

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

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 bbc.co.uk/bbctrust/about/meetings_and_minutes/bbc_trust_committees.html.

The Committee comprises six Trustees: Richard Tait (Chairman), Chitra Bharucha, Mehmuda Mian, David Liddiment, Alison Hastings and Anthony Fry. It 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 will consider appeals concerning complaints which allege that:

- the complainant has suffered unfair treatment either in a transmitted programme or item, or in the process of making the programme or item
- 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
- there has otherwise been a failure to observe required editorial standards

The Committee will aim to reach a final decision on an appeal within 16 weeks of receiving the request.

The findings for all appeals accepted by the Committee are reported in this bulletin, *Editorial Complaints: Appeals to the Trust*.

As set out in its Terms of Reference, the Committee can decline to consider an appeal which in its opinion:

- is vexatious or trivial;
- does not raise a matter of substance;
- relates to the content of a programme or item which has not yet been broadcast;
- concerns issues of bias by omission in BBC news programmes unless the Chairman believes that it is plausible that the omission of an item could have led to a breach of the guidelines on impartiality;
- has not been made within four weeks of the final correspondence with the ECU or BBC Director on the original complaint; and
- relates to matters which are the subject of or likely to be the subject of, or relevant to, legal proceedings.

The Committee will not generally reconsider any aspects of complaints that have already been adjudicated upon or considered by a Court.

Any appeals that the Committee has declined to consider under the above criteria are reported in the bulletin.

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 or is available from:

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Summary of findings

You and Yours, BBC Radio 4, 5 June 2008

The complaint relates to an item on the BBC Radio 4 consumer series You and Yours about the provision of large-print bus timetables by Merseytravel. A representative of Merseytravel complained that the company was treated unfairly by the programme by not being given sufficient information about the allegations against it, and also by linking this story to a previous item. The Committee also considered an issue regarding the programme's record-keeping that arose during its investigation of the complaint.

The Committee concluded that:

Right to reply

- a representative of Merseytravel had given a full and considered response on the programme.
- Merseytravel's position was that it would have challenged the programme's account of events had it been given fuller information beforehand.
- it had not seen any evidence to suggest a specific reason for the programme to protect the name of the customer or the date of the incident being discussed.
- the details of events leading up to the broadcast of the programme were disputed.
- there was no evidence to show that Merseytravel had requested the name of the customer, and that Merseytravel's claim to have requested this information could not be verified as the programme's log of communications had been inadvertently wiped during routine maintenance.
- the date of the incident had been requested in an email from Merseytravel but the BBC had been unable to be specific because the customer could not recall the exact date.
- given the uncertainty around the date of the incident it would have been reasonable for the programme to have provided the name of the customer even if this had not been requested by Merseytravel.
- while the Committee was satisfied that there had been no intention on the part of the programme makers to mislead, not providing this information had resulted in unfairness to Merseytravel and had led to a breach of the guideline on Fairness.

Linking of the item to a previous item on the Passport Office

- a brief allusion in the programme to a previous case concerning the Passport Office as a form of introduction to the item was not unfair to Merseytravel.

- there had been no breach of the guidelines in this respect.

Logging and maintenance of records by the programme

- while there was nothing to suggest to the Committee that the wiping of the logs was anything other than accidental, it is important for programmes to abide by the element of the Fairness guideline that states that a “request for a response must be properly logged with the name of the person approached and the key elements of the exchange”.
- as these records had been lost, it was a technical breach of the guideline.

The complaint was partially upheld with regard to Fairness.

For the finding in full see pages 6 to 13

Findings

You and Yours, BBC Radio 4, 5 June 2008

1. The programme

You and Yours is a consumer affairs programme broadcast every weekday from 12.00 to 13.00.

This particular edition of the programme featured a complaint from a visually-impaired listener about a problem she had experienced obtaining a large print bus timetable from the Merseytravel Travel Centre in St Helens. The item also included an interview with the Chief Executive of Merseytravel about this issue.

2. The complaint

This is a first party complaint brought by Merseytravel who believed they had been treated unfairly by the programme because they were given insufficient information about the complaint made against them. Merseytravel also felt that the programme was under-researched and the claims made by the member of the public were without foundation.

The initial complaint from Merseytravel was made to the programme team on 16 June 2008. Merseytravel pointed out that they had been contacted by the programme in early June following a complaint the programme had received from a Merseytravel customer who had been unable to obtain a large print bus timetable from the Merseytravel Travel Centre in St Helens. The customer had claimed that she had been told by a member of staff at the Travel Centre that a large print timetable could take up to three weeks to be delivered. Merseytravel stated that the production team would not or could not provide the name of the customer or the date when the timetable was requested. As such, Merseytravel had been unable to investigate the complaint properly.

