

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

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Contents

Contents	1
Remit of the Editorial Standards Committee	2
Summary of findings	4
Appeal Findings	16
The One Show, BBC One, 31 March 2015	16
Inside Out East Midlands: Investigating Sports Direct, BBC One 5 October 2015	19
Hiroshima: The Human Cost and the Historical Narrative, BBC News Online, 4 August 2015	30
Russell Howard's Good News, BBC Two, 12 November and 3 December 2015	38
ATP World Tour Finals, BBC One, 21 November 2015	47
Britain's Nuclear Secrets: Inside Sellafield, BBC Four, 10 August 2015	52
Application of Expedited Complaints Procedure at Stage 1 – Complainant 1	55
Application of Expedited Complaints Procedure at Stage 1 – Complainant 2	58
Requests to review the Trust Unit's decisions on appeals	61
Strictly Come Dancing, BBC One, September – December 2015	61
South Today, BBC One (South), 15 February 2016	67
Inside Out East Midlands: Investigating Sports Direct, BBC One, 5 October 2015	71
5 live Breakfast, Radio 5 live, 30 October 2015	79
The Nolan Show, BBC Radio Ulster, 7 December 2015 and Stephen Nolan, Radio 5 live, 4 December 2015	82
Sunday Breakfast, BBC Radio 5 live, 27 December 2015	86
The One Show, BBC One, 31 March 2015	92
Appeals against the decisions of BBC Audience Services not to correspond further with the complainant	100
Decision of BBC Audience Services not to respond further to a complaint about This World: Don't Panic – How to End Poverty in 15 Years, BBC Two, 11 October 2015	102
Decision of BBC Audience Services not to respond further to a complaint about BBC Breakfast papers review, BBC News Channel, 20 March 2016	106
Decision of BBC Audience Services not to respond further to a complaint about Thought for the Day, BBC Radio 4	110
Decision of BBC Audience Services not to respond further to a complaint about Sunday Politics North West, 20 March 2016	114
Decision of BBC Audience Services not to respond further to a complaint about BBC Radio 5 live Daily, 3 February 2016	118
Decision of BBC Audience Services not to respond further to a complaint about a BBC News Online article about Radovan Karadzic, 24 March 2016	122
Decision of Audience Services not to respond further to complaint regarding interviewing style on BBC Radio 5 live, 5 January 2016	126
Decision of BBC News not to respond further to a complaint about BBC News Online – A Point of View: 'How I stopped being intolerant of food intolerance'	130
Admissibility decisions	135
5 live Breakfast, Radio 5 live, 17 November 2015	136
Decision of Audience Services not to respond further to a complaint regarding the decision of BBC News to name Brussels terror suspect and specify his religion despite his confirmed innocence	139
Request to extend the 1,000-word limit for appeals to the BBC Trust	141

Decision of Audience Services not to respond further to a complaint regarding bias in favour of remaining in the EU, BBC News at Ten, 13 May 2016

143

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

Remit of the Editorial Standards Committee

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

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

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

The Committee may consider appeals concerning complaints which allege that:

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

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

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

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

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

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

In deciding whether an appeal qualifies for consideration, the Committee may also decide to take only part of the appeal, and consider only some of the issues raised.

Where an appeal or part of an appeal qualifies for consideration, the Committee will aim to provide the complainant with its final decision within 80 working days of accepting the request for an appeal.

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

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

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

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

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

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

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

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

Summary of findings

The One Show, BBC One, 31 March 2015

Summary of finding

The complainant contacted the BBC to complain that a report was inaccurate in stating that between 300,000 and 400,000 construction workers were employed through umbrella companies.

The Committee concluded that:

- as the BBC had acknowledged that the film was highlighting a significant and newsworthy issue that was worthy of investigation, together with the fact that there was wide disparity in the figures being quoted on the subject, the BBC should have made clear there was a range of figures and lack of certainty about how many construction workers were employed through umbrella companies.
- in failing to do so, the BBC had breached the Editorial Guidelines on Accuracy. The BBC should also have acknowledged its error at an earlier stage.

The complaint was upheld.

Following this decision, the Chairman of the Editorial Standards Committee noted that the complainant had raised other points and that these had not come before Trustees. The Committee considered the admissibility of these points at a subsequent meeting and decided that the remainder of the appeal did not qualify to proceed for consideration. The elements of the appeal which did not qualify can be found under 'Requests to review the Trust Unit's decisions on appeals'.

Inside Out East Midlands: Investigating Sports Direct, BBC One 5 October 2015

The Committee decided that some elements of this appeal qualified for consideration. The consideration of these elements is reflected here and 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 did not qualify can be found under 'Requests to review the Trust Unit's decisions on appeals'.

Summary of finding

The complainant, Sports Direct, said that there was no proper basis for the programme's inclusion of a reference to a member of staff giving birth in warehouse toilets and that the BBC misled the audience because it implied this incident was an example of someone turning up for work when they were unfit to do so. Sports Direct also felt the programme was unfair because it did not provide them with an opportunity to respond to the "serious allegation" about the childbirth incident.

The Committee concluded that:

- some of the audience may have made a connection between the childbirth incident and the concept of someone turning up for work when they were unfit to do so due to the context of the programme (which investigated the working conditions at Sports Direct's national distribution centre) and the other specific example of an emergency ambulance callout it featured - the case of a man who had a stroke at work whose family admitted he should not have been at work that day and he was only there because he was scared of losing his job.
- the reference to a member of staff giving birth in the warehouse toilets, however, was factually accurate. The programme went no further than the known facts and therefore the BBC had not knowingly and materially misled the audience with the inclusion of the reference to the childbirth incident; the content was duly accurate.
- the programme makers should have appreciated that some of the audience may have made a connection between the childbirth incident and the concept of someone turning up for work when they were unfit to do so and that if this inference was drawn, the programme might be seen as a damaging critique of Sports Direct to which the company was entitled to a right of reply.
- given this possibility, it might have been preferable for the programme makers to have given the complainant fuller detail about the childbirth incident in their 'right of reply' letter to the complainant dated 8 September 2015.
- on balance, the complainant had been provided with sufficient detail about the nature of the allegations being made in the programme and specifically the intention to include in the programme Freedom of Information data from the East Midlands Ambulance Service, which included information on four pregnancy calls, to give them a fair opportunity to respond.
- on balance, Sports Direct had been afforded an adequate right of reply in the programme in that it was able to say that it did not penalise workers for being unwell; that the number of ambulance calls to the warehouse was less than to the entire site where the warehouse was situated; that it aims to provide safe working

conditions; and that it complied with health and safety regulations. The fact that an ambulance was called in this case was self-evident from the programme, as was the fact that this was a complex case.

- the broadcast did not breach the Editorial Guidelines on Fairness.

The complaint was not upheld

Hiroshima: The Human Cost and the Historical Narrative, BBC News Online, 4 August 2015

The complainant initially contacted the BBC to complain about a lack of impartiality in a BBC News Online article. The BBC's Editorial Complaints Unit (ECU) upheld his complaint and the article was amended. The complainant subsequently complained that the amended version of the article had not been adequately corrected, remained lacking in impartiality and took an excessive time to correct.

The Committee concluded that:

- given the ongoing political debate about the use of nuclear weapons since they were first used at Hiroshima, this was a controversial issue and that the impartiality requirements that applied were therefore those pertaining to controversial matters.
- the article should not have been positioned as a "personal view" piece in that it was by a BBC correspondent and about a controversial subject with political resonance today. Further, it was not signposted as a "personal view" piece.
- given this was a controversial subject, there had not been sufficient acknowledgment of the rich and complex historiography concerning the bombing of Hiroshima, including the evidence about conversations of decision-makers at the time, and that there was an almost entire absence of an alternative point of view. There has been a considerable amount of well-informed debate about the subject but it was not included here. The balancing voice came from a quote from a young man describing what he had been taught in school about the bombing.
- the amended headline "The human cost and the historical narrative" was not duly accurate as it suggested an examination of the historical narrative, whereas this was not explored in the (amended) article itself.
- the delay in amending the article following the ECU's decision on the complaint meant that an article, against which a finding of lack of due impartiality had been upheld, remained un-amended on the website for about five months. This was not acceptable. The Committee thought that this was more problematic than for a broadcast item, which, by its nature, is transient and disappears from iPlayer, whereas online content is constantly in the public domain.
- while it understood the need to prioritise the coverage of important news stories, and the pressure on correspondents which meant that other issues might need to be put back, when an article is found to have breached the guidelines it should be rectified speedily. The BBC had a professional responsibility to respond to the finding completely and quickly. The Committee concluded that the delay in achieving due impartiality was too long.
- is clear that if the BBC's own internal complaints handling is to be effective and to deserve the confidence of audiences, the BBC Executive must ensure that action is taken swiftly to rectify errors which the BBC itself acknowledges. In the case of a finding of lack of due impartiality or accuracy in an online article, if there is a significant delay in amending the original version it should be taken down until a compliant version can replace it.

- while it could recognise why the complainant had understood he was to be consulted on an appropriate remedy for the ECU's finding of lack of due impartiality, it was clear that it had not been the BBC's intention to consult him. The responsibility for ensuring that content is compliant with the Editorial Guidelines rests with the BBC alone.

The complaint was partially upheld.

Russell Howard's Good News, BBC Two, 12 November and 3 December 2015

The complainant, Philip Davies MP, contacted the BBC to complain that sections of the programme misrepresented him, and were inaccurate and defamatory. He also complained that the action taken by the BBC Executive, where it accepted that the programme did not fully represent his position, was not satisfactory.

The Committee concluded that:

- it could not decide whether a programme was defamatory as that is a matter for the courts but it could consider whether content was fair or duly accurate.
- the nature of this long-standing programme was very clear to the audience. It was topical satire and the audience expected comment which at its best would be biting and bruising to the target. Those in the public eye, such as politicians, could expect robust criticism.
- satire should have a basis in truth but also accepted that it would offer an acerbic approach to a topic by its very nature. Whilst all genres should abide by the BBC's Editorial Guidelines, programmes featuring satire and particularly political satire would necessarily be allowed substantially more leeway in their approach to accuracy and fairness than, for example, news or a current affairs programme. To do otherwise, would be to risk an unwarranted curtailment of freedom of expression which would not be acceptable in a democracy.
- the quotation from the Guardian used in the programme which referred to the complainant using up "the time" allocated in Parliament for the debate could bear more than one meaning, and did not necessarily mean Russell Howard was saying that the complainant spoke for so long that he used up all the time for the debate.
- the programme had not claimed that the complainant personally used up all the allocated time for the debate.
- Trustees considered the clarification on the BBC's Corrections and Clarifications page that Mr Davies "did not personally use up all the time available for the debate" resolved the concern that the script could be taken to mean that Mr Davies had talked for all the time allotted to the bill.
- having taken into account several definitions of filibustering, the complainant's own comments about the legitimate use of parliamentary procedure to "keep a debate going" in order to stop a bill, the length of both speeches and the Deputy Speaker's interventions, the Committee concluded that it was fair and duly accurate to refer to Mr Davies's actions as filibustering. The Committee further agreed therefore that the references to debating in the programmes were duly accurate and fair.
- viewers would have understood that the explanation that the complainant opposed the Compulsory Emergency First Aid Education Bill because he had forgotten the first aid he had been taught at school, would not necessarily have been the only reason the complainant disagreed with the bill. It was therefore reasonable for the programme, in the context of using a newspaper headline in a satirical

programme, to refer only to this specific reason for the complainant's opposition to the bill. In this respect the programme was also fair and duly accurate.

- in a satirical programme, it was both fair and duly accurate to juxtapose the complainant's original pledge to support carers with his decision to oppose the bill by speaking for 93 minutes to reduce debating time. It was also fair and duly accurate within such a programme for the presenter to express the view that that amounted to hypocrisy. It was not necessary to refer to points in his speech where the complainant had expressed his general support for carers or for the programme-makers to approach him for a formal reply or to spell out precisely which carers would benefit from the bill.
- the BBC Executive's decision, having recognised that the programme had not fully explained or reflected the complainant's position on the minimum wage and disabled people, to publish a clarification on the BBC website and not repeat the programme in its current form was a proportionate and appropriate response. The Committee agreed that further action was not necessary. This was also the case in relation to the clarification about the complainant using up all the debating time in Parliament posted by the BBC.

The complaint was not upheld.

ATP World Tour Finals, BBC One, 21 November 2015

The complainant contacted the BBC to complain that coverage of the 2015 ATP tennis World Tour Finals gave undue prominence to one of the event's sponsors, Moët & Chandon.

The Committee concluded that:

- it disagreed with the complainant's view that a close-up of a woman in a Moët & Chandon apron carrying six (branded) glasses of champagne was "an advert", as defined by the Advertising Standards Authority. The BBC received no payment or valuable consideration in return for publicity. The BBC covered a sports event which contained event sponsorship.
- while it was possible that the sequence involving the woman serving champagne had been created for the live feed and therefore more contrived than other event sponsorship branding in sports coverage, it could be viewed as essentially a "moving" sponsorship brand over which the BBC had no production control.
- it did not believe that the commentator's passing reference to the fact champagne was being served could be construed as endorsing the Moët & Chandon brand. It believed they were light-hearted asides to reflect what the viewers were watching on their screens. The comments were not significant and could not be viewed as promotional to the champagne brand. In addition, there was no verbal reference to Moët & Chandon.

it was for the BBC to avoid undue prominence whether or not the feed they were using came from an external supplier.

- undue prominence had not been given to Moët & Chandon. In the context of this sporting event, the Moët images were fleeting and in line with standard industry practice and within audience expectations. The commentator's improvised comments, which had not named the sponsors, had editorial justification. While no undue prominence had occurred in this case, the Committee welcomed the BBC's view that they would expect to cut away from such a shot in future.
- they were content with the investigation undertaken by the independent editorial adviser and did not require any further investigation or a financial analysis of the arrangements between the parties in order to judge whether the BBC accepted free or reduced cost products or services in return for on-air or online credits, links or off-air marketing or whether any individual benefited.
- it accepted that BBC Sport had no agreements with the sponsors and considered that the relationship between the supplier and its sponsors was not a matter for the BBC. It was evident that these arrangements had not resulted in a commercial relationship between the event sponsor and the BBC.
- There had been no commercial arrangement on this occasion because:
 - the BBC had not entered into any contract or arrangement with Moët & Chandon
 - there was no contractual agreement with the supplier to show any event sponsors (including Moët & Chandon)

- o the BBC had been entitled to cut away from the feed although it had not done so
 - o the BBC gained no commercial benefit from transmitting the images.
- visual references to Moët & Chandon in the BBC's coverage of the ATP World Tour should be considered as analogous to broadcasters' transmitting acquired feature films which contained product placement.
- there had been no breach of the Editorial Guidelines as no commercial arrangement existed and therefore there was no programme sponsorship, broadcast advertising or product placement of Moët & Chandon.

The complaint was not upheld.

Britain's Nuclear Secrets: Inside Sellafield, BBC Four, 10 August 2015

The complainant contacted the BBC to say that that the presenter of this documentary made inaccurate claims about the exclusivity and scale of the programme's access to the Sellafield site. The complainant also said that the title *Inside Sellafield* had previously been used by him for a programme broadcast in 1989 on Channel 4.

The Committee concluded that:

- it agreed with the BBC Editorial Complaints Unit that it was hard to compare the access given to the two programme teams because the complex had changed substantially in the meantime.
- some viewers could have understood the presenter to have meant that he – as a nuclear physicist – had been given unprecedented access to the site, which enabled him to carry out activities that were not permissible to non-scientists. However, Trustees noted that the programme also claimed access “for the very first time”, and they considered that the combination of the two references made it likely that viewers would understand there to have been no previous extensive television access to Sellafield.
- it was understandable that an Sellafield's press office described the programme's “unprecedented access” which was an “historic... first for Sellafield” as the organisation may not have a corporate memory stretching back twenty-six years. But those involved in reviewing the draft press communications for the programme team were apparently unaware of the Channel 4 programme despite the research that would have been undertaken for the BBC's programme. Therefore, Trustees decided that, on this element of the appeal, the Editorial Guidelines on Accuracy had been breached.
- the titles *Inside Sellafield* and *Britain's Nuclear Secrets: Inside Sellafield* were similar but not identical, and as an unremarkable description of access to Sellafield, it was unsurprising that both teams chose similar titles. As this point did not engage the Editorial Guidelines, the point was considered in relation to the overall audience expectation of due accuracy. The Committee did not agree that the two programmes would be confused, as they were broadcast 26 years apart, and with markedly different production styles.
- publication of the finding would serve to set the record straight, and no broadcast apology was required.

The complaint was partially upheld.

Application of Expedited Complaints Procedure at Stage 1 – Complainant 1

The complainant appealed against the decision of BBC Audience Services to apply the Expedited Complaints Procedure to the complainant at Stage 1.

The Committee concluded that:

- over 140 complaints had been made in the complainant's name since 2011.
- having reviewed the correspondence from November 2015 to June 2016, most of the complaints were detailed comments and views about climate change.
- none of the complaints provided to them had identified any BBC output that was not duly accurate or duly impartial with regard to climate change.
- the volume of complaints and the consequent demands on complaints advisers' time merited the application of the Expedited Complaints Procedure, in order to protect licence fee resources and licence fee payers' interests.
- it was satisfied that the conditions for applying the Expedited Complaints Procedure were met, in that the complainant had a history of persistently or repeatedly making complaints which: (a) were trivial, misconceived, hypothetical, repetitious or otherwise vexatious; (b) failed to raise an issue of breach of any relevant Guidelines or Policies; and (d) were shown on investigation to have no reasonable prospect of success.

The appeal was not upheld.

Application of Expedited Complaints Procedure at Stage 1 – Complainant 2

The complainant appealed against the decision of BBC Audience Services to apply the Expedited Complaints Procedure to complaints by the complainant at Stage 1.

The Committee concluded that:

- the complainant had made 30 complaints about similar issues in approximately 18 months.
- having reviewed the correspondence, most of the complainant's complaints related to references to Northern Ireland in BBC output, including the use of the terms "Irish" and "Northern Irish" in relation to issues concerning Northern Ireland, with no reference to the "British" population.
- no breaches of the Editorial Guidelines were identified, although Trustees noted that a technical failure to include data on the red button was rectified in this period and an apology was given for not mentioning Northern Ireland in a joke on a comedy show
- the volume of complaints and the consequent demands on complaints advisers' time merited the application of the Expedited Complaints Procedure, in order to protect licence fee resources and licence fee payers' interests.
- it was satisfied that the conditions for applying the Expedited Complaints Procedure were met, in that the complainant had a history of persistently or repeatedly making complaints which: (a) were trivial, misconceived, hypothetical, repetitious or otherwise vexatious; and (b) failed to raise an issue of breach of any relevant Guidelines or Policies.

The appeal was not upheld.

However, in view of the potential seriousness of the issue the complainant had raised, the Committee decided that Audience Services should continue to respond to complaints from this complainant if they related to the use of the description "Northern Irish" in BBC output.

Appeal Findings

The One Show, BBC One, 31 March 2015

Following this decision, the Chairman of the Editorial Standards Committee noted that the complainant had raised other points and that these had not come before Trustees. The Committee considered the admissibility of these points at a subsequent meeting and decided that the remainder of the appeal did not qualify to proceed for consideration. The elements of the appeal which did not qualify can be found under 'Requests to review the Trust Unit's decisions on appeals'.

Background

This edition of *The One Show* included an item that investigated the practices of some umbrella companies working with the construction industry. The report examined whether some construction workers were being made to pay their employer's National Insurance Contributions as well as an additional processing fee.

Complaint

The complainant believed that the programme was inaccurate to state that between 300,000 and 400,000 construction workers were employed through umbrella companies and said that this statistic had been central to the audience's perception of the issue.

At Stages 1 and 2, the BBC responded in the following way:

- The BBC acknowledged that it had been advised by the Freelancer and Contractor Services Association (FCSA) that a total of 300,000 – 400,000 people were employed through umbrella companies, of whom between 63,000 to 84,000 worked in the construction industry. However, the BBC said that the programme had inaccurately represented these figures, stating that umbrella companies covered 300,000 to 400,000 construction workers.
- The BBC said that, on further investigation, it had found that the figures provided by the FCSA were an extrapolation based on a survey of umbrella companies affiliated to the organisation. However, it said these figures were disputed by the construction workers' union UCATT [the Union of Construction, Allied Trades and Technicians] which believed that the figure of 300,000 to 400,000 construction workers was closer to the truth. The ECU said this claim was made on the basis of consultations with their officials and the scale on which employees were being transferred to umbrella companies in the wake of changes to legislation.
- The BBC said that, while it would have been preferable if the programme had given a sense of the span of estimates available or the lack of certainty that surrounds them, it could not say that the figure provided in the programme was wrong.

Appeal to the Trust

The complainant appealed to the BBC Trust, pointing out that the BBC had admitted that *The One Show* had been incorrect in saying that 300,000 to 400,000 construction workers were employed through umbrella companies. He said that, despite this, the BBC had

stated there was plausible evidence that the figure given in the programme may be correct; but he believed there was no evidence to support this.

Applicable Editorial Guidelines

The relevant editorial guidelines relating to Accuracy 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) the Editorial Adviser's report and the subsequent submissions from the complainant and the BBC.

The Committee considered whether the programme had achieved due accuracy when stating that 300,000 to 400,000 construction workers were employed through umbrella companies.

It noted that the BBC had acknowledged that the programme had inaccurately quoted the figures given to it by the FCSA but that the BBC, after carrying out research once the complaint was lodged, stood by the figures used.

The Committee noted that data from the Office of National Statistics (ONS) showed that 852,000 people working in the construction were self-employed in 2009 with this figure rising to 895,000 in 2014. This represented just over 40 per cent of construction sector jobs. It also noted that there was a significant difference between the FCSA figure of 63,000 to 84,000 construction workers employed through umbrella companies and the figure used by the programme. It noted that the evidence provided by the BBC to support the figures the BBC had used had come from the construction workers' union UCATT. UCATT had said that:

"Our evidence from officers in each and every region of UCATT across the UK is that workers have been transferring in huge numbers from Agency payment methods to that of Umbrella Companies since April 2014. The construction sector accounts for over 2.1 million jobs in the UK. The UK Government's own analysis of the sector and also ONS data shows that 40% of all construction jobs are self-employed (based on our day to day experiences in construction UCATT believe this to be a conservative estimate). The ONS data shows the huge amount of self-employment in construction and the growth in this area. This growth isn't fuelled merely by new successful SME's [small and medium sized enterprises], but by the engagement of workers as single contractors through the Umbrella Company route. It is therefore in our view fair to estimate that the level of workers engaged by umbrella companies could be around 300-400,000."

Trustees noted that BBC Current Affairs, Salford, said it believed UCATT was better placed than the FCSA to provide the most accurate estimate as it was the body representing construction workers. It also said that it had been told by UCATT that the FCSA did not represent any of the major payroll companies used by construction workers.

Trustees noted that both UCATT and the FCSA had a vested interest in this matter and that there were no independent statistics as to how many construction workers were employed through umbrella companies.

The Committee then looked at whether the figures used on the programme were adequate and appropriate, taking account of the subject and nature of *The One Show*.

It noted that the BBC had said it did not believe that the figure used had affected the issue being discussed, as the specific number of construction workers being employed by umbrella companies was not central to what was being explored.

However, the Committee noted that the BBC had acknowledged that the film was highlighting a significant and newsworthy issue that was worthy of investigation.

Given this and the wide disparity in the figures being quoted on the subject, the Committee considered that the BBC should have made clear the range of figures and lack of certainty about how many construction workers were employed through umbrella companies.

As it had failed to do so, the Committee considered that the BBC had breached the guidelines on Accuracy and believed it should have acknowledged its error at an earlier stage.

Finding: Upheld

Inside Out East Midlands: Investigating Sports Direct, BBC One 5 October 2015

The Committee decided that some elements of this appeal qualified for consideration. The consideration of these elements is reflected below. The Committee decided that the remainder of the appeal did not qualify to proceed for consideration. The elements of the appeal which did not qualify can be found under 'requests to review the Trust Unit's decisions on appeals'.

The complainant was represented by solicitors and "the complainant" is used to refer both to Sports Direct and to solicitors acting on behalf of Sports Direct.

Background

This edition of Inside Out East Midlands investigated the working conditions at Sports Direct's national distribution centre based at Shirebrook in Derbyshire. It included figures, which came from a Freedom of Information (FOI) request made by the BBC programme to East Midlands Ambulance Service, which revealed that a total of 76 ambulances or paramedic cars were dispatched to the distribution centre's postcode between January 2013 and December 2014. It also revealed that three of the calls were about women having pregnancy difficulties, including one who gave birth in toilets at the site. Sports Direct's response to the FOI figures was reflected in the programme in the following script lines:

"Sports Direct said the list covers the whole site and its own records show there were only 24 calls specifically to the warehouse. The company pointed out the calls may include visitors as well as employees."

The programme included testimony from former Sports Direct agency workers who said they were managed by a "six strikes" disciplinary policy. The programme obtained a copy of the policy document from Transline, one of the two agencies responsible for providing workers at the site. The Transline policy document stated that workers could receive a strike for a range of "offences" including a period of reported sickness, excessive chatting, excessive or long toilet breaks and using a mobile phone in the warehouse. If workers exceeded six strikes in a six-month period then they would be sacked. Former workers alleged that this disciplinary policy meant that workers attended their shifts even when they were sick, because they feared losing their jobs.

The programme included responses from both of the agencies supplying workers to the Sports Direct warehouse at Shirebrook. Transline said it was incorrect to suggest that workers go to work poorly because of the "strike" system and that it is a reputable company that fulfils its duty of care to its employees. The Best Connection, the other agency that operates a similar "strikes" system, said it was not its policy to unfairly penalise temporary workers for sickness and they should not fear losing their jobs if they called in sick.

The programme also reflected Sports Direct's response to its allegation that staff turn up for work even when they were unfit to do so in the following script lines:

"Sports Direct told shareholders that casual workers aren't penalised for sickness, unless the worker calls in within an hour of a shift starting."

"Well Mike Ashley was in there (Annual General Meeting) but it was Keith Hellawell the Chairman who said it was up to the Board to respond to any of my questions, and he said to me he was satisfied that the company did comply with health and safety regulations and any concerns were taken up immediately."

"Sports Direct says it aims to provide safe working conditions for all warehouse staff which comply with employment and health and safety legislation."

Appeal to the Trust

The complainant originally raised a range of different concerns about the way the programme was conceived and delivered alleging it was unfair and misleading and that it portrayed Sports Direct in a bad light. However, to meet the requirement for proportionality, the complainant's appeal to the Trust set aside a number of these original elements and limited the appeal.

The Trustees agreed at their meeting on 2 June 2016 that they would be likely to conclude that two of the points raised did not concern a breach of editorial standards and did not have a reasonable prospect of success and that it was therefore not appropriate, proportionate or cost effective to proceed with them.

The points of complaint taken on appeal were:

Point (A): There was no proper basis for the programme's inclusion of a reference to a member of staff giving birth in the warehouse toilets and the BBC misled the audience because it implied this incident was another example of someone turning up for work when they were unfit to do so.

Point (B): The programme did not provide the complainant with an opportunity to respond to the "serious allegation" about a member of staff giving birth in the warehouse toilets.

Applicable Editorial Guidelines

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

The Committee's decision

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

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

The Committee first noted the complainant's grounds for appeal in relation to Points (A) and (B). These referred to the Editorial Complaints Unit's (ECU) provisional finding on the case, in which the complainant said the ECU had indicated that the BBC was culpable in this respect. The Committee noted the wording of the finding:

"The programme reported the case of a woman who gave birth at the Sports Direct site in 2014 as follows:

'There is one other call we know a little bit about. It was on New Year's Day late in the evening last year. A baby, born in the toilets. We don't know the circumstances but mother and baby were taken to hospital. The police then investigated. A 29 year old Polish woman was later charged with abandoning her baby. Then last month just days before she was due to stand trial here at Derby Crown Court the case was dropped.'

...I do not believe there was a requirement to seek a response to this particular point from the company. It was made clear that the mother in question faced investigation rather than Sports Direct.

The case was clearly included as an example of staff turning up for work even when they were unfit to do so but the programme reflected the company's response to this elsewhere. For example:

- Sports Direct told shareholders that casual workers aren't penalised for sickness, unless the worker calls in within an hour of a shift starting.
- Sports Direct says it aims to provide safe working conditions for all warehouse staff, which comply with employment and health and safety legislation."

The Committee noted that the complainant did not accept the ECU's provisional finding and made the following response to it on 28 January 2016:

"You have sought to characterise an unfortunate incident of a lady giving birth to a baby in our toilets as 'an example of staff turning up to work even when they were unfit to do so' which, you say, is due to concerns surrounding strikes (which is denied) ... for the BBC to seek to shoe-horn this incident into your programme theory is highly inappropriate and misleading. In including this material, the BBC led the audience to draw an adverse inference without any sound evidence – which is precisely why Sports Direct should have been afforded a right of reply."

The Committee noted that the ECU confirmed its finding in correspondence dated 8 February 2016 and said in response to the complainant's point detailed above that:

"I agree it is probable the audience would have understood the description of a mother who gave birth at Sports Direct to be a further example of a member of staff turning up for work even when they were unfit to do so. I do not know the specific circumstances but my understanding is that the incident did prompt local MPs Dennis Skinner and Sir Alan Meale, and UNITE, to raise concerns about working conditions at the Shirebrook site. That would suggest the inference drawn by the programme was shared, at least at the time, by others concerned about staff welfare.

On the point about a 'right of reply', I remain of the view that the programme adequately reflected the company's response to concerns about working conditions at the Shirebrook site."

The Committee also noted that the complainant's appeal letter referred again to the fact that, despite apparently agreeing with the complainant, the ECU had not upheld this element of the complaint. The appeal letter said the ECU:

"sought to excuse the inclusion of the material by reference to his 'understanding' that other people had drawn the same adverse inference".

It went on to say that this:

"is clearly irrelevant as to whether or not the BBC breached the Guidelines in including this material (which we say it did)."

Point A: There was no proper basis for the programme's inclusion of a reference to a member of staff giving birth in the warehouse toilets and the BBC misled the audience because it implied this incident was another example of someone turning up for work when they were unfit to do so.

The Committee noted the relevant section of the transcript of the programme:

Reporter: [NAME], who was once a first aid army medic in Iraq, was called to the canteen when Guntars collapsed.

[NAME]: An ambulance was called and it was a serious illness he'd got. Ambulances were called on a regular basis at least one or two every other week.

Reporter: So [NAME] claims that, while he worked there, ambulances were regularly called to the warehouse. Was he right?

Reporter Piece to Camera (PTC): Using the Freedom of Information Act, I asked East Midlands Ambulance Service for a breakdown of all the 999 emergency calls made from the Shirebrook Sports Direct site for the whole of last year and the year before. The list covers the warehouse, with its transport hub, the head office, a training centre, two on site stores, and immediately outside.

