

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

BBC - Jury Team

In summary, the grounds for appeal contended that:

- (a) the BBC Election Guidelines for the election campaigns for the European Parliament across the UK and for Local Government in England (polling day 4th June 2009) ("the Guidelines") should not have been adopted by the BBC;
- (b) to the extent that the Guidelines were properly adopted they had been misapplied in practice; and
- (c) the Guidelines were not effectively published by the BBC.

The Committee noted that the appeal did not identify any specific breach of the Guidelines.

The Committee approached the appeal on the basis that the practical remedy sought by the Jury Team was enhanced coverage of its campaign in BBC news and current affairs programming in the short time left before the polls close on Thursday 4 June 2009.

The Committee did not allow the appeal. It determined that the BBC's approach to broadcast coverage of the various political parties seeking election in the forthcoming polls of 4 June 2009 did comply with the Guidelines and was within the range of reasonable decisions open to the BBC. It also considered that the Guidelines were adequately published on 15 April 2009 and have remained accessible to the public on the BBC's Editorial Policy website throughout the election period.

Finding

BBC - Jury Team

1. The complaint

The Editorial Standards Committee (“the Committee”) considered an appeal on behalf of the Jury Team which is registered as a political party by the Electoral Commission. Independent candidates are standing under the Jury Team umbrella in the European Election on 4 June 2009. The appeal was lodged on 1 June 2009 at 19.59.

In summary the appellant complained to the Executive and appealed to the Trust that:

- (a) the BBC Election Guidelines for the election campaigns for the European Parliament across the UK and for Local Government in England (polling day 4th June 2009) should not have been adopted by the BBC;
- (b) to the extent that the Guidelines were properly adopted they have been misapplied in practice; and
- (c) the Guidelines were not effectively published by the BBC.

In effect he complained to the BBC because in his view the Jury Team had not received appropriate coverage and was seeking an acknowledgment that the Guidelines had been breached in time for the BBC Executive to remedy the breach. However his appeal was largely couched in terms of his concern that the Guidelines approved by the Trust were wrong in principle because they rewarded entrenched parties and stifled innovation.

As described in more detail below, the Guidelines were approved by the BBC Trust on 23 April 2009. The appellant had been informed by the Trust Unit that the ESC cannot re-open a final decision of the Trust.

1.1 Regulatory framework and background to the adoption of the Election Guidelines for 4 June 2009

European elections for the UK and Local Government elections for parts of England will take place on 4 June 2009. The BBC is obliged under section 144 of the Political Parties, Elections and Referendums Act 2000 to draw up a code of practice for each election, with respect to the participation of candidates in items about the electoral area during the election period. The relevant Editorial Guideline on reporting UK election and referendum campaigns reads as follows:

"The BBC is required by law to adopt a code of practice at each election to govern the participation of candidates in each constituency

or electoral area. Before drawing up a code the BBC is required to "have regard to any views expressed by the Electoral Commission".

Election and referendum guidelines will be agreed by the Board of Governors and issued by the Chief Adviser Politics before each election or referendum.

On polling day the BBC, in common with other broadcasters, will cease to report campaigns from 06.00 and until the polls close. We will restrict our coverage to factual accounts, for example, of the level of the poll, politicians' appearances at polling stations and the weather to ensure that while the polls are open nothing in our output can be construed as influencing the ballot."¹

Election specific guidelines also enable BBC programme-makers and other content providers to offer coverage of the elections that is consistent with the BBC's obligation of due impartiality in broadcast programming, as required by the Framework Agreement and Editorial Guidelines. The relevant Editorial Guideline on broadcasting during elections reads as follows:

"Our commitment to impartiality and fairness is under intense scrutiny when we report election campaigns. All political parties will seek to influence editorial decisions. Content producers should take all complaints seriously and be aware that anything they say may be construed as "BBC policy". We should explain that general complaints or allegations of bias must always be dealt with at a higher level, and refer them accordingly.