Merseytravel's complaint also noted that on 4 June 2008 they were asked by the programme to put someone forward to respond to the customer's complaint on the following day's programme, "still lacking the information necessary to make a considered response". Merseytravel complained that it had been bounced into the interview to answer a claim "that was, at best, a vague claim". Merseytravel noted that once the customer's name had come to light following her appearance on the programme, it had been able to investigate her complaint further and found that there was "absolutely no truth in these claims whatsoever" – the Travel Centre staff having, in their view, correctly followed Merseytravel procedure (i.e. offered to post a large print timetable to the customer's home address on the same day).

Merseytravel was also disappointed that the programme had linked this item to a previous issue concerning a complaint against the Passport Office and the use of large print documentation. Merseytravel believed that it had "borne the brunt of the

Passport Office's failings" which it considered unacceptable. Concluding their complaint Merseytravel stated that "spurious and unsubstantiated claims like this" had "reputational effect" and that they requested the opportunity to "rectify the damage this 'non-story' has had on our organisation". Merseytravel requested that it sought to redress the balance of this story by a right of reply on the programme.

The Deputy Editor of the programme responded to the complaint on 23 June 2008 stating that having considered Merseytravel's concerns, listened to the programme and talked to staff who worked on the item she believed that the Chief Executive of Merseytravel had "used his opportunity exceedingly well and responded robustly to [the customer's] complaint". The Deputy Editor also noted that had Merseytravel asked for the name of the customer the programme would have been happy to have shared that information with them, but it had not been asked. The Deputy Editor also pointed out that the programme had followed up the issue with the customer who stood by her account of what had happened. The Deputy Editor therefore concluded that the programme would not be returning to the subject.

Merseytravel replied on 25 June 2008 stating that they had asked for the name of the customer during the initial discussion with the programme but had not asked for it later when the discussion was about who was being provided for the interview.

On 9 July 2008 Merseytravel informed the programme it would be making an official complaint.

The Deputy Editor replied the same day reiterating her point that the Chief Executive of Merseytravel had used his opportunity (the interview) exceedingly well and that the programme would not be returning to the story.

On 29 July 2008 the Chief Executive of Merseytravel wrote to the Editorial Complaints Unit (ECU) escalating the complaint to stage 2 of the BBC's complaints process. In his letter of complaint the Chief Executive of Merseytravel stated that the way Merseytravel had been dealt with in the lead up to the "debate about large print timetables...was unfair". He pointed out that the item had been "under-researched" and had been "without foundation" which had "caused reputational damage to [his] organisation". He also repeated the points made in the initial complaint noting that following investigation, once the customer's name had come to light, there had been "no truth in her claims". The Chief Executive also noted that Merseytravel had not been informed that the story would be linked to the customer's previous experience with the Passport Office. He also reiterated the request of redress i.e. the opportunity of a right of reply on the programme.

The ECU replied on 26 August 2008 explaining that it was unable to uphold the complaint. The reply noted that the programme had taken sufficient steps to check the details of the customer and that the customer had given a consistent account of events throughout. The reply also noted that Merseytravel had never asked for the name of the customer in any of its contacts with the programme prior to its broadcast. The ECU also stated that the Chief Executive was given "sufficient opportunity" to respond to the complaint and to explain Merseytravel's policy on

large print timetables. As to the issue of the request for an on-air interview, Merseytravel had been provided with prior knowledge of the allegations and that “no fresh allegations” were made on the programme. With regard to the mention of the Passport Office, the ECU noted that the programme had been justified in referring to the Passport Office as it helped establish the problems faced by visually impaired people and that You and Yours had a track record of investigating such problems. The response noted that the Passport Office was only mentioned in the introduction and that there was clear separation between that issue and Merseytravel.

The Chief Executive of Merseytravel responded on 2 September 2008 totally disagreeing with the ECU’s provisional finding. He reiterated his earlier points stating that there was no truth in the customer’s complaint and that the BBC had failed to investigate it properly; that Merseytravel had requested the name of the customer but it had not been forthcoming; that he had been placed in the position of defending Merseytravel against a spurious allegation; and that there was no justification in linking this story to an issue concerning the Passport Office.