Reporter: There's the reason, the time and date, and how serious. And here's Guntars' call out, the very last one of the year: patient unconscious. In two years there were seventy-six attendances. There were six traffic accidents; a dog bite and we know two were to the stores. What we don't know from the log is how many of the calls were for agency workers in the warehouse, but we do know they make up the vast majority of staff on site. So how serious were the calls? Look at the number of Red 2 responses. These calls have been assessed as life threatening, time critical. The ambulance will have a flashing blue light and siren. Almost half the calls are in that category. Sports Direct said the list covers the whole site, and its own records show there were only 24 calls specifically to the warehouse. The company pointed out the calls may include visitors as well as employees. We understand Transline has only been supplying workers on site since last summer. Gerard Hand travels the world as a health and safety consultant advising big business. He knows all about logistics and migrant labour.

Gerard Hand: Now I really can't believe some of the things I am seeing on here. This is something I would expect in a third world country. These are just all health issues and you know there's just pages of them. As employers there's a responsibility to anybody that works for them whether they're migrant workers or

whether they're actually their own employees. If they're migrant workers that this is happening to, then unfortunately it looks like they're disposable not sustainable. One of the things that scares me with this Sarah is these are actually people. We know about Guntars. We know what's happened with Guntars but all of these are individuals you know and I worry what's happened to them. This is probably just scratching at the surface, we need to go right back to a review as to why people are working in environments where they're suffering from ill health, but they're carrying on.

Reporter: There is one other call we know a little bit about. It was on New Year's Day late in the evening last year: a baby, born in the toilets. We don't know the circumstances but mother and baby were taken to hospital.

Reporter PTC: The police then investigated. A 29-year-old Polish woman was later charged with abandoning her baby. Then last month just days before she was due to stand trial here at Derby Crown Court the case was dropped.

The Committee noted that it was the very unusual nature of this childbirth incident that had put Sports Direct's distribution centre at Shirebrook on the programme's radar, but that the actual catalyst for the programme was the family story of 52-year-old Guntars Zarins, who suffered a stroke in the warehouse canteen.

The Committee noted the programme Editor's editorial justification for the inclusion of the childbirth story:

"We were making the point that there was an incident which, at the very least, any reasonable person would view as a highly unusual occurrence in a work place in the UK and that the facts needed establishing ... given this was in the public domain, the team felt those events were a matter of public interest. We wanted to show that we had endeavoured to find out more. But we also wanted to be clear about what conclusions could or could not be drawn. We therefore stated in the documentary that the case was dropped and we did not know the circumstances. A link with working conditions was not implied... The fact that the abandonment charges were dropped suggests a complex picture and we did not speculate...

We made it clear we were not making any allegation about Sports Direct in relation to the childbirth incident. We did not allege that the mother was too frightened to phone in sick. We made the editorial point that, like the stroke suffered by Guntars Zarins, which was recorded on the emergency ambulance log, it was another unusual incident on the log data, which we knew a little bit about.

We do not accept that this was included as an example of staff turning up unfit for work. It was included because it appeared in the emergency call ambulance data, had been previously reported, and is not something a reasonable member of the public would usually expect at work. We were able to establish a little more detail about the incident and made it clear it was the mother, not Sports Direct, who was investigated by police. We also made it clear we did not know the circumstances. Therefore we did not mislead."

The Committee noted the complainant's response to the Editor's editorial justification for inclusion of the childbirth story in correspondence dated 10 June 2016. It said:

"In our view it is disingenuous and lacks credibility for the Editor to suggest in a

programme designed to 'expose' allegedly unfair working practices in our Shirebrook warehouse that the audience would not link the birth in the toilets with the BBC's allegations relating to working practices.

As such we do not accept that the Editor was not '...making allegations about Sports Direct in relation to the childbirth incident.' Indeed, no positive assertion was made to this effect. Instead it was left deliberately opaque to allow the audience to draw the adverse inference."

The Committee noted that the birth of a child in the toilets at the Sports Direct warehouse was widely reported in the media at the time and the information was therefore in the public domain prior to the broadcast of *Inside Out East Midlands: Investigating Sports Direct*. It also noted that the BBC Executive said it had been included in the programme as an example of the nature of one of the emergency callouts to Sports Direct, made on behalf of a pregnant worker that they actually knew something about. It also noted that the BBC was unaware of the specific circumstances of the case as they had been unable to speak to the mother.

The Committee agreed that the context of the programme and the other specific example of an emergency ambulance callout it featured - the case of a man who had a stroke at work whose family admitted he should not have been at work that day and he was only there because he was scared of losing his job – may have meant that some of the audience may have made a connection between the childbirth incident and someone turning up for work when they were unfit to do so.

The Committee agreed, however, that the reference to a member of staff giving birth in the warehouse toilets was factually accurate. It went no further than the known facts. Trustees concluded that the BBC had not knowingly and materially misled the audience with the inclusion of the reference to the childbirth incident and that the content was duly accurate.

Finding on Point (A): Not upheld

Point (B): The programme did not provide the complainant with an opportunity to respond to the "serious allegation" about a member of staff giving birth in the warehouse toilets.

The Committee noted the wording of the Fairness Guideline: Right of Reply 6.4.25, which says:

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

We must ensure we have a record of any request for a response including dates, times, the name of the person approached and the key elements of the exchange. We should normally describe the allegations in sufficient detail to enable an informed response, and set a fair and appropriate deadline by which to respond."

The Committee noted that in the first complaint letter to the BBC dated 5 November 2015 the complainant said:

"The Programme also referred to 'a baby born in the toilets'. As set out in our solicitors' letter dated 5 October 2015, at no stage were we provided with an opportunity to comment on this serious allegation. Indeed, we only became aware that the BBC was seeking to rely upon this allegation on 5 October 2015 (the same day as the first broadcast of the Programme) when we saw a reference to it in an article relating to the Programme published on the BBC's website that day. We were afforded no right of reply."

The Committee noted that the 5 October 2015 letter was commenting on a news story published on the BBC's website:

"Ambulance call outs – You say that 'The figures, which came from a Freedom of Information request made by the BBC's Inside Out team to East Midlands Ambulance Service, also revealed the service received three calls about women having pregnancy difficulties, including one who gave birth in toilets at the site'.

You sent us these figures by email on 25 September 2015. There was no reference to a lady giving birth in the toilets at our client's warehouse nor have you asked our client about such an allegation. That you have raised this for the first time on the day of broadcast by way of the Article is in flagrant disregard for the rules and principles of the Code and Editorial Values (as previously defined). We put you on notice that the relevant individual is subject to ongoing proceedings brought by the Crown Prosecution Service. For obvious reasons we are unable to comment further, but we understand that you do not have the facts correct and we can only recommend that you ought to be very careful about that."

The Committee also noted that in correspondence dated 28 January 2016 the complainant highlighted other brief information about the childbirth incident, which it said, meant that it was highly inappropriate and misleading of the BBC to include the case. The complainant also said that its inclusion had wrongly led the audience to draw an adverse inference without any sound evidence and that was why Sports Direct should have been afforded a right of reply to this particular matter.

The Committee noted that the Editor of Inside Out East Midlands said the complainant was not offered an explicit right of reply about the programme's inclusion of the facts about the emergency ambulance callout to a member of staff giving birth in the warehouse toilets. It also noted that she explained that this was because the programme did not present or intend it as an example of "wrongdoing, iniquity or incompetence" and therefore did not consider that a right of reply was required.

The Committee again noted that the birth of a child in the toilets at the Sports Direct warehouse was widely reported in the media at the time and the information was therefore in the public domain prior to the broadcast of Inside Out East Midlands: Investigating Sports Direct. Trustees noted that they had agreed that the reference to a member of staff giving birth in the warehouse toilets was a factually accurate statement. They had also agreed (see above), however, that:

"...the context of the programme and the other specific example of an emergency ambulance callout it featured - the case of a man who had a stroke at work whose family admitted he should not have been at work that day and he was only there because he was scared of losing his job – may have meant that some of the audience may have made a connection between the childbirth incident and someone turning up for work when they were unfit to do so."

Though the programme makers did not agree that this inference could be drawn, that was not the position of the ECU or the Trust. Trustees agreed that the programme makers should have appreciated that this was an inference that the audience might draw from the programme and might see as a damaging critique of Sports Direct to which the company was entitled to a right of reply.

The Committee went on to consider if the right of reply information provided to Sports Direct had been sufficient to cover this particular case and whether it met the Guidelines requirement that:

We should normally describe the allegations in sufficient detail to enable an informed response...

The Committee noted that Sports Direct was first offered a right of reply to an allegation relating to the Freedom of Information data the BBC had obtained from the East Midlands Ambulance Service, in an email dated 14 July 2015. It said:

"It is alleged emergency ambulances were called to Sports Direct at Shirebrook every other week. It is also alleged that the number of ambulance calls in 2013 and 2014 was excessive and mostly for serious illness not accidents. Would Sports Direct comment on this allegation? Is the company concerned about the number and reasons for emergency ambulance calls to the Shirebrook site?"

The Committee noted that the complainant was asked to provide a response by 24 July 2015. The complainant responded on 28 July 2015 requesting that the programme team send them evidence to support its allegations by 31 July 2015.

The programme team subsequently sent a more detailed right of reply letter to the complainant dated 8 September 2015 and asked for a response by 21 September 2015. The letter detailed 15 separate allegations it proposed to include in the programme which included the following points relating to pregnancy matters:

"It is alleged by a former agency worker [NAME] that she was told by a female agency worker in 2012 that the worker hid her pregnancy because she was frightened of losing her job and that this was common at Sports Direct because pregnant women feared losing their jobs. ... We have also discovered from a Freedom of Information request made to East Midlands Ambulance Service that between 2013 and 2015 there were 4 separate ambulance calls from the Shirebrook site regarding pregnancy issues.

We have also discovered that in 2013 and 2014 there were 38 workplace accidents at Shirebrook reported through the RIDDOR system. We presented this evidence to an expert, Gerard Hand, an International Health and Safety consultant. He comments that, even taking into account the large number of people working at Shirebrook and the type of work being carried out in the warehouse, the number of emergency ambulance calls from the site is excessive and the type of calls, including childbirth and pregnancy difficulties, is unusual..."

The Committee noted that the complainant's response to Inside Out East Midlands on this point was marked private & confidential and not for publication. It said:

"This is another example of an allegation based upon hearsay; this time an alleged

conversation from three years ago by a former member of staff ... Such hearsay is absolutely no basis for you to allege that pregnant staff in general working at Sports Direct are poorly treated.

In respect of our client's employees, women who report their pregnancy have a risk assessment undertaken to determine material facts such as due dates, any existing health issues and any health issues that arise during the pregnancy etc. These assessments are reviewed and updated throughout the employee's pregnancy and our client's HR Department keep in regular contact with the employee until she departs the business on maternity leave. This monitoring of pregnant employees' wellbeing enables our client and the employees to make any necessary changes to work duties to ensure that both the mother's and baby's welfare is not adversely affected.

In respect of staff not employed by Sports Direct, our client's HSO understands that the Agencies operate similar policies although you would have to ask them directly for specific details.

If a pregnant member of staff is taken ill at Sports Direct and the first aider has any material concern for the mother or baby an ambulance would be called as a precaution. It is not clear why you would seek to draw an adverse inference from an ambulance being called to assist a pregnant member of staff as this is in the best interests of both mother and baby."

The Committee noted that the Editor of Inside Out East Midlands said that:

"In our letter to Sports Direct of September 8th we raised an allegation from a witness that in 2012 a female agency worker hid her pregnancy because she was frightened of losing her job and that this was common at Sports Direct because pregnant women feared losing their jobs. We took into account the company's response of September 25th and, partly as a result of that response, the programme did not include that allegation."

The Committee further noted the following comments from the Editor of Inside Out East Midlands:

"The right of reply letter to Sports Direct outlined a number of incidents which suggested wrongdoing by Sports Direct. The limited information we had about the 'baby in the toilet' incident (one of four in the category 'pregnancy/childbirth/miscarriage' in the ambulance log) did not suggest wrongdoing by Sports Direct.

Although the childbirth was not part of any allegation, we outlined to Sports Direct the four 'pregnancy issues', which were unusual for a workplace and stood out on the call log. One of these was recorded on '1.1.13', the New Year's Day childbirth incident that received coverage at the time. Sports Direct chose not to respond to this. The Best Connection asked for more detail on the four 'pregnancy issues' which we provided. Subsequently they did not respond. It is not clear which agency the mother worked for."

The Committee noted that on 25 September 2015 the BBC provided Sports Direct with the spreadsheet of 76 calls received by the East Midlands Ambulance Service. It was in this context that information was provided regarding the New Year's Day childbirth. On the

same date it also provided one of the two agencies providing workers for the Sports Direct Shirebrook warehouse - The Best Connection - with the specific information it had requested about the four calls relating to pregnancy issues. This information was more detailed than that shown on the spreadsheet.

The Committee agreed that it might have been preferable to have given the complainant fuller detail about the childbirth incident, given that some in the audience might have drawn an adverse inference from its inclusion in this programme. However, the Committee was aware that the company had been informed that the programme had details of all the ambulance callouts and that some of them related to pregnancy issues. The Committee was also aware that the case of the woman who gave birth in the toilets was a matter of public record and had already received publicity, such that the company might reasonably have expected the programme to make further reference to it. On balance, Trustees agreed that the complainant had been provided with sufficient detail about the nature of the allegations being made in the programme and specifically the Freedom of Information data from the East Midlands Ambulance Service, which included information on the four pregnancy calls, to give them a fair opportunity to respond.

The Committee then considered whether the BBC had been fair to Sports Direct in the programme as broadcast by including a reply to the allegations made by the BBC.

The Committee agreed that the complainant had provided detail in its responses to the allegations detailed by Inside Out East Midlands in its right of reply letter but that these responses had been marked private and confidential and not for publication and could therefore not be broadcast in the programme.

The Committee noted that the response from the complainant's solicitors relating to pregnant women and marked for publication but which was not used by the programme said:

"We take extra health and safety precautions with pregnant women and if there are material concerns for the wellbeing of an expecting mother or her baby, an ambulance would be called as a precaution."

The Committee noted that the following commentary was included in the programme as a right of reply from both Sports Direct and Transline, one of the two agencies that supply workers at its Shirebrook warehouse:

"Sports Direct says it aims to provide safe working conditions for all warehouse staff, which comply with employment and health and safety legislation. Transline said it had recorded no instances of the unlawful discrimination against women who are pregnant."

It also said:

"Sports Direct told shareholders that casual workers aren't penalised for sickness, unless the worker calls in within an hour of a shift starting."

And:

"... Keith Hellowell the Chairman ... said to me he was satisfied that the company did comply with health and safety regulations and any concerns were taken up immediately."

The Committee also noted that the programme included an on the record response from

Sports Direct to allegations about the 76 ambulance attendances over two years to its postcode NG20 8RY which the programme explained covered the warehouse, its transport hub, the head office, a training centre, two on site stores and immediately outside. The programme said:

“Sports Direct said the list covers the whole site, and its own records show there were only 24 calls specifically to the warehouse. The company pointed out the calls may include visitors as well as employees.”

The Committee agreed that on balance Sports Direct had been afforded an adequate right of reply in the programme in that it was able to say that it did not penalise workers for being unwell; that the number of calls to the warehouse was less than to the entire site; that it aims to provide safe working conditions; and that it complied with health and safety regulations. The fact that an ambulance was called in this case was self-evident from the programme, as was the fact that this was a complex case with police involvement leading to a charge against the mother, although it had not ultimately come to court.

The Committee concluded that Inside Out East Midlands: Investigating Sports Direct did not breach the Fairness guidelines.

Finding on Point (B): Not upheld

Overall finding: Not upheld

Hiroshima: The Human Cost and the Historical Narrative, BBC News Online, 4 August 2015

Background

This was an appeal by the historian, Antony Beevor, who complained that an amended version of an article about which the Editorial Complaints Unit had upheld his complaint of lack of impartiality, was not an adequate correction, remained lacking in impartiality and had taken an excessive time to amend.

Complaint

The original complaint related to an online article by the BBC's Tokyo correspondent, Rupert Wingfield-Hayes, which was posted on the BBC Website on 4 August 2015. The original article was published to mark the 70th anniversary of the bombing of Hiroshima.

The article considered the bombing of Hiroshima and Nagasaki and set out, as the "conventional wisdom", that dropping atomic bombs on the civilian populations of Hiroshima and Nagasaki was justified because it led to the end of World War Two. The article stated that this reason had itself been "constructed after the war, by America's leaders, to justify what they had done".

The article considered the scale of the human cost of the bombing – the number of people killed, the manner in which they died, and the injuries sustained by those who did not die but were severely affected. The article noted that it had become accepted that those affected had died immediately in the intense heat of the blasts; however, the article stated that this did not take account of those who later died of their injuries or had been trapped in collapsed buildings, or who had been injured or disabled by the bombings.

The complainant considered the original article biased because it did not include information which would have explained the historical justification for using the bombs – in particular, that there had been careful consideration given at the time about the effect of the bombs and their use had been justified because they would prevent the deaths of even greater numbers of people.

In his original complaint, the complainant said:

"The article on Hiroshima never explained that most serious historians now consider that the atomic bombs saved far more Japanese (as well as Allied) lives because the Japanese military was prepared to sacrifice 28 million civilians in continuing the struggle, forcing even women and children to fight an Allied invasion of the home islands with bamboo spears and suicide bombs. It was only the second bomb at Nagasaki which prompted the Emperor to surrender. The prolongation of the war into 1946 would have also led to millions dying of hunger, including almost all Allied prisoners of war."

The complaint was upheld at Stage 2. In upholding his complaint, the ECU said the article had breached the "personal view" guideline in that a piece had to be based on evidence and that alternative views and arguments should be duly represented. It saw several difficulties with the article:

- There was nothing substantial included on the argument(s) that the use of the

- atomic bombs was justified.
- The headline did not make it clear that the “sanitised view” was the opinion of the author.
- “The limited credit the article might earn by merely mentioning that there is an alternative narrative is seriously undermined by the claim that this was ‘constructed after the war’ as a retrospective justification for a course of action which had no such justification at the time.”
- There is a contemporaneous view that consideration of casualties was a factor in deciding to drop the bomb, which should have been given due weight.

The ECU finding read:

“The ‘sanitised narrative’ of Hiroshima’s atomic bombing, bbc.co.uk:

Finding by the Editorial Complaints Unit

Complaint According to this online article, the rationale that the use of the A-bombs was intended to shorten the war and avoid an indefinite number of casualties *“was constructed after the war, by America’s leaders, to justify what they had done”*. The historian Antony Beevor complained that this stated as fact a view which conflicted with contemporaneous evidence.

Outcome There are contemporaneous sources which make clear that extremely high estimates of casualties in the event of an invasion of Japan played a major part in US thinking. The ECU concluded that what the article stated as a fact was strongly contested, on the basis of credible evidence.

Upheld

Further action The matter was discussed in detail with the author of the article (the BBC’s Tokyo Correspondent), who revised it in the light of the finding. The headline, which was not the responsibility of the author, was also changed.”

The article and headline were amended.

Appeal to the Trust

The complainant contacted the BBC Trust on 30 March 2016 to say that, although his complaint concerning the lack of impartiality in a previous version of this article had been upheld by the ECU on 29 October 2015, it had taken five months for the offending article to be amended. And this had been done with no consultation with himself – which he had expected from previous exchanges with the ECU.

He also complained that the amended version – originally headlined “The ‘sanitised narrative’ of Hiroshima’s atomic bombing”, now titled “Hiroshima: The human cost and the historical narrative” was, in his view, hardly any improvement, in terms of impartiality, over the previous version.

Applicable Editorial Guidelines

The Editorial Guidelines relating to

- Impartiality
- Complaints Handling

are applicable to this case. The full guidelines are at: [www.bbc.co.uk/editorial guidelines](http://www.bbc.co.uk/editorial_guidelines)

The Committee's decision

The Committee decided it should consider two preliminary matters before going on to adjudicate on the substantive complaints about impartiality and complaints handling.

Firstly, the Committee discussed whether the subject of the article and complaint was a "controversial matter" within the meaning of the guidelines.

The Committee noted that as with many events of historical significance, there is a debate between historians about the interpretation of events and what was behind them – in this case the use of atomic bombs by the USA at Hiroshima and Nagasaki. There is also contemporary political debate in the United Kingdom and abroad about the morality of the use of nuclear bombs both then and now. The Committee concluded that, given the ongoing political debate about the use of nuclear weapons since they were first used at Hiroshima, this was a controversial issue and that the impartiality requirements that applied were therefore those pertaining to controversial matters.

Secondly, the Committee discussed whether this was a "personal view" piece within the meaning of the Editorial Guidelines. Paragraph 4.4.29 says:

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

The Committee noted that there seemed to be no evidence of any signposting. It was a piece with a by-line, but articles by BBC correspondents do not usually fall into the personal view category. Paragraph 4.4.31 says:

"BBC staff and regular BBC presenters or reporters associated with news or public policy-related output may offer professional judgements rooted in evidence. However, it is not normally appropriate for them to present or write personal view programmes and content on public policy, on matters of political or industrial controversy, or on 'controversial subjects' in any area."

The Committee acknowledged that the ECU finding, upholding the original complaint said that:

"The BBC's guidelines do allow for the expression of a personal view, which this article is (and is acknowledged to be), but i[t] has to be based on evidence and even then there is a requirement that alternative views and arguments should be duly represented."

But the Committee, whilst acknowledging that there can be a lack of clarity about whether a historical subject is no longer controversial, concluded that this should not have been positioned as a "personal view" piece in that it was by a BBC correspondent and about a controversial subject with political resonance today. Further it was not signposted as a "personal view" piece.

Was there a breach of the Impartiality Guideline?

The Committee noted that:

- In his appeal, the complainant said of the amended piece:

- o "...the requirement that alternative views should be duly represented has not been met in any form in the new version. There is no 'historical narrative'; the same degree of bias is barely undiminished; and there is absolutely no sign that 'alternative views and arguments' are 'duly represented'."
- He said that the words:
 - o "the conventional wisdom is that the dropping of atom bombs on Hiroshima and Nagasaki ended the war, and because of that it was justified"

are not adequate given the author "then proceeds to attack the idea without in any way explaining its basis".

The Committee also noted that:

- The revised article includes the following information in terms of the use of the atomic bombs and their justification:
 - o "The US has always insisted that the atomic bombs dropped on Hiroshima and Nagasaki were necessary to end World War Two. But it is a narrative that has little emphasis on the terrible human cost."
 - o "The first President George Bush famously said that issuing an apology for Hiroshima would be 'rank revisionism' and he would never do it."
 - o "The conventional wisdom is that the dropping of atom bombs on Hiroshima and Nagasaki ended the war, and because of that it was justified."
 - o "The danger of this version of history is that it diminishes the appalling suffering inflicted on the civilian populations of Hiroshima and Nagasaki. And it was, by any measure, appalling."
 - o "It is also true that terror bombing was not invented by the United States. The Nazis unleashed it at Guernica in 1937 and again on British cities in 1940. The Japanese bombed Chongqing for six years. The British destroyed Dresden and many other German cities. But no other bombing campaign in WW2 was as intense or destructive of civilian lives as the US bombing of Japan in 1945. Between 300,000 and 900,000 people died."
 - o "Seventy years on, it is perhaps worth asking again how it is that a country which entered the war to save civilisation ended it by slaughtering hundreds of thousands of civilians."
- The article also includes the following comments from an interviewee, who was asked about his view of America's use of the atom bomb on Hiroshima. He responded:
 - o "It's a difficult question... I think we as a society need to revisit this point in history and ask ourselves how America came to a point where it was OK to destroy entire cities, to firebomb entire cities."

- He was also asked what he was taught in school about the bombing, and replied:
 - “A great scientific endeavour had brought quick victory, and saved hundreds of thousands of lives on both sides.”
- There was no further examination in the piece of arguments, either at the time or since, as to whether the dropping of the atomic bombs had been justified.

The Committee noted research by an independent editorial adviser which indicated that there has been a vigorous debate among historians of the period about the factors considered at the time including: the likelihood of Japanese surrender; the determination of its military; the weakness of Japan's capability; and the impact of continued warfare on Allied forces, prisoners of war, the Japanese population and the non-combatant Asian populations of the region. Trustees noted a range of views including:

- Frederick Taylor in his article “The Countdown to Annihilation and the Legacy of the A-Bomb” said:

“Historians are sharply divided in their judgement. Many view the atomic attacks as futile war crimes. For others, they saved many, many more Japanese and Allied lives that would have been lost in the course of the invasion...”
- Richard Frank (who was cited by Antony Beevor in his response to the amended article) wrote in his book, “Downfall: the End of the Imperial Japanese Empire”:

“It is hard to imagine anyone who could have been president at the time (a spectrum that includes FDR, Henry Wallace, William O. Douglas, Harry Truman, and Thomas Dewey) failing to authorize use of the atomic bombs in this circumstance...”
- D M Giangreco in his book “Hell to Pay” said “American concern over casualties was hard to miss”. His conclusion was that calculations about how many American servicemen would be lost in any prolonged action, was absolutely critical in Truman's decision and that the numbers of deaths overall would have been much higher had more conventional weapons and battles been deployed.
- An article for the Hampton Institute: “Dropping the Bomb: A Historiographical Review of the Most Destructive Decision in Human History” by Derek Ide explained the revisionist historian's position:

“The revisionist position is quite clear. Officials in the United States were deeply concerned about post-war hegemony, particularly in the Pacific but in Europe as well, and saw the use of the atomic bomb against Japan as a way to contain the Soviet Union. Subsequently, any and all alternatives that could have ended the war, albeit not in time to prevent Soviet entry, were disregarded and not pursued. This conclusion is often premised on the fact that Japan was already defeated and near surrender.”
- There is also a school of thought, which, according to Ide, was:

“...that Truman and his advisers were aware of alternatives that seemed likely to end the war. The ‘consensus’ historians reject the traditionalist argument that the atomic bombs were a military necessity and at the same time greatly

distance themselves from the atomic diplomacy thesis.”

The Committee discussed whether the article, as amended, still breached the Editorial Guidelines on Impartiality by not adequately referencing the traditional historical analysis that the bombing of Hiroshima could be justified at the time and afterwards by comparing the number of those killed in the bombing, both straightaway and in the ensuing days, months and years, with the numbers of both combatants and non-combatants which it was estimated would have been lost in continued conventional warfare.

It concluded that, given this was a controversial subject, there had not been sufficient acknowledgment of the rich and complex historiography concerning this event, including the evidence about conversations of decision-makers at the time, and that there was an almost entire absence of an alternative point of view. There has been a considerable amount of well-informed debate about the subject but it was not included here. The balancing voice came from the young man describing what he had been taught.

The Committee was also of the view that the amended headline “The human cost and the historical narrative” was not duly accurate as it suggested an examination of the historical narrative, whereas this was not explored in the article itself.

Finding: Upheld

Was the BBC compliant with the Complaints Handling Guideline?

The Committee noted that the complainant said it took a considerable period, (five months) during which there was no consultation with him –which he had expected there to be – for the BBC to post an, in his view, inadequately amended item and headline.

Trustees were aware that:

- The Editorial Guidelines require complaints to be “dealt with quickly...” but do not specify a time-frame for any correction.
- The Editorial complaints procedure says:

4.9.5 if a complaint is upheld in any respect, [the ECU] ensures that the BBC takes appropriate action in response to the finding.

Trustees noted the comments by the Head of Editorial Complaints, ECU who:

- accepted that it took too long to amend the article. He explained that there were other editorial matters to deal with in this period. It also took some time to explore the possibility of an amended version which would take due account of the finding but which could appear under the correspondent’s by-line.
- added that the original delay took the BBC into a period when the correspondent was working and travelling 24/7 because of nuclear testing in North Korea and the earthquake in Taiwan.

The Committee considered that the delay, which meant that an article, against which a finding of lack of due impartiality had been upheld, remained un-amended on the website for about five months, was not acceptable. The Committee thought that this was more problematic than for a broadcast item, which, by its nature, is transient and disappears from iPlayer, whereas online content is constantly in the public domain.

The Committee understood the need to prioritise the coverage of important news stories, and the pressure on correspondents which meant that other issues might need to be put back. However, Trustees considered that when an article is found to have breached the guidelines it should be rectified speedily and that the BBC had a professional responsibility to respond to it completely and quickly. The Committee concluded that the delay in achieving due impartiality was too long.

The Trust is clear that if the BBC's own internal complaints handling is to be effective and to deserve the confidence of audiences, the BBC Executive must ensure that action is taken swiftly to rectify errors which the BBC itself acknowledges. In the case of a finding of lack of due impartiality or accuracy in an online article, if there is a significant delay in amending the original version it should be taken down until a compliant version can replace it.

Finding: Upheld

On the matter of whether the complainant should have been consulted about the amendments to the article, or whether he had a legitimate expectation that he would be consulted, the Committee noted that:

- In his letter of 30 October, the complainant had asked for “a full correction of the original article to be posted with similar prominence to the original on the BBC website” and had said “I would be grateful if you could send me a draft of what you intend to say”.
- The ECU response said:
 - “Thank you for your reply, which leaves me in a position to finalise the finding. The next stage will be for me to draft a summary for publication on the complaints pages of bbc.co.uk, which will include a note of the action taken, or to be taken, as a result of the finding. The suggestion in your letter will be considered in that context. Could I ask whether you'll be checking emails while you're out of the country? If not, perhaps you could let me know a date on which email contact could be resumed.”
- The ECU also said in a later email to the complainant: “I must proceed by consultation unless and until it becomes clear that agreement isn't going to be reached.”

Trustees noted that the Head of Editorial Complaints did not consider his emails implied that the complainant would be consulted before the amended article was uploaded. He explained in his comments to the Committee that:

“I think the natural inference from the email as a whole is that his proposal for ‘a full correction of the original article to be posted with similar prominence to the original on the BBC website’ (which is ‘the suggestion in your letter’) would be considered in the context of the note of the action taken as a result of the finding, and I don't see how it can be read as encouraging [the complainant] to expect sight of anything in draft. I don't think there could have been any suggestion at that point in the story that ‘the amended piece’ would be referred to him, because there was no assumption that there would be an amended version – it still looked entirely possible that the piece would have to be taken down.”

And

“The relevant passage from my 24 December email reads ‘I was hoping to be in a position to publish the summary by the time I replied, but in fact I’m not. This is largely because the question of what action should be taken as a result of the finding has raised issues in which a number of people in the BBC have an interest, and I must proceed by consultation unless and until it becomes clear that agreement isn’t going to be reached’. I don’t see any implication that the consultation would be with anyone other than the people in the BBC with an interest in the question of what action should be taken.”