We should make, and be able to defend, our editorial decisions on the basis that they are reasonable and carefully and impartially reached. To achieve this we must ensure that:

- news judgements continue to drive editorial decision-making in news based programmes.
- news judgements at election time are made within a framework of democratic debate which ensures that due weight is given to hearing the views and examining and challenging the policies of all parties. Significant minor parties should also receive some network coverage during the campaign.
- they are aware of the different political structures in the four nations of the United Kingdom and that they are reflected in the election coverage of each nation. Programmes shown across the UK should also take this into account.

¹ <http://www.bbc.co.uk/guidelines/editorialguidelines/edguide/politics/reportingukelec.shtml>

The way in which due accuracy and impartiality is achieved between parties will vary. It may be done in a single item, a single programme, a series of programmes or over the course of the campaign as a whole. But content producers must take responsibility for achieving due accuracy and impartiality in their own output and not rely on other BBC services to redress any imbalance for them."²

The BBC Executive prepared the Guidelines for the 4 June elections and provided these to the Electoral Commission for comment on 19 February 2009. The Electoral Commission replied on 17 March 2009 to confirm that they were content with the draft Guidelines and the approach taken to the participation of candidates during the relevant period.

The BBC Executive then provided the Guidelines to the ESC for consideration on 1 April, which recommended that the Trust approve the Guidelines as drafted for use. The Trust approved the Guidelines on 23 April 2009 and they apply to coverage during the period 28 April to 4 June 2009.

1.2 The publication of the Guidelines

In his appeal the appellant argued that the BBC had failed properly to publish the Guidelines. He supported this point by screen grabs provided as attachments to his email of appeal of 1 June 2009 to illustrate that the Guidelines could not be found through searching the internet.

The Chief Adviser Politics' email to the appellant on 30 May 2009 (sent at 3:20pm) stated that the Guidelines as approved by the Trust were published on the BBC website on 15 April 2009. He added on 1 June 2009 that the Election Guidelines can be searched using Google and also illustrated with a screen grab in his email of 2 June 2009 (sent at 11.54am).

There is no explicit Charter or Framework requirement to publish the Guidelines (although the Editorial Guidelines do state that the Chief Advisor Politics will "issue" the Guidelines in their approved form). Further, it is a Charter requirement that the Trust ensure that the BBC observes high standards of openness and transparency and it is the BBC's practice to publish Guidelines (both so that they can be accessed by programme makers and others interested in them).

1.3 Coverage of the Jury Team

The Guidelines and the BBC Editorial Guidelines in particular those pertaining to impartiality apply to the coverage during the period 28 April to 4 June 2009. In considering whether the Guidelines have been complied with the Committee noted these points made by the appellant in his complaint of 27 May:

That policy [Guidelines] states...:

² <http://www.bbc.co.uk/guidelines/editorialguidelines/edguide/politics/broadcastingdur.shtml>

"Each bulletin, programme or programme strand, as well as online and interactive services, covering each election, must achieve an appropriate and fair balance over an appropriate period. Whilst the majority of coverage is likely to be about the main parties care must be taken to ensure that other political parties and independent candidates also receive appropriate coverage."

The "main" parties are the Conservatives, Labour and the Liberal Democrats.

All of the other parties nationally contesting the European Elections should be treated similarly.

The appellant then argued:

The Jury Team is the only umbrella group for independent candidates in the European Elections.... The Jury Team was set up, before the current scandals emerged, with the clear objective of cleaning up politics. It is therefore of particular relevance to your viewers. Please see www.juryteam.org

The complaint was then lodged as follows:

