had not gone to Stage 2. She therefore decided that the point she should consider was whether an appeal against the decision of Audience Services not to correspond further with the complainant had a reasonable prospect of success.

The Adviser noted that Audience Services had explained to the complainant that this had been a cookery item and the interview had been conducted as the interviewees prepared their version of falafel, a traditional chickpea dish served with accompaniments throughout the Middle-East.

The Adviser considered the original complaint was not factually correct. She noted that at the start of the programme, there was a reference to the later item, which stated:

"To the Middle East today to cook the perfect summer dish – falafel and tabouleh salad..."

She noted that the presenter had not suggested that falafel originated in Israel or was anything other than a Middle Eastern food. The presenter had said she herself had first tried it in Israel at a time when, in her experience, it had not been available in Barnsley. She had stated: "You couldn't get it here in Britain – well, not in Barnsley at any rate..." Her interviewee said that falafel-makers could be found throughout the Middle East. The Adviser did not consider that the *Woman's Hour* audience would have expected further information about the political situation of the Middle East or how food eaten in one part of the Middle East would also be found elsewhere in the region.

The Adviser could not see what Audience Services could have explored or discovered, had it investigated the matter further. As the communication closing down the correspondence stated:

"I must also tell you that we feel that we have responded as fully as we can to you, given the nature of your complaint, and do not have more to add. This reply

is therefore to explain that we do not consider the points you raised suggested a possible breach of standards..."

Looking at the underlying editorial issue: as there had been no suggestion in the programme item that falafel was invented in Israel, and, as there was no requirement, in a cookery item, to explain the provenance of the creation of different recipes in order to comply with the guidelines on accuracy or impartiality, the Adviser did not think that there was a significant editorial issue which the Editorial Standards Committee should consider.

Under the Complaints Framework, the BBC was required to consider the interests of all licence fee payers and was entitled to close down correspondence if it had nothing further it wished to say and considered the complaint did not raise an issue of substance. The Adviser noted that this was what had happened in this instance – the BBC had closed down the correspondence at Stage 1b.

The Editorial Complaints and Appeals Procedures stated:

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

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

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

1.9 If the BBC Executive decides not to investigate your complaint for one or more of the reasons set out in paragraphs 1.7 and 1.8 above, you can write to the BBC Trust (address below) and ask the Trust to review that decision. If the Trust agrees with you, the Executive will be directed to investigate your complaint. If the Trust does not agree with you, the Trust's decision is final.

BBC Audience Services notified the complainant on 21 July 2014 that it did not intend to correspond further as it had nothing to add to its earlier correspondence. Where a complainant appealed to the Trust against a 1b closedown, if Trustees upheld the appeal, the complaint was sent back to the BBC for a further response.

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 the appeal had a reasonable prospect of success and did not propose to put it before Trustees.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with her appeal. She reiterated her view that the programme breached accuracy and impartiality standards. She made the following key points:

- Israel had appropriated a land and all that existed in it and presented it as theirs; in this case, the food and customs.
- In her view, by saying "implicitly" that falafel was a speciality of Israel, the interviewees were meaning that the Israelis made this food theirs.

- The interviewee who said that the British did not seem to appreciate falafel should have been corrected by the presenter and her opinion challenged. (The complainant had said in her original complaint that Middle Eastern food had been served for a great many years and had objected both to the presenter saying she had first tasted it in Israel “you couldn’t get it here in Britain, well not in Barnsley at any rate”, and to the interviewee saying “we never thought that anyone would want to eat it”.)
- This was an example of BBC pro-Israeli bias.
- The mission of the BBC was to inform, educate and entertain.
- The complainant considered the reference to 1.7.2 of the complaints procedure (which explains that a complaint may not be investigated if it is ‘trivial, misconceived, hypothetical, repetitious or otherwise vexatious’) was objectionable.

The Committee’s decision

The Committee was provided with the complainant’s correspondence with the BBC and with the Trust Unit including: the complainant’s appeal to the Trust; the response from the Senior Editorial Complaints Adviser; and the complainant’s email asking the Committee to review her decision. The Committee was also provided with the relevant programme material.