Trustees recognised why the complainant had understood, from the ECU’s request about how he could be contacted, that he was to be consulted on an appropriate remedy for the finding of lack of due impartiality. However, Trustees were clear that that had not been the BBC’s intention. The responsibility for ensuring that content is compliant with the Editorial Guidelines rests with the BBC alone. At its own discretion, the BBC can and does approach those with expertise to comment upon a proposed draft article or programme script but it was not a requirement placed upon the BBC to do so as part of the complaints procedure and no such consultation had been offered in this case.

Finding: Not upheld

Overall finding: Partially upheld

Russell Howard's Good News, BBC Two, 12 November and 3 December 2015

Background

Russell Howard's Good News ("RHGN") is a topical comedy show hosted by the comedian Russell Howard. The programme "offers his unique perspective on the big stories dominating the news outlets from online and print to broadcast"⁴, mainly through stand-up and sketches illustrated with video clips and newspaper headlines. He also interviews guests who have appeared in the media that week.

The programmes transmitted on 12 November and 3 December 2015 contained a number of references to the MP, Philip Davies.

12 November 2015 Programme

In the 12 November episode, the programme showed a photograph of Mr Davies holding up a sign, which stated "I pledge to speak up for carers in Parliament". In the photograph Mr Davies was surrounded by three representatives from the charities Macmillan Cancer Support, Carers UK and Independent Age.

Russell Howard then read out a quotation from the Guardian newspaper saying:

"A Conservative MP has blocked a proposed law to introduce free hospital parking for carers by speaking in the House of Commons for 93 minutes in order to use up the time allocated for the debate."

Russell Howard then said:

"What an arsehole, carers have to pay to park at hospitals, they wanted a debate to end this bullshit and that wanker spoke for 93 minutes so they couldn't. Well, I think we can change that photo, don't you?"

"I am a toad-faced hypocrite."

The same photograph of Mr Davies was shown, but the large pledge card now read, "I am a toad-faced hypocrite". Mr Howard then continued:

"You can disagree with it – that's fine, you have to let them debate it, that's your job. I can't wait for him to rock up to hospital, imagine that 'Help, I'm having a heart attack'. 'Oh really, we'll see you in 93 minutes'".

Russell Howard then gave a list of things which Mr Davies had spoken out against. Among other things, he quoted the Daily Mail:

"Disabled people should offer to work for less than the minimum wage".

3 December 2015 Programme

⁴ BBC website, BBC Two *Russell Howard's Good News*

In the 3 December episode, Russell Howard referred again to Mr Davies. He quoted from The Daily Mirror: "Philip Davies does it again! Tory windbag talks for 52 minutes against law to teach pupils first aid."

Russell Howard continued:

"What an arsehole. [imitation] 'I don't want kids learning about first aid. I want them to learn relevant things that will help them today, like Latin and the recorder.'"

"It's such bullshit. I've put someone in the recovery position. I've never been at a party and gone I know what this needs [imitates playing the recorder]. Some girl in the corner, 'Dominus meus, Russell, dominus meus'.

"It gets even more ludicrous. Did you see the reason why he wanted this bill blocked? He had been taught first aid in school but had forgotten what he was taught.

[Picture of Independent newspaper cutting 'He had been taught first aid in school but had forgotten what he was taught.']

"What kind of logic is that? [imitation] 'Don't learn the things I forgot'. Kids shouldn't be punished just because you're a shit for brains. Does my head in this bloke. What I want to know, how he's allowed to get away with filibustering? Basically what he does, he speaks for long enough so that important things can't be discussed in Parliament. That's what filibustering is. He just talks bollocks to stop democracy."

Complaint

Mr Davies complained that comments made about him were "inaccurate and defamatory". He initially complained about the 12 November programme and then about the 3 December programme. In summary he complained that:

- It was inaccurate of the programme to say that Mr Davies spoke for so long that he used up all the time for the debate.
- The bill would not have applied to all carers which was something the programme did not say.
- It was not true to say he was a hypocrite: he pledged to speak up for carers - not to support this bill. This was a deliberate lie.
- He would have supported legislation which would support carers and said so in his speech – those bits were not used by the programme.
- His speech demonstrated he had spoken up for carers and so had stood by his pledge.
- He had received abusive tweets and emails.
- He had never said that "disabled people should offer to work for less than the minimum wage". He had said that everyone should be free to offer to work for less than the minimum wage if they think that would help them get on to the jobs ladder. Many newspapers had already had to publish apologies for making similar mistakes and he noted the audience reaction as evidence of how damaging the statement was.

The Acting Director of BBC Television responded to Mr Davies's complaint at stage 1 of the BBC's complaints process and rejected it.

Mr Davies wrote to the Director-General reiterating his concerns.

The Director-General responded at stage 2 of the BBC's complaints process and amongst other points he said that he was happy to acknowledge that Mr Davies had not personally used up "all the time available for the debate and that three hours remained" after Mr Davies had sat down.

In the covering email it was explained that a clarification would be posted on the BBC website:

"An edition of Russell Howard's Good News, first broadcast on 12 November, said that Philip Davies MP blocked a proposed law to introduce free hospital parking for carers by speaking in the House for 93 minutes. We are happy to clarify that Mr Davies did not personally use up all the time available for the debate and that almost three hours remained after he sat down."

Mr Davies wrote again. The Director-General replied and said that on reading further details about Mr Davies's contribution to the debate about disabled people and the minimum wage, he agreed that the programme did not "fully represent" the MP's comments and stated:

"I understand that you are not arguing that disabled people should be obliged to work for less than the statutory minimum wage; rather that it would be in the best interests of disabled people, and others, to be allowed to offer to work for less than the minimum wage, if the alternative were no employment at all.

"I note that you had the chance to put your side of the case in an interview on the BBC at the time but I am happy to put the record straight in this letter."

The complainant wrote again seeking a further note on the BBC Clarifications and Corrections website, and that repeats of the relevant episodes should either carry a correction or be edited in a way that the relevant sections were not repeated. He sought reassurance that the programme – or parts of it – should not be available through other mechanisms, such as iPlayer and YouTube. He requested a broadcast statement at the first opportunity in any new series of the programme. He suggested the BBC should make a "generous donation to a disability charity or carers' charity" of the MP's choice.

The Director-General sent a final reply which carried a link to the Corrections and Clarifications page, which had been updated. The Director-General hoped the complainant would consider the BBC had "properly addressed" his concerns.

The BBC's Clarifications and Corrections website states:

"An edition of Russell Howard's Good News, first broadcast on 12 November, said that Philip Davies MP blocked a proposed law to introduce free hospital parking for carers by speaking in the House for 93 minutes. We are happy to clarify that Mr Davies did not personally use up all the time available for the debate and that almost three hours remained after he sat down. There is also a suggestion in this edition that Philip Davies argued in the House of Commons that disabled people should be obliged to work for less than the statutory minimum wage. We would

like to clarify that the programme did not fully represent his comments, which were, that it would be in the best interests of disabled people, and others, to be allowed to offer to work for less than the minimum wage, if the alternative were no employment at all."

Appeal to the BBC Trust

Mr Davies appealed to the BBC Trust. He said that Lord Hall had twice accepted that RHGN did not fully represent his comments about disabled people and the minimum wage, but "no satisfactory solution" had been proposed. Mr Davies also stated that Lord Hall failed to accept his points on misrepresentations in the programmes regarding the issues of debating and standing up for carers.

Applicable Editorial Guidelines and Guidance

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

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

Trustees noted that Mr Davies believed the programmes to be defamatory. The Trust cannot decide whether a programme is defamatory as that is a matter for the courts but Trustees can consider whether content is fair or duly accurate.

The Committee noted that the BBC Editorial Guidelines explain that

"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 guidelines also state that the BBC "...should be fair and accurate in our portrayal of ... people".

The Committee agreed that the nature of this long-standing programme was very clear to the audience. It was topical satire and the audience expected comment which at its best would be biting and bruising to the target. Those in the public eye, such as politicians, could expect robust criticism.

Trustees agreed that satire should have a basis in truth but also accepted that it would be an acerbic approach to a topic by its very nature. They noted that the Editorial Guidelines explain that "the due accuracy required of ...comedy will not usually be the same as for factual content". Trustees agreed that whilst all genres should abide by the BBC's Editorial Guidelines, programmes featuring satire and particularly political satire would necessarily be allowed substantially more leeway in their approach to accuracy and fairness than for example news or a current affairs programme. To do otherwise would be to risk an unwarranted curtailment of freedom of expression which would not be acceptable in a democracy.

Point (A) misrepresentation regarding debating

The Committee understood that Mr Davies thought that the programme was inaccurate and unfair in the way it described how Mr Davies took part in Parliamentary debates. He objected that the programme said he had spoken for so long that he had used up all the time for the debate when there was actually three hours left. Trustees noted that, in correspondence, Mr Davies had highlighted elements of the programmes which referred to debating. For example, Russell Howard read a quotation from the Guardian newspaper:

"A Conservative MP has blocked a proposed law to introduce free hospital parking for carers by speaking in the House of Commons for 93 minutes in order to use up the time allocated for the debate."

Russell Howard also said the following:

"... carers ... wanted a debate to end this bullshit and that wanker spoke for 93 minutes so they couldn't."

"You can disagree with it – that's fine, you have to let them debate it, that's your job."

"A few weeks ago he spoke for 93 minutes so a bill to give carers free hospital parking couldn't be debated. Well guess what [quotes the Daily Mirror] 'Philip Davies does it again! Tory windbag talks for 52 minutes against law to teach pupils first aid'."

"[What I want to know, how he's allowed to get away with filibustering?] Basically what he does, he speaks for long enough so that important things can't be discussed in Parliament. [That's what filibustering is. He just talks bollocks to stop democracy.]"

Trustees noted that Mr Davies had said in correspondence:

"What on earth do you ... consider to be a debate in Parliament? To help you all out, it is when MPs make speeches in Parliament. My speech was part of the debate..."

He also said in relation to the debate on the Hospital Parking Charges (Exemption for Carers) Bill:

"...there were also some three hours left for the debate when my speech ended (and therefore by definition [I] didn't or couldn't sink the bill)"

Trustees noted that the Executive had accepted that Mr Davies "personally did not use up all the time available for the debate" in relation to the Hospital Parking Charges (Exemption for Carers) Bill, but said that it was reasonable for the programme to interpret a 93 minute speech as part of an attempt to talk the measure out.

The Committee noted that the quotation from the Guardian used in the programme referred to using up "the time" allocated for the debate.

The Committee agreed that this phrase could bear more than one meaning, and did not necessarily mean Mr Howard was saying that Mr Davies spoke for so long that he used up all the time for the debate. Trustees therefore did not consider that the programme

claimed that Mr Davies personally used up all the allocated time for the debate, and noted that the BBC Executive had clarified that Mr Davies “did not personally use up all the time available for the debate” on the BBC’s Corrections and Clarifications page, and had stated that the programme would not be repeated in its original form. Trustees considered this clarification resolved the concern that the script could be taken to mean that Mr Davies had talked for all the time allotted to the bill.

The Committee looked at the broader issue of debating and how it was approached in the programmes. Trustees took note of a number of definitions of filibuster. For example⁵ :

- an action such as prolonged speaking which obstructs progress in a legislative assembly in a way that does not technically contravene the required procedures. (<http://www.oxforddictionaries.com/definition/english/filibuster>)
- the use of extreme dilatory tactics in an attempt to delay or prevent action especially in a legislative assembly and b) an instance of this practice. (<http://www.merriam-webster.com/dictionary/filibuster>)
- the process or an instance of obstructing legislation by means of long speeches and other delaying tactics (<http://www.collinsdictionary.com/dictionary/english/filibuster>)
- to make a long speech in order to delay or prevent a new law being made (<http://dictionary.cambridge.org/dictionary/english/filibuster>)

The Committee also noted an interview Mr Davies gave to the *Total Politics* website⁶, headlined: “Tory MP Philip Davies speaks for 90 minutes to kill bill allowing free hospital parking”. It referred to earlier comments made by Mr Davies on the subject:

“Asked about his ‘filibustering’ tendencies by [Total Politics] earlier this year, the Shipley MP made no apologies. He told us:

‘That’s probably a slightly jaundiced view of it. It’s about making sure that bills get proper scrutiny, for sure. I’m also a fan of using whatever parliamentary procedures are in place in order to pursue my beliefs and what I think is the best thing.

‘And if by keeping a debate going for a period of time you can stop a bill that you think will be damaging for the country and your constituents, then it seems to me that any good parliamentarian would keep a debate going for as long as possible in order to stop that from happening.’”

In relation to the debate on the Compulsory Emergency First Aid Education (State-funded Secondary Schools) Bill in which Mr Davies spoke for 52 minutes, Trustees noted Hansard also records the Deputy Speaker intervening in Mr Davies’s speech⁷ with such comments as:

- “We are definitely drifting off the Bill.”

⁵ These links may feature advertising

⁶ See <https://www.totalpolitics.com/articles/news/tory-mp-philip-davies-speaks-90-minutes-kill-bill-allowing-free-hospital-parking>

⁷ See Hansard parliamentary debate on Compulsory Emergency First Aid Education (State-funded Secondary Schools) Bill <http://www.publications.parliament.uk/pa/cm201516/cmhansrd/cm151120/debtext/151120-0002.htm>

- “We do not want to go into what previous Governments may or may not have done.”
- “The debate is about the Bill”, and “Nobody is disagreeing that there are lots of good organisations, but the Bill is about schools and education. We are in danger of getting into an argument about those who provide training in the voluntary sector and whether they should do it.”

Having taken into account the above and in particular the definitions of filibustering, Mr Davies’s own comments about the legitimate use of parliamentary procedure to “keep a debate going” in order to stop a bill, the length of both speeches and the Deputy Speaker’s interventions, the Committee concluded that it was fair and duly accurate to refer to Mr Davies’s actions as filibustering. The Committee further agreed therefore that the references to debating in the programmes were duly accurate and fair.

For completeness the Committee also considered whether it was fair and duly accurate to explain that the reason Mr Davies opposed the Compulsory Emergency First Aid Education (State-funded Secondary Schools) Bill was because he had forgotten the first aid he had been taught at school. The Committee accepted that in a 52 minute speech Mr Davies had given a number of reasons as to why he opposed the bill. However, the Committee considered that viewers would have understood that this would not necessarily have been the only reason the MP disagreed with the bill. It was therefore reasonable for the programme, in the context of using a newspaper headline in a satirical programme, to refer only to this specific reason for Mr Davies’s opposition to the bill. In this respect the programme was also fair and duly accurate.

Finding: Not Upheld

Point (B) misrepresentation regarding standing up for carers

The Committee understood that Mr Davies thought that the programme was inaccurate and unfair in suggesting Mr Davies did not stand up for carers and that he was a hypocrite. (Mr Davies had previously been seen at a photo-call carrying a pledge card stating “I pledge to speak up for carers in Parliament”.)

Trustees noted that Mr Davies provided quotes from his speech to Parliament which he said demonstrated that he had kept to his pledge to stand up for carers. He said in his speech that he would be happy to support other measures which would benefit carers and suggested some. However, he had explained to the BBC that he did not support this bill because, according to the MP, it would have applied to only 1 in 6 carers while 5 in 6 carers may have had to pay more for their hospital parking. Mr Davies said his pledge was to speak up for carers - not to support a bill on hospital parking which would benefit only 1 in 6 carers. He was not required by his pledge to support everything Carers UK supported.

Trustees also noted that Mr Davies said that the programme had made no reference to any of the quotes from his speech and by saying he was a hypocrite was saying he had broken a promise, which he had not done. He had built up a reputation for straight talking. A reputation for trust and integrity was hard won and easily lost and the reaction on Twitter demonstrated that people believed what had been said. There was no opportunity for his side of the story to be heard.

The BBC response was also noted by Trustees. The BBC said that the bill would have provided free parking to those who were entitled to claim the Carers’ Allowance. These

people would potentially lose out if the bill did not become law. Carers UK has supported the bill and had expressed disappointment at the failure of the bill to pass. Carers UK was one of the main organisations behind Carers' Week and the pledge card which Mr Davies had held. The presenter's description of Mr Davies as a "hypocrite" could therefore be described as an opinion that might be formed in the light of Mr Davies's action, even if clearly he would, and others might, see those actions differently. It was legitimate in this context to compare his actions in speaking for 93 minutes with his earlier pledge to speak up for carers.

The Committee decided that, in a satirical programme, it was both fair and duly accurate to juxtapose the original pledge to support carers with Mr Davies's decision to oppose the bill (which would have led to free parking for some carers) by speaking for 93 minutes to reduce debating time. It was also fair and duly accurate within such a programme for the presenter to express the view that that amounted to hypocrisy. It was not necessary to refer to points in his speech where Mr Davies had expressed his general support for carers or for the programme-makers to approach Mr Davies for a formal reply or to spell out precisely which carers would benefit from the bill.

Finding: Not Upheld

Point (C) adequacy of Executive remedy (re: comments about paying disabled people below the minimum wage)

Trustees noted that Mr Davies complained about the adequacy of the Executive remedy.

Mr Davies had complained that the first programme unfairly alleged that he said, "Disabled people should offer to work for less than the minimum wage" (quoting from the Daily Mail). Mr Davies said that he had "never said such a thing". Mr Davies stated that what he had previously said was everyone should be free to offer to work for less than the minimum wage.

The Committee noted that Hansard recorded these extracts from Mr Davies's contribution to the Employment Opportunities Bill on 17 June 2011 as follows:

"The point is that if an employer is considering two candidates, one who has disabilities and one who does not, and if they have to pay them both the same rate, which is the employer more likely to take on? Whether that is right or wrong and whether my hon. Friend would or would not do that, that is to me the real world in which we operate. The people who are penalised are those with disabilities who are desperate to make a contribution to society and who want to get on the employment ladder, but find time and again that the door is closed in their face..."

"I am sure that all Members want everybody to have the opportunity to get a job, to develop their career and for it to flourish in every possible way, but for some people the national minimum wage may be more of a hindrance than a help, and if those people—in my view, some of the most vulnerable people in our society—consider it a hindrance and feel that for a short period taking lower pay to get on the first rung of the jobs ladder is a good thing, I do not see why we should stand in their way."

"The national minimum wage has been of great benefit to lots of low-paid people. However, if the Labour party is not even prepared to accept that the minimum

wage is making it harder for some of those vulnerable people to get on the first rung of the jobs ladder, we will never get anywhere in trying to help these people into employment.”

The Committee noted that the BBC accepted that Mr Davies had not said that “Disabled people should offer to work for less than the minimum wage” (emphasis added) but that Mr Davies was of the view that disabled people should be permitted to take “lower pay to get on the first rung of the jobs ladder”.

The BBC Executive had agreed that, “the programme didn’t fully represent [Mr Davies’s] comments”. It put a note of clarification on the BBC’s Clarifications and Corrections website (see above). The Executive also decided that the programme would not be repeated in its current form.

The Committee noted that the BBC Executive had recognised that the programme had not fully explained Mr Davies’s position on the minimum wage and disabled people and had agreed there was a discrepancy between his views and how they had been reflected in the output. In the view of the Committee, the Executive had taken appropriate action by publishing a clarification on the BBC website and ensuring that the programme would not be repeated in its current form. The Committee considered this to be a proportionate and appropriate response to the issue and agreed that further action was not necessary. This was also the case in relation to the other clarification posted by the BBC.

Finding: Not upheld

Overall finding: Not upheld

ATP World Tour Finals, BBC One, 21 November 2015

Background

BBC One broadcast live coverage of the tennis 2015 ATP World Tour Finals. At around 2.30pm, there was a break in the play between Rafael Nadal and Novak Djokovic.

While the commentator discussed Nadal's form, the camera followed a woman who was carrying a tray of six glasses onto the court and served them to some guests watching the tennis. The woman was wearing a black apron. As she came closer it was possible to see that there was white lettering on the apron saying "Moët & Chandon", though this was partly obscured by the glasses. It also became apparent, as she came closer, that the six glasses were branded with "Moët".

The commentator said, "Oh now there's an idea" before continuing to discuss Nadal's game plan: "He's trying to catch, or work on his game and everyone here is trying to catch Novak Djokovic. Is there a weakness in that serving of the game?" During this time the camera continued to follow the waitress serving the drinks – though the logos on the glasses and her apron were no longer visible – and the commentator said, "Where's ours by the way?" The shot then dissolved back to the courtside view of Djokovic.

The camera shot of the woman carrying the glasses, serving the drinks and then guests sipping the champagne lasted for 24 seconds. The "Moët" logo on the glasses was in clear focus for three seconds. The branding on the apron was in shot for five seconds (at the same time as the glasses) but was partly obscured.

Complaint

BBC Sport received a complaint that the programme "filmed a setup advert".

BBC licence fee-funded services are not permitted to carry broadcast advertising, sponsorship or product placement. The BBC Executive stated that the sequence was not an advertisement. It added that, in this case, the relevant Editorial Guidelines concerned product prominence and whether any undue prominence had been given to the product. The BBC Executive rejected the complaint saying that Moët & Chandon was present at this event like any other major sponsor. There were many other event sponsors.

The BBC Executive explained the footage was taken from ATP Media and therefore it had no editorial control over the nature or length of the shot in question. It stated that the Editorial Guidelines recognised that it was sometimes necessary to refer to commercial products and "given the ubiquity of advertising in the world of sport today it would be impossible for the BBC to avoid a certain amount of prominence of branding in the coverage of high profile events of this kind". The BBC did not film the sequence but it was part of a supplied feed. It said that it was the role of the commentator to reflect what was happening on the screen and "add some repartee to the proceedings" which provided editorial justification to the references.

Appeal to the Trust

The complainant appealed to the Trust restating that this was "a staged advert". He said that the footage was "clearly lingering on the product, with verbal references to draw attention to it (even if unintentionally)".

Applicable Editorial Guidelines and Guidance

The Committee considered the appeal against the BBC's Editorial Guidelines ("the Guidelines") applicable in the case (the full version available at <http://www.bbc.co.uk/editorialguidelines/>). In particular, Section 14 "Editorial Integrity and Independence from External Interests" is relevant. Among other things, Guideline 14.4.4 "Product Prominence" states:

We need to be able to reflect the real world and this will involve referring to commercial products, organisations and services in our output. However, we must avoid any undue prominence which gives the impression that we are promoting or endorsing products, organisations or services. To achieve this we must:

- ensure that references to trade names, brand names and slogans are clearly editorially justified
- not linger on brand names or logos and use verbal references sparingly unless there are very strong editorial reasons for repeated references to a brand.

The Committee's decision

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

Point (A) Undue Prominence

Trustees noted the complainant's view that the programme gave undue prominence to the Moët & Chandon brand and that:

- this was a staged advertisement, rather than a fleeting glance of a logo
- the commentator's verbal references drew attention to the brand
- the BBC should have switched to an alternative feed.

The Committee noted that footage from the event was provided centrally by ATP Media and was made available to global broadcasters such as the BBC in the UK. According to the ATP Media website, the company was formed in 2001 to "provide the centralised exploitation and host broadcast production for the worldwide television and digital broadcast rights to the ATP World Tour Finals, ATP World Tour Masters 1000 and ATP World Tour 500 tournaments".

Trustees noted the complainant's view that the fact that this feed was provided by a commercial entity should itself have been a warning that it may contain unsuitable content and was not a defence to the broadcast. It was his view that the camera lingered on the product and that it is a common advertising technique to show fleeting glances to reinforce the brand. In his view no-one could mistake the brand. He argued that it was recognisable for virtually the whole time and that a 24 second advert was a very valuable commodity at such a prime event. It was also his view that there was time to see the "stunt" being prepared and so time to cut away.

Turning to the commercial sponsorship of the event, Trustees noted that Moët & Chandon was one of the main sponsors of the 2015 ATP World Tour Awards which honoured the season's best players and tournaments. In common with many sporting events, the ATP

World Tour coverage contained numerous sponsorship brands: the players' chairs were branded with the FedEx logo; the net displayed the Corona brand; the umpire's chair and the official courtside clock carried Ricoh signage; and the edges of the court carried branding for Barclays. In addition the players' clothing, footwear and equipment all carried brand names. As always, the viewers' exposure to commercial brands at these sporting events was significant.

Trustees noted that the BBC said that it believed viewers understood these sorts of sporting sponsorship arrangements and that this was no different from seeing the pitch-side adverts at televised football matches, or the logo boards behind players and manager at post-match interviews. BBC Sport also said:

“Evidently M&C's arrangement with the ATP involves them serving their champagne to VIP guests in the audience during breaks in play, and the television cameras that were there witnessed this.”

The Committee also noted that BBC Sport had confirmed that it was technically possible for the BBC to cut away “slightly quicker to a wide shot and with the gift of hindsight, that is what we would do in future”. However, BBC Sport said that this was a fast-moving, live broadcast environment in which these sorts of unexpected incidents can arise, and it takes time to assess the situation and evaluate the options.

The Committee concluded that it disagreed with the complainant's view that this was “an advert”. It considered that the relationship between the BBC and Moët & Chandon would not fall within the definition of an advertisement⁸. The BBC received no payment or valuable consideration in return for publicity [see also point B below]. The BBC covered a sports event which contained event sponsorship.

Trustees accepted that it was possible that the sequence involving the woman serving champagne had been created in order to get camera footage of this for the live feed. As such, Trustees also acknowledged that it was more contrived than other event sponsorship branding in sports coverage. Nevertheless, Trustees noted that while the full sequence was 24 seconds long, the amount of actual exposure to the brand name Moët & Chandon was limited to five seconds of the apron logo (which was partially obscured) and, at the same time, three seconds of the glasses. While this sequence was unusual, it could be viewed as essentially a “moving” sponsorship brand over which the BBC had no production control.

Trustees noted that the commentator made passing reference to the fact that champagne was being served. The Committee did not believe the comments could be construed as endorsing the Moët & Chandon brand. It believed they were light-hearted asides to reflect what the viewers were watching on their screens. The comments, “Oh now there's an idea” and “Where's ours by the way?” were not significant and could not be viewed as promotional to the champagne brand. In addition, there was no verbal reference to Moët & Chandon.

The Committee agreed that it was for the BBC to avoid undue prominence whether or not the feed they were using came from a supplier. On viewing the material, Trustees noted

⁸ An advertisement is described by the Advertising Standards Authority as “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”. (emphasis added)

that, although the sequence was 24 seconds long, time elapsed between first seeing the woman carrying the drinks and when the Moët & Chandon logo was visible. Given the logo was only visible for some five seconds the time to react and switch to an alternative feed would have been extremely limited.

Taking the above into account and given the context of a sporting event such as the ATP World Tour, the Committee did not believe that undue prominence had been given to Moët & Chandon. Trustees concluded that in the context of this sporting event the Moët images were fleeting and in line with standard industry practice and within audience expectations. The commentator's improvised comments, which had not named the sponsors, had editorial justification. While it was the Committee's view that no undue prominence had occurred in this case, Trustees welcomed the BBC's view that they would expect to cut away from such a shot in future.

Finding: Not Upheld

Point (B) Whether the BBC received any benefit

The complainant asked the BBC to clarify whether it was required to show the coverage in full, whether any individual benefited from the inclusion of this segment, and whether the BBC received the output at a cost which reflected the value of the advertising it contained.

Trustees noted that BBC Sport had said that the commercial arrangement between the sponsor and ATP Media had nothing to do with the BBC, and that BBC services funded by the licence fee are not permitted to carry advertising, product placement or sponsorship.

The BBC had also confirmed to the Trust's independent editorial adviser that it was not required under the agreement with the ATP to show the Moët brand:

- the BBC had no agreements with the sponsors of the ATP in respect to the coverage of the event
- the BBC had the ability to cut away to a different shot, rather than showing "the full output"
- the BBC did not receive any financial benefit for showing the Moët logo.

The Trustees also noted that the complainant stated that to ask the BBC to reply to these questions was meaningless. He argued that there should be an investigation and a proper financial analysis of the arrangements between the parties in order to judge whether the BBC accepted free or reduced cost products or services in return for on-air or online credits, links or off-air marketing or whether any individual benefited.

Trustees agreed that they were content with the investigation undertaken by the independent editorial adviser and did not require a financial analysis or further investigation of the BBC or any individuals. The BBC Executive was required to provide the Trust with information upon request and had done so.

Trustees accepted that BBC Sport had no agreements with the sponsors. The Committee considered it was clear that the relationship between ATP Media and its sponsors was not a matter for the BBC. It was evident that these arrangements had not resulted in a commercial relationship between the event sponsor and the BBC. Trustees were aware that such commercial arrangements required a contract or other formal understanding between a broadcaster and a third party and that programming that was subject to a

commercial arrangement would therefore generally include a payment and/or the provision of some other valuable consideration in return for a commercial reference. Trustees agreed this was not the case on this occasion because:

- the BBC had not entered into any contract or arrangement with Moët & Chandon
- there was no contractual agreement with ATP Media to show any event sponsors (including Moët & Chandon)
- the BBC had been entitled to cut away from the ATP feed although it had not done so
- the BBC gained no commercial benefit from transmitting the images.

The Committee felt that visual references to Moët & Chandon in the BBC's coverage of the ATP World Tour should be considered as analogous to broadcasters' transmitting acquired feature films which contained product placement.

The Committee concluded that there had been no breach of the Editorial Guidelines as no commercial arrangement existed and therefore there was no programme sponsorship, broadcast advertising or product placement of Moët & Chandon.

Finding: Not upheld

Britain's Nuclear Secrets: Inside Sellafield, BBC Four, 10 August 2015

Background

On 10 August 2015 BBC Four broadcast a documentary in which the presenter (and nuclear physicist) Professor Jim Al-Khalili visited the Sellafield nuclear facility. The programme was described on the BBC website as follows:

"Lying on the remote north-west coast of England is one of the most secret places in the country - Sellafield, the most controversial nuclear facility in Britain. Now, for the first time, Sellafield are letting nuclear physicist Professor Jim Al-Khalili and the television cameras in, to discover the real story. Inside, Jim encounters some of the most dangerous substances on Earth, reveals the nature of radiation and even attempts to split the atom. He sees inside a nuclear reactor, glimpses one of the rarest elements in the world - radioactive plutonium - and even subjects living tissue to deadly radiation. Ultimately, the film reveals Britain's attempts - past, present and future - to harness the almost limitless power of the atom."

In the programme's opening menu Professor Al-Khalili said:

"I'm a nuclear physicist. And I've been fascinated by this place for much of my career... Now for the very first time they are giving me and the television cameras exclusive access to discover the real story - we are going inside Sellafield. We've been given unprecedented access to some of Britain's most secret buildings."

Complaint

The complainant said that Professor Jim Al-Khalili had made inaccurate claims about the exclusivity and scale of the programme's access to the Sellafield site and that the title *Inside Sellafield* had previously been used by the complainant for a programme made by Partners in Production Ltd, broadcast in 1989 on Channel 4.

Appeal to the Trust

The complainant appealed to the BBC Trust on 12 November 2015. The Senior Editorial Adviser considered that Trustees would be likely to conclude that the complaint had no reasonable prospect of success. The complainant asked the Editorial Standards Committee (ESC) to review this decision. Trustees disagreed with the Adviser's decision and decided to consider the complaint in its June meeting.