The ECU responded to Merseytravel’s concerns on 16 September 2008. In response the unit stated that the programme had provided all the information they had and that Merseytravel had not come back to the programme makers with further questions. The reply also stated that there had been no deliberate attempt to conceal the customer’s identity and that it had seen no specific evidence that Merseytravel had asked for this information or had been denied it. The ECU repeated its point that Merseytravel had been given adequate notice of the allegations and had been provided sufficient time to give a clear and detailed response. The reply also repeated the view that the mentioning of problems with the Passport Office was sufficiently separate to prevent unfairness to Merseytravel.

Merseytravel wrote again to the ECU on 22 September 2008 disputing its decision.

On 29 September 2008 the Chief Executive appealed to the Editorial Standards Committee (ESC).

3. Applicable Editorial Standards

Section 5 – Fairness, Contributors and Consent

Introduction

The BBC strives to be fair to all – fair to those we're making programmes about, fair to contributors, and fair to our audiences.

Fairness editorial principles

- We will be open, honest and straightforward in our dealings with contributors and audiences, unless there is a clear public interest in doing otherwise, or we need to consider important legal issues or issues of confidentiality.
- People will normally have consented to contribute to our output.
- Where allegations are being made, the individuals or organisations

concerned should normally have the right of reply.

Fairness to contributors

Our commitment to fairness is normally achieved by ensuring that people know:

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

The more significant their contribution, the more detail we should provide.

When inviting people to contribute to our output we should normally explain:

- the kind of contribution they are expected to make. If it is a discussion or debate we should tell them in advance about the range of views being represented and, wherever possible, the names of other likely contributors.

Right of reply

When we make allegations of wrong doing, iniquity or incompetence or lay 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 before transmission.

Our request for a response must be properly logged with the name of the person approached and the key elements of the exchange. We should always describe the allegations in sufficient detail to enable an informed response. The response should be reflected fairly and accurately and should normally be broadcast in the same programme, or published at the same time, as the allegation. There may be occasions when this is inappropriate (usually for legal or overriding ethical reasons) in which case a senior editorial figure or commissioning editor for Independents should be consulted. It may then be appropriate to consider whether an alternative opportunity should be offered for reply at a subsequent date.

4. 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 decision the Committee took full account of all the available evidence, including (but not limited to) the Editorial Adviser's report and the subsequent submission from the complainant.

This appeal raised issues requiring consideration of the editorial guidelines relating to fairness, contributors and consent.

The Committee considered the appeal in three parts:

- I. Was sufficient information provided to Merseytravel?
- II. Was the reference to the Passport Office appropriate?
- III. The logging and maintenance of records by the programme

I. Was sufficient information provided to Merseytravel?

The Committee noted the relevant principles and guidelines:

“Where allegations are being made, the individuals or organisations concerned should normally have the right of reply.”

“When we make allegations of wrong doing, iniquity or incompetence or lay 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 before transmission.”

And

“When inviting people to contribute to our output we should normally explain:

- the kind of contribution they are expected to make. If it is a discussion or debate we should tell them in advance about the range of views being represented and, wherever possible, the names of other likely contributors.”

And

“Our commitment to fairness is normally achieved by ensuring that people know:

- why they are being asked to contribute to BBC output...
- the context of the programme...

The more significant their contribution, the more detail we should provide.”

The Committee considered whether the programme, when “alleging incompetence” or making a “damaging critique”, had given Merseytravel a fair opportunity to respond to the allegation.

The Committee noted that the contributor from Merseytravel had given a full and considered response on the programme. However, Merseytravel’s position was that it would have challenged the account of events had it been given fuller information

beforehand and therefore it had not been given a fair opportunity to respond to the allegations.

The Committee therefore considered whether it was appropriate for the programme to have provided Merseytravel with the name of the customer and the date of the incident being discussed.

Before coming to a view the Committee first considered whether there was a specific public interest or issue of confidentiality which justified the programme keeping the identity of the customer secret.

The Committee noted that there was no evidence to suggest that there was a specific reason for the programme to protect the name of the customer. The Committee noted that this view was borne out by the programme's comments to the appellant, as well as to the Committee during its investigation, that the identity of the customer would have been shared with Merseytravel if they had asked for it. The Committee also noted that the customer had been named in the programme as she had in the In Touch programme where the issue of the Passport Office had first been mentioned. The Committee was satisfied that there was no problem as to the sharing of her name.

The Committee also considered whether Merseytravel had asked for the name of the customer and the date of the incident. If so, was Merseytravel's request denied, or, given the guideline on providing information to a contributor, which states:

“If it is a discussion or debate we should tell them in advance about the range of views being represented and, wherever possible, the names of other likely contributors.”

was it the responsibility of the programme to have shared this information without being asked for it?