The Committee acknowledged the complainant’s view that references to falafel in the *Woman’s Hour* cookery item in question constituted an example of BBC pro-Israeli bias because, in the complainant’s view, it was implied that falafel originated in Israel.

The Committee noted that the presenter had not stated that falafel originated in Israel or suggested that falafel was anything other than a Middle Eastern food. The Committee did not agree that it had been implicitly stated that Israelis had made a Middle Eastern food their own.

The presenter was entitled to say that “you couldn’t get [falafel] here in Britain, well not in Barnsley at any rate” as that was her experience and the interviewees were entitled to explain their view at the time which was that “we never thought that anyone would want to eat it”. There was no obligation on the presenter to challenge that view.

The Committee did not believe there was evidence to suggest that the item breached Editorial Guidelines. The Committee noted that the complainant found the reference to 1.7.2 of the complaints procedure objectionable. However, the Committee considered that the complaint was both trivial and misconceived because it did not raise any possible breach of the Editorial Guidelines. It was considered that Audience Services had issued a reasoned and reasonable response to the complaint and it had been appropriate for Audience Services to decline to enter into further correspondence with the complainant.

The Committee noted the terms of paragraph 5.10 of the Editorial complaints and appeals procedure. The Committee considered, in fairness to the interests of all licence fee payers in general, that it was not appropriate, proportionate or cost effective to take this matter on appeal.

The Committee did not consider that this complaint had a reasonable prospect of success and therefore decided that this appeal did not qualify to proceed for consideration.

The Committee decided that this appeal did not qualify to proceed for consideration.

Decision of BBC Audience Services not to respond further to complaint about “Former MI5 agent’s warning over fighting in Syria” - BBC Online

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 complaint

The complainant wrote to the BBC Trust following the decision of BBC Audience Services not to respond further to his complaint about a BBC News Online article which he believed was biased against motorcyclists in the way it described a former Islamic radical turned MI5 agent. It included the line:

“It was while he was in a Denmark jail for assault that the former cage fighter and motorcyclist said he discovered Islam.”

The complainant considered the reference to the subject of the article being a motorcyclist had no relevance to the article “unless stating he was in a motorcycle gang which is something completely different”.

The article can be found at: www.bbc.co.uk/newsbeat/28099735

The Complaints Adviser for BBC News responded on 21 July 2014 stating:

“It’s my understanding that Morten Storm was involved in a biker gang and was described as a former biker by his publisher and subsequently elsewhere in the media, as I believe you are aware.

Accordingly I discussed your concerns with the Newsbeat Editor and we were in agreement that the word ‘biker’ adds more precision to the story than ‘motorcyclist’ and so we’ve changed the article.”

The complainant made a follow-up complaint on 21 July 2014 stating:

“The response that I received was unsatisfactory. Bikers are normal people. All it needs is to add the words; gang member. A biker is someone who rides a bike. A biker gang member is someone involved in crime. There is a difference. All it takes is a couple more words. Paramedics can be a biker.”

The Complaints Adviser, BBC News responded at Stage 1b on 31 July 2014 stating:

“While I do appreciate your additional concerns with our wording in the article I also note that the Oxford English dictionary provides one definition of ‘biker’ as:

‘2. Chiefly U.S. and Brit. A motorcyclist, esp. a member of a motorcycle club or gang.’

Furthermore the nature of association with a motorcycle gang is based primarily around the driving of motorcycles.

With this in mind I don’t feel the inclusion of the word in this article was misleading or otherwise unreasonable in the manner you suggest.”

The Complaints Adviser also stated that the BBC was unable to engage in further correspondence on the complaint as it felt it had responded as fully as it could and did not consider the points raised by the complainant suggested a possible breach of standards.