Applicable Editorial Guidelines

The Committee considered the output against the BBC's guidelines on Accuracy, in particular:

- Accuracy 3.1, 3.2.1, 3.2.2

The Committee's decision

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

The Committee noted that the complainant's programme *Inside Sellafield* was a 76-minute observational documentary with minimal voice-over, which depicted working practices inside Sellafield in the late 1980s. It showed not only the operations of the plant but also meetings between workers and management discussing the new business plan and the need for reform of working practices including the abolition of the tea-break; it filmed a visit by the local Conservative Association, and an investigation into the mysterious contamination of a junior manager's badge.

The Committee noted that the BBC's documentary was part of a season of programmes (*BBC Four Goes Nuclear*) which marked the 70th anniversary of Hiroshima. The hour-long programme was heavily presenter-led and explored the history of Sellafield from its development as a military installation through to the present day's reprocessing activities. It carried out formal interviews with members of staff, past and present, and Professor Al-Khalili carried out experiments, including showing how the atom was split at the National Nuclear Laboratory, creating a chain reaction and testing different types of radiation.

The Committee noted that the complainant had raised two points to support his appeal:

Point (A)

Professor Al-Khalili claimed during the programme that television cameras were being given access to Sellafield "for the very first time" and this statement was untrue. The presenter said the access was "unprecedented" yet the complainant's programme also involved behind-the-scenes access to Sellafield and "there was no unprecedented access in the BBC's film".

The Committee noted the view of the Editorial Complaints Unit [ECU] that some viewers may have understood that no film crew had previously had access to the site, but it did not consider this a serious breach of the BBC's guidelines on "due" accuracy – in part because the comment occurred during the introduction to the programme when the presenter conveyed his sense of excitement over what this meant to him personally and in which context a certain degree of hyperbole might be understandable.

The Committee also noted the complainant's view that Professor Al-Khalili's comments "inform the way viewers encounter the film as the film continues".

The Committee noted the BBC's guidelines on 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."

The Committee agreed with the ECU that it was hard to compare the access given to the two programme teams because the complex had changed substantially in the meantime. Trustees also noted that Professor Al-Khalili, as a nuclear physicist, was able to describe in detail the processes carried out at Sellafield and that he was allowed to manipulate nuclear waste in the dangerous "ponds" on site and to look down into the core of Calder Hall Reactor 1. They considered that some viewers could have understood the presenter to have meant that he – as a nuclear physicist – had been given unprecedented access to the site, which enabled him to carry out activities that were not permissible to non-scientists.

However, Trustees noted that the programme also claimed access “for the very first time”, and they considered that the combination of the two references made it likely that viewers would understand there to have been no previous extensive television access to Sellafield.

Trustees noted that in its press communications, Sellafield described the programme’s “unprecedented access” which was an “historic... first for Sellafield”. They considered it understandable that an organisation’s press office may not have a corporate memory stretching back twenty-six years, but those involved in reviewing the draft press communications for the programme team were apparently unaware of the Channel 4 programme despite the research that would have been undertaken to put in place the BBC’s programme.

Trustees therefore decided to uphold this element of complaint as a breach of the due accuracy Guidelines.

Point (A) finding: upheld

Point (B)

The complainant said that the BBC had used the title of his film, “so any future interested person would easily mix them up”.

The Committee noted that the complainant’s programme was called *Inside Sellafield*. The BBC’s title was *Britain’s Nuclear Secrets: Inside Sellafield*.

Trustees decided that the titles were similar but not identical, and as an unremarkable description of access to Sellafield, it was unsurprising that both teams chose similar titles. As this point did not engage the Editorial Guidelines, Trustees decided to consider the point in relation to the overall audience expectation of due accuracy. They did not agree that the two programmes would be confused, as they were broadcast 26 years apart, and with markedly different production styles.

Point (B) finding: not upheld

Trustees noted the complainant’s request for an on-air apology and recompense for the damage to his reputation. They noted that a claim that the complainant’s reputation had been damaged was properly a matter for the courts and not the Trust, as was any claim for compensation. The editorial complaints procedure does not offer any mechanism by which compensation might be awarded. They decided that publication of the finding would serve to set the record straight, and that no broadcast apology was required.

Finding: Partially upheld

Application of Expedited Complaints Procedure at Stage 1 – Complainant 1

The complaint concerned BBC Audience Services' decision to apply the expedited complaints procedure⁹ to complaints by the complainant at Stage 1.

Informing the complainant of this decision, the Head of Communications and Complaints, BBC Audience Services, made the following points:

- He believed the complainant's complaints fell into categories (a), (b) and (d) of the expedited complaints procedure.¹⁰
- He had decided to apply the procedure because of the volume of the complainant's complaints and the consequent demands they made on complaints advisers' time when they had not suggested breaches of BBC guidelines.
- The complainant had made 13 complaints in January 2016, 12 in February, and six between then and 15 June. Since 2011, over 140 complaints had been made in the complainant's name.
- Many of the complaints were comments or views. They mostly concerned climate change and some other issues to which Audience Services had previously provided replies, some of which were subsequently escalated.
- Most of the complaints had not suggested a breach of the BBC's published standards, or a significant issue of general importance which might justify further investigation, and had not been successful on escalation.

In response to Audience Services' decision, the complainant made the following points:

- Audience Services could not deny the veracity of his complaints, and so sought to deny him the right to complain.
- The BBC should stop trying to convince him that:
 - CO₂ was black carbon pollution.
 - a 1.4°F temperature rise in 165 years was apocalyptic.
 - a one part in 10,000 rise in CO₂ over 200 years was cataclysmic.
 - CO₂ at just 0.039% of the atmosphere was a looming disaster.
 - CH₄ [methane] at just 0.00017% demanded the slaughter of every cow.
 - oceans were rising apocalyptically, when they were not.
 - his complaints were misconceived and vexatious.
 - the BBC had evidence of AGW [anthropogenic global warming].
- The complainant added that:
 - atolls did not float and 85% had not increased in size.
 - the BBC did not believe its audiences were "complete idiots".
 - the BBC should not be paid hugely so that it could afford to tell lies in support of its "greenie cronies", to licence fee payers' detriment and the latter's financial benefit.

⁹ The expedited complaints procedure is set out in Annex B to the BBC's Complaints Framework. See:

http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2014/e3_complaints_framework.pdf

¹⁰ i.e. that the complainant had "a history of persistently or repeatedly making content or handling complaints which: (a) are trivial, misconceived, hypothetical, repetitious or otherwise vexatious; (b) fail to raise an issue of breach of any relevant Guidelines or Policies (eg in the case of an editorial complaint, the Editorial Guidelines; in the case of a fair trading complaint, the Fair Trading Policies and Framework); ... (d) are shown on investigation to have no reasonable prospect of success".

- the audited income of the WWF [*World Wide Fund for Nature*] in 2015 was not \$250 million (\$50 million of which came from federal government).
- FOE [*Friends of the Earth*] was not 50% funded by the EU from “our” payments.
- there was no such thing as an advanced microwave sounding unit, mounted on NASA and NOAA [*National Oceanic and Atmospheric Administration*] satellites, monitoring temperature twice daily around the planet from ground zero to 15km, and the data that existed was hypothetical.

Appeal to the BBC Trust

The complainant appealed to the BBC Trust on 21 June 2016. He made the following points:

- Continuous complaints were justified, because BBC output on climate change was “trivial, misconceived, hypothetical, repetitious and otherwise vexatious”.
- For four decades, the BBC had used deception to impose the ideology that CO₂ caused climate change, despite none of its prophecies having manifested themselves.
- A temperature rise of just 1.4°F in 165 years was no reason for panic, and no justification for the demonisation of CO₂.
- Temperatures would continue to rise, until we entered a new ice age. One needed to be careful what one wished for, if one believed that a drop of just 1.4°F to pre-industrial temperatures would be a move in the right direction.
- Global temperatures were falling rapidly. This was the opposite of what the CO₂ hypothesis asserted. If CO₂ were driving temperature in the way that the IPCC [Intergovernmental Panel on Climate Change] CO₂ hypothesis claimed (i.e. if CO₂ rose, temperature would exhibit a rapid and immediate linear response), Audience Services should explain why, following the El Niño event, temperatures were now falling.
- The BBC distributed stories of normality portrayed as abnormality, designed to scare audiences into believing that CO₂ was “the ultimate destroyer”.
- Expecting the complainant to “resolve the enigma of our complex coupled non linear chaotic climate in 1,000 words” revealed the magnitude of the BBC’s scientific incompetence and illiteracy. The complainant cited various sources, including a BBC TV programme broadcast in 1974, in support of his arguments.
- Audience Services could not refute his evidence, and so needed a way of shutting down free speech about CAGW [catastrophic anthropogenic global warming], as had also happened in the US.
- The BBC could not justify its abuse of the licence fee to drip-feed propaganda designed to enforce and impose belief that CO₂ had the potential to cause an apocalypse now, when it had not done so in 4.5 billion years.
- Plant osmosis begins shutting down at just 180ppm [parts per million] of CO₂ and stops at 160ppm, which means plants do not grow. At pre-industrial levels of 280ppm, we are only just on the right side. Agriculture only begins to “do OK” at 240ppm, but with CO₂ at 401ppm the planet has “greened by 14%”, meaning more food for more people.
- “Alarmism” never mentions how much life on this planet depends on atmospheric CO₂, because to admit that CO₂ is necessary for life and not a constituent for death completely undermines the assertion that CO₂ is a killer.
- It all comes down to what the BBC’s Environment Analyst calls “black carbon pollution”. The complainant asked, if CO₂ were in fact “black carbon pollution”,

why the WHO [*World Health Organisation*] did not issue a health warning that everyone should stop breathing, as CO₂ was a health hazard.

The Committee's decision

The Committee considered the points made by the BBC and the complainant.

For the following reasons, the Trustees decided that BBC Audience Services had correctly applied the expedited complaints procedure at Stage 1:

- The complainant had made 13 complaints in January 2016, 12 in February, and six between then and 15 June, and that over 140 complaints had been made in the complainant's name since 2011.
- Having been provided with correspondence between the complainant and Audience Services from November 2015 to the point of the application of the expedited procedure (June 2016) the Trustees noted that most of the complainant's complaints were detailed comments and views about climate change.
- With regard to the substance of the complainant's concerns, the Trustees noted that, in his 2011 review of the impartiality and accuracy of the BBC's science coverage for the BBC Trust, Professor Steve Jones cited the existence of man-made climate change as an example of the sort of story which was "non-contentious" and where the BBC needed to avoid giving "undue attention to marginal opinion".¹¹
- Trustees noted that none of the complainant's numerous complaints provided to them had identified any BBC output that was not duly accurate or duly impartial with regard to climate change.
- The volume of the complainant's complaints and the consequent demands they made on complaints advisers' time merited the application of the expedited complaints procedure, in order to protect licence fee resources and licence fee payers' interests.
- Trustees were satisfied that the conditions for applying the expedited complaints procedure were met, in that the complainant had a history of persistently or repeatedly making complaints which: (a) were trivial, misconceived, hypothetical, repetitious or otherwise vexatious; (b) failed to raise an issue of breach of any relevant Guidelines or Policies; and (d) were shown on investigation to have no reasonable prospect of success.

Accordingly, the Committee decided not to uphold the complainant's appeal against Audience Services' decision.

Finding: Not upheld

¹¹ See http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/our_work/science_impartiality/science_impartiality.pdf at p 5.

Application of Expedited Complaints Procedure at Stage 1 – Complainant 2

The complaint concerned BBC Audience Services' decision to apply the expedited complaints procedure¹² to complaints by the complainant at Stage 1.

Informing the complainant of this decision, the Head of Communications and Complaints, BBC Audience Services, made the following points:

- He believed the complainant's complaints fell into categories (a), (b) and (e) of the expedited complaints procedure.¹³
- He had decided to apply the procedure because of the volume of the complainant's complaints and the consequent demands they made on complaints advisers' time when they had not suggested breaches of BBC guidelines.
- Since January 2016, the complainant had made 11 complaints about similar issues relating to Northern Ireland in BBC output. Another 19 had been made in 2015 about the same issues.
- Most of the complainant's complaints were about the same issues to which Audience Services had previously provided replies, of which some were subsequently escalated.
- The complainant's complaints had not generally suggested breaches of the BBC's published standards, or a significant issue of general importance which might justify further investigation.

Appeal to the BBC Trust

The complainant appealed to the BBC Trust on 24 June 2016. He made the following points:

- His appeal was supported by the following documents:
 - the Belfast Agreement 1998 (also known as the Good Friday Agreement),¹⁴ which recognised the birthright of all the people of Northern Ireland to identify themselves and be accepted as Irish or British, or both, as they may so choose, and accordingly confirmed that their right to hold both British and Irish citizenship was accepted by both Governments and would not be affected by any future change in the status of Northern Ireland;¹⁵ and
 - the 2011 UK Census,¹⁶ which depicted the population of Northern Ireland as 48.4% British, 28.4% Irish and 29.4% Northern Irish.
- BBC broadcasts used the terms "Irish" and "Northern Irish" daily in relation to issues concerning Northern Ireland. They did not refer to the predominant "British" population.

¹² The expedited complaints procedure is set out in Annex B to the BBC's Complaints Framework. See:

http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2014/e3_complaints_framework.pdf

¹³ i.e. that the complainant had "a history of persistently or repeatedly making content or handling complaints which: (a) are trivial, misconceived, hypothetical, repetitious or otherwise vexatious; (b) fail to raise an issue of breach of any relevant Guidelines or Policies (eg in the case of an editorial complaint, the Editorial Guidelines; in the case of a fair trading complaint, the Fair Trading Policies and Framework); ... (e) after rejection of the complaint at an earlier stage (eg Stage 1), are persistently and repeatedly appealed unsuccessfully to the next stage (eg Stage 2)."

¹⁴ <https://www.gov.uk/government/publications/the-belfast-agreement>

¹⁵ Good Friday Agreement, "Constitutional Issues", para 1(vi).

¹⁶ <http://www.ons.gov.uk/census/2011census/2011ukcensuses>

- The majority of his recent complaints had reflected his concern for this overlooked “British” social group and the BBC’s use of terms also favoured by Irish Nationalists and Irish Republicans, to the detriment of British licence fee payers in Northern Ireland. Over the years, his complaints had been about protecting the UK and its loyal citizens.
- These complaints were not “trivial”, “misconceived”, “hypothetical” or “vexatious”. However, their theme had consistently repeated his concern over the offence caused to the predominant population in Northern Ireland by the frequent exclusion of Northern Ireland from everyday matters raised in BBC broadcasts. It is for this reason he wished to appeal the censorship that has been implemented.
- He had not used gratuitous, abusive or offensive language.
- The BBC’s guidelines were tailored to suit an English viewpoint, and did not adequately cater for British people from Northern Ireland. They needed adjustment. English had little understanding of NI issues. This was reflected in BBC broadcasts.

The Committee’s decision

The Committee considered the points made by the BBC and the complainant.

For the following reasons, the Trustees decided that BBC Audience Services had correctly applied the expedited complaints procedure at Stage 1:

- Since January 2016, the complainant had made 11 complaints about similar issues relating to Northern Ireland in BBC output, and 19 complaints in 2015 about the same issues. This amounted to 30 complaints in approximately 18 months.
- Having been provided with the correspondence between the complainant and Audience Services, from February 2015 to the application of the expedited procedure in June 2016 Trustees noted that most of the complainant’s complaints were about the same type of issue.
- No breaches of the Editorial Guidelines were identified although Trustees noted that a technical failure to include data on the red button was rectified in this period and an apology was given for not mentioning Northern Ireland in a joke on a comedy show.
- The volume of the complainant’s complaints and the consequent demands they made on complaints advisers’ time merited the application of the expedited complaints procedure, in order to protect licence fee resources and licence fee payers’ interests.
- Trustees were satisfied that the conditions for applying the expedited complaints procedure were met, in that the complainant had a history of persistently or repeatedly making complaints which: (a) were trivial, misconceived, hypothetical, repetitious or otherwise vexatious; and (b) failed to raise an issue of breach of any relevant Guidelines or Policies.

Accordingly, the Committee decided not to uphold the complainant’s appeal against Audience Services’ decision. However, Trustees wished to assure the complainant that any complaint he made in the two-year period when the procedure applied would be read and if it raised a matter of substance would be responded to.

In view of the potential seriousness of the issue the complainant had raised, the Committee decided that Audience Services should continue to respond to complaints from this complainant if they related to the use of the description “Northern Irish” in BBC output.

Finding: Not upheld

Requests to review the Trust Unit's decisions on appeals

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

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

Strictly Come Dancing, BBC One, September – December 2015

The complaint concerned the voting system adopted by *Strictly Come Dancing*. The complainant believed the system was unfair and biased in favour of the judges. She made a similar complaint (and appeal) in May 2015, which was not considered as it was out of time. The complainant made reference in this current appeal to the May 2015 complaint (and appeal). Where relevant the previous complaint and appeal was taken into account in assessing whether it was appropriate to proceed with this appeal.

Strictly Come Dancing is a ballroom dance show featuring celebrities who are partnered with professional dancers. Each couple's routine is scored out of ten by a panel of judges and ranked. The public then vote on their favourite dance routine. The judges' ranking is combined with the audience's ranking resulting in an overall final ranking. This system is often referred to as 50/50. The couple ranked last and second last then compete in a "dance-off". The judges then decide who is eliminated. The "Grand Final" is decided purely by public vote.

The complainant made the following points:

- The presenters on *Strictly Come Dancing* made "factually incorrect statements" about the voting system. These statements were misleading because they over-emphasised the influence the public vote could have (e.g. "Every single vote counts" and "As we saw last week, no one is safe").
- It was unfair that the judges ("four handpicked BBC employees") ultimately had the final say through the dance-off.
- There was always a bias in favour of the judges, because of the way the voting system was constructed. According to the complainant, before the audience voted, probability dictated that the judges' choices carried much greater weight than the audience's, even though the system was 50/50.
- Since there was a paid element to the vote – this was possibly fraud.
- The BBC did not release the audience voting data.

The BBC Executive rejected her complaint stating, among other things:

- The audience was aware of how the voting system works and viewers were advised where they could obtain the terms and conditions.
- It was not misleading for the presenters to tell the audience to vote for their favourite couple in order to save them from the dance-off.
- There were many examples when couples, ranked bottom of the leader board after the judges' vote, avoided the dance-off because of the public's vote. The important point was that the public's vote could influence the outcome.
- In a semi-final (with five couples competing) where the public's favourite was ranked last by the judges, that couple would be "saved".
- The BBC did not release exact voting statistics and the reasons were explained in the FAQ section of the *Strictly Come Dancing* website.

Appeal to the BBC Trust

The complainant appealed to the BBC Trust (primarily on 3 February 2016 but also on later dates) on the substance of her complaint. In addition to the points raised in her complaint she said, in summary:

- There was a "severe mathematical judge bias" – meaning that the judges' votes had more weight than the public's. Her complaint "mathematically proves" the judges' ranks were too significant.
- The public votes were "fighting against the skewed voting system" - therefore the public was not having any credible influence on the outcome.
- Because of the judges' ranking, some of the couples would only have the remotest chance of being in the dance off - even if they received very few public votes (the complainant also provided a number of worked examples alongside probability calculations).
- The fact that both the judges and the public voted and the system is 50/50 did not make it fair.
- The complainant disputed the Executive claim that in a semi-final the audience's favourite couple would be saved from the dance-off.
- The BBC Editorial Guidelines made no reference to judges being involved in votes.
- The voting system, since a payment is made, could be fraud.

Decision of the Trust Adviser

The Trust Adviser (the Adviser) decided that the complainant's appeal did not have a reasonable prospect of success. The Adviser considered all the points the appellant made in her complaint and appeal.

The Adviser assessed the appeal against the standards set under the Editorial Guidelines

("the Guidelines") available at www.bbc.co.uk/editorialguidelines. Section 17 ("Interacting With Our Audiences") was relevant to this complaint. In particular, Section 17.4.4 "Voting" is applicable to this request for an appeal. The Guidelines require, among other things, that "...votes must be honest, open, fair and legal" and that "...votes must have clear rules, which must be made known as appropriate", "The results must be accurately reported to the audience" and the BBC "must not mislead the audience about the purpose of a vote".

The Adviser recognised the strength of the complainant's feeling and noted the detailed analysis of the mathematical probabilities she had compiled. It was also noted that the appellant believed that a 50/50 voting system is unfair "where public votes can be written off by a handful of BBC representatives".

The transparency of the voting system

It was the Adviser's view that Trustees would consider that the 50/50 voting system and the terms and conditions of the competition were very well explained to the viewers.

The Adviser noted that the information was provided through the "editorial narrative" of the programme; for instance, the judges awarded their points after each and every act and there was a reminder that the public vote was aggregated. It was therefore clear what role the judges' vote had in the overall voting system. After the judges awarded their points, the presenters then explained how the audience could vote. The audience was frequently made aware of the fact that its vote was combined with the judges' score after the judges had voted, giving an overall ranking with the two bottom ranked couples facing a dance-off. The competition's terms and conditions were regularly referred to throughout the programme (including a website address for the full details). In addition, explanatory statements were often made in the programme, such as:

"...the two couples with the lowest combined scores from the judges' and the viewers' vote scores ... will find themselves in the dance-off tomorrow night. It will then be down to the judges to decide who to save."

"Remember, it's not just the judges' scores that count, it's your vote too."

"Remember the judges scores are only half the story tonight..."

"Your votes have been combined with the judges' scores and the two couples with the overall lowest points will go head to head in the dance-off"

At the end of the programme, there was a summary of all the judges' scores alongside the corresponding ranking points given to each act. The presenters were also clear that the judges made the final decision on who would leave after the dance-off.

Consequently, as required by the Editorial Guidelines, the Adviser believed that Trustees would conclude that the rules were clear and they were made known as appropriate. In addition, the explanations in the programme were sufficient for the audience to understand and appreciate the voting mechanism. The fact that the Guidelines made no reference to the voting systems with judges did not mean that the process was unfair. The Guidelines were not designed to cover every scenario of programming but were instead a set of principles and practices to follow.

Fairness of the voting system

In *Strictly Come Dancing*, the judges awarded their points first. The audience was aware of this fact. The public also voted in the knowledge of how many points each couple had already been awarded. Those contestants at the top of the points table, after the judges voted, were considerably more likely to go through than those at the bottom of the table. However, it was clear that the public vote made a difference and could determine who was in the dance-off. For example, in week 5 of series 13, only one couple in the bottom four faced the dance-off. Further, the couple that was awarded the fewest points by the judges (Jeremy Vine and Karen Clifton) avoided the dance-off altogether because of the public's vote. It was therefore likely that Trustees would not conclude that the presenters' statements such as, "your votes make all the difference" (as well as other announcements quoted by the complainant) were in breach of the Guidelines.

Irrespective of the probability scenarios outlined by the complainant, the judges and public had a 50/50 share of the votes. Both the judges and public had the same "voting power" (in fact in the event of a tie, the public's vote took precedence). This was explained to the viewers, and the Adviser considered that Trustees would conclude it was fairly described.

The Adviser noted that, contrary to a statement from the Executive during the complaints correspondence, it was possible for the public's favourite to be in the dance-off in the semi-final. However, the Adviser considered that Trustees would not view this as relevant to whether or not the programmes as transmitted breached the Guidelines.

The Adviser noted that the complainant's probability analysis concerning the judges' votes versus the public's vote was based on the fact that the judges voted first. The Adviser considered Trustees would be likely to conclude that the audience understood that the performances the judges considered most accomplished would be high up the leader-board and that the audience also understood that the judges were giving their professional judgements relating to each dance.

She considered that audience members would individually form their own opinions about which couple they preferred – which might include their assessment of how well the contestants had danced, but might also include a range of other factors, such as whether they liked the celebrity, whether they liked the professional dancer they were paired with, whether they wanted to "save" a couple from leaving the programme, and whether they particularly liked the style of dance they had performed that week etc. She noted that there were many examples – John Sergeant being one – where celebrities stayed in the competition because the public repeatedly voted for them, even though they had received very low votes from the judges. She noted that, when judges assessed the dance-off, they made a point of stating their judgement was based only on the dance performed in the dance-off – not on previous weeks' successes.

The Adviser noted that the complainant believed that it was unfair that four judges had so much power and that they also had the final say in the dance-off. However, she noted that these were the rules of the competition, which were clearly explained to viewers. The Adviser considered Trustees would conclude that the programme properly explained the voting system and the public understood it.

Publishing the public's votes

The BBC Executive explained to the complainant the reason why it did not publish the audience vote. It had also published these reasons in its "FAQs" section of the terms and

conditions. There was no requirement for such data to be released and so it was unlikely that Trustees would find a breach of the Guidelines on this matter.

Fraud

The Adviser considered that as fraud was a criminal matter, it was not appropriate for Trustees to consider this aspect of the complaint. However, the Adviser considered that Trustees would be likely to conclude the voting system used on *Strictly Come Dancing* was properly explained to audiences and well understood by them and that it met the requirements set out in the Editorial Guidelines.

Request for review by Trustees

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

- She did not believe the programme's explanation of how the voting system worked was "sufficient for the audience to understand and appreciate the voting system". She said the presenters continued to encourage viewers to vote for couples that she considered were almost certain to be eliminated or certain to avoid a dance off without a single public vote.
- Once the judges have voted, every couple does not "have a fair chance of winning at the point of the public vote". After the judges vote the probabilities of couples being saved vary significantly – so every vote is not equal. Losers and a small subset of winners can be mathematically predominantly predetermined prior to the public vote even though the public are invited to vote for all couples. The results do not reflect the public vote and can be contrary to it. The results of public votes do not have to be given to audiences.
- There is an overwhelming probability that the judges' lowest scored couples will be eliminated and yet the public are invited to vote for them.
- The presenters' statements were misleading and breached the Guidelines.
- The public does not have the "same voting power" (50/50) as the panel, not least because the judges have the final say (the dance-off) "to write off the public opinion when the public does not vote how the judges think they should".
- It is possible for the public's favourite to be eliminated (because of the dance-off) but not the judges' favourite, if the panel decide they wish to keep a couple in the competition.
- The BBC had not engaged in credible checks prior to the voting system going live as her examples demonstrated. For instance the public favourite can be eliminated in weeks when there are between five and eight couples competing, which amounts to almost half the series. John Sergeant, had he remained in the competition, could have been eliminated in the eight-couple week, even if he had been the public favourite for several weeks prior or had dropped to second favourite with the public. That would have been a total waste of paid-for viewer votes.
- The complaint had gone on for a long time and she understood the BBC Trust had asked her to be "silent with third parties" during this period. She believed that the BBC has not been open and honest with the public and the press about "the fairness of the *Strictly* voting system".
- The words "50/50" hide a multitude of deceptions.
- The public voting history could be released at the end of the competition.
- The Guidelines required the BBC to be open and honest about the voting systems but if they were then the systems would be brought into disrepute.

The Panel's decision

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

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

- The Guidelines require all BBC votes to be honest, open, fair and legal with clear rules made known, as appropriate, to viewers.
- Overall, the rules of the vote were well-explained to the viewers and they would understand the significant role the judges had in eliminating any couple in the dance-off (even if that couple had been the audience's favourite).
- It is apparent from the programme, that until the Grand Final, the judges voted first and so their highest rank couples will always be significantly safer than those at the bottom of the table when the audience comes to vote. The audience would vote with that knowledge.
- By voting first, the judges are effectively asking the public who to save from the dance-off. The totals of the judges' votes combined and the totals of the audience's votes combined have the "same power". The role of the judges is clear from the show and the published terms and conditions.
- Trustees also considered the voting system is well understood by viewers.
- There was no requirement on the BBC to release the details of the public vote.

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

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

South Today, BBC One (South), 15 February 2016

The complainant wrote to the BBC Trust following the decision of the Editorial Complaints Unit (ECU) not to uphold his complaint about a news item which was broadcast on *South Today* following the conviction of a former Hampshire schoolteacher, Tyrone Mark, for downloading indecent images of children.

The complainant noted a statement from Mark's former school, which was broadcast at the end of the news report:

"The charges for which Tyrone Mark has been convicted concern incidents that took place after he left the school. The school has acted with propriety, in good faith and on expert advice throughout."

The complainant said that by simply repeating the school's own statement the BBC was being misleading.

Appeal to the BBC Trust

The complainant appealed to the BBC Trust on 5 April 2016 on the substance of his complaint.

The complainant said the report should have reflected that:

- there had been systemic failings by the authorities
- crucial evidence had not been passed to police
- the school had stated to parents previously that a police investigation had cleared the teacher when no such investigation had been conducted.

The complainant said that evidence was not sent to police until, as a parent of a pupil who had been at the school, he became aware that the case had not been investigated and told his MP; he maintained it was his actions which resulted in the matter being recorded and Mark's subsequent arrest and conviction:

"Here an official line has been quoted from an official source (the school) without due regard to the supplied underpinning facts and evidence which would have balanced the story out. Concentrating purely on one side of the story in this way and omitting all else is careless and disingenuous to the public interest."

The Trust Unit's decision

The Trust Adviser (the Adviser) replied to the complainant explaining that the relevant correspondence had been reviewed by the Trust Unit and she did not consider that the appeal had a reasonable prospect of success.

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

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

The Adviser noted the following:

- the news item which was the subject of the complaint was a court report of a case which was not directly connected to Tyrone Mark's conduct whilst he was a teacher at the school
- there may be valid questions to be asked of the authorities as to why it appeared to have been left to a parent to press for Mark's prior conduct to be properly investigated
- but it would have been a matter of editorial judgment whether to allude to such wider issues, as they were not material to the audience's understanding of the outcome of the court case
- nevertheless, having chosen to reflect a statement from the school and to include no wider context, due accuracy would require that the audience were not misled on the known facts as they related to the school's role in the matter.

The Adviser noted the relevant sentence from the school's statement as reported on *BBC South Today*:

"The school has acted with propriety, in good faith and on expert advice throughout."

The Adviser noted that the complainant submitted a dossier of information in support of his appeal and that his appeal made the following points:

- the complainant stated that evidence handed to the head teacher in October 2013 had not reached police until more than a year later, and only then due to the complainant's involvement
- the National College for Teaching and Leadership (NCTL) which, in July 2014, banned Tyrone Mark for life from teaching, highlighted that evidence was not sent to police in October 2013, when the complainant considered it should have been
- the NCTL report of the hearing was not sent to police either
- in its Stage 2 response to the complainant, the BBC's Editorial Complaints Unit had noted that information about Tyrone Mark's conduct had been passed to police in December 2012 and December 2013. However, the complainant asserted that no evidence had been passed to police on these occasions.