- *Since the formal launch of the European Election campaign, the Jury Team has only had two small slots on national BBC TV: each a short interview with myself on BBC News 24, which as you are aware has a comparatively small audience.*
- *BBC national TV has given no coverage to "independent candidates".*
- *In contrast the BBC has given wide coverage to other (non main) political parties across all of its channels. In particular there has been extensive coverage of the BNP and of UKIP in numerous interviews and other features, the timing and extent of which we are currently documenting.*
- *Similarly there have been no interviews with any representatives of the Jury Team on Radio 4, the BBC's main outlet for radio election coverage, whereas there have been extensive interviews and other items relating to other parties, again particularly the BNP, UKIP and the Green Party.*
- *We have had no significant coverage on your "online and interactive services"*
- *We have just heard from the Editor of Question Time that the programme will this Thursday again feature a representative of UKIP (Nigel Farage) despite having a representative of UKIP on Question Time last Thursday (Marta Andriessen). ...*
- *Question Time this week includes representatives of the Conservatives, Labour and Liberal Democrats but also of UKIP (Nigel Farage) and of the Green Party (Caroline Lucas). You will see from the attached email that your Editor describes this, despite our pointing out that UKIP will have appeared two weeks running, as "balanced and fair".*

We do not believe, and do not believe any court would agree, that the BBC as a public body deciding to have a UKIP representative on Question Time two weeks running immediately before the European Elections and only providing the Jury Team with the coverage outlined above is either:

- *"balanced and fair", or*
- *in line with the BBC's own Editorial Policy.*

The Committee noted the response from the Director of News on May 29:

Firstly, may I clarify the points you raise in relation to the BBC's Election Guidelines, in particular, the sentence:

*Whilst the majority of coverage is likely to be about the main parties, care must be taken to ensure that other political parties and independent candidates also receive **appropriate** coverage".*

*They do not say that all parties other than the "three" main ones should be "treated **similarly**".*

In the context of the European elections, a starting point for deciding relative levels of coverage is "previous electoral support", particularly, in this case, the 2004 European election. As you will recall, UKIP came third, ahead of the Liberal Democrats, which means, for the purposes of the 2009 election, they will receive similar levels of coverage to the three main parties. In terms of share of the vote, you will also note that both the Green Party (which won representation in the European Parliament) and the BNP (which, across Britain, secured almost 5% of the vote) have demonstrated that they have significant electoral support and, therefore, proportionately, will receive more coverage than parties which are not in that position.

The Guidelines also set out a minimum level of coverage which other parties who are standing a full slate of candidates in the election will receive. The relevant BBC News programmes (including the Six or Ten o'clock News on BBC One, Radio 4 1800 news, Five Live Drive and the News Channel) are on course to fulfil that obligation.

The Jury Team did not field a full slate of candidates across either England or Scotland. However, as you mention, the BBC has, despite that, used its discretion and taken the view that the Jury Team should still be allocated a Party Election Broadcast, despite not reaching the threshold. Similarly, we have taken the view that the Jury Team should be given the minimum level of coverage set out in the Guidelines, even though it fell some way short of the required threshold.

Turning finally to Question Time, I strongly disagree that we've acted unfairly or that UKIP has been given disproportionate coverage.

Twelve UKIP candidates were elected in 2004 with around 16% of the vote. Recent polls suggest they will perform strongly again. As a new party, of course, the Jury

Team have no MEPs. However recent polls, whilst not the definitive guide to a future performance, do not provide current evidence of any significant level of electoral support.

There are a limited number of places available on a Question Time panel and in this pre-election period it's right that the main parties are represented fully and fairly. The BBC's guidelines commit us to appropriate coverage. Without unlimited airtime - and only two appearances by a party even as prominent as UKIP - the appropriate coverage for the Jury Team is, disappointing though you must find this, the minimum level. This consists of the programme carrying a full list of the parties who are standing candidates across the country on the edition billed as a European election Special, which ran last night.

Previous programmes have focused heavily on the expenses issue and the presence of panellists such as Martin Bell and the former EU financial whistle-blower Marta Andreasen - as well as comments from our live audience - ensured all sides of the argument were aired and a balanced and fair debate ensued.

As regards the Jury Team's inclusion in future programmes, these matters are kept under constant consideration and Question Time will certainly revisit the issue once the results of the election, and therefore your level of electoral support, are known."

The Committee noted that the minimum level of coverage was set out in Appendix Aiii of the Guidelines.