Appeal to the BBC Trust

The complainant appealed to the BBC Trust on 14 August 2014. His appeal included the following points:

- He had felt the use of the broad term 'motorcyclist' was inappropriate and said he rang BBC Complaints to request it be changed to 'motorcycle gang member'.
- As a result of his complaint, the term had been changed to 'biker' because the BBC claimed 'biker' was a more precise description.
- He had not agreed that 'biker' was an improvement and had asked the BBC to change it to 'biker gang member'.
- He did not think the second reply from the Complaints Adviser which gave a dictionary definition of the term 'biker' was an appropriate response.
- He did not feel that the term 'biker' was any better than 'motorcyclist' in the context of the article.
- He felt the use of both terms 'biker' and 'motorcyclist' contravened section 3.2.2 of the BBC Editorial Guidelines as it demonstrated a failure to use language that was clear and precise.
- He also felt the handling of his complaint had been poor. He said his phone calls had been received courteously and sympathetically but he felt the responses from the BBC Complaints Adviser were not worthy of the BBC. He stated:

"To substitute biker for motorcyclist is bad enough but to then try to justify the decision by quoting a partial and vague dictionary definition and continue by essentially saying that 'biker' and 'gang member' are synonymous is lamentable."

- The BBC had a responsibility to be as clear and accurate as possible rather than reinforce unhelpful stereotypes.

The Trust Unit's decision

The Trust's Senior Editorial Complaints Adviser (the Adviser) carefully read the correspondence that had passed between the complainant and the BBC, as well as the BBC Online article in question. She did not consider that the appeal had a reasonable prospect of success.

The complainant appealed on the substance of his complaint regarding the use of the word 'motorcyclist' and, subsequently, 'biker' to describe a former Islamic radical turned MI5 agent. The Adviser noted, however, that BBC Audience Services had ceased handling this complaint at Stage 1 and that the complaint had not gone to Stage 2. She therefore decided that the point she should consider was whether an appeal against the decision of BBC Audience Services not to correspond further with the complainant had a reasonable prospect of success.

She noted that the BBC's editorial complaints system had three stages. The first two stages lay with the BBC; the third and final stage was an appeal to the Trust.

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

However, under the Complaints Framework, it was open to the BBC to close down correspondence – this meant the BBC notified the complainant that it did not wish to respond further and the complainant could appeal to the Trust if they considered the BBC was wrong to close down the correspondence. This was the procedure Audience Services followed in this case. BBC Audience Services notified the complainant on 31 July 2014 that they did not intend to correspond further as they had nothing to add to their earlier correspondence and they did not consider the complaint related to a breach of the BBC's Editorial Guidelines. Where a complainant appealed to the Trust in these circumstances, if Trustees upheld the appeal, the complaint was sent back to the BBC for a further response.

The Adviser noted that the complainant believed the article was in breach of the Editorial Guidelines on Accuracy. These can be found in full at <http://www.bbc.co.uk/guidelines/editorialguidelines>.

The Adviser noted that judgements about what was duly accurate would vary depending on the output and the context and she considered this was generally understood by audiences.

She noted that the main focus of the original article was about a man who had held radical Islamic views and said he subsequently became an MI5 agent. The word 'motorcyclist' had been used as part of an initial background description of him and was used just once in the article:

"It was while he was in a Denmark jail for assault that the former cage fighter and motorcyclist [subsequently changed to 'biker'] said he discovered Islam."

The Adviser noted that the BBC had changed the descriptive term 'motorcyclist' to 'biker' as a result of the complainant's concerns, with the aim of making the description more precise. However, she acknowledged that the complainant did not agree that the alternative word 'biker' had achieved greater precision.

The Adviser noted that the word 'motorcyclist' or 'biker' had no bearing on the focus of the article itself. She acknowledged the complainant's point about the perpetuation of stereotypes, but she noted that there was no evidence to suggest that the description of Morten Storm as a motorcyclist or biker was factually inaccurate. She also believed Trustees would be of the view that the word 'biker' was sufficiently clear and precise as a description of Morten Storm's motorcycling interests.

She noted that the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General.