The Adviser noted that the ECU had contacted Hampshire Constabulary for further information and set this out to the complainant:

"As you are aware, the force issued a media statement in October 2015 which confirmed the school did pass the information in its possession to the local authority in line with agreed practice, and the local authority discussed it with the police. The statement said:

'Following a thorough re-assessment of previous reports to police, we can confirm that two referrals were made to Hampshire Constabulary in connection with this matter: the first in December 2012 and a second in October 2013. These referrals were promptly made by the school to the local authority, who informed police as per the working together protocol.'

"The police spokeswoman told me the police considered the school and its head teacher had acted appropriately throughout and did not conceal any information in

their possession. She confirmed that on both occasions, the police took the view the matter was one of 'professional misconduct' and should be handled by the local authority and the NCTL; as a result, no criminal investigation was undertaken. However, having reviewed the matter, the force acknowledged in its statement of October 2015 *'this action was incorrect and an investigation should have started when the first referral was made.'*"

The Adviser noted, as had the ECU, that it was reasonable to take account of the conclusions of formal investigations by recognised and relevant organisations and she did not consider that the evidence provided by the complainant, while it highlighted potential shortcomings in the handling of the issue overall, supported the assertion that the school had acted improperly.

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

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with his appeal. He said that the Trust Unit's decision not to proceed had been arbitrary:

"It seems to offer the excuse only the result of the trial was pertinent. That is ludicrous, important background information was omitted that should not have been for the benefit of the public."

He reiterated the points he considered should have been included in the report. In his view using the school's quote without checking its accuracy was a breach of proper reporting standards and not mentioning pertinent events was biased and did not properly inform.

The Panel's decision

A panel of the Committee considered the points made by the complainant, the ECU and the Adviser. They acknowledged that the complainant had a personal involvement in the matter, as a parent of a pupil who had been at the school. They appreciated he had pursued the details of what had happened and sought to ensure that relevant information had been passed to the police.

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

- due accuracy and due impartiality do not require that all aspects of a story are reflected on each occasion
- the *South Today* report was a court report about the outcome of the trial and decisions about the inclusion of wider context was a matter of editorial judgement
- it was for the programme to decide whether it wished to include a statement from the school and for the school to decide how it wished to respond
- information provided to the ECU by Hampshire Constabulary suggested that the assertions made by the school in their statement were likely to be founded in fact
- there is no evidence to suggest that the news report was not accurate or was biased.

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

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

Inside Out East Midlands: Investigating Sports Direct, BBC One, 5 October 2015

The Committee decided that some elements of this appeal qualified for consideration. The consideration of these elements is 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 did not qualify are reflected below.

The complainant was represented by solicitors and “the complainant” is used to refer both to Sports Direct and to solicitors acting on behalf of Sports Direct.

This complaint claimed:

- Apparent bias in the complaints procedure at Stage 1.
- The biased and unfair use of Sports Direct branded water bottles apparently containing urine in a reconstruction sequence in the programme.

The complainant made the following points about bias in the complaints process at Stage 1:

- In accordance with the BBC’s complaints procedure, the complainant wrote to the BBC Executive, but the BBC’s response was sent by [NAME] the Editor, Current Affairs and Features, BBC East Midlands, who “appears far from independent given the connection between the programme and her role within BBC East Midlands”. The complainant argued that, if she was not independent, she should not have been involved in the complaints procedure.

The BBC made the following points:

- The remit of the ECU is limited to considering the editorial content of specific items broadcast or published by the BBC, and it cannot comment on the handling of complaints at Stage 1 of the complaints process, although it is open to a complainant to ask the BBC Trust (the third and final stage of the process) to review this aspect of a complaint in due course.

The complainant made the following points about the inclusion of footage of Sports Direct branded water bottles:

- The programme alleged that a former security guard ...(Stuart Young) who worked in the complainant’s Shirebrook warehouse was “...asked to collect bottles of urine from the warehouse”.
- In a letter dated 25 September [the reporter] was told that Sports Direct’s onsite Health and Safety Officer was aware that a single drinking bottle of urine had been retrieved from the warehouse. This material fact, that challenged the BBC’s evidence, was not referred to.
- This is a breach of sections 3, 4 and 6 of the Guidelines.
- Whilst Mr Young was talking, footage was shown of a Sports Direct branded sports bottle containing a yellow liquid, clearly intended to represent urine. There was

no proper basis for including such an image, particularly one bearing the complainant's branding. The complainant asked whether the BBC was told that this was the type of bottle recovered by Mr Young, and suggested that such "re-enactment" was "designed to scandalise" and, in their view, was "evidence of ... unfair treatment and an intention to humiliate and cause harm to [their] business".

The BBC made the following points in its Stage 1 response:

- Sports Direct stated that a single bottle of urine was retrieved from the warehouse "20 months ago", i.e. around February 2014. The programme referred to Sports Direct drinking bottles containing urine being retrieved around a three-week period in November and December 2014. The BBC said it had two separate and credible sources for this allegation, one of whom appeared on camera, and that the incident "20 months ago" confirmed to the BBC that there had been a similar incident previously. The BBC therefore does not believe it was unfair, inaccurate or unbalanced not to include this specific detail.
- In response to the concern over the use of the Sports Direct branded sports bottle in the reconstruction, the BBC was told by its sources that this was the specific type of bottle containing urine which was retrieved from the warehouse, and therefore this was an accurate reconstruction of events.

The complainant made the following point when escalating the complaint to Stage 2:

- The re-enactment depicting Sports Direct branded bottles containing urine appears to have been calculated to create added impact and negativity against Sports Direct. They asked why this was included if this was not the case, and argued that "this was not a situation where a visual aid would assist the audience to better understand the account being given by the security guard".

The BBC made the following points in its Stage 2 response:

- The programme attributed the claim about water bottles to a former security guard, Stuart Young:

Reporter: Stuart says he was asked to collect bottles of urine from the warehouse. He believes workers were worried they'd be penalised for taking an unofficial break.

Stuart Young: Finding urine in bottles in the warehouse because they've been told they can't go to the toilet unless it's their break time. That should not happen in this day and age.
- While appreciating that Sports Direct said only one such instance was recorded and this should have been reported in the programme, the BBC did not accept that the omission of this point led to a lack of due accuracy or was unfair to Sports Direct. In the BBC's view, the programme fairly and accurately summarised the position of both Sports Direct and [Agency A] on this point:

"Sports Direct said workers are free to use the toilet as needed. [Agency A] said it hadn't received any record of bottles of urine being retrieved from the warehouse."

- The BBC noted that the programme-makers' said that they relied upon evidence from two separate sources, and considered that the fact both of those sources said the urine was collected in Sports Direct branded water bottles justified the manner in which the reconstruction was presented.

The complainant made the following point in response to the Editorial Complaints Unit's (ECU) provisional finding:

- Stating that the BBC admits "that there was an omission of Sports Direct's evidence relating to the collection of urine bottles yet [does not] consider this to be unfair" the complainant argued "that Sports Direct is being unfairly treated in circumstances where its evidence, which directly challenged Mr. Young's evidence, was disregarded. As such, it is not clear how the BBC was able to determine that Mr Young's account was 'based on sound evidence'."

The ECU's reply stated:

- "I do not believe there is anything I can usefully add to my provisional finding. The programme adequately reflected two contrasting views on this issue. The guidelines on Accuracy say 'Claims, allegations, material facts and other content that cannot be corroborated should normally be attributed' and that requirement was met."
- Mr Young was identified as a former security guard who spoke of "Finding urine in bottles in the warehouse..." Viewers would have been aware he was making an allegation based on his recollection (and an allegation which the programme-makers knew had been corroborated by a separate source). The programme noted that [Agency A] had no record of any such incidents having taken place and it noted that Sports Direct's stated policy on toilet breaks meant there should be no occasion for staff to have to use water bottles in this way."

Appeal to the BBC Trust

The complainant appealed to the BBC Trust on 4 March 2016.

Decision of the Trust Adviser

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

Bias in the complaints procedure at Stage 1

The Adviser noted that the BBC Editorial Guidelines Section 19 on Accountability require programme makers to handle editorial complaints according to the Complaints Framework created by the BBC Trust. The Framework says:

An appropriate editorial complaint may proceed through up to three stages:

- Stage 1
 - Stage 1a – initial response
 - Stage 1b – if your complaint is further considered, a response from or on behalf of a BBC manager or a member of the editorial team

- Stage 2 - if your complaint is further investigated, a response from either the Editorial Complaints Unit or the BBC Division responsible for the content you are complaining about
- Stage 3 – if your complaint qualifies for an appeal, a response from the BBC Trust.

The Adviser noted that the BBC Trust is part of the BBC and is its governing body. To distinguish the BBC Trust from the output divisions of the BBC, the term BBC Executive is used to describe the large part of the BBC that is not the BBC Trust. The BBC Trust sets the BBC Executive's strategic direction; supervises its operational duties and holds it to account for complying with regulatory requirements like the BBC Editorial Guidelines. In terms of the complaints procedure, the term BBC Executive is not used to relate to a particular management level or pay band. Anyone responding to an editorial complaint on behalf of the BBC, and who does not belong to the BBC Trust, is responding on behalf of the BBC Executive.

The Adviser noted that a very senior member of the *Inside Out East Midlands* editorial team, the Series Editor, responded to the complaint within the required ten working days. She also noted that the Series Editor is Editor, Current Affairs and Features, BBC East Midlands, a BBC Manager, and a representative of the BBC Executive.

The Adviser noted that when the complaint was escalated to Stage 2 it was investigated by the ECU. The ECU, though part of the BBC Executive, is independent of the editorial team. At Stage 3 the BBC Trust, which is independent of the BBC Executive, had investigated the complaint.

The Adviser noted that the complaints process was intended to cater for simple concerns as well as more complex matters. It allowed programme-makers to be involved as, on many occasions, there was a reasonable likelihood that they would be able to respond to the complaint that had been made and explain their editorial thinking in a way which would resolve the complaint. She noted that the BBC considered complaints at Stage 2 through a unit, which was independent of programme makers. The Adviser considered the complaint had been handled in accordance with the complaints procedure and the fact that the BBC's initial response had come from an individual connected with the editorial output did not raise a matter of bias.

The inclusion of footage of Sports Direct branded water bottles containing urine

The complainant considered that the use of Sports Direct branded water bottles in a reconstruction sequence in the programme was biased and unfair and that its inclusion was inappropriate and damaging to the Sports Direct brand. The Adviser noted the BBC Editorial Guidelines Sections 3 and 6 on Accuracy and Fairness:

Accuracy – Principles

3.2.2: All BBC output, as appropriate to its subject and nature, must be well sourced, based on sound evidence, thoroughly tested and presented in clear, precise language. We should be honest and open about what we don't know and avoid unfounded speculation. Claims, allegations, material facts and other content that cannot be corroborated should normally be attributed.

3.2.3: The BBC must not knowingly and materially mislead its audiences. We should not distort known facts, present invented material as fact or otherwise undermine our audiences' trust in our content.

Fairness - Right of Reply

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

The Adviser noted that it was down to the editorial judgement of the *Inside Out* production team as to what they should and/or should not include in a programme, but that their right was tempered by the need to ensure that what they said was capable of substantiation.

The Adviser noted that as the comments made about the Sports Direct branded drinking bottles containing urine amounted to an allegation about the way Sports Direct operated its Shirebrook warehouse, the company was entitled to a right of reply, for example by way of the inclusion of their position in commentary.

The Adviser noted the transcript of the relevant section of the programme and the right of replies from Sports Direct and [Agency A] that were included in the commentary script:

Commentary: So who else sees what happens inside? Security guards are often the eyes and ears of any business. Stuart Young was a security guard at Sports Direct for three years until the spring. Tucked away behind the store, he was on reception, the entrance for warehouse workers.

Stuart Young: It feels like something out of Dickens, is the old workhouse. Way it's run. I mean the only thing they didn't do is walk around with big sticks and beat them. A tannoy system, always names being called out. Please finish your order; you're not picking quick enough. All the injuries, minor injuries would come through reception. A lot of the injuries were either hand injuries where they'd been trapped between cages. Ankle injuries. After a while it got to be another normal [sic].

Commentary: Stuart says he was asked to collect bottles of urine from the warehouse. He believes workers were worried they'd be penalised for taking an unofficial break.

Stuart Young: Finding urine in bottles in the warehouse because they've been told they can't go to the toilet unless it's their break time. That should not happen in this day and age. They come to this country because money's better, when they're invited to come and work for a big company and then tret [sic] like crap.

Commentary: Sports Direct said workers are free to use the toilet as needed. [Agency A] said it hadn't received any record of bottles of urine-being retrieved from the warehouse.

The Adviser noted there was no verbal reference to the retrieval of Sports Direct branded drinking bottles of urine in either Stuart Young's interview or the programme's commentary script. The reference was a visual one made in a reconstruction sequence, eleven seconds long, which came just over twelve minutes into the programme.

The first shot of the reconstruction sequence was a four second pan left across a shelf ending on two Sports Direct branded plastic sports drinking bottles, laid on their side and half full of yellow liquid. The second shot was seven seconds long, which started on a close up shot of the bottom of a bottle, with the second visible in the background. The shot then pulled out as a hand appeared and removed the two bottles from the shelf. The whole sequence was clearly labelled "Reconstruction".

The Adviser noted that the programme had two first-hand sources that both alleged that Sports Direct branded drinking bottles of urine were retrieved from the warehouse. One was a named source that featured in the programme - Stuart Young, a former security guard.

The Adviser also noted that the programme explicitly referred to Sports Direct drinking bottles when seeking a response to the allegation from all three companies involved with workers at the Shirebrook warehouse. The specific allegation that the urine was contained in Sports Direct drinking bottles was made in the three separate right of reply letters sent by the production team to Sports Direct, [Agency A] and [Agency B] on 8 September 2015, almost a month before *Inside Out East Midlands* was broadcast. The allegation was described in the following way:

"It has also been alleged by a former member of security staff that, during a period of approximately three weeks across November and December 2014, security guards at the Shirebrook site had to retrieve Sports Direct drinking bottles full of urine from the warehouse. The security guard believes that this was because workers were worried they would receive a strike for taking an unofficial toilet break."

The Adviser noted that the complainant's response to this allegation simply referred to the bottles as drinking bottles rather than using the programme's description of "Sports Direct drinking bottles full of urine". She also noted that the complainant's response was made in a letter headed private and confidential and that the response itself was marked as not for publication. The response read:

"Our client has investigated this allegation with its onsite Health and Safety Officer (HSO). Our client's HSO is aware of a single drinking bottle of urine being retrieved from its warehouse around 20 months ago. We would therefore question the veracity of your evidence. To be clear, all staff are entitled, and free, to use the toilet as and when needed."

The Adviser noted that the complainant's reference to "around 20 months ago" would have meant the single drinking bottle of urine was retrieved in about January/February 2014. The allegation made in the programme related to a three-week period across November and December 2014. She also noted that the *Inside Out* production team viewed this off the record information from the complainant as confirmation that a similar incident to the ones alleged in the programme was known to a Sports Direct Health and Safety Officer several months before the incidents that were alleged in the programme.

The Adviser noted that the programme-makers were not able to include in the broadcast the specific comments made by Sports Direct in its letter that was marked "Not for Publication Apart from Schedule 1", dated 25 September 2015. She also noted that the statement for publication at Schedule 1 (updated in a further letter dated 30 September 2015) provided by Sports Direct did not contain any specific reference to the allegations

concerning the branded bottles of urine, meaning the production team was not able to provide a direct and specific response to this allegation during the broadcast.

The Adviser noted that reconstructions were used at different points in the programme to illustrate the matters being raised. She considered that the decision, generally, to use reconstructions was an editorial one and noted that they had been clearly labelled. She did not consider she had seen any information to suggest the reconstruction in this instance had only been included in order to scandalise and humiliate Sports Direct.

The Adviser considered that Trustees would be likely to conclude the output was duly accurate, that decisions about how to portray the events being related were editorial ones and that an appropriate right of reply had been offered in terms of the reference to Sports Direct branded bottles containing urine.

Request for review by Trustees

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

- The fundamental point of whether the Stage 1 consideration of its complaint was biased had not been addressed. The fact that the complainant had had to push for an independent review by the Trust to have an acknowledgement that one of the complaints had a reasonable prospect of success illustrates the point. A more fair and independent review might have meant the complainant would not have had to write to the Trust at this stage.
- The key issue of why the decision was made to use footage depicting urine in Sports Direct branded bottles when the security guard's evidence required no visual reconstruction in order for the audience to understand it had not been addressed. The Adviser said it had been an editorial decision to illustrate the matter raised but the complainant said this was highly unlikely and the use of the footage was motivated by a desire to belittle and shame Sports Direct in a manner consistent with the general tenor of, and approach to, the programme.

The Panel's decision

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

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

- Under the terms of the complaints procedure and the Editorial Guidelines on Accountability, an editorial manager is entitled to respond to a complaint initially, as someone likely to be best-placed to provide reasoned responses to criticisms. The Trust has set in place a three-stage complaints and appeals system precisely so that decisions at the earlier stages could later be reviewed and rectified where necessary. Therefore the fact that the BBC's initial response had come from an individual connected with the editorial output did not invalidate the process by reason of bias. Trustees considered it a fundamental principle that, when an editorial complaint is made to the BBC Executive, they were entitled to ask someone from the production team to respond in detail, provided that there was an appropriate route of appeal.

- As to why footage depicting urine in Sports Direct branded bottles was used:
 - a. two first-hand sources had alleged that Sports Direct branded drinking bottles of urine were retrieved from the warehouse and one of them, a former security guard, was interviewed in and named by the programme
 - b. there was editorial justification for including this information in the programme, and the decision about how or whether to portray the events described by the security guard was an editorial and creative decision
 - c. under the Royal Charter, the direction of the BBC's editorial and creative output is the responsibility of the programme makers and content producers who work to the Executive Board, and not the Trust (Article 38(1)(b)) and "the Trust must not exercise or seek to exercise the functions of the Executive Board" (Article 9(3))
 - d. accordingly, such editorial decisions are not a matter for the BBC Trust unless they involve a breach of editorial standards which was not the case here. Having regard to the analysis presented by the Adviser, Trustees decided that if they took the appeal they would likely conclude the output was duly accurate and that an appropriate right of reply had been offered to Sports Direct.

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

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

5 live Breakfast, Radio 5 live, 30 October 2015

The complaint concerned the phone-in section of *5 live Breakfast* presented by Nicky Campbell. The programme was discussing the news that Shaker Aamer, a Saudi national with UK residency, had just been released from Guantanamo Bay. Nicky Campbell posed the question to callers, "Do you welcome Shaker Aamer back?" The complainant made the following points:

- Nicky Campbell displayed an "offensive, racist attitude" to natives of Great Britain
- he "cut off a white native British caller because he used the word 'indigenous' when describing himself. Nicky Campbell said the word was 'pejorative'"
- his use of the term "pejorative" was to "deny the very existence of an indigenous British race".

BBC Audience Services made the following points at Stage 1a:

- Nicky Campbell had moved on from the caller, saying the word "indigenous" was "pejorative" and "very difficult"
- it was not the BBC's intention to be offensive.

The Editor, *5 live Breakfast*, made the following points at Stage 1b:

- callers on 5 live were free to use the language they chose but presenters were also allowed to comment on thoughts expressed
- in this case Nicky Campbell took issue with the term "indigenous" as used by the caller. He queried distinguishing between indigenous and non-indigenous British citizens where it concerned those being put in danger as the result of possible acts of terrorism
- in hindsight it might have been clearer if he had taken time to say this rather than use the words he did
- Nicky Campbell did not cut the caller off. He interjected in order to move on and get another view.

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

- the term "indigenous" could not correctly be described as "pejorative" in this context and there was no basis for thinking that the caller was deprecating or disparaging the group he was referring to, or that Nicky Campbell intended to suggest that he was
- however, it seemed from the context that Mr Campbell had simply alighted upon a word which did not properly express his meaning (a hazard of live broadcasting)
- this became clearer when he went on to refer to the term "indigenous" as "a very difficult one" – the principal difficulty, in the context of a phone-in about a relatively narrow topic, being the way it opens onto a discussion in which an entire segment of the population is associated with terrorism on the basis of ethnic origin
- there was no basis therefore for thinking that Mr Campbell was making a racist slur.

Appeal to the BBC Trust

The complainant appealed to the BBC Trust on 8 April 2016 on the substance of his complaint.

Decision of the Trust Adviser

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

She listened to the relevant section of the output and noted that the discussion was based on the news that Shaker Aamer had just been released from Guantanamo Bay. Nicky Campbell introduced a pair of callers, the first of whom commented:

"My question is: what is a British national doing in a war theatre in Afghanistan when he's married and living in the UK with four children? I assume that his family are on benefits, with subsidised housing, and again this is just another example, in my view, of the UK government – whatever colour – indirectly subsidising terrorism and of putting the lives of the indigenous population of the UK in danger."

Nicky Campbell responded by saying, "Indigenous is a pejorative term, and a very difficult one" then he moved on to ask the other caller what he thought.

The Adviser noted that in its responses to the complainant, the BBC had agreed that "pejorative" was not an appropriate word to use to describe "indigenous" in this context. She also noted the response at stage 1b from the Editor of *5 live* Breakfast.

On listening to the output, the Adviser noted that Nicky Campbell had attempted to clarify his intended meaning by noting that the word "indigenous" was a "very difficult" term. She considered that Trustees would be likely to agree that Nicky Campbell had been taking issue with the fact that a distinction had been made by the caller between indigenous and non-indigenous British citizens when talking about people whose lives might be put in danger as a result of terrorism.

She noted too that the ECU believed that to make the distinction in this context between indigenous and non-indigenous residents was to broaden the discussion away from the individual - Shaker Aamer - to, as the ECU described it, "a discussion in which an entire segment of the population is associated with terrorism on the basis of ethnic origin".

The Adviser noted that given the nature of the fast-moving phone-in programme - which could include longer interviews with contributors and a variety of phone-in callers with widely differing views - it was bound to be the case that presenters would occasionally use words which did not express exactly what they had intended. She noted the complainant's view that the presenter had made "a racist slur against indigenous Britons" and that this had "serious genocidal implications"; however, she had seen no evidence to support this. She also noted the complainant considered that the BBC had sought to argue that the presenter "did not utter the actual words" complained about, but again she could see no evidence for this.

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

Request for review by Trustees

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

- the words were racist
- the BBC had repeatedly used semantics and avoided, denied and lied about this.

The Panel's decision

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

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

- the BBC had already agreed that in this context the word "indigenous" as used by the caller could not be correctly described as "pejorative"
- it was clear, however, that Nicky Campbell had attempted to clarify what he had intended to say by going on to describe the word "indigenous" as a difficult term, and the BBC said that he was attempting to challenge the distinction made by the caller between indigenous and non-indigenous British citizens when referring to those in danger from possible acts of terrorism
- this was a fast moving live phone-in programme and in such cases it was inevitable that presenters would on occasion fail to express their meaning clearly. However, in this case there was no evidence that this had resulted in Nicky Campbell displaying a "racist attitude".

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

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

The Nolan Show, BBC Radio Ulster, 7 December 2015 and Stephen Nolan, Radio 5 live, 4 December 2015

The element of the complaint concerning 5 live is covered later in this finding.

The complaint concerned a section of *The Nolan Show* on BBC Radio Ulster. Stephen Nolan related an anecdote about a recent occasion when he had eaten in a restaurant in Manchester before going to work on his Radio 5 live programme. He had tried to pay the bill with Northern Ireland banknotes, which a waiter and then his manager had declined to accept. Mr Nolan said he had become very angry at this rejection. On air he called them “dimwits” and “absolute complete and utter stupid people”. It was not clear how he addressed them to their faces. In the end, he said, he had walked out, leaving two NI £10 notes to pay a £16 bill and inviting the staff to keep the change, if they wanted to.

He interviewed Paul Gosling, a financial journalist, who told him - and the audience - that Stephen Nolan had been wholly wrong in his assumption that the restaurant had to accept his money. The expert explained that the notes could be accepted as legal currency, but are not legal tender. Such notes can be taken by English restaurants (as can English notes by Northern Ireland or Scottish businesses) but there is no compulsion to do so.

The complainant made the following points:

- It was offensive to call waiters “dimwits”.
- It was an abuse of Stephen Nolan’s position as a BBC presenter to use such language in this context.
- The waiters might be foreign nationals or disabled.
- Stephen Nolan had a past record of similar behaviour.
- The BBC should sack Stephen Nolan.

The Head of Corporate & Community Affairs - BBCNI replied and made the following points:

- This was a matter of legitimate public interest and had been discussed frequently before on Radio Ulster.
- There may have been hyperbole but no offence was intended.
- There was no suggestion that the waiters were foreign or disabled.
- There may have been over-statement or hyperbole, but that was acknowledged on air.
- The presenter’s assumptions and assertions were properly challenged by his interviewee in a detailed response.
- BBC presenters should exercise care in their use of language.
- “The repeated use of the term ‘dimwits’ by Stephen Nolan in referring to restaurant staff was over-done and unnecessary.”
- There was no evidence of any racial or ethnicity element.

The complainant appealed to the Editorial Complaints Unit (ECU).

The ECU, in its substantive response, said it considered the complaint against the Harm and Offence Editorial guideline on Intimidation and Humiliation. It did not uphold the complaint. The finding said that audience expectation had to be considered, and whether

comments on this occasion were “unduly” humiliating, aggressive or derogatory, or went beyond the expectations of the audience in general:

- The ECU concluded that the item would not have exceeded audience expectation for this programme and no other complaint had been received.
- As the waiters were unidentifiable, they would not have been unduly humiliated, even had Manchester waiters been listening to a Radio Ulster programme, which was unlikely.
- The presenter’s reaction had been exaggerated for effect and dimwit is not particularly aggressive.
- Stephen Nolan had been challenged and corrected on air by the financial journalist.

The complainant responded to the provisional finding with a range of allegations against Stephen Nolan’s behaviour on and off air. He said he had also complained about Stephen Nolan’s remarks about this incident on Twitter and Radio 5 live but had not had a response.

The ECU responded saying that it could not address matters that had not been dealt with at Stage 1 and finalised the decision not to uphold the complaint.

Appeal to the BBC Trust

The complainant appealed to the BBC Trust on 11 April 2016 on the substance of his complaint. He said a BBC presenter should not label ordinary waiters doing their job as stupid or dimwits. This was abusive behaviour and Mr Nolan should be sacked for it.

Decision of the Trust Adviser

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

She agreed with the ECU that the relevant Editorial Guideline was that for Harm and Offence related to Intimidation & Humiliation.

The Adviser considered whether it was possible to intimidate or humiliate someone who would be highly unlikely to have heard the programme – given it was broadcast on Radio Ulster and the waiters worked in Manchester. She also took into account that there are very many restaurants in Manchester – some 1733 mentioned on TripAdvisor for instance – and that Stephen Nolan had given no details about the type of restaurant or its location, except that it was in Manchester city centre and the bill had been £16. The Adviser concluded that content which did not identify an individual, nor anything about him except his city, gender and occupation, certainly not his ethnicity nor possible disability, could not be said to be “unduly intimidating, humiliating, intrusive, aggressive or derogatory” and that the Trustees would be unlikely to find that it was.

The Adviser considered that Stephen Nolan had self-parodied to some extent. His use of the expression “dimwit”, or indeed “stupid”, though excessive, would not have shocked his audience or exceeded their expectations of the likely language on *The Nolan Show*.

She noted that the other participants in the programme did not seem to take Mr Nolan’s pantomimic fury seriously and his fulminating was wholly contradicted by the financial journalist, Paul Gosling. Mr Gosling put him right, in detail, on the law concerning legal

tender and legal currency and told him how he should have behaved in the circumstances. She considered there would have been no doubt, by the end of the programme, that the waiters had obeyed the letter of the law and that Stephen Nolan's self-reported behaviour had been incorrect.

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

Request for review by Trustees

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

- There had not been a proper investigation.
- The matter had been raised by Stephen Nolan on Twitter and Radio 5 live as well as Radio Ulster and the complainant had raised this but it had not been responded to.
- People in Manchester knew about the story. He had previously submitted links to the Manchester Evening News which had covered the story.
- The fact that there was only one complaint did not mean it was not valid.
- It might have been possible for the two waiters to be identified.
- Nolan's abuse of the workers was inexcusable.
- The BBC is too in awe of its "Talent" and condones its behaviour.

The Panel's decision

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

Radio 5 live

Trustees were informed that the Executive had not replied to the complainant on the matter of 5 live or Twitter. However, the 5 live complaint had been raised in the initial complaint at Stage 1; in the email escalating the issue to Stage 2; in comments on the provisional ECU finding; and on appeal to the Trust. Trustees agreed that the 5 live complaint should have been addressed. The Trustees were provided with the 5 live material and listened to it. They noted that the restaurant and the workers were not identified and also that a guest explained that: "the legal position apparently is that people don't have to take Scottish notes and the same I guess with [Northern] Irish notes".

Trustees agreed that if they took the matter regarding Radio Ulster and Radio 5 live on appeal they would not be likely to uphold a breach of the Editorial Guidelines given that:

- The coverage was within audience expectations for *The Nolan Show* on Radio Ulster and for the Stephen Nolan programme on Radio 5 live.
- There was no evidence to suggest that the waiters concerned were identified on air or elsewhere.
- The clear message of these two broadcasts was that Stephen Nolan had been wrong to believe that businesses in England were required to accept Northern Ireland banknotes (and therefore wrong to blame the restaurant staff for refusing

to do so). That being the case, it was hard to see how the broadcast could possibly be considered humiliating, aggressive, or derogatory towards them.

The tweets

Trustees were informed that the tweets had not been raised in the initial complaint and so the Executive was entitled not to consider them. They were provided by the complainant and were reviewed by Trustees who noted they were not from a BBC account and so were not content produced by the BBC. Trustees agreed that such content was not required to comply with the BBC Guidelines. Trustees noted that there are guidelines which refer to the external activities of those working for the BBC and for those who are primarily known as presenters on BBC News and Current Affairs. Trustees agreed that there was no reasonable prospect of success for a complaint about the tweets which, when taken in the round with the broadcast material, did not undermine the public's perception of the impartiality, integrity, independence and objectivity of the BBC or the impartiality and objectivity of Stephen Nolan or bring the BBC into disrepute.

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

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

Sunday Breakfast, BBC Radio 5 live, 27 December 2015

The complaint concerned a news headline and bulletin item regarding government spending on flood defences.

The complainant made the following points:

- A news item in the 08:00 bulletin on Radio 5 live had suggested that the government was increasing its spending on flood defences when this was contradicted in BBC coverage of the issue elsewhere.
- An interview prior to the bulletin with the Secretary of State for the Environment, Liz Truss, had challenged the figures, but this was edited out of the news bulletin item, so misleading the listener and presenting the government in a favourable light.

BBC Audience Services made the following points:

- The item in the bulletin was a summary of the earlier interview with Ms Truss in which the presenter had challenged her on several occasions about government funding for flood defences.
- The BBC believed it had fairly reflected the issues to do with government spending on flooding across the programme, through the interview and various clips of the interview subsequently used.