"Aiii Party Coverage for broadcasts across the UK:

Parties which gained substantial representation at the last European election are:

- *Labour, Conservative, Lib Dems and UKIP.*

Where coverage relates purely to the European Election or matters decided in the European Parliament, these parties will receive similar levels of coverage.

The Green Party of England and Wales won significant support and representation and should receive some coverage, proportionate to the four leading parties.

UK-wide programmes must ensure that, where either SNP or Plaid Cymru or both have distinctive policies on matters decided in the European Parliament these parties are featured in a substantial number of items on such matters in which the UK-wide parties take part. This should not preclude network programmes using SNP and Plaid Cymru spokespeople on other major election news stories.

All parties which are standing a full slate of candidates (ie as many candidates as there are seats available) in one or more of the nations of Great Britain will have – as a minimum – their manifesto launch (or equivalent event) covered on appropriate network TV and radio news and current affairs programmes.

All parties which are standing candidates, as well as serious independent candidates, will, where appropriate and possible, have their manifesto launches (or some equivalent event) covered online."

The Committee noted that the Executive does not maintain and had not provided a comprehensive list of coverage.

The Committee noted that the list of programmes provided by the Director of News ("*the Six or Ten o'clock News on BBC One, Radio 4 1800 news, Five Live Drive and the News Channel*") which must provide the minimum coverage to those standing a full list of candidates are set by News and are not contained within the Election Guidelines.

2. The Committee's decision

The Committee noted that the Trust approved the Guidelines on 23 April 2009. The Committee agreed that this was a final decision of the Trust and was not open to further internal review. The Committee noted that any challenge to the Guidelines themselves should be brought promptly following publication.

The Committee then considered the appellant's claim that the Guidelines were not adequately accessible or adequately published. The Committee considered the explanation given to the appellant by the Executive Board (through his correspondence with the Chief Adviser Politics) and was satisfied that the Election Guidelines were published on the BBC's Editorial Policy website on 15 April 2009. The Committee did not uphold this ground of the appeal.

The Committee then considered the second ground of the appeal, namely that the BBC has not implemented the Guidelines properly. The Committee concluded that this involved the Committee in a review of an exercise of discretion by the Executive. The Committee therefore considered whether the decisions taken by the Executive which were mentioned in the appeal—

- (a) were correct in principle,
- (b) were taken in accordance with relevant considerations (or otherwise took into account irrelevant considerations), and
- (c) were otherwise within the parameters of reasonable decisions open to it.

The Committee disagreed with the appellant's contention that this was not the correct test to apply. The Committee noted the test that the appellant proposed and took the view that the test it had itself applied necessarily required it to take account of the points he raised.

The Committee considered that editorial decisions taken day to day by BBC Executive staff and journalists in the course of covering the election campaign are an issue for the Executive alone. The Committee's role is an appellate one, and it would be improper for it to seek to substitute its own judgment for that of the Executive.

The Committee took into account the arguments which formed the basis of the appeal and the explanations provided by the Director of News in her email of 29 May and by the Chief Adviser Politics in his e-mails of 30 May and 1 and 2 June 2009. The Committee concluded that it did not uphold the second ground of the appeal.

In particular—

- (a) the appellant has not identified any specific breach of the Guidelines in his appeal;
- (b) in the time available it was obviously not possible to conduct a thorough evaluation of all election broadcast material in order to see if a breach has taken place and, in any event, the Committee did not consider that this was an appropriate task to conduct whilst the election period is still running and in advance of the election;
- (c) it noted that the Jury Team, notwithstanding that it had not stood a full list of candidates, had received the minimum coverage for qualifying parties as set out in the Guidelines (Aiii);
- (d) the Committee identified nothing in the appellant's correspondence with the BBC Executive which persuaded it that any breach of the Guidelines had occurred; and
- (e) bearing in mind the BBC's public purposes and its commitment to impartiality, informing citizens and sustaining democracy, the Committee also considered that there was no evidence that the BBC failed to interpret the Guidelines in accordance with these principles.

On the basis of the above, the Committee did not allow the appeal.

Finding: Not upheld