In particular, "the direction of the BBC's editorial and creative output" was specifically

defined in the Charter (paragraph 38, (1) (b)) as a duty that was the responsibility of the Executive Board, and one in which the Trust did not get involved unless, for example, it related to a breach of the BBC's editorial standards, which the Adviser believed Trustees would consider did not apply in this case. The Adviser considered that decisions relating to the language used to describe people who featured in BBC News online content fell within the "editorial and creative output" of the BBC and were the responsibility of the BBC Executive.

The Adviser noted the complainant's comments about the handling of his complaint and although she acknowledged that he was not happy with the written responses to his concerns, she was pleased to hear that he had been satisfied with the way his telephone complaints had been handled.

Having read the correspondence, she considered that Audience Services had sought to provide helpful responses to explain the rationale behind the report. She considered that Trustees would be likely to conclude that it had been reasonable for the BBC to include a dictionary definition of the word 'biker' when explaining that the BBC's editorial news team did not think the term was misleading. She felt that, overall, Trustees would consider that the BBC had provided a reasoned and reasonable response to the complaint and that it was appropriate for the Complaints Adviser to state that the BBC could not enter into further correspondence on the issue.

For the reasons set out above, the Adviser believed the appeal did not have a reasonable prospect of success and she decided it should not be placed before Trustees.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with his appeal and he presented a number of points to support this request. He argued that as a news item this story should attain a high degree of due accuracy.

He accepted that it was correct to say that Morten Storm was a biker but said that the point was that he led an 'outlaw motorcyclist gang'. The meaning would be clearer if the article was changed and would reflect the intent of the BBC as described in the Stage 1 letter to the complainant which said "Morten Storm was involved in a biker gang".

He argued that the dictionary definition provided by the BBC was not complete and unambiguous. (In his original appeal to the Trust he had noted that part 1 of the definition in the OED gives the definition as a cyclist which has no relevance to cyclists or gangs. He also noted that it was possible to be a member of a legitimate motorcyclist's club.)

The Committee's decision

The Committee was provided with the complainant's correspondence with the BBC and with the Trust Unit including: the complainant's appeal to the Trust; the response from the Senior Editorial Complaints Adviser; and the complainant's letter asking the Committee to review her decision. The Committee was also provided with the relevant article.

The Committee acknowledged the complainant's view that the article was not as clear as he would like it to be with regard to the description of Morten Storm as a motorcyclist and noted that, following the complaint, the BBC had changed the description to 'biker'. The Committee noted that, following the change of word, the complainant still felt that his

concerns had not been adequately addressed.

The Committee noted the Editorial Guidelines on accuracy, taking particular note of paragraphs 3.1, 3.2.1 and 3.2.2. The BBC is committed to achieving due accuracy. The Committee noted that the term 'due' means adequate and appropriate to the output, taking account of the subject and nature of the content, the likely audience expectation and any signposting that may influence that expectation. The Committee noted that Morten Stern was in fact a 'biker' or a "motorcyclist" because he rode motorcycles. Therefore, the Committee believed it would be likely to conclude that the article was duly accurate and that the meaning of the word 'biker' in the context of the article was sufficiently clear and precise. The Committee understood that the complainant wanted the term elucidated in case its use was effectively pejorative of legitimate bikers who were not part of criminal gangs. However, given that the fact he rode motorcycles was an incidental detail to the main thrust of the article and was duly accurate, the Committee considered this was not a matter for the Trust. The Committee noted that the direction of the editorial and creative output of the BBC was the responsibility of the BBC Executive. The article had chosen not to focus on the former MI5 agent's participation in a motorcycle gang because this was incidental to the chosen focus of the article. It was considered that this editorial choice by itself did not constitute a breach of the Editorial Guidelines.

The Committee considered that there had not been any credible arguments advanced that suggested that the article was in breach of the guidelines on impartiality or any evidence that the article displayed bias against motorcyclists.

The Committee believed that Audience Services had provided a reasoned response to the complaint and had acted reasonably in closing down the correspondence at Stage 1b. The Committee did not consider it would be appropriate, proportionate or cost effective to uphold this appeal.