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

- At no point did Ms Truss say there had been no reduction in flood defence spending and it believed it was clear to the audience that the increase she spoke of related to future spending.
- Ms Truss was comprehensively challenged by the presenter in the interview prior to the bulletin about what a "real terms increase" in flood defence spending actually meant.
- It was not feasible to encapsulate all aspects of an issue in one short piece of output and the ECU did not believe that anything within it was materially inaccurate.

Appeal to the BBC Trust

The complainant appealed to the BBC Trust on the substance of her complaint, that she considered the news bulletin broadcast after 08:00 gave a misleading impression and was favourable to the government.

She said that she disagreed with the ECU when it said that at no point did Ms Truss say there had been no reduction in flood defence spending. She said that in the course of the interview, the presenter had said:

"So there's been no cuts in flood defence spending."

And Ms Truss responded:

“No, we’re in fact increasing flood defence spending.”

The complainant said that she suggested “no” was a denial that there had been cuts, and “we’re in fact increasing flood defence spending” emphasised that assertion.

She said that all subsequent reports on BBC Radio 5 had contradicted the impression given by the news bulletin that implied there had been no cuts to flood defence spending.

Decision of the Trust Adviser

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

The Adviser began by noting the BBC Editorial Guidelines to do with Accuracy. She noted that these stated:

“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 Charter¹⁷.

“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 then noted the content of the 08:00 bulletin to do with government flood defence spending. She noted that the bulletin item began by reporting on the severe flooding in the city of York and then on the number of flood warnings across the country. She noted that the newsreader then said:

“The Prime Minister will chair a conference call of the government’s emergency COBRA committee this morning to coordinate efforts to cope with the floods. He’ll visit some of the areas which have been affected tomorrow. Liz Truss is the Environment Secretary:

‘If you look in Yorkshire we spent 100 million on flood defences in the last parliament, this six year programme we’re due to spend 280 million so we are increasing flood defence spending but what we’re also seeing is increasingly extreme weather. We do need to review our flood defences in the light of these extreme events.’”

The Adviser noted that the clip of Ms Truss had come from an interview carried out with her on the programme at around 07.45 that morning. An independent editorial adviser had listened to the interview on behalf of the Adviser and noted that the first question asked by the presenter Nomia Iqbal was whether the government had spent enough money to protect people from flooding. She noted that Ms Truss said:

LT: Well we have increased the amount of money we have spent on flood protection and, over this parliament, we are increasing it in real terms but clearly...

¹⁷ http://www.bbc.co.uk/bbctrust/governance/regulatory_framework/charter_agreement.html

NI: What does that mean “real terms”?

LT: What it means is that we’re spending more money including inflation...

The Adviser then noted that the presenter returned to the question of government funding later in the interview by asking:

NI: There’s lots of mixed messages though isn’t there. If that is the case why did David Cameron approve cuts in flood spending? 14% and that’s 166 million pounds slashed, and that’s the biggest year on year drop for four years.

LT: Well that’s, those figures simply aren’t true. The money you’re referring to is additional money that was put in to repair flood defences after the winter floods of 13/14. If you look at spending in the last parliament we spent 1.7 billion pounds and this parliament we’re due to spend 1.9 billion pounds.

NI: So there’s been no cuts in flood defence spending?

LT: No we’re in fact increasing flood defence spending and if you take – I’m in Leeds today, looking at the situation here. I’ll also be visiting Lancashire and York and if you look in Yorkshire we spent 100 million on flood defences in the last parliament, this parliament, this 6 year programme we’re due to spend 280 million, so we are increasing flood defence spending, but what we’re also seeing is increasingly extreme weather, and if you speak to local people on the ground they will say they’ve never seen anything like it take place here in Leeds. So what I’m very clear is we do need to review our flood defences in the light of these extreme events that we’ve seen both here in Yorkshire and Lancashire and also of course in Cumbria.

The Adviser noted that the issue of whether government funding on flood defences had increased or fallen at the time of the flooding of North England and Scotland in late December 2015/January 2016 had created considerable debate at the time. As an example of this, she noted that the issue was raised by the Labour Party leader Jeremy Corbyn at Prime Minister’s Questions on 6 January 2016 and that David Cameron had said spending on flood defences had increased under his government. A link to this exchange can be found below:

<http://www.bbc.co.uk/news/uk-politics-35244484>

The Adviser noted that, following this exchange, Mr Corbyn and the Shadow Secretary of State for Environment, Food and Rural Affairs had written a letter to the Prime Minister expressing their surprise that he had claimed that his government was spending more on defence schemes and saying this was a misinterpretation of what had happened since Mr Cameron had come to office. A link to the letter can be found below:

<http://jeremycorbyn.org.uk/articles/jeremy-corbyn-and-kerry-mccarthy-mp-labours-shadow-secretary-of-state-for-the-department-of-environment-food-and-rural-affairs-write-to-david-cameron-about-complete-failure-of-the-governme/>

The Adviser then noted that, following this exchange, an analysis on government spending on flood defences was carried out to see if it had misrepresented its record. The analysis was conducted by Full Fact, an organisation that describes itself as “the UK’s independent, non-partisan, fact checking charity”.

The Adviser noted that this analysis states:

“Labour’s letter to the Prime Minister appears to challenge his claim to have increased spending on flood defence schemes. But while it cites specific cases of cuts – such as a reduction in Environment Agency staffing since 2010 – it doesn’t provide evidence that spending overall has fallen under Mr Cameron.

“It hasn’t. Central government funding for flood defences in England over the last five years was higher than the same period under Labour. This is true even if you take inflation into account. But it’s only higher because of a funding surge in response to floods two winters ago.”

A link to this report can be found below:

<https://fullfact.org/economy/government-defence-flood-defences/>

Given this, the Adviser then considered whether the presenter of *Sunday Breakfast* and other commentators on the BBC cited by the complainant had been accurate in stating that there had been a fall of 14 per cent in flood spending in the year 2015/16 compared with the previous year.

The Adviser noted that figures released by Department of Environment, Food and Rural Affairs (DEFRA) showed spending on flood defences in 2014/15 at £810 million in real terms while it was budgeted at £695 million for 2015/16 – a drop of around 14 per cent. However, she noted that this was because the original 2014/15 budget of £630 million had been increased by £180 million of additional spending introduced as a result of the winter flooding of 2013/14¹⁸.

As a result, the Adviser considered that the presenter had been accurate in describing government flood defence spending as having fallen on a year by year basis. However, she also believed that the evidence showed that government flood defence spending had increased over a five-year period.

Given this, the Adviser did not consider the programme had failed to be “duly accurate” in using the clip of Ms Truss saying government spending had increased, as the period that she was discussing was not specified in either the bulletin or the earlier interview.

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

Request for review by Trustees

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

She said that:

¹⁸ These figures were taken from a document setting out Central Government Funding for Flood and Coastal Erosion Risk Management (FCERM) in England, published by DEFRA in December 2015. The document was updated in September 2016 to include the actual spend for the previous financial year. It is available here: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/549093/Funding_for_Flood_and_Coastal_Erosion_in_England_Sep_2016.pdf

- The editor of Radio 5 Breakfast, BBC Complaints, and the Senior Editorial Adviser, BBC Trust agreed that the government had not cut flood defence spending. However, she said Radio 5 presenters and contributors in the output she had raised had agreed that the government had cut flood defence spending. She said both versions could not be right so one had to be misleading and inaccurate.
- The DEFRA Report of December 2015 stated:

“Following the flooding in winter 2013/14, an exceptional additional £270m funding was announced, of which £30m related to 13/14, £180m to 2014/15 and £60m to 2015/16. This accounts for the large increase in funding to 2014/15 and subsequent decrease to 2015/16,”
- It seemed the question was whether the exceptional additional £270m should be classed as flood defence investment, or as compensating for failure of flood defence investment.
- Another BBC presenter in another interview on the same topic had said: “But those figures you’ve just quoted, they add in emergency spending after the last floods in 2013, the National Audit Office says you should take those figures out, they shouldn’t be included so really there is a counter-argument that the funding hasn’t increased.”

The Panel’s decision

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

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

- Figures showed that spending on flood defences had risen over a five-year period when compared with the previous five years.
- Budgeted spending on flood defences in 2015/16 showed a drop of around 14 per cent from the previous year but the original 2014/15 budget of £630 million had been increased by £180 million of additional spending introduced as a result of the winter flooding of 2013/14.
- The additional spending of £180 million did allow for different interpretations on the direction of government spending on flood defences depending on which years one compared. The Committee felt that this had generally been reflected by the output.
- The BBC had been duly accurate in describing government flood defence spending as having fallen between 2014/15 and 2015/16. In addition, they also believed that the *Sunday Breakfast* programme had been “duly accurate” in using the clip of Ms Truss saying government spending had increased particularly as the period that she was discussing was not specified.

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

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

The One Show, BBC One, 31 March 2015

The Committee decided that one element of this appeal qualified for consideration. This element is 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 did not qualify are reflected below.

The complaint concerned an item on *The One Show* which investigated the practices of some “umbrella” companies in the construction industry, through which some workers were paid their wages. The report included contributions from construction workers who reported that they had had to pay for their employers’ National Insurance contributions, as well as additional processing fees. The practice had resulted in the workers shown losing around £100 per week from their expected wages. The complainant made the following points at Stage 1:

- He considered that the approach of the journalism was frivolous, poorly researched and relied on trade union comment, when the union was pursuing its own agenda.
- Not all “third party commercial contractors” were necessarily umbrella companies and the programme failed to make clear that their use had come about after changes in legislation that had been brought in at short notice.
- The impact this had had on labour rates was “complex and interesting” and the BBC had failed to investigate it properly.
- The programme had been inaccurate when making a tax calculation to explain how the wages paid to workers through an umbrella organisation may be adversely affected.

The BBC made the following response at Stage 1a:

- The representative from the construction workers’ union, UCATT, stated his belief that the practice of umbrella companies passing on unfair costs to workers was a major problem within the industry. The union representative had told the BBC that tens of thousands of people had been affected.
- The programme featured two case studies, and named one employment agency and the umbrella company in question.
- Both the employment agency and the umbrella company were approached and offered a right of reply. The agency stated that it gave workers the choice of working through the umbrella company or “under PAYE” and this was reflected in the film. The umbrella company had not answered the programme’s questions, but stated that the tax authorities were not taking steps to stop their use.
- The union representative said on film that the industry was exploiting a loophole to shift tax liabilities onto the workforce and, in the studio afterwards, it was made clear that the Chancellor and the Welsh Government had said they were cracking down on umbrella firms.
- The programme had been provided with pay slips by construction workers which showed that construction companies did appear to be passing tax liabilities onto the workforce.
- The Government had announced that it wanted employment intermediaries like umbrella companies to provide greater transparency around pay.
- The programme had not said all umbrella companies were guilty of this – but reported on a widespread and unpopular practice that had provoked union concern and led to a promise of action by government.

The complainant remained dissatisfied and made the following points.

- He asked what independent research had taken place to determine how many people were affected by the practice (and questioned whether any were affected at all); whether the umbrella company in relation to the first, anonymous, example had been contacted, and whether any other umbrella company or trade body had been contacted.
- He queried the statement from the employment agency that workers were offered the choice of being employed through an umbrella company (as they would not choose a structure that paid them less at the same hourly rate), and considered that the calculation used by the programme was “erroneous”.
- He asked why UCATT’s assertion that umbrellas “shift tax liabilities onto the workforce” was not tested (as he considered that it should have struck the programme-makers as “likely to be illegal”).
- He sought further information to substantiate the programme’s claims that the Chancellor was “cracking down” on the use of umbrella firms, the programme’s claim that it was exposing “widespread and unpopular” practices, and the BBC’s position that “the industry” had been given a fair right of reply.

At Stage 1b, the BBC sent the following information, which had been provided by the programme team:

- They had contacted a number of construction workers, some via UCATT, some independently, from around the UK. All confirmed that they, or someone they knew, had been victims of this practice.
- UCATT stated that the number of people affected was high and was growing.
- The Welsh Government had informed publicly funded construction projects that it would not work with agencies using umbrella companies.
- The programme explained how it had contacted the relevant companies for an interview for the programme, and had outlined the responses it had received, and how they had been reflected in the film.
- They stated they had contacted the Freelancer & Contractor Services Association (FCSA) to confirm how many people were employed by umbrella companies.
- They noted that the employment agency had stated that workers had a choice about working through an umbrella company – and that the union representative had said that in practice, workers were not offered the choice – these points were included in the film.
- They noted separately that the workers they had spoken to had said they had not had a choice.
- They explained they had used a tax calculator to work out how much the individual had been underpaid – and that this calculation had been shown in the programme.
- They said they had been shown the payslips of the construction workers featured in the film. These showed that costs had been shifted onto the worker.
- The worker who had been shown anonymously had explained that he had complained to the umbrella company about this practice – he was subsequently taken off their pay roll and put on to PAYE terms.
- The worker had shown them how much more he was paid as a result, and they had taken this up with HMRC who had said:

“The Government wants employment intermediaries to provide individuals with more transparency on how they are employed and what they are being paid. BIS (The Department of Business, Innovation and Skills) will

later this year consult on proposals for improving transparency for those paid through an umbrella company, on how they are employed, and what they are being paid.

“The Government is working hard to prevent any misuse of tax reliefs by Umbrella Companies. The Chancellor announced in last week’s Budget plans to stop employment intermediaries exploiting the tax system to reduce their own costs by clamping down on the agencies and umbrella companies who abuse tax reliefs on travel and subsistence.”

The complainant was advised that if he remained dissatisfied, he could pursue his complaint to Stage 2 and seek a response from the Editorial Complaints Unit (ECU). In his appeal to the ECU the complainant made the following points:

- He considered the Stage 1b responses he had received were “inaccurate” and “glib”. He did not consider it was possible that “all” the construction workers contacted had either been affected, or knew someone who had been.
- He noted the action being taken by the Welsh Government and sought information about the political make-up of those involved in the decision, stating: “...let me know how balanced they are against every other relevant decision maker across the whole public political spectrum who have not made such a decision”.
- He considered the words of the union and the construction workers had been taken at face value – and that the programme had not made sufficient efforts to seek further responses to the questions that the employment agency and umbrella company had not answered.
- He queried the relevance of the programme contacting the FCSA.
- He considered the calculation shown on the programme was inaccurate and had not been assessed with due diligence.
- He considered the reference to the costs that had been shifted onto the workers was inaccurate.
- He queried whether the programme had contacted the employer that had been involved with the anonymous worker.
- He noted the response which the programme said had come from the Government and disputed it, quoting a different statement from the Department of Business, Innovation and Skills, that:

“Many umbrella companies are compliant with their obligations but HMRC is aware that some are non-compliant, including through the misuse of dispensations issued by HMRC.”

He considered that this statement – reflecting that many umbrella companies complied with the law – was a balanced statement about how they worked.

- He considered that the programme had been “taken in” by the union and did not include sufficient challenge to the union position, and that the programme had not properly understood the industry that it was reporting on and had focused on the action of umbrella companies – while not considering the actions of the construction companies or employment agencies.

The ECU did not uphold the complaint, making the following points [this excludes the ECU response on the numbers employed through umbrella companies as this is covered in the related appeal finding]:

- It could not see any obvious flaw in the programme's tax calculation so did not believe it had been inaccurate.
- The programme was not a consideration of the pros and cons of using umbrella companies to employ workers, but was highlighting the alleged practices of some umbrella companies. As a result, the requirement upon the programme was to seek responses from these particular companies and this they did.
- A number of articles about the likely effect of certain proposals put forward by the Chancellor of the Exchequer in the 2015 Budget showed that the basis on which at least some umbrella companies operated would be seriously threatened.

Appeal to the Trust

The complainant appealed to the BBC Trust. One point of complaint was taken on appeal and was upheld as a breach of the Editorial Guidelines for Accuracy.

Subsequently, the Chairman of the Editorial Standards Committee noted that the complainant had raised other points and that these had not come before Trustees. The Trust Unit was asked to carry out further work on the outstanding points.

Decision of the Trust Adviser

The Trust Adviser (the Adviser) noted that under the Complaints Framework, all points of complaint had to be raised with the BBC at Stage 1 and the Trust was not able to consider matters that had not already been addressed by the BBC. She noted that the complainant had made the following points in response to his appeal paperwork:

- "One event overtook [the] complaint", which was the "very eye-catching figure" of 300 – 400,000 construction workers alleged to be affected by the issue, that "grabbed the attention and justified the seriousness and the immediacy of the piece".
- The piece had in his view misled the audience.
- The programme had never properly understood the subject matter it was reporting on and in particular had not explained or understood the relationship where a worker was engaged through a third party business, or the benefits of having the "umbrella industry" offering its services as a choice to those working through agencies.
- In 2009 the Government ran a consultation into the "umbrella" industry and decided to leave the rules unchanged, but (noting that construction was a specific industry with its own legislation governing payments by contractors to subcontractors) subsequently changed tax law in April 2014 to bring most workers who were contracted through agencies into PAYE.
- For some workers this occurred "mid contract" and for agencies "mid agreement", and agencies were not able to increase the charges they made to the companies who were contracting the workers and instead reduced the payments to workers in order to meet the obligations on them for PAYE.
- He considered there was no "mass migration" to umbrella companies; and deducting employer liabilities or fees from wages en masse would be illegal and would have been likely to result in legal action.
- Reasoned questioning – instead of following a union agenda – would have led the programme to question the contradictions within the situation.
- The story was not well suited to a five minute report, nor (in relation to the opening sequence which showed the reporter holding an umbrella on a sunny day) to a flippant reporting style, and he considered that there would be no "audience

expectations" of the item and this in itself made the item problematic, as viewers would take it at face value.

- He considered the output relied on one source, which was the Trade Union, UCATT, and this was a "left of centre" viewpoint; and he noted that some considered the BBC generally also shared this left of centre position.
- He noted criticism that had been made of the decision by the Welsh Assembly to stop working with contractors that used umbrella companies.
- He was concerned above all else that he had had to watch the industry he worked in being badly reflected "as entertainment".

The Adviser noted that all output was required to meet the standard of "due accuracy", which was defined as follows:

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

She noted that decisions about what subjects to report – and decisions about the style of the reporting – were matters of editorial judgment that rested with the BBC.

The Adviser noted that *The One Show* was aimed at a general audience rather than a specialist one. She considered that there was a clear editorial justification in reporting a situation in which a significant number of workers were unexpectedly losing a substantial proportion of their pay. She considered that, overall, the tone of the item was that of a considered report that took as its starting point the experiences and opinions of the individual workers. She considered this was a legitimate exercise of editorial judgment.

She considered that the audience would not have expected the report to include the level of detail suggested by the complainant. She considered that:

- the claim that the tax calculation used in the programme was inaccurate had not been substantiated. The calculation was a standard one and its purpose was to demonstrate (in a short item to a general audience) that a particular worker was losing money compared to the sum they had expected to earn
- the complainant's suggestions that:
 - the figures used in the show did not add up "because the rate of pay agreed between an agency and the client to whom it supplied labour would differ depending on whether the worker was paid under PAYE or through an umbrella company, because in the latter case it would include additional employer costs", and
 - the worker was paid less because the tax rules had changed were not relevant as the programme aimed only to show that *some* individuals had been paid significantly less than they understood they would earn and the calculation had been used to indicate what a standard worker in an average industry earning £500 a week should expect to pay in tax, and compared it with this particular man's pay slip
- in claiming that umbrella companies "shift tax liabilities onto the workforce", the programme had obtained pay slips demonstrating this, and there was no reasonable prospect that, if they took the appeal in full, Trustees would find the programme had been inaccurate
- as to whether the programme had been duly accurate in stating that the Chancellor was "cracking down" on umbrella companies, the Adviser noted an article from the *Construction Enquirer* from 18 March 2015 cited by the ECU and

entitled "Budget: Fresh Crackdown on Umbrella Companies" that suggested that the way some umbrella companies operated would be seriously threatened by proposals put forward by the Chancellor, and

- an earlier article in December's *Construction News* that had referred to the Autumn Statement under the headline, *George Osborne announces review of umbrella companies in bid to curb tax avoidance*, and referred specifically to the concerns of UCATT and the construction industry, and she concluded that there was no reasonable prospect that, if they took the appeal in full, Trustees would find the programme had been inaccurate.

The Adviser also considered the complaint that the programme had failed to be duly impartial because the views of umbrella companies or their trade associations were not represented. She noted that:

- the programme interviewed two workers (one anonymously) who had described that they did not understand the deductions that had been made, that the situation had not been explained to them, and that they had both resulted in losing significant sums of money
- they had claimed that umbrella companies were deducting employers' national insurance contributions from their wages and levying a fee on the worker for services provided
- in the case of the named worker, the programme specified both a building employment agency and an umbrella company that recruited and paid the worker, and both were given a right to reply to the worker's claims (the other worker remaining anonymous)
- the umbrella company declined to answer whether employees were being made to pay employers' national insurance contributions but had said that tax authorities were not taking steps to prevent the use of umbrella companies.

The Adviser considered that the report was a relatively short consumer item investigating the experiences of particular employees, and in that context, the above steps were likely to be sufficient to meet the requirement of "due impartiality", as required by the Editorial Guidelines.

She noted that the programme made it clear that deductions by umbrella companies were not an issue affecting all construction workers, and that it did not claim that all umbrella companies were guilty of questionable practices. Given the nature of *The One Show* and the expectations of its audience, the decision to cover the issue in terms of substantiated impacts on particular individuals, rather than attempting a comprehensive analysis of practice across the whole construction industry or an examination of the pros and cons of using umbrella companies, was a legitimate exercise of editorial discretion.

The Adviser recognised the complainant's views that this was a "complex and interesting" subject in terms of employment practice, and that legislative changes had been brought in at short notice; however, she considered that these were not the subject of the report, and there was no requirement for an industry-wide discussion to be included.

She noted that the complainant had queried whether the BBC had contacted the company of the worker who appeared anonymously. She noted that the programme script stated the worker wished to be anonymous because: "...he's worried he'll lose his job and be blacklisted". She considered that it was reasonable editorial judgment not to contact an employer in that situation and that audiences were aware the individual was speaking anonymously and would assess his contribution in that context.

The Adviser noted that the complainant had repeatedly raised the tone of the report and considered it was flippant and that this did not suit the subject matter. However, she considered this was a matter of editorial judgment and would have been within the audience expectations for viewers of *The One Show*.

Finally, as regards the handling of the complainant's case, the Adviser considered that Trustees would be likely to conclude that the BBC had responded appropriately to the complainant and had apologised for inadvertent errors, for the complainant's unhappiness with the process, for the delays, and for a typographical mistake in a letter and that the apologies had resolved this element of the complaint.

The Adviser therefore considered that, since there was no reasonable prospect that Trustees would uphold these aspects of the appeal, it would not be appropriate, proportionate or cost-effective to proceed on appeal with the other matters of complaint.

Request for review by Trustees

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

- previously, his complaint had been considered to have had no reasonable prospect of success and yet a part of it had been upheld on appeal, therefore there was no reason to accept that the other elements of complaint were not also likely to be upheld
- he considered that he had been advised many times during the process that his complaint had no merit, and wished the remainder of his complaint to receive due consideration by the Panel.

The Panel's decision

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

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

- the choice of story and the tone and style of the item was a matter of editorial discretion and so a matter for the BBC Executive and its programme makers and not a matter for the Trust (Charter, Article 38 (1)(b))
- *The One Show* was aimed at a general audience rather than a specialist one and the information that the item could include would therefore be aimed at a general audience
- there was a clear editorial justification in highlighting a situation in which a number of workers were unexpectedly losing a proportion of their pay
- the item took as its starting point the experiences and opinions of the individual workers and it was a reasonable editorial decision to focus on them
- the programme included sufficient detail about the financial situation the workers were in
- an appropriate right of reply was offered to the relevant company and employment agency
- there was no requirement to include a representative of umbrella companies

- generally (with the exception of the matter upheld on appeal) the report met the requirements for due accuracy and due impartiality.

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

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

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

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

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

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

The Editorial Complaints and Appeals Procedure¹⁹ explains that:

At all stages of this Procedure, your complaint may not be investigated if it:

fails to raise an issue of breach of the Editorial Guidelines; or

is trivial, misconceived, hypothetical, repetitious or otherwise vexatious.

In all of the following cases the complainants had appealed on the substance of their complaints but as BBC Audience Services had ceased handling the complaints at Stage 1 the point put to the Trustees was whether an appeal against the decision of BBC Audience Services not to correspond further with the complainant had a reasonable prospect of success.

In each of the instances below, the complainant asked the Editorial Standards Committee to review the decision of the Trust Unit that the complainant's appeal did not qualify to proceed for consideration by the Committee.

The Committee was provided with the complainant's correspondence with the BBC, the complaint's appeal/s to the Trust, the response/s from the Trust Unit and the

¹⁹

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

complainant's request/s to review that decision. The Committee was also provided, where appropriate, with the relevant broadcast or published content.

Decision of BBC Audience Services not to respond further to a complaint about This World: Don't Panic – How to End Poverty in 15 Years, BBC Two, 11 October 2015

The complaint concerned accuracy and impartiality in a BBC Two documentary which was described on the BBC iPlayer as follows:

"The legendary statistical showman Professor Hans Rosling returns with a feast of facts and figures as he examines the extraordinary target the world commits to this week – to eradicate extreme poverty worldwide. In the week the United Nations presents its new goals for global development, Don't Panic – How to End Poverty in 15 Years looks at the number one goal for the world: eradicating, for the first time in human history, what is called extreme poverty – the condition of almost a billion people, currently measured as those living on less than \$1.25 a day."

The complainant said that the programme used statistics to measure levels of poverty; these figures were sourced from the World Bank and were not challenged during the programme. The complainant raised the following specific points to support his complaint:

- the programme said that the world's median daily income was \$10 but World Bank estimates from spending/income surveys in 2010 gave a PPP [Purchasing Power Parity] figure of \$3.40; saying that results depended on the value of the dollar may mislead the audience; the presenter seemed to "conflate GDP \$10 and Bank household survey '\$/day'"
- the programme used a "poverty tracker" which was unreliable in that it reflected "opinion, assumptions and value judgements about food quality, housing quality etc"
- the programme referred to the "importance" of Goal 1.1 and this required a "balance of views"; it used a chart which referred to "extreme poverty" but this figure was also unreliable in that it took no account of "changing needs, or inflation faced"; the presenter acknowledged "uncertainty" about these figures but this was not enough to mitigate the prominence given to the chart
- the programme may have created a misleading impression in failing to mention the "1996 hunger pledge and the actual pledge of 2000 with 2000 baseline".

The complainant said that these issues formed part of a general BBC pattern in under-representing criticism of the "official statistics".

The BBC made the following points:

- this was a BBC production in partnership with The Open University, based on expert opinion and scientific facts
- it drew on widely available public data, much of it from the Millennium Development Goals and Sustainment Development Goals UN processes
- the BBC was sorry if the complainant did not agree with the facts presented in the programme. The data sources and methodologies used could be found on Gapminder's Educational Material site : <http://www.gapminder.org/news/data-sources-dont-panic-end-poverty/>

- the statistics in this area were complicated and were necessarily simplified in order to aid comprehension. However, the BBC was confident that this process was carried out in such a way as not to mislead the audience and was in accordance with BBC Editorial Guidelines.

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

Appeal to the BBC Trust

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

In his appeal the complainant raised a number of new points relating to the programme, and the Adviser noted that these points could not be considered by the Trust as the complainant had not raised them at Stage 1.

The complainant also said that the BBC had repeated an earlier programme in this occasional *This World* series (*Don't Panic – The Truth about Population*) despite the complainant not having received a Stage 2 response to his complaint about this programme.

Decision of the Trust Adviser

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

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

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

The Adviser noted that *Don't Panic – How to End Poverty in 15 Years* was aimed at a general audience. She noted that it attempted to convey complex information in a straightforward way – for example, it used graphics to plot a period of more than 200 years, showing how countries had become richer as their child mortality rates had fallen. She noted the programme had sought to understand and illustrate in a practical way how the lives of people who lived in extreme poverty differed from those who remained poor but were no longer among the poorest in society. For example, it had noted that people in extreme poverty would tend not to have electricity in their homes and their homes would be made of material that was not durable – while people who were very poor, but outside extreme poverty, were likely to have electricity and live in houses that might, for example, have roofs made of plastic sheeting or corrugated iron. In terms of the specific points made by the complainant, she noted the following:

- the programme had created a "yardstick" of poverty which ranked the average income per person of the world's population from lowest to highest income. The values had been expressed in terms of PPP. GDP per capita in PPP was adjusted for the value of US dollars and corrected for inflation

- the programme had defined “extreme poverty” as being \$1.85 per day. This differed from the recent official Poverty Line of the World Bank and the UN which was \$1.25 per day adjusted for international prices in 2005. The programme had adjusted the figure for 2011 because prices had changed in the intervening six years. The team had used the World Bank’s recently published global price comparisons called PPP2011 to calculate the new figure
- the programme said the exact position of the extreme poverty line varied depending on the value of the dollar, but although the value was not fixed, the meaning was clear and did not change, it was “about the daily struggle to get enough to eat”
- the programme included a film which showed what daily life was like for those living in extreme poverty in Malawi. After the film Professor Rosling said, “So now you’ve got a glimpse of how life is in extreme poverty, I hope you agree on the importance of United Nations Goal 1.1”. The Adviser considered that Professor Rosling was suggesting it was a worthwhile aim to improve living conditions for those people featured in the film, and she decided that Trustees would be likely to consider that this would not require a “balancing view” in order to achieve due impartiality
- the programme tracked over time the declining proportion of the global population who were in extreme poverty, and Professor Rosling said, “This year is not the first time the United Nations put a target, a goal for extreme poverty. The former goal was to halve extreme poverty from 1990 up to 2015.” The Adviser considered that Trustees would be likely to consider there was no requirement under the guidelines for the programme to mention other measures and goals such as the “1996 hunger pledge” mentioned by the complainant.

The Adviser noted that the programme had made its sources publicly available and she decided that Trustees would be likely to consider the information to be “well sourced” and “based on sound evidence” as set out in the guidelines. She considered that, given that this programme was aimed at a non-specialist audience, Trustees would be likely to consider there was no requirement for the programme to have given weight to any criticism of the World Bank’s figures.

The Adviser considered that Trustees would be likely to conclude that some of the complainant’s requests for further detail involved a level of complexity which would not be appropriate for a general audience and which would have reduced the clarity of the presenter’s argument whilst not being required under the BBC’s guidelines. She therefore decided Trustees would be likely to consider the programme duly accurate and impartial for a general audience.