The Committee noted that the customer had not taken part in a debate or a discussion, so that, to an extent, this guideline did not apply, but that her experience and her contribution had been the focus of the discussion. The Committee considered whether the name of the contributor and the date of the event was the sort of detail that should be provided to a chief executive who was going to be questioned about his company's apparent failure to adhere to its own publicity and best practice.

When coming to its decision on this issue the Committee noted that there were disputed versions of the events in the lead up to the broadcast of the programme. It noted the claim by Merseytravel, in its initial email of complaint, that it had requested the name of the customer and the date of the incident when the programme had first contacted it about the allegation. However, the Committee noted that whilst Merseytravel maintained its belief that this information had been verbally requested, it had been unable to provide evidence of having asked for the name in any of the correspondence supplied to the Committee.

The Committee also noted that the programme team had denied that any such request as to the identity of the customer had been made. However, the programme team's claim that the name had not been requested could not be verified since the programme's log of the conversations between the programme and Merseytravel had been inadvertently wiped during routine maintenance sometime in the summer.

However, on the question of the date of the incident, the Committee noted that this had been requested in an e-mail but that the BBC had been unable to be specific on this because the customer featured could not recall the exact date.

The Committee concluded that it was not in a position to know whether or not a request had been made for the customer's name and thus was not in a position to say whose account of the events leading to the broadcast was accurate.

However, as to whether the programme should have volunteered the information, the Committee noted that as the date of the incident under scrutiny was vague, it would have been reasonable for the programme to have provided the identity of the customer to Merseytravel in order for it to have helped pinpoint the event more specifically.

The Committee noted that the programme had said it would have done so if asked, but the Committee believed that in order to be fair to Merseytravel, as suggested in the guidelines, it should have offered this information, not least because the woman involved in the item was happy to be named on air and so there were no editorial or operational reasons as to why her name should not have been shared.

The Committee was satisfied this was an unintentional breach of the guidelines but noted that had Merseytravel been provided with this information, it asserted that its response would have been very different. The Committee concluded that it would uphold this aspect of the complaint. In doing so, the Committee concluded that while there had been no intention to mislead, the non provision of this information had resulted in unfairness to Merseytravel, despite the opportunity they were given to respond and the fact that the Chief Executive had used the opportunity to good effect.

II. Was the reference to the Passport Office appropriate?

The Committee noted the complainant's view that there was no justification for the on-air reference to the problems in the Passport Office (which had featured in an item on the sister programme *In Touch* the previous month) and that Merseytravel had "borne the brunt of the Passport Office's failings". The Committee also noted the response from the Editorial Complaints Unit (ECU) on this issue which stated:

"[...] the programme was justified in mentioning a previous complaint against the Passport Office for two reasons. Firstly it helped to establish that the visually impaired suffer problems on a reasonably regular basis and secondly it highlighted the fact that *You and Yours* has a track record of investigating

such problems. Furthermore, having listened to the item, the Passport Office is only mentioned in the introduction and there is a clear separation between [the customer's] experience with them and subsequently with Merseytravel.”

The Committee concluded that the brief allusion to a previous case concerning the Passport Office as a form of introduction to the item – with no attempt to introduce it later when the Chief Executive of Merseytravel was interviewed – was not unfair to that organisation. The Committee did not uphold this element of the complaint.

III. The logging and maintenance of records by the programme

The Committee noted that as part of the discussion relating to the earlier part of the complaint, You and Yours had been unable to supply the Committee with the logging notes of the exchanges with Merseytravel prior to broadcast. The Committee noted the explanation from the programme editor that the exchanges had been logged in a common area of the programme's computer system, but following a cleanout of the system for housekeeping purposes the information had been deleted.

The Committee concluded that while there was nothing to suggest that this was anything but an unfortunate accident relating to the programme's procedures for storing information, it was extremely important for programmes to abide by the aspect of the fairness guideline which states:

“Our request for a response must be properly logged with the name of the person approached and the key elements of the exchange.”

The Committee agreed that it was particularly important for investigative and consumer programmes to keep proper records, especially whilst any complaint was still active in the complaints process. The Committee therefore concluded that as the records had been lost this was a technical breach of the guideline.

Finding: The Committee partially upheld the complaint regarding fairness to the complainant, in particular the provision of information to the complainant with regard to the name of the other contributor to the item in question. The Committee also found that the programme had been in technical breach of the fairness guidelines in relation to the logging of details.