The Committee did not consider that this complaint had a reasonable prospect of success and therefore decided that this appeal did not qualify to proceed for consideration.

The Committee decided that this appeal did not qualify to proceed for consideration.

Decision of BBC Audience Services not to respond further to complaint about “Gaza conflict: Contrasting views on targeting”, BBC Online, 4 August 2014

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 complaint

The complainant wrote to the BBC Trust following the decision of BBC Audience Services to close down his complaint at Stage 1b about a BBC news online article which published the contrasting personal opinions of an Israeli history student and a Palestinian paediatrician about targets of Israeli rocket attacks. The article can be found through this link: <http://www.bbc.co.uk/news/world-28630442>

The introduction to the article stated:

Several UN-run schools sheltering thousands of Palestinians fleeing from the Gaza conflict have been hit by shelling since the conflict began.

Deliberately targeting civilians who are sheltering in buildings that have no military purpose is illegal under international law.

Israel denies targeting the schools, but has said some of them were hit accidentally.

The complainant was appalled at the decision to publish the views of an Israeli history student. In the article the student had stated:

“I feel very sorry for the people in Gaza too, but what can we do when they have fighters shooting at us from hospitals, from the roof of UN schools and using these places to launch terror attacks?

We have to stop the terrorists who are using their own people as human shields.

In this case targeting those buildings is the moral and right thing to do.”

The opposing view was put forward by a Palestinian who worked as a paediatrician at the El Wafa Rehabilitation Hospital in Gaza that was hit by Israel rockets in July. He said that “targeting UN hospitals and UN shelters is ‘criminal’”.

He stated:

“The Israelis say they have to bomb the hospitals and shelters because there are fighters here, but that is not true. The only people we have are sick people. You never see any fighters or soldiers on the streets...

How can they win when they have no military targets, it is just civilians they are firing on? We are not attacking anyone.

We have no government here. We never see Hamas, they are not in front of the

people, we can't talk to them or go to them to ask them to stop the fighting."

BBC Audience Services responded on 15 August 2014 stating:

"The comments made by the two contributors are their own and not the views of the BBC. The BBC makes no editorial comment on views expressed by contributors to our programmes, and our aim is simply to provide enough information for viewers to make up their own minds.

Although we appreciate that some people believe that such views should not be published, ...we feel it's important to cover a range of differing opinion wherever possible.

Part of this means reading opinions which some people may find abhorrent, but which individuals may be fully entitled to hold in the context of legitimate debate."

The complainant was not happy with this response and made a follow-up complaint on 15 August 2014. He did not agree that publishing an opinion such as that put by the Israeli history student was something "which individuals may be fully entitled to hold in the context of legitimate debate". He stated:

"The targeting of hospitals is a war crime, it is not 'legitimate debate'. The BBC should not publish opinions which call for war crimes to be carried out."

He said that publishing this opinion was "incitement, heavily biased and sickening".

He also stated that the BBC had not mentioned on the webpage that the targeting of hospitals in a war was a crime.

Audience Services responded at Stage 1b on 27 August 2014. They made the following points:

- The BBC did state on the webpage that "Deliberately targeting civilians who are sheltering in buildings that have no military purpose is illegal under international law."
- The issue that the article was seeking to examine was the contrasting views on targeting in light of Israeli claims that Hamas had been using civilian areas to store weapons and launch attacks against IDF forces. In that context the BBC published two contrasting views on the issue of targeting and the Palestinian paediatrician made the point that:
 - "The Israelis say they have to bomb the hospitals and shelters because there are fighters here, but that is not true. The only people we have are sick people. You never see any fighters or soldiers on the streets."
- The issue of targeting had clearly been one of intense argument and debate as the conflict progressed, subject to claim and counterclaim. In that context the BBC felt it would be of interest to readers to hear the contrasting views of those on the ground on an issue of clear topicality, allowing them to make up their own minds on the merits of the points being made.