The Adviser noted that the complainant believed that his points of complaint formed part of a general BBC pattern in under-representing criticism of the official statistics. She noted that in a previous appeal to the BBC Trust (about the BBC Radio 4 programme *More or Less*, and associated programmes²⁰) the complainant had stated that there was “an accumulation of problems causing a lack of due accuracy” and “cumulative error and/or omission causing a lack of impartiality”. She noted that the Trustees had decided that this previous appeal did not raise a matter of substance and it could not therefore be brought into consideration in this appeal.

The Adviser also noted that the complainant had stated that the BBC had repeated an earlier programme in this occasional series (*Don’t Panic – The Truth about Population*)

²⁰ http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc_bulletins/2016/esc_bulletin_dec_jan_2.pdf

despite the complainant not having received a Stage 2 response to a complaint about this programme. The Adviser noted that the ECU had chosen not to respond further to this complaint but the BBC Trust had considered the complaint and had concluded that the appeal did not have a reasonable prospect of success.

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

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with his appeal. He said that the adequacy of BBC information on the “world’s number one goal” and leaders’ pledges were not a trivial matter.

The Panel’s decision

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

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

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

- the programme was aimed at a general non-specialist audience
- the statistics used in the programme were based upon publicly available data from reputable sources
- the programme was produced in partnership with The Open University, involving expert opinion
- the reference in the programme to “the importance of United Nations Goal 1.1” did not require a balancing view in order to achieve due impartiality
- the presenter’s reference to current – and past – United Nations’ targets to reduce global poverty did not require any reference to other past pledges in order to achieve due accuracy
- given the context of the programme and the likely understanding of the audience the complainant had raised no evidence of a breach of the Editorial Guidelines.

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

Trustees agreed that the BBC’s obligations to be duly accurate and impartial on these matters were not “trivial” but they decided not to take the appeal, on the basis that it would not be appropriate, proportionate or cost-effective since there was no reasonable prospect of the appeal succeeding.

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

Decision of BBC Audience Services not to respond further to a complaint about BBC Breakfast papers review, BBC News Channel, 20 March 2016

The complainant alleged that BBC News Channel breached Editorial Guidelines on Impartiality during references to Jeremy Corbyn's meeting with Hamas. The reviewer had said that Jeremy Corbyn had, in the past, shared platforms with people who expressed anti-Semitic sentiments and he had also described groups like Hamas, which the reviewer said had genocidal anti-Semitism as part of its charter, as being a "friend".

The complainant made the following points:

- The presenters and guest newspaper reviewer, Justin Cohen, News Editor at the Jewish News, repeated standard criticisms of Jeremy Corbyn's meeting with Hamas and demonstrated a failure of balance.
- They failed to point out that since resigning as Peace Envoy, Tony Blair had had talks with Hamas (evidenced in reports online in the Independent and the Telegraph and others.) Also, Margaret Thatcher held talks with the IRA even when condemning them as terrorists.
- They failed to mention that the term "friends" was used as a collective term in many contexts such as Parliament, diplomacy, charities, public speaking events, workplaces and more, to people who were not friends but whom the speaker wished to include in the event or situation.
- She thought that the BBC News presenters were probably not aware of the complexity and background to the issue. She noted that Mr Corbyn was "following the examples of Moyshe Dyan who said you have to talk with your opponents to make peace".

BBC Audience Services made the following points:

- They understood that the complainant felt that comments on Tony Blair's meetings with Hamas should have been included in the review of Nick Cohen's article in the Observer "Why I'm becoming a Jew and you should, too", as well as references to Jeremy Corbyn.
- The BBC acknowledged that not everyone would agree with its choices on which stories to cover, and the prominence given to them. These were subjective decisions made by BBC News Editors, and the BBC accepted that not everyone would think they were correct on each occasion.
- While editorial decisions were subjective, the BBC appreciated audience feedback when viewers felt a story had been overlooked or marginalised.
- BBC journalists were well aware of the BBC's commitment to impartial reporting. They expected to put their own political views to one side when carrying out their work for the BBC. They sought to provide the information which would enable viewers and listeners to make up their own minds; to show the political reality and provide the forum for debate, giving full opportunity for all viewpoints to be heard.
- Senior editorial staff, the Executive Board, and the BBC Trust all worked to ensure that standards of impartiality were maintained.

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

Appeal to the BBC Trust

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

She repeated the substance of her complaint and made the following points:

- This was an example of the “unjustified maligning of a politician’s reputation, over such a serious matter that it gives an advantage to other politicians”.
- She believed that respect should be shown for Nigel Farage, George Galloway, David Cameron and Jeremy Corbyn.
- She referred to another complaint, currently being investigated by the BBC at stage 2, and suggested her complaints might be considered together.
- She hoped that the BBC’s standard presentation of Jeremy Corbyn as a terrorist sympathiser because he had met with Hamas was the result of a lack of research, or lack of challenge, rather than intention.
- What was required to redress the balance was to point out that Mr Corbyn was not alone and that Mrs Thatcher, Mr Blair and Mo Mowlam had all engaged with the IRA.

Decision of the Trust Adviser

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

She noted the complainant’s view that Jeremy Corbyn had been unfairly maligned as a terrorist sympathiser for sharing a platform with members of Hamas, and that the complainant felt BBC News Channel had not met the Editorial Guideline requirement for due impartiality during a review of a newspaper article about anti-Semitism.

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

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

The Adviser noted the context of the comments about Jeremy Corbyn at the centre of the complaint. Justin Cohen, News Editor at the Jewish News, was reviewing the Sunday papers with two Breakfast News presenters. He focused on an article in the Observer about the rise in anti-Semitism, “particularly the rise in polite anti-Semitism on the left”. Mr Cohen remarked on how the Labour Party currently risked being tainted by those it attracted in the same way that UKIP had been.

Mr Cohen went on to explain that the article described a situation that people on the left and elsewhere needed to recognise, that campaigning for the Palestinian cause could “go into” anti-Semitism – which was problematic. He noted some instances of people connected with the Labour Party who had made inappropriate comments about Jews and Hitler. He noted that Jeremy Corbyn had, in the past, shared platforms with people who expressed anti-Semitic sentiments and he had also described groups like Hamas, which Mr Cohen said had genocidal anti-Semitism as part of its charter, as being a “friend”. He considered this was problematic for Jeremy Corbyn and did not reinforce Mr Corbyn’s

claim that he wanted to have a zero tolerance approach to anti-Semitism. Mr Cohen also said that he did not doubt for a moment that Mr Corbyn really did want to have a zero tolerance approach to anti-Semitism in the Labour Party.

The Adviser noted that the views expressed by newspaper reviewers were their own personal ones, and she considered that this was well understood by viewers. She noted the complainant's comments that other politicians in the past besides Jeremy Corbyn had spoken to members of Hamas, and that the connotation of "friend" should be understood in the context of political diplomacy. She also noted that Mr Cohen stated that he did not doubt Mr Corbyn's desire to take a zero tolerance approach to anti-Semitism in the Labour Party, but felt that calling Hamas a friend sent out the "wrong message" and did not help Mr Corbyn's case.

The Adviser considered that the audience would have understood Mr Cohen to be giving his personal view. She also noted that the discussion was a topical one relating to a major news story of that week – anti-Semitism in the Labour Party, of which Mr Corbyn was the current leader and his comments therefore had contextual relevance.

The Adviser noted that decisions about the choice of programme contributors and the presentation of their personal views were part of the editorial and creative management of the BBC. The Trust would only have a role if the output did not meet the standards set out in the BBC's editorial guidelines. The Adviser had not seen evidence to suggest that was the case here.

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

Request for review by Trustees

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

- The accusation that Mr Corbyn was a terrorist sympathiser had continued for a long time and she believed it was spreading within the BBC as a standard comment.
- For context, she noted that similar accusations had been made against Sadiq Khan during his London Mayoral election campaign, but these accusations had not gone on as long as they had against Mr Corbyn.
- She felt that Mr Corbyn was always being condemned for his efforts towards negotiating peace in the Middle East.
- She also felt that similar efforts by Tony Blair went unreported. She said she had to ask why the "BBC's treatment of the two politicians is so contrasting: one whose efforts are not reported, the other condemned at every opportunity".
- She noted that there were as many political views within people of Jewish descent as within people of every descent.
- This was the only item not responded to by the presenters.
- She understood the point about reviewers of the papers giving their personal view, but she rejected that as a justification for not ensuring balance.

- She felt that Mr Cohen repeated a standard narrative which the complainant summarised as Mr Corbyn meeting Hamas, describing Hamas as a friend, and was therefore generally considered by the media to be a friend of people who were anti-Semitic and genocidal. The BBC had failed “to challenge this toxic narrative”.
- Citing other output on Radio 5 live, she believed that presenter Nicky Campbell’s analysis demonstrated a lack of objectivity.
- Jeremy Corbyn had told Channel 4 News that he had used “friends” in a collective way at a meeting in Parliament; that even the head of Mossad said there had to be talks with Hamas; and that he, Mr Corbyn, “had discussions with people from the right in Israeli politics who have the same view, possibly, that the State of Israel should extend from the river to the sea, as it is claimed people from the Palestinian side do.”

The Panel’s decision

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

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

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

- it would have been clearly understood by the audience that the reviewers of the papers were giving their personal views.
- the comments which gave rise to the complaint concerned a major news story of that week – anti-Semitism in Labour, the party of which Mr Corbyn was the current leader. Remarks should be seen in that context.
- the comments were measured in that Mr Cohen said that he did not doubt Mr Corbyn’s desire to take a zero tolerance approach to anti-Semitism in the Labour Party, but felt that calling Hamas a friend sent out the “wrong message” and did not help Mr Corbyn’s case.
- the approach to impartiality was adequate and appropriate to a newspaper review.

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

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

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

Decision of BBC Audience Services not to respond further to a complaint about Thought for the Day, BBC Radio 4

The complainant made the following points:

- *Thought for the Day* continually presented and promoted religion(s), through its daily messages
- a moral code and ethics etc were not limited to those with religious beliefs and the opportunity should be provided for atheists to present another point of view, perhaps a humanist viewpoint, perhaps even challenging religious “thoughts”
- it was clearly bias to present only a religious message and without the balance of an atheist thought for the day
- the rest of *Today* did not provide any equivalent focus for atheistic or humanist messages so there was no corresponding balance
- *Thought for the Day* supports a falsity which is that moral reflection only comes from a religious viewpoint
- it ignores the fact that many crises are often caused because of religion.

BBC Audience Services made the following points:

- *Thought for the Day* was a unique slot on the BBC in which speakers from a wide range of religious faiths reflected on an issue of the day from their faith perspective
- in the midst of the three-hour *Today* programme devoted to overwhelmingly secular concerns the BBC judged it appropriate to offer a brief, uninterrupted interlude of spiritual reflection, at a point in the morning when most of the audience were embarking on their day
- at its best it planted a seed of thought or a spark of spiritual insight that stayed with listeners during the day. At times of national event or crisis it also had the capacity to catch the mood of the nation and speak to it
- broadening the brief would detract from the distinctiveness of the slot
- the BBC believed that all licence fee payers had the right to hear their reasonable views and beliefs reflected on its output
- within *Thought for the Day* a careful balance was maintained between voices from different Christian denominations and other religions with significant membership in the UK. Speakers were expected to make brief references to their faith and its scriptures, but were not permitted to proselytise on behalf of their religion or to disparage other religions
- speakers were not questioned or interrupted on air, but their choice of subject and the content of their scripts were subject to careful scrutiny and frequent re-drafting in collaboration with an experienced producer working to strict BBC guidelines on impartiality
- the mix of regular contributors to the slot represented a wide range of theological, social and political views to ensure further balance across a period of time
- occasional programmes gave voice to atheist and humanist viewpoints
- most general programmes made little reference to religion, but approached the world from an overwhelmingly secular perspective
- in general the BBC’s Religion & Ethics output maintained a balance of religious and non-religious voices, through programmes such as *Sunday, Something Understood, Beyond Belief* and *The Moral Maze*. In these programmes, atheists, humanists and secularists were regularly heard, the religious world was

scrutinised, its leaders and proponents were questioned, and the harm done in the name of religion was explored

- this did not suggest that the only people with anything worthwhile to say about morals or ethics were religious people but that did not mean that the *Thought for the Day* brief was not a legitimate one for listeners of all faiths and those of none. Some of the programme's strongest support and most positive feedback came from people who began, "I am not a religious person but I do enjoy *Thought for the Day*..."

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

Appeal to the BBC Trust

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

Decision of the Trust Adviser

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

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

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

The Adviser also noted that it was a matter of editorial discretion for the BBC Executive as to whether the BBC broadcast a slot commenting on topical issues from a faith perspective. Such decisions were not a matter for the BBC Trust unless they involved a breach of editorial standards. She noted that such decisions were matters where the BBC should be free to exercise editorial judgment.

The Adviser noted the responses from the BBC which outlined in detail the BBC's position on *Thought for the Day* and referred to a range of other output that included secular and philosophical contributions. They had also referred to a range of other BBC programmes from BBC Religion and Ethics which put forward alternative viewpoints including those of atheists, humanists and secularists, and in which the views of many religious people were scrutinised.

The Adviser also noted that the content of each individual *Thought for the Day* had a requirement to meet the BBC's Editorial Guidelines. She noted in its response that the BBC had explained the measures taken by the production team to ensure that the individual broadcasts met the requirement to be impartial.

The Adviser noted the complainant's concern about the positioning of *Thought for the Day* within a factual news and current affairs programme. The Adviser considered, however, that *Thought for the Day* was a stand-alone strand and was clearly signposted as such on the *Today* programme website and its inclusion therefore in the programme was not misleading.

Noting that *Thought for the Day* had been broadcast on BBC Radio 4 for over 40 years and had a well-established remit to feature reflections from a faith perspective on current issues, the Adviser considered that its approach was well within audience expectations and it did not raise a breach of standards.

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

Request for review by Trustees

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

- his views had not been fully or accurately reflected
- he did not believe that atheists and/or humanists should be allowed to present a message to challenge religious viewpoints; rather that the programme should be open to them on occasion to present secular moral thoughts or opinions on events
- moral thinking was not within the exclusive preserve of religion
- it was about balance
- he had raised fairness and serving the public interest on appeal but these had not been addressed.

The Panel's decision

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

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

Trustees agreed that points raised on appeal which had not previously been raised with the BBC Executive would not be considered at this stage. This was in accordance with the editorial complaints and appeals process.

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

- under the Royal Charter, the direction of the BBC's editorial and creative output is the responsibility of the programme makers and content producers who work to the Executive Board, and not the responsibility of the BBC Trust (Article 38(1)(b)); and "the Trust must not exercise or seek to exercise the functions of the Executive Board" (Article 9(3))
- accordingly, editorial decisions – such as the decision to commission the religious strand *Thought for the Day* within the *Today* programme – are not a matter for the BBC Trust. The Trust would only become involved if the decisions led to a breach of editorial standards

- the approach to due impartiality should be adequate and appropriate to the output, taking into account the subject and nature of the content, audience expectation and any signposting that may influence that expectation
- this was a long-running, stand-alone strand and was well-signposted as such. Audiences expected a faith perspective on the issues discussed on *Thought for the Day*
- there was no requirement that an atheist point of view be included in all religious programming and therefore limiting contributors to those of religious faith would not amount to a breach of due impartiality
- the BBC had outlined the measures taken to ensure that each individual *Thought for the Day* met the requirements of the BBC's Editorial Guidelines
- the BBC had outlined a range of output in which atheist, humanist and secularist viewpoints were heard
- although *Thought for the Day* was a distinct strand it did sit within the *Today* programme, in which a range of secular views were regularly expressed including, on occasion, atheist views.

Trustees agreed that the complainant had received a reasonable and reasoned reply from Audience Services.

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

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

Decision of BBC Audience Services not to respond further to a complaint about Sunday Politics North West, 20 March 2016

The complaint concerned a reference to "Merseyside". The complainant said this word was applied inaccurately and the BBC thereby demonstrated prejudice against Liverpool City Region. The complainant made the following points:

- It was inaccurately stated that "Merseyside" would retain additional business rates under devolution when it became "Liverpool City Region".
- "Liverpool City Region" included the six boroughs of Liverpool, Halton, Knowsley, Sefton, St. Helens, and Wirral. "Liverpool City Region" was getting a metro mayor and devolved powers from national government.
- "Merseyside" included all the above boroughs apart from Halton. "Merseyside" would get neither a metro mayor nor devolved powers from national government.
- The perpetuation of this inaccuracy was prevalent within BBC Manchester in particular, and was the result of a strong historical prejudice against "Liverpool City Region" from Greater Manchester which was often manifested in the inappropriate use of the word "Merseyside".

BBC Audience Services made the following points:

- Halton was part of the Liverpool City Region Combined Authority, joining the local authorities of Liverpool, Sefton, Wirral, Knowsley and St Helens, the five metropolitan district councils which made up the county of Merseyside.
- The BBC aimed for the highest standards of accuracy in its programmes, and they appreciated that the complainant felt the BBC should have referred to "Liverpool City Region".
- Merseyside remained as a metropolitan county and thus would be regularly referred to in BBC reports.
- The new City of Liverpool Region included one more borough than Merseyside, that of Halton, and that was regularly referred to in BBC reports.
- They did not believe there was a lack of clarity on this issue in BBC programmes and noted that there had been no feedback from any other viewers about it.

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

Appeal to the BBC Trust

The complainant appealed to the BBC Trust on the substance and handling of her complaint. She made the following points:

- She felt the response she received from Audience Services was supercilious and ignored a key component of her overall complaint about BBC prejudice against Liverpool City Region, in particular from BBC Manchester, manifested in the use of the word "Merseyside", a term which was used frequently and inappropriately.
- The response from Audience Services misrepresented the issue, stating: "The new City of Liverpool Region". She said there was no such thing as "The new City of Liverpool Region" and she had never claimed there was. The new official, political, economic and geographical entity was called "Liverpool City Region" and it superseded "Merseyside".

Decision of the Trust Adviser

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

The Adviser noted that all BBC output was required to meet the standard of due accuracy and due impartiality which, under the Editorial Guidelines, meant that the accuracy and impartiality must be adequate and appropriate to the output, taking account of the subject and nature of the content, the likely audience expectation and any signposting that may influence that expectation.

The Adviser noted the complainant's view that the edition of *Sunday Politics North West* that was broadcast on 20 March 2016 was factually incorrect by referring to Merseyside becoming "Liverpool City Region". She also noted her wider concern that, by frequently referring to "Merseyside" inappropriately in this programme and other output, the BBC was demonstrating bias against Liverpool City Region. She noted that only one piece of content was specifically cited in the complaint and that this was the output which had been investigated at Stage 1.

The Adviser noted the context of the programme item which referred to Greater Manchester and Liverpool City Region business rates, and which outlined the changes that were about to be implemented under local government devolution. She noted that during discussion the presenter and his guest contributors referred to "Greater Manchester" and "Liverpool City Region".

The Adviser noted that "Liverpool City Region" was the term predominantly used in the programme, but she believed that Trustees would be likely to conclude that any references to "Merseyside" would have been acceptable when referring to the geographical region around Liverpool, and that this term of reference would be widely understood by audiences. She noted that the Editorial Standards Committee had considered a similar complaint in September 2015, and Trustees had taken the view that, had they taken the complaint on full appeal, they would have been likely to conclude that occasional references to Merseyside were made as journalistic shorthand and were not inaccurate.

On the complainant's wider point about the frequency of inappropriate references to Merseyside across BBC output, the Adviser noted that she had not given any specific examples to support her allegation of bias. She believed that if Trustees took this complaint on appeal, they would be likely to conclude that the BBC had not responded inappropriately by confining their response to the one specific piece of BBC output referred to in the substantive complaint.

The Adviser noted that the complainant had found some of the BBC's replies unsatisfactory in tone and in particular referred to the response of Audience Services on 11 April 2016 as "supercilious". Having reviewed the correspondence, the Adviser did not consider that there was any substance to this element of the complaint, but appreciated that the complainant had been disappointed by the response which informed her that the BBC had nothing to add to previous replies on the issue.

Taking this into account the Adviser considered Trustees would be likely to conclude that BBC Audience Services had given a reasoned and reasonable response to the complaint

and had acted appropriately in declining to enter into further correspondence. She therefore did not consider it was appropriate, proportionate or cost-effective to proceed with the appeal as it did not have a reasonable prospect of success. The Adviser did not propose to put it before Trustees.

Request for review by Trustees

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

- Two different case numbers were submitted as a joint complaint, being cross referenced and mutually dependent. The response from the BBC received to one case number did refer to the contents of another, although only selectively.
- The final response from the BBC completely ignored a key component of the overall complaint, "i.e. prejudice against Liverpool City Region, in particular from the BBC's Greater Manchester based offices and staff, often manifested in the inappropriate and over use of the word 'Merseyside'".
- The BBC's response misrepresented the issue, stating: "The new City of Liverpool Region". She said there was no such thing as "The new City of Liverpool Region" and she had never claimed there was. She said "the new official political, economic and geographical entity is called 'Liverpool City Region' and it supersedes 'Merseyside'."
- "Liverpool City Region" included the 6 boroughs of: Liverpool; Halton; Knowsley; Sefton; St. Helens; Wirral. "Liverpool City Region" was getting a metro mayor and devolved powers from national government.
- "Merseyside" included the 5 boroughs of: Liverpool; Knowsley; Sefton; St. Helens; Wirral. Halton was not in Merseyside. "Merseyside" would neither get a metro mayor nor devolved powers from national government.
- It was not an isolated incident, as claimed by the Trust Adviser in her decision dated 31 May 2016. There were many such examples littered across BBC content.

The Panel's decision

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

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

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

- There had been one reference to Merseyside and thereafter the programme referred to the "Liverpool City Region".
- Occasional references to Merseyside were made as journalistic shorthand and in this context the use was duly accurate. With this in mind Trustees did not consider it was evidence of prejudice by staff.
- On the complainant's wider point about the frequency of inappropriate references to Merseyside across BBC output, Trustees concluded that the BBC had not responded inappropriately by confining responses to the one specific piece of BBC output referred to in the initial substantive complaint. The editorial complaints procedure says:

Your complaint should be limited to a single item broadcast or published by the BBC unless it is about more than one item but your points relate to the same issue...

And

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.

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

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

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

Decision of BBC Audience Services not to respond further to a complaint about BBC Radio 5 live Daily, 3 February 2016

The complainant felt that the BBC was taking its lead from other media instead of upholding its independence and impartiality in relation to news and politics. The complainant made the following points:

- All three parties in the broadcast on 3 February 2016 agreed that “most of the time the BBC is reacting to what’s in the newspapers”.
- She felt her view had been confirmed by the broadcast and was shocked that no-one at the BBC appeared to be shocked.
- To choose not to broadcast an item of news was a “partial decision”.

BBC Audience Services made the following points at Stage 1a:

- Peter Allen introduced the item they identified as being at the centre of the complaint, saying “if you read the papers” before going on to review press reports about David Cameron’s attempts to persuade MPs to back a package of reforms he hoped would keep Britain in the EU.
- It was not uncommon for BBC programmes and news output to cover what was being reported in the press – such as in regular reviews of the newspapers. However, that in no way affected the BBC’s own ability to report stories; reporting what the press have said was just one aspect of BBC reporting and was in addition to covering actual events, viewpoints, developments and other reactions etc.

Audience Services made the following points at Stage 1b:

- The main aim of the item was to explore whether the Prime Minister still needed to influence the newspapers. The front page reaction to Mr Cameron’s EU deal was topical and was being analysed by other media commentators. They talked about sales of tabloids falling dramatically, but that the national press “still sets the national conversation” - it was suggested they have an influence over people but “not necessarily to do what they say”. Peter Allen stated that it was quite a way on from the days when The Sun claimed to have “won it for John Major”. It was suggested that the press can “set the tone” of a debate with opinion pieces, but that is a far cry from having any impact on the editorial integrity of any other news outlet. Neil Midgley mentioned that the BBC, as a regulated outlet, was scrupulously regulated and forced to be as impartial as it could be, compared to newspapers which could take their own line.
- The BBC believed that the item was balanced and adequately looked at the impact newspapers can still have.

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

Appeal to the BBC Trust

The complainant appealed to the BBC Trust on the substance of her complaint and enclosed a transcript of the broadcast on 3 February 2016. She said she had serious concerns about the BBC’s impartiality and made the following points:

- The transcript confirmed her view that the BBC was “too generally following the lead of other sections of the media”.
- She disagreed with Peter Allen’s interpretation of impartiality as stated on the programme. She said that “to not speak is to speak” seemed obvious to her.
- She felt that Neil Midgley’s comment on the BBC’s requirement for impartiality was a statement of how its news output should be, not how it has developed.
- Roy Greenslade, whose views the complainant had respected for decades, “confirmed explicitly that most of the time the BBC is reacting to what is in the newspapers”.

Decision of the Trust Adviser

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

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

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

The Adviser noted the context of the item at the centre of the complaint. The BBC broadcaster Peter Allen was joined by the media commentators Roy Greenslade and Neil Midgley. They were discussing David Cameron’s EU deal and how it had been presented in the newspapers ahead of Mr Cameron’s address to the House of Commons that afternoon. The opinions heard reflected that the press had been critical of Mr Cameron, for failing, in the newspapers’ view, to achieve what he had promised in the Conservative Party manifesto.

One of the points made by the media commentators in the studio was that TV and radio, including the BBC, seemed to allow the national press to set the national conversation in terms of the daily political agenda. The Adviser noted that the complainant found this a shocking observation and felt that those taking part in the discussion on *5 live Daily* were acknowledging the BBC’s dependence on the print media, a course of action which undermined the BBC’s commitment to impartiality and was, in the complainant’s view, a breach of the BBC’s editorial standards.

The Adviser noted the explanations given by Audience Services in their Stage 1 responses.

She noted that the question of the BBC’s impartiality was a legitimate subject for debate, in terms of news reporting about David Cameron’s EU deal, and more generally. She noted that a major point being made in the discussion was that the BBC, and other broadcasters, were regulated so tightly in relation to impartiality that it posed the question as to whether this inhibited them from taking a lead in exploring topical issues, and instead encouraged broadcasters to leave this to the newspapers who were freer to take a partial political stance when writing opinion pieces. The other major question being asked during the discussion was how much influence the papers actually had on public opinion. The Adviser noted that the opinions expressed by the commentators in *5 live Daily* were their own views and were not intended to represent the views of the BBC Executive.

The Adviser noted that editorial decisions relating to the content of news programmes such as *5 live Daily* were made by BBC News Editors and formed part of the Editorial and Creative decision making of the BBC. The Trust did not have a role in these decisions unless there was evidence to suggest a possible breach of editorial standards, which the Adviser did not believe Trustees would be likely to conclude was the case in this instance.

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

Request for review by Trustees

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

- She felt the Trust Adviser had, like Audience Services, misinterpreted her complaint and had answered a different question.
- She said her concern was not the comments about Mr Cameron, or any one example of BBC output, it was about her awareness of a growing trend by the BBC to take its lead from other media instead of upholding its independence and impartiality.
- She gave some further examples of where she felt BBC presenters had referred to political opinions expressed in other media as a way of validating BBC responses. One such example was:

“Mr Adam Parsons on 26/11/15: ‘...from a political perspective ... you’d have to look at a lot of the front pages today, the Telegraph and the Times’.”

She said her concern was that “Mr Parsons saw no contradiction between quoting the political stance of two privately-owned, heavily party-politically supporting newspapers as the ‘political perspective’, and that of the requirement of the BBC to be politically impartial.”

- She was concerned that some parts of BBC News seemed to be “morphing into a broadcast version of other media”.
- She believed that the political opinions of The Times and The Telegraph should not be promoted by the BBC.

The Panel’s decision

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

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

Trustees agreed that if they took this matter on appeal it had no reasonable prospect of success given that:

- Audience Services had explained in their response at Stage 1a that it was not uncommon for BBC programmes and news output to cover what was being reported in the press – such as in regular reviews of the newspapers. However, that in no way affected the BBC’s own ability to report stories; reporting what the press had said was just one aspect of BBC reporting and was in addition to covering actual events, viewpoints, developments and other reactions.
- Opinions expressed by the commentators in 5 live Daily were their own views; it did not constitute evidence that the BBC was failing to be impartial in its approach to the news.

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

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

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

Decision of BBC Audience Services not to respond further to a complaint about a BBC News Online article about Radovan Karadzic, 24 March 2016

The complaint concerned a BBC News Online article about the former Bosnian Serb leader, Radovan Karadzic.

<http://www.bbc.co.uk/news/world-europe-19960285>

The article said:

“One count of genocide related to the massacre of more than 7,500 Muslim men and boys in the Srebrenica enclave in July 1995, which the UN said was part of a campaign to ‘terrorise and demoralise the Bosnian Muslim and Bosnian Croat population’.”

The complainant made the following points:

- The BBC was inaccurate to say that more than 7,500 Muslim men and boys had been massacred at Srebrenica in 1995, as the International Criminal Tribunal for the former Yugoslavia had said in its judgement on Radovan Karadzic that the figure was “at least 5,115”.

BBC Audience Services made the following points:

- The International Commission on Missing Persons estimated the number of missing at Srebrenica at 8,000 and had identified DNA from mass graves for almost 7,000.
- The International Criminal Tribunal said on its website that more than 8,000 Bosnian Muslims were executed at Srebrenica.
- The Guardian, Sky, Reuters, CNN and the Financial Times had all put the figure at more than 7,000 and the majority around 8,000.
- The International Tribunal’s judgement summary for Mr Karadzic said that “at least 5,115 Bosnian Muslim males” had been killed and so this did not preclude that the figure was higher.

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

Appeal to the BBC Trust

The complainant appealed to the BBC Trust on the substance of his complaint. He said the BBC should not have inflated the number of victims and, by doing so, had been inaccurate.

Decision of the Trust Adviser

The Trust Adviser (the Adviser) reviewed the correspondence that had passed between the complainant and the BBC and read the relevant article. She understood that BBC Audience Services had ceased handling this complaint at Stage 1. She decided that the point she should consider was whether the complainant’s appeal against the decision of

Audience Services not to correspond further had a reasonable prospect of success. She decided it did not.

The Adviser began by noting the BBC Editorial Guidelines to do with Accuracy. She noted that these stated:

“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.”

The Adviser noted the judgement summary for Radovan Karadzic published by the International Criminal Tribunal for the former Yugoslavia on 24 March 2016. In terms of the part of the ruling related to Srebrenica, it stated:

“The evidence tendered in this case has shown that at least 5,115 Bosnian Muslim males were killed in connection with the Scheduled Incidents charged in the Indictment. However, the Chamber has been unable to establish beyond reasonable doubt that Scheduled Incident E.2 took place as alleged in the Indictment.”