Rejected Appeals

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

BBC Reporting of the current financial situation has been sensationalist

The complainant said that the BBC's reporting of the financial situation over the last few months has been emotive rather than factual. In particular the complainant referred to the reports of Robert Peston, saying he used dramatic and misleading language in reporting confidential matters that should not have been made public.

Action: The Committee noted the complainant's argument that emotive language had been used to create a dramatic story rather than give the facts. The Committee also noted the complainant's view that selective interviewing had been used to present an extreme view which may have provoked fear amongst the public. The Committee also noted that the allegation was not supported by evidence or directed at a particular item of content.

The Committee then considered the Executive's responses which had stated that the BBC was presenting a factual situation, as it had a duty to do. The Committee also noted that the BBC response at stage 2 had defended the reporting as having been proportionate rather than sensationalist. The reply at stage 2 had also noted examples where the reporting had been careful about the use of the word "recession".

The Committee concluded, having taken the Executive's responses into account, that the complainant had not made out a case for the Executive to answer, in that the complainant had not provided evidence or pointed to particular items which he believed were misleading or inaccurate. The Committee concluded that without this evidence the appeal did not have a reasonable prospect of success. The Committee also noted that, whilst it was in its remit to consider complaints about breaches of the BBC's editorial standards, it could not consider a complaint about style or tone or the selection of interviewees in the absence of a complaint about a breach of the editorial guidelines. The appeal had therefore not raised a matter of substance. As such, the Committee did not consider it appropriate to take on the appeal.

Trivialisation of the death of four Afghan civilians

The complainant was concerned that the reporting of the death of four Afghan civilians had been placed in a story below the death of a British dog handler and his dog, identified as a labrador called Sasha. The complainant considered the radio news

report of 26 July 2008, which gave more information about the dead dog than the four Afghan civilians killed, to be offensive.

Action: The Committee noted the BBC Executive's response at stage 1 that the reporter had been unable to name the civilians at the time of the broadcast (nor were they provided afterwards).

The Committee also noted the BBC's response at stage 2, which said that the story had focused on the dog handler rather than the dog. The stage 2 response also suggested that the mentioning of the dog's name gave the audience an "in" to the story, allowing the subsequent mentioning of the killing of the civilians, which might not have otherwise been reported. The response at stage 2 noted that the naming of the dog may have been a step too far. The BBC Executive's response then provided evidence where reporting had covered civilian deaths in recent reports.

The Committee agreed that the deaths of Afghan citizens should be treated with sensitivity in the same way as the deaths of serving members of the armed forces. It noted the names of the dead citizens were not available and concluded that whilst some listeners may have found the combination of the two stories with the prominence given to the death of the dog upsetting, the way the stories were written did not breach generally accepted standards.

The Committee concluded, having taken the Executive's responses into account, that the complainant had not made a case (that the material was offensive) for BBC management to answer and that there was no reasonable prospect of success. The complaint did not raise a matter of substance and thus the Committee did not consider it appropriate to consider the appeal.

Objection to the use of the words "Jesus Christ" in the drama New Tricks

The complainant said that the use of "Jesus Christ" as a swear word was offensive to Christians regardless of the context and time of the programme. The complainant felt that the BBC was not as considerate of Christians as it was of other religions and that words offensive to other religions would not have been used. The complainant also pointed out that the BBC Editorial Guideline on offence covered the use of profane references and that other swear words could have been used.

Action: The Committee noted the responses of the Executive at stages 1 and 2. It noted that the explanation at stage 1 stated that the use of the phrase was dependent on the tone and context of the programme and that it was unrealistic not to use it in some situations. A further reply at stage 1 also stated that the drama in which it was used was a post-watershed programme for an adult audience and that the edgier and more realistic language was editorially justified.

The Committee noted that the stage 2 response pointed out that the harm and offence guidelines refer to reflecting the world as it is. The reply also reiterated the view that the remark was editorially justified given the context in which it was said and the time at which the phrase was broadcast. The Committee noted that the stage 2 response also quoted the Ofcom report into language and sexual imagery in broadcasting (2005) which explained that “Jesus Christ”, whilst offensive to some, is seen as mild and commonplace to the majority of the audience.

The Committee concluded, having taken the responses of the Executive into consideration, that the complainant had not made a case that the offence had outweighed the editorial justification for the BBC Executive to answer and that there was no reasonable prospect of success. The complaint did not raise a matter of substance and thus the Committee did not consider it appropriate to consider the appeal.