Audience Services also stated that they would not investigate the complaint any further as they did not consider that the points raised by the complainant suggested evidence of a

potential breach of the BBC's standards. The complainant was informed he could appeal against this decision to the BBC Trust.

Appeal to the BBC Trust

The complainant appealed to the BBC Trust on 27 August 2014. He reiterated his substantive complaint, stating that

"The BBC should never publish anything that calls for war crimes to be committed... I feel the BBC is showing bias in the Israel/Palestine conflict by including this opinion."

He believed that by publishing the Israeli student's opinion on the targeting of buildings such as hospitals and schools, the BBC had breached editorial guidelines on impartiality and was guilty of incitement by "calling for war crimes to be carried out".

The Trust Unit's decision

The Trust's Senior Editorial Complaints Adviser (the Adviser) replied to the complainant explaining that the relevant correspondence and the relevant article had been reviewed by the Trust Unit and she did not consider that the appeal had a reasonable prospect of success.

The complainant appealed on the substance of his complaint about the online publication of a personal view of the Israel/Palestine conflict which he believed lacked impartiality and amounted to incitement. The Adviser noted, however, that BBC Audience Services had ceased handling this complaint at Stage 1 and that the complaint had not gone to Stage 2. She therefore decided that the point she should consider was whether an appeal against the decision of BBC Audience Services not to correspond further with the complainant had a reasonable prospect of success.

She noted that the BBC's editorial complaints system had three stages. The first two stages lay with the BBC; the third and final stage was an appeal to the Trust.

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

However, under the Complaints Framework, it was open to the BBC to close down correspondence – this meant the BBC notified the complainant that it did not wish to respond further and the complainant could appeal to the Trust if they considered the BBC was wrong to close down the correspondence. This was the procedure Audience Services followed in this case. BBC Audience Services notified the complainant on 27 August 2014 that they did not intend to correspond further as they had nothing to add to their earlier correspondence and they did not consider the complaint related to a breach of the BBC's Editorial Guidelines. Where a complainant appealed to the Trust in these circumstances, if Trustees upheld the appeal, the complaint was sent back to the BBC for a further response.

The Adviser noted that Audience Services had explained, in their response of 27 August, the BBC's editorial justification for publishing the contrasting views of an Israeli history student and a Palestinian paediatrician.

In their earlier Stage 1a response of 15 August, Audience Services had explained the BBC's position on the publication of personal view output in general.

The Adviser believed that Audience Services had comprehensively represented the BBC Editorial Guidelines in relation to personal view content. The relevant section of the Guidelines on Impartiality states:

4.4.29

The BBC has a tradition of allowing a wide range of individuals, groups or organisations to offer a personal view or opinion, express a belief, or advance a contentious argument in its output. This can range from the outright expression of highly partial views by a campaigner, to the opinion of a specialist or professional including an academic or scientist, to views expressed through contributions from our audiences. All of these can add to the public understanding and debate, especially when they allow our audience to hear fresh and original perspectives on familiar issues.

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

The Adviser considered that Trustees would be of the view that the introduction to the article had provided context for the views expressed in the article.

The Adviser believed Trustees would consider that the personal view content was clearly signposted to readers at the start of each viewpoint, as required by the Guidelines:

[Name], 23, is a history student at the Hebrew University of Jerusalem. She has two brothers and a boyfriend serving in the Israeli army and explains why she thinks the military should target hospitals and UN shelters.

[Name], 61, is a Palestinian paediatrician. He works at the El Wafa Rehabilitation Hospital in Gaza that was hit by Israeli rockets in July. He says targeting hospitals and UN shelters is 'criminal'.

The Adviser acknowledged the complainant's view that the article lacked impartiality and "called for war crimes to be committed" but she did not consider that Trustees would be likely to conclude that was the case. She did not consider that publishing the clearly signposted personal view of an Israeli history student was tantamount to a "call for war crimes to be committed". The article had made it clear that the targeting of non-military buildings was illegal and had also published Israel's denial that it deliberately targeted schools and hospitals.