The Adviser looked at the International Criminal Tribunal for the former Yugoslavia (ICTY) Scheduled Incidents relating to Srebrenica in Mr Karadzic’s Indictment. She noted that there were 17 incidents of organised killings listed and four incidents of opportunistic killings cited. She further noted that the total number of people killed in these listed incidents was put at 6,010 but that in 11 of these incidents the number of deaths was put as either approximate or the lowest possible estimate. A link to this schedule (Schedule E) can be found here:

http://www.icty.org/x/cases/karadzic/ind/en/markedup_indictment_091019.pdf

The Adviser noted the International Criminal Tribunal’s website set up in 2015 to mark the twentieth anniversary of the Srebrenica genocide, which stated:

“The ICTY was the first international criminal tribunal to enter convictions for genocide in Europe. In April 2004, in the case of Radislav Krstic, the Appeals Chamber determined that genocide was committed in Srebrenica in 1995, through the execution of more than 7,000 Bosnian Muslim men and boys following the take-over of the town by Bosnian Serb forces.

<http://www.icty.org/specials/srebrenica20/?q=srebrenica20/>”

The Adviser also looked at the ICTY’s background information on the conflicts in former Yugoslavia (<http://www.icty.org/sid/322>). She noted that this said:

“The single worst atrocity of the war occurred in the summer of 1995 when the Bosnian town of Srebrenica, a UN-declared safe area, came under attack by forces lead by the Bosnian Serb commander Ratko Mladić. During a few days in early July, more than 8,000 Bosnian Muslim men and boys were executed by Serb forces in an act of genocide.”

The Adviser then turned to the International Commission for Missing Persons (ICMP), a respected organisation that was set up in the wake of the Dayton Peace Agreement. In July 2015, it released updated information on its work to do with Srebrenica. A link to

this can be found here: <http://www.icmp.int/news/facts-and-figures-on-srebrenica/>. The introduction stated:

“At the beginning of July, ICMP published an Infographic on Srebrenica that provides details about the work that has been done during the last 20 years to account for the estimated 8,000 missing, including numbers of victims who have been identified by different means, and statistics on Srebrenica-related war-crimes cases.

“ICMP has led a process that has made it possible to account for 6,930 of the missing from Srebrenica, roughly 90 percent of all those reported missing. By establishing facts about the fate of individuals and identifying victims by name, ICMP has helped to create a verifiable historical narrative of what happened, where it happened, when it happened and to whom it happened.”

The Adviser considered that when saying “at least 5,115 Bosnian Muslim males were killed”, the ICTY’s judgement summary for Radovan Karadzic was not precluding the idea that this figure could be higher and that this view was supported by other statements from the ICTY. She also noted that both the ICTY and the ICMP acknowledged that the total number of killings at Srebrenica could only be estimated, but that the consensus was that the number lay close to 8,000.

Given this, the Adviser considered that the Trustees would be likely to conclude that Audience Services had given a reasoned and reasonable response when saying that the BBC had been duly accurate when stating that the number of deaths at Srebrenica was more than 7,500 and had acted appropriately in declining to enter into further correspondence. She therefore did not consider it was appropriate, proportionate or cost-effective to proceed with the appeal as it did not have a reasonable prospect of success. The Adviser did not propose to put it before Trustees.

Request for review by Trustees

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

He asked where the Adviser got the figure of 6,010 as the number of victims. He could also claim that it was an old document not taking into account new evidence. The figure was still much smaller than 7,500 or 8,000.

He said that the BBC should report the number in the judgement and provide other sources as it finds fit, but not falsify the judgement.

The Panel’s decision

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

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

Trustees agreed that if they took this matter on appeal it had no reasonable prospect of success given that:

- when saying “at least 5,115 Bosnian Muslim males were killed”, the ICTY’s judgement summary for Radovan Karadzic was not precluding the idea that this figure could be higher and that this was supported by other ICTY statements and the International Commission for Missing Persons, which acknowledged that the total number of killings at Srebrenica could only be estimated but that the consensus was the number lay close to 8,000.
- the article did not claim that the figure of 7,500 appeared in the indictment or in the judgement, merely that one count in the indictment was related to the killings which were on that scale. This was duly accurate.

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

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

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

Decision of Audience Services not to respond further to complaint regarding interviewing style on BBC Radio 5 live, 5 January 2016

The complainant considered that 5 live demonstrated unacceptable standards of interviewing. She made the following points:

- Radio 5 live had broadcast interviews with Conservatives from both sides of the argument regarding the EU referendum debate, but a named presenter had talked over her interviewee, John Redwood.
- A Labour MP Michael Dugher had also been interviewed by the same presenter on the same programme and the complainant believed he had been treated far more sympathetically.
- There was a difference between being “persistent and assertive”, and she was complaining about interviewers who crossed the line, kept on repeating questions and ultimately became aggressive.

In a follow-up complaint, the complainant considered her complaint had not been addressed and asked for it to be escalated.

In a second follow-up complaint, the complainant compared the interviews with Mr Redwood and Mr Dugher and said that Mr Redwood had been interviewed in a more hostile manner while Mr Dugher had been interviewed “sympathetically and without challenge”.

BBC Audience Services responded and said that they appreciated that the complainant felt the presenter had talked over John Redwood during the interview on the EU Referendum. They said that:

- The presenter was aware of the BBC’s commitments regarding impartiality and that she was “expected to put her own political views to one side when carrying out work for the BBC”.
- BBC presenters seek to provide the information which will enable listeners to make up their own minds and show the political reality whilst providing the forum for debate, giving full opportunity for all viewpoints to be heard.
- The interviewee also had an influence on the tone of the interview.
- The interviewer’s intention was not to generate hostility but to persist in pressing for answers to important questions with the proper combination of firmness and civility.
- The task of informing the public could demand a degree of persistence which would be out of place in ordinary social conversation.

In response to the follow-up complaint, they noted that the complainant considered that the interview with the Labour MP Michael Dugher had been “completely unbalanced” and based on “speculation” and said that:

- The interviewer’s job was to ask the questions that might be in the minds of listeners.
- Mr Dugher had been questioned on a range of issues – including the criticisms he had made of Jeremy Corbyn’s leadership.
- The presenter was forthright in her questioning but Audience Services considered Mr Dugher was able to answer all the questions appropriately.

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

Appeal to the BBC Trust

The complainant appealed to the BBC Trust on the substance of her complaint and made the following points:

- While her complaint related to the interviews she had referred to, she considered this a wider matter and related to poor interviewing generally.
- She considered that interviewers should not interview politicians as if they were a “sympathetic friend”, neither should they be aggressive or talk over the interviewee.
- She considered that interviews with both Mr Redwood and Mr Dugher were unacceptable – one because the interview was too hostile and the other because the interviewee had been treated too sympathetically.

Decision of the Trust Adviser

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

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

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

She also noted the following Impartiality Guideline in terms of presenters:

“Presenters, reporters and correspondents are the public face and voice of the BBC - they can have a significant impact on perceptions of whether due impartiality has been achieved. Our audiences should not be able to tell from BBC output the personal prejudices of our journalists or news and current affairs presenters on matters of public policy, political or industrial controversy, or on ‘controversial subjects’ in any other area. They may provide professional judgements, rooted in evidence, but may not express personal views in BBC output, including online, on such matters.”

The Adviser noted that decisions about what questions to ask in an interview and how to pursue the points raised were matters of editorial judgement. She appreciated that many listeners strongly disliked hearing interviewers talk over interviewees – but she also noted that politicians were adept at not answering the questions asked and that it was part of the interviewer’s job to seek a response to the question they had posed.

She appreciated that one interview included more interruptions than the other; however, she noted that the manner of the interviewee had a significant bearing on the style and tone of an interview. She considered that both interviews would have been well within the audience expectation of 5 live’s listeners.

The Adviser considered decisions about what approach to take to interviews were matters of editorial judgement that rested with the BBC; the Trust only had a role if BBC output was potentially in breach of the Editorial Guidelines – which the Adviser considered was not the case in these instances. She therefore did not consider that these interviews contributed in any way to a “trend” in which presenters were more concerned with offering or supporting their own personal political views.

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

Request for review by Trustees

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

- She strongly disagreed with the Trust Adviser’s assessment of the qualities of both interviews and requested that the Trustees be given the opportunity to listen to both interviews and make their own assessment of each, and the contrasting styles of the presenter.
- She regretted the deterioration in the way public discourse was now conducted: “from the shouting, jeering, insults and innuendos at PMQs; to the personal abuse of politicians in the media; to invented stories for sensation and damage; to the sometime viciousness of Twitter etc.”
- She cited the recent EU Referendum campaign as an example of this deterioration in public discourse.
- She was concerned that the BBC was not only reflecting the coarseness of the public discourse in the run-up to the Referendum, but was taking on some characteristics of that coarseness.
- In years gone by, she did not recall BBC presenters being discourteous, talking over, interrupting, pursuing personality-politics, or crossing the line into aggressiveness, sometimes bordering on bullying.
- She would like BBC News presenters to detach themselves from the influence of the coarseness of other media, and the coarseness of some politicians.
- Courtesy and respect in public discourse, including within the UK public broadcaster, was a fundamental British value which the BBC should strive towards at all times.
- She asked for a return of respect to politicians and about politicians.

The Panel’s decision

A panel of the Committee was given the audio of the two interviews and considered the points made by the complainant, the BBC and the Trust Adviser.

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

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

- Decisions about what questions to ask in broadcast interviews and how to pursue the points raised were matters of editorial judgement.
- Decisions about the content of BBC output rested solely with the BBC Executive as part of the creative and editorial direction of the BBC (Royal Charter, Article 38(1)(b)); they were not matters for the Trust unless there was evidence of a breach of editorial standards.
- They had not seen evidence likely to lead them to conclude that the programme breached editorial standards for due impartiality.

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

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

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

Decision of BBC News not to respond further to a complaint about BBC News Online – A Point of View: ‘How I stopped being intolerant of food intolerance’

The complaint concerned a BBC News Online article by Will Self about his experience of food intolerance. The article can be found at:
<http://www.bbc.co.uk/news/magazine-35876418>

The complainant made the following points:

- By giving Will Self the opportunity to indulge his intolerance towards those with a food intolerance, the BBC was endorsing his viewpoint.
- It was not acceptable to provide a mouthpiece for disability discrimination.
- The article did not alert readers to the fact that a failure to address some intolerances could have a catastrophic effect on people with disability and might (through a failure to make reasonable adjustments) constitute a breach of the Equality Act.
- He did not find it acceptable that he could not reply directly to a named individual within the Audience Services team instead of having to submit his concerns each time using the complaints webform.

BBC Audience Services and the BBC News website made the following points:

- The article was the personal viewpoint of the novelist and journalist Will Self, as part of Radio 4's *A Point of View*. The series aimed to provide a weekly reflection on a topical issue from leading thinkers.
- The article was an opinion piece from an outside contributor, not a BBC employee.
- The range of tastes and opinions held by the BBC audience was so diverse that it was inevitable some viewers would dislike or disapprove of certain contributors. The BBC's aim was simply to provide enough information for the audience to make up their own minds. This could include hearing opinions which some people might personally disagree with but which individuals were fully entitled to hold in the context of legitimate debate.
- The BBC did not accept that the article amounted to providing a "mouthpiece for disability discrimination". The article focused on only one named condition: Irritable Bowel Syndrome (IBS), in a reference that was accompanied by a link to more information on the NHS Choices website. (<http://www.nhs.uk/conditions/irritable-bowel-syndrome/Pages/Introduction.aspx>).
- The starting point of the article was that the author, Will Self, developed digestive problems as a result of disregarding the potential impact of food intolerance, which was exactly the point the complainant believed was not conveyed. The BBC did not believe the article implied or advocated that people with experience in managing digestive conditions should have their associated concerns disregarded.
- The BBC believed readers would recognise that the article was something of a light-hearted piece, clearly labelled as a "viewpoint" article reflecting Will Self's personal view. The BBC did not believe the article suggested that "the BBC considers it is acceptable to ignore the needs of those with disabilities and that the Equality Act can be ignored".
- The main reason the BBC asked people to use the webform, even when replying to an email sent by Audience Services, was because the Corporation dealt with over a million audience contacts every year and the BBC had to ensure that they

could be efficiently tracked using the handling system. In addition, the complaints and general enquiries webforms asked for essential information such as channel, programme name and transmission date, which meant that the BBC did not have to write back to people unnecessarily. Using a webform also guaranteed that Audience Services could match a return contact up with the previous contact from that person without the need to cross-check thousands of unformatted emails which would then have to be manually transferred into the tracking system.

- The BBC tried to restrict public email inbox addresses where possible because it received millions of “spam” emails and a return email address would attract and generate even more. Junk mail cost the BBC a considerable amount of money because every email had to be checked before being deleted as it was not always possible to distinguish junk from genuine email. Also, there was the potential for viruses to be transmitted via email, which could be very damaging.

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

Appeal to the BBC Trust

The complainant appealed to the BBC Trust on the substance and handling of his complaint. He re-stated the following concerns:

- It could never be acceptable to provide a mouthpiece for disability discrimination. In a lot of cases, IBS could be classified as a disability under the terms of the Equality Act 2010.
- He did not consider there was anything light-hearted about the article, as had been suggested at Stage 1 by BBC News website.
- He felt the BBC had endorsed Will Self’s personal view by supporting the article’s publication.
- As an individual with disabilities (including dietary issues) he found the article offensive and inappropriate.
- It provided the view that it was okay not to make reasonable adjustments for those with disabilities, and this was discriminatory under the Equality Act 2010.
- He asked whether it would be acceptable to publish a similar article in which somebody stated they would not serve food to individuals based on their race or gender. He thought not, and in that respect disability discrimination was no different.
- His email response to a named individual in Audience Services had been rejected and this was not acceptable. He also felt the response from Audience Services suggested arrogance.

Decision of the Trust Adviser

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

The Adviser noted that the complainant considered that the article in question was “offensive and inappropriate”; that it was “a mouthpiece for disability discrimination”; and ignored the serious difficulties experienced by sufferers of IBS.

She noted the BBC Editorial Guidelines on Impartiality, which state:

"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 the article was clearly signposted as Will Self's personal viewpoint, and was prominently titled: A Point of View: "How I stopped being intolerant of food intolerance". She did not agree with the complainant's view that by publishing the article the BBC was endorsing Mr Self's opinions.

She also noted that the article's sub-heading clearly referred to Mr Self's point of view which emanated from his own digestive problems:

"Will Self was intolerant about other people's 'fussy' eating habits until he developed digestive problems of his own. Then he became even more intolerant."

She noted that the article did not seek to dismiss the physical effects of IBS, but did focus on Mr Self's aversion to some social responses to the condition which he had encountered – what Mr Self referred to as "irritable inter-personal syndrome (IIS)". She appreciated that the complainant did not like the tone of the article, but she considered audiences generally would understand it was light-hearted. She did not consider that it raised an issue that could be a potential breach of the Editorial Guidelines.

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 the Trustees would decide did not apply in this case. Decisions relating to the content of articles published on the BBC News website fell within the "editorial and creative output" of the BBC and were the responsibility of BBC News Editors.

The Adviser considered that the complainant had received a comprehensive response at Stage 1b from BBC News website which addressed both the substantive and complaints handling issues, explaining in considerable detail exactly why the BBC Complaints team did not accept incoming emails and instead asked complainants to use the webform for each contact. The BBC had acknowledged that this could be annoying, but had explained that this was a decision which had not been taken lightly.

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

Request for review by Trustees

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

- As previously explained at Stage 1, the complaint involved a news story that appeared to advocate intolerance of food intolerance; this, being contrary to the aims and objectives of the Equality Act, could lead to personal harm.
- He asked whether the BBC or the BBC Trust would find it acceptable to post a similar news story that appeared to advocate intolerance against, say, different ethnicities/race or against gender or against sexuality or against different religions.
- Why in 2016 did the BBC consider it acceptable to report a news story that essentially advocated intolerance against a disabling condition which could result in harm?
- The Stage 1 response claimed the news story was intended to be light hearted and yet there was nothing light hearted about intolerance of a disabling condition.
- Furthermore the news story was not in any comedic section but formed part of the BBC's news section, the same news section that reported the Easingwold peanut death on its pages <http://www.bbc.co.uk/news/uk-england-york-north-yorkshire-36248467> which clearly indicated the impact that the "wrong type of food" could cause.

The Panel's decision

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

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

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

- the article was clearly signposted as Will Self's personal viewpoint. Personal view content was permitted under the Editorial Guidelines as long as it was clearly signposted.
- they did not consider that, by publishing Mr Self's personal views, the BBC was endorsing his opinions.
- the article did not seek to dismiss the physical effects of food intolerance but did focus on Mr Self's aversion to some social responses to the condition which he had encountered.
- they had not seen evidence likely to lead them to conclude that the programme breached editorial standards.
- decisions about the content of BBC output rested solely with the BBC Executive as part of the creative and editorial direction of the BBC (Royal Charter, Article 38(1)(b)); they were not matters for the Trust unless there was evidence of a breach of editorial standards.

Trustees also agreed that the complainant had received a reasonable and reasoned reply from BBC News.

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

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

Admissibility decisions

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

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

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

The Editorial Complaints and Appeals Procedure²¹ explains that:

At all stages of this Procedure, your complaint may not be investigated if it:

- o fails to raise an issue of breach of the Editorial Guidelines; or
- o is trivial, misconceived, hypothetical, repetitious or otherwise vexatious.

In the cases where BBC Audience Services had ceased handling the complaints at Stage 1, the complainants appealed to the Trustees on the substance of their complaints. However, the point put to the Trustees was whether an appeal against the decision of BBC Audience Services not to correspond further with the complainant had a reasonable prospect of success.

In the cases which progressed to Stage 2 the decision for the Trustees was whether to take the complaint as an appeal or whether it had no reasonable prospect of success and was not admissible.

In each of the following cases the Committee was provided with the complainant's correspondence with the BBC and the complainant's appeal/s to the Trust. The Committee was also provided with the relevant broadcast or published content.

21

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

5 live Breakfast, Radio 5 live, 17 November 2015

The complaint concerned comments in the programme made by Nigel Farage which the complainant felt were slanderous and should have been challenged by the programme presenter. The exchange was as follows:

Presenter:

OK, one last thought, Jeremy Corbyn has, he's really angered a lot of his own parliamentary party by saying that he does not approve of a shoot on sight policy.

Some of his MPs are saying, well hang on, if you got a guy with a Kalashnikov in the street, you are, you're not going to get the security services to shoot him and there's been a great furore about this. What are your thoughts about what Jeremy Corbyn said?

Nigel Farage:

Well, I mean, you know right from the time that he said that Osama bin Laden's death was a tragedy, through to saying that we should not shoot on sight people bearing Kalashnikovs in our streets, Corbyn just does not appear to have the backbone to stand up and fight this threat that faces our society and I think it'll do him and the Labour Party enormous harm.

The complainant made the following points:

- She heard Mr Farage repeat, without challenge, a previous allegation that Jeremy Corbyn had described the death of Osama bin Laden as a tragedy.
- This should have been challenged by the programme presenter during the interview with Mr Farage.
- This was close to a by-election and may have influenced voters.

BBC Audience Services said:

- This was a live interview and it is not always possible for an interviewer to challenge everything his subject says. The remark also came right at the end of the discussion when time was running out.

The complainant provided the transcript of Mr Corbyn's interview on the Iranian TV Channel, Press TV when he spoke about the US Navy Seals' operation in which Osama bin Laden and four others were shot dead in a Pakistan compound on 2 May 2011:

"Well I think that everyone should be put on trial. I also profoundly disagree with the death penalty, under any circumstances for anybody. That's my own view. There was no attempt whatsoever that I can see to arrest him, to put him on trial, to go through that process. This was an assassination attempt, and is yet another tragedy, upon a tragedy, upon a tragedy. The World Trade Centre was a tragedy, the attack on Afghanistan was a tragedy, the war in Iraq was a tragedy."

The complaint was investigated by the Editorial Complaints Unit (ECU) at Stage 2. The Complaints Director made the following points:

- There had recently been considerable controversy surrounding the alleged quote from Jeremy Corbyn.

- What Mr Corbyn had said was that the assassination of Osama bin Laden was a tragedy because, as it stepped outside due legal process, it would only make matters worse; the tragedy was the manner of bin Laden's death rather than the death itself.
- The Complaints Director felt it was the meaning that Mr Corbyn intended that Nigel Farage had been addressing. He believed Mr Farage was questioning whether Mr Corbyn had the "backbone" to fight terrorism and, in doing so, appeared to be referring to particular courses of action which, he believed, Mr Corbyn would not sanction – one being a shoot on sight policy and the other being the targeted killing of Osama bin Laden.
- It was the targeted killing of Osama bin Laden that Mr Corbyn was addressing in his comments on Press TV and the Complaints Director believed there was no need to offer any challenge to the remark.

The complaint was not upheld.

Appeal to the BBC Trust

The complainant escalated her complaint to the BBC Trust. She made the following points:

- She did not accept that the ECU or anyone else was qualified to use their personal interpretation of the meaning of another person's words as credible grounds for adjudication, particularly concerning a matter as serious as this one.
- Mr Farage had distorted Mr Corbyn's words.
- The BBC should not have remained silent when Mr Farage made the allegation against Mr Corbyn.

The Panel's decision

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

Trustees noted that the sections of the BBC Editorial Guidelines relating to Accuracy and Impartiality were applicable in this case.

Trustees agreed that the matter was not admissible, having concluded that:

- This was a brief reference by Nigel Farage at the end of an interview.
- In context Mr Farage was questioning if Mr Corbyn had the "backbone" to take on Islamic State and its adherents and the reference to the death of bin Laden should be seen in that light.
- The words were open to interpretation but in the context of a question on shoot on sight it was highly probable that Mr Farage was referring to Mr Corbyn's views as they were expressed on Press TV, that the targeted killing of Osama bin Laden was a tragedy.
- There was no need to probe such a fleeting reference in order to establish what Mr Farage meant, given that his political point and conclusion were clear.
- If this complaint were taken on appeal Trustees would be likely to conclude that this was duly accurate and impartial.

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

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

Decision of Audience Services not to respond further to a complaint regarding the decision of BBC News to name Brussels terror suspect and specify his religion despite his confirmed innocence

The complainant asked the Editorial Standards Committee to review the decision of the BBC not to respond further to the complaint at stage 1b.

Complaint

The complaint concerned the news coverage given to a Brussels terror suspect. The complainant made the following points:

- The BBC had named the suspect despite the fact that he was found innocent.
- Racism had been institutionalised by the media.
- He was sick of the “constant bashing of Muslims because of the actions of a few people”.
- By calling the suspect a Muslim the BBC was “downgrading all Muslims and giving him legitimacy in the process”.
- The BBC only picked stories that fitted its narrative

BBC Audience Services made the following points at Stage 1:

- They noted that the complainant felt that as the charges were dropped his name should not have been reported.
- The suspect was named by the Belgian police and this was reported on by other news outlets as well as the BBC.
- The BBC had also reported that a judge found there was no evidence to justify holding the suspect.
- The BBC referred to ethnicity, race or religion only where it believed there was a direct relevance to the case in hand or where this was specifically referenced in court or by the police as part of a witness appeal.
- They were sorry the complainant felt the BBC was biased. Editors were responsible for ensuring the balance of programmes and that their content accorded with the BBC’s standards of impartiality.

Appeal to the BBC Trust

The complainant escalated his complaint to the BBC Trust. He made the following points:

- The BBC had never fully explained how and why it had applied the law when reporting this story.
- The BBC could not pick and choose what information they gave.
- The person involved in this story was totally innocent, yet the BBC chose to name him and state his religion. They should have done some digging.

The Panel’s decision

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

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

Trustees agreed that the matter was not admissible having concluded that:

- They had not seen evidence that the BBC's reporting raised a potential breach of the Editorial Guidelines.
- 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 the responsibility of the Executive Board. In this case, decisions about the content of BBC News stories were made by news editors.
- The suspect had been named by Belgian police and this was reported on by the BBC and by other major news organisations.
- The BBC was entitled to name the suspect and state his religion regardless of whether he was later released without charge.

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

Request to extend the 1,000-word limit for appeals to the BBC Trust

The complainant's request concerned the limit to the number of words he was permitted to use when making an appeal to the Trust to review his complaint.

His substantive complaint was about the BBC's reporting relating to climate change. His original appeal to the Trust was against the decision by BBC Audience Services to apply the expedited procedure to his complaints on this issue. In relation to this appeal he requested an extension to the 1,000 word limit.

The complainant submitted that anyone who believed "our complex coupled non-linear chaotic climate can be even remotely approached in just 1,000 words or less clearly does not even begin to understand the problem ... a few million words might suffice but 1,000 certainly not".

He made a number of points including:

- He had too much evidence.
- He had registered more than 300 complaints about the BBC's deception regarding anthropogenic or man-made warming.
- The BBC used licence-fee payers' money to distribute and re-distribute stories of climate normality portrayed as abnormality designed to scare its audience into believing that CO₂ was the ultimate destroyer.
- Expecting him to resolve the enigma of Earth's complex coupled non linear chaotic climate in 1,000 words revealed the magnitude of the BBC's incompetence and illiteracy when related to science.
- The document <https://wattsupwiththat.com/2016/06/20/greenpeace-co-founder-pens-treatise-on-the-positive-effects-of-co2-says-there-is-no-crisis/> was 23 pages long just to chart the history of atmospheric CO₂. He said that Trustees should read it.
- He concluded that a documented rise of 1.4F in 165 years did not constitute a crisis nor an apocalypse.
- The BBC was defending the indefensible with every configuration of deceptive programming to try and impose on its audience the ideology that CO₂ caused climate change despite not one of its scare-mongered prophecies having manifested itself within the last four decades.
- Continuous complaints on this issue were justified because BBC programming relating to climate change was trivial, misconceived, hypothetical, repetitious and otherwise vexatious.
- The BBC promoted intentionally misleading, scaremongering propaganda in support of HMG policy, private equity funds & rich land owners but determinedly detrimental to our environment based upon the deliberately created belief that CO₂ is the planet's climate control knob and if that knob is twiddled in the right direction we could achieve a stable climate.

The Panel's decision

A panel of the Committee considered the points made by the complainant.

Trustees noted that the complainant was appealing, separately, against the decision of BBC Audience Services to apply the expedited complaints procedure to future complaints on this issue.

Trustees noted that the complaints procedure states that:

“Your appeal request should clearly and concisely set out why you remain dissatisfied. It should not exceed 1,000 words. In exceptional circumstance longer complaints may be entertained. In that case, however, you should also identify the reasons why your complaint exceeds 1,000 words and provide a one-page summary of your complaint.”

Trustees noted that the complainant felt extremely strongly on these issues. However, they noted he was able to provide a bullet point list of reasons to support his belief that anthropogenic warming leading to climate change does not exist. He had explained that in his view the BBC's approach was deceptive and therefore he was constrained to make multiple complaints. His argument was clear. Trustees noted too that in considering his appeal against the expedited procedure they would be provided with the text of recent complaints he had made and all the exchanges relating to each complaint, in which his arguments would also be contained.

Trustees took into account that the Royal Charter (Article 52 (3)) required the Trust to put in place a complaints framework which is appropriate, proportionate and cost effective:

“Complaints to the BBC have an important role to play. 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 agreed that the matter was not admissible having concluded that however complex the science of climate change might be, it should be perfectly possible to explain within the 1,000-word limit why the complainant objected to being expedited including why he believed breaches of the Editorial Guidelines had taken place.

Trustees agreed that it would not be appropriate, proportionate or cost effective and so not fair to other licence fee payers to allow the complainant to extend his appeal when the issues were clear.

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

Decision of Audience Services not to respond further to a complaint regarding bias in favour of remaining in the EU, BBC News at Ten, 13 May 2016

The complainant asked the Editorial Standards Committee to review the decision of the BBC not to respond further to the complaint at Stage 1b.

The complainant believed that the BBC Economics Editor Kamal Ahmed's reporting in the run-up to the Referendum was biased in favour of "Remain". The complainant made the following points:

- Kamal Ahmed had been reporting EU "Remain" stories without telling the public the wider picture – that Christine Lagarde, Mark Carney and George Osborne had an "alternative agenda".
- He believed that Ms Lagarde, Mr Carney and Mr Osborne were all "members of the One World Order group known as Bilderberg" which he believed wanted to create a single world state.
- He believed Kamal Ahmed had been misleading the British public and wanted to know directly from Mr Ahmed why either he did not know about the Bilderberg Group or why he refused to tell the British public about it.
- He found the BBC's coverage of the EU Referendum to be "extraordinarily narrow" and only informed people of "a very small part of the truth".

BBC Audience Services made the following points:

- The BBC did not have an opinion on the European Union or on the UK's position within it. Instead, it tried to explore the often complex factors which affected the audience as voters and to give people the information they needed in order to make up their own minds.
- The BBC's commitment to due impartiality and independence from political influence was particularly closely scrutinised when reporting election and referendum campaigns.
- During the run-up to the Referendum the BBC had reported a full range of opinions from prominent Eurosceptic figures from the respective campaigns, from the political parties and from commentators and journalists.
- The BBC's aim, as stated in the Editorial Guidelines, was to achieve a proper balance between the two sides, irrespective of indications of relative levels of support, whilst acknowledging that referendums were seldom fought purely on the basis of just two opposing standpoints; on each side, where there was a range of views or perspectives, that should be reflected appropriately during the campaign.
- The BBC had compiled a detailed Q&A on the upcoming referendum which attempted to answer a range of questions while including a webform in case people wished to submit others for the BBC to consider.

Appeal to the BBC Trust

The complainant escalated his complaint to the BBC Trust. He made the following points:

- He asked why it was that individual complaints against particular "biased" journalists at the BBC did not require replies from the journalist in question, as he had requested.

- He said that the initial reply from Audience Services failed to address his complaint.
- He suspected that the BBC was “just a mouthpiece for the REMAIN campaign”.

The Panel’s decision

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

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

Trustees agreed that the matter was not admissible given that:

- The Bilderberg Group of senior politicians, financiers and others meets annually and is sometimes reported upon by the BBC. It is also sometimes the subject of conspiracy theories.
- There was nothing to suggest that the BBC was misleading the British public in terms of its coverage of the Bilderberg Group.
- There was no reason why the EU Referendum coverage should include reflections on who belonged to the Bilderberg Group.
- The complaints procedure stated that all complaints should be made to Audience Services in the first instance. Individual BBC journalists were required to cooperate with any BBC investigation of a complaint about them and their work but they were not required to reply to complainants directly.
- The complaints procedure also explained that if the BBC receives a number of complaints about the same issue, it may compile a summary of the range of issues raised, then consider them together across the full range of issues identified and send the same response to everyone.
- They noted that, as explained by Audience Services, the impartiality of the BBC’s political reporting during election and referendum campaigns was subject to extremely close scrutiny. Details of the Guidelines pertaining to the EU Referendum could be found at:
<http://www.bbc.co.uk/editorialguidelines/news/referendum-guidelines-feb-2016>.
- 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 the responsibility of the Executive Board. Decisions about the content of BBC News stories were made by news editors, and Trustees had not seen evidence that Kamal Ahmed’s reporting raised a potential breach of the Editorial Guidelines.

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

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