For completeness, the Adviser noted that the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. "The direction of the BBC's editorial and creative output" was specifically defined in the Charter (paragraph 38, (1) (b)) as a duty that was the responsibility of the Executive Board, and one in which the Trust did not get involved unless, for example, it related to a breach of the BBC's editorial standards which the Adviser did not believe Trustees would be likely to conclude was the case in this instance. Decisions relating to the choice of content within a news article fell within the "editorial and creative output" of the BBC and were the responsibility of the BBC Executive.

The Adviser believed that Trustees would be likely to conclude that Audience Services had provided reasoned and reasonable responses to the complaint. For these reasons she did not believe the appeal had a reasonable prospect of success and she did not propose to put it before Trustees.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with his appeal. He wanted this subject debated by Trustees as he considered that publishing this opinion was not acceptable. He argued that:

- The BBC would not publish an opinion that war crimes should be carried out on the Israeli people (which would be incitement, abhorrent and disgraceful).
- By publishing this opinion the BBC legitimised it.
- The BBC was taking sides and not acting impartially as attacks were taking place in the manner that the article called for at the time this opinion was published.

The Committee's decision

The Committee was provided with the complainant's correspondence with the BBC and with the Trust Unit including: the complainant's appeal to the Trust; the response from the Senior Editorial Complaints Adviser; and the complainant's email asking the Committee to review her decision. The Committee was also provided with the relevant article.

The Committee acknowledged the complainant's view that the BBC had not acted with due impartiality in publishing an opinion of the Israel/Palestine conflict which he felt amounted to incitement to war crimes and was offensive.

The Committee noted that Audience Services had explained the BBC's editorial justification for publishing the contrasting views of an Israeli history student and a Palestinian paediatrician. The Committee agreed that Audience Services had clearly explained the BBC's editorial policy in relation to 'personal view' content.

The Committee agreed that context for the views expressed in the article had been provided in the article's introduction, and the fact that they were personal views had been clearly signposted to readers at the start of each viewpoint, as required by Editorial Guideline 4.4.29.

The Committee noted that publishing personal view content meant that readers could be exposed on occasion to opinions that some people might find objectionable, but which individuals were entitled to hold in the context of legitimate debate.

It was noted by the Committee that opposing perspectives were highlighted in the online news article. It was further considered that there was no credible evidence that the BBC had aligned itself with a contributor or shown bias. The Committee therefore believed it would be likely to conclude that the article was not in breach of the editorial guidelines on impartiality.

Trustees noted the Editorial Guidelines on Harm and Offence and, in particular, Trustees noted that the BBC was required by Editorial Guideline 5.2.1 to apply generally accepted standards in order to protect the public from the inclusion of offensive or harmful

material.

It was noted that guideline 5.1 stated that “applying ‘generally accepted standards’ is a matter of judgement, taking account of the content, the context in which it appears and editorial justification”. The Committee considered that Audience Services had provided a clear editorial justification and purpose for the presentation of contrasting personal opinions regarding the targets of Israeli rocket attacks. The Committee noted that the article included appropriate context by detailing the international law on targeting of non-military buildings. It was considered that generally accepted standards had been applied in producing the article. Trustees considered that if they took the matter on appeal, they were unlikely to conclude that the editorial guidelines on Harm and Offence had been breached.

The Committee did not agree that the article called for war crimes to be carried out. Trustees agreed with the Adviser that the article had made it clear that the targeting of non-military buildings was illegal and had also published Israel’s denial that it deliberately targeted schools and hospitals.

The Committee decided that Audience Services had provided a reasoned and reasonable response to the complaint and had acted appropriately in closing down the correspondence at Stage 1b. Therefore, it would not be appropriate or proportionate to uphold the complainant’s appeal against this decision.

The Committee did not consider that this complaint had a reasonable prospect of success and therefore decided that this appeal did not qualify to proceed for consideration.

The Committee decided that this appeal did not qualify to proceed for consideration.