

Editorial Standards Findings

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

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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: Alison Hastings (Chairman), Mehmuda Mian, David Liddiment, Elan Closs Stephens, Richard Ayre 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 accepting 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:

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

Summary of findings

Sportscene: Scottish Cup Final, 21 May 2011

Twenty-eight people complained about the live coverage broadcast on Sportscene of the Scottish Cup Final between Celtic and Motherwell, during which singing by some Celtic supporters was described as "sectarian" by a presenter and studio guest. The complainants appealed to the Editorial Standards Committee on a number of points regarding accuracy, impartiality, fairness, the reputation of Celtic supporters, and complaints handling.

The Committee considered the complainants' challenges to the Head of Editorial Standards' decision not to proceed with some of the points of appeal. It decided not to proceed with these points of appeal:

1. The reference to the singing of sectarian songs in the plural was inaccurate.
2. The presenter's use of the phrase "the Celtic supporters ..." implied that all Celtic supporters present at the match were singing sectarian songs, which was inaccurate.
3. Celtic supporters had been defamed and treated unfairly.
4. The BBC had broadcast an inaccurate statement of which it had no proof, and had therefore reported hearsay as fact; moreover, both the message conveyed to the studio and the presenter's statement in its entirety were inaccurate.
5. The Editorial Complaints Unit (ECU) had delegated its judgement to Strathclyde police.
6. It was inappropriate for the BBC to have consolidated complaints, and the Head of Editorial Standards' decision had failed to address all the issues that had been raised.
7. The complaints process was too complex, as different aspects of the same complaint had to be addressed to different parts of the BBC.
8. The ECU should have referred operational matters not to the Trust but to the Executive Board.

With regard to the appeal on accuracy and impartiality, the Committee concluded:

Accuracy

- that rather than seeking to precisely define the term "sectarian", a key consideration in deciding whether there had been due accuracy was the likely audience expectation and what the audience would have understood by the reference on Sportscene to "sectarian" singing
- that the word "sectarian" was commonly used in Scotland to refer to cultural, political, religious and historical passions which inform rivalry between football teams in Scotland
- that it was likely that the audience would consider that the singing of The Boys of the Old Brigade at the match fell within the range of behaviours and actions which are associated with being "sectarian"
- that the audience would have expected analysis of the game and surrounding issues during the half-time segment

- that the audience would not have expected the presenter to reflect the debate surrounding the term "sectarian" when the exchange regarding "sectarian" singing lasted just over a minute in a half-time summary lasting fifteen minutes
- that the issue of sectarian singing had not been given undue prominence which did not accord with the reality of the match
- that the BBC had not knowingly nor materially misled the audience by referring to "sectarian" singing
- that there had not been a breach of the Editorial Guidelines on due accuracy

Impartiality

- that in making comments condemning sectarian singing the presenter and the studio guest were not making comments that were controversial
- that the decision to devote around a minute of the half-time discussion to the issue of sectarian singing was justified and was proportionate
- that the exchange between the presenter and studio guest had clearly distinguished opinion from fact
- that nothing was said in the exchange between the presenter and studio guest which demonstrates partiality against Celtic
- that, to achieve due impartiality, it was not necessary for there to have been references to the behaviour of Rangers fans at the earlier Cup Final
- that it was not the case, as suggested by some appellants, that the behaviour of the Motherwell supporters later in the match had also merited comment in order to achieve due impartiality
- that the broadcast did not require a discussion regarding the wider context of sectarianism in order to achieve due impartiality
- that it had not seen any evidence to suggest that the presenter and studio guest had made the comments about the singing deliberately to initiate a debate on the subject
- that there had not been any breach of the Editorial Guidelines on impartiality

The complaints were not upheld.

For the finding in full see pages 6 to 23.

Complaint handling

The appeal relates to the handling of a complaint about BBC Radio 2's regular astrology feature, which the complainant considered potentially harmful. The Head of Editorial Standards at the BBC Trust determined that the substance of the complaint should not proceed to the Editorial Standards Committee (ESC) of the Trust for consideration on appeal. The Head of Editorial Standards considered that the complaint relating to the handling of the appeal should proceed to the ESC.

Regarding the handling of the complaint, the Committee:

- noted that the BBC had met its target response date for initial Stage 1 complaints.

- noted that internal referral to BBC Radio 2's Editor of Programmes for further information resulted in a fuller response to the complainant, which required more time to prepare.
- noted that, at Stage 2, the complainant did not receive a response for twenty weeks, despite intervention by the BBC Trust Unit. When the response eventually arrived from BBC Radio 2 it did not contain an apology, nor a reason for the delay. It also did not provide information about the next step in the complaints process.
- concluded that the handling of the complaint at Stage 2 of the process had fallen short of best practices and had been in breach of the BBC's guidelines on Accountability.

The complaint was upheld.

For the finding in full see pages 24 to 26.

Appeal Findings

Sportscene: Scottish Cup Final, 21 May 2011

1. Background

Twenty-eight people complained about the live coverage broadcast on *Sportscene* of the Scottish Cup Final between Celtic and Motherwell, during which singing by some Celtic supporters was described as "sectarian" by a presenter and studio guest. The complainants appealed to the Editorial Standards Committee on a number of points regarding accuracy, impartiality, fairness, the reputation of Celtic supporters, and complaints handling.

At a previous meeting on 2 November 2011 the Committee had agreed that, due to the large number of appeals, and in accordance with the Complaints Framework, the issues raised by the 28 complainants would be considered together.

On 9 November 2011 the Head of Editorial Standards wrote to the complainants explaining that she considered the appeal on accuracy and impartiality should proceed for consideration by the Committee, but that some of the points of appeal raised did not have a reasonable prospect of success and therefore should not proceed to be considered by the Committee.

On 1 December 2011 the Committee considered:

- challenges to the Head of Editorial Standards' decision that certain points of appeal did not have a reasonable prospect of success
- the appeal on accuracy and impartiality.

2. The complaint

Stage 1

Over 300 complainants contacted the BBC about the live broadcast on BBC Scotland's *Sportscene* of the Scottish Cup Final between Celtic and Motherwell on 21 May 2011. Complaints arose from the use of the word "sectarian" by the presenter and studio guest to describe singing by Celtic supporters. Complainants argued that the use of the term was inaccurate and misleading, the presenter and studio guest having failed to distinguish between conduct that some might consider offensive and conduct properly described as sectarian.

Several arguments centred on the definition of "sectarian":

- It was contended that the definition was controversial, and that it was inappropriate to have used the term without reflecting the debate surrounding it.
- Some complainants cited a case in the Perth Sheriff Court involving consideration of section 74 of the Criminal Justice (Scotland) Act 2003, which concerned offences aggravated by religious prejudice. It was contended that the case had the force of legal precedent in relation to the interpretation of "sectarian".
- One complainant argued that "sectarian" could refer only to a dispute between sects within the same religion or political group, which was not the case here.

A number of complainants contended that the presenter had inaccurately referred to songs in the plural, whereas only one allegedly sectarian song, namely *The Boys of the*

Old Brigade, had been sung. It was argued that, having no proof of the accuracy of this statement, the BBC had reported hearsay as fact.

As the presenter had not identified the songs in question, complainants inferred that these were *Amhrán na bhFiann (The Soldier's Song)* and/or *The Boys of the Old Brigade*. It was argued that neither song could accurately be described as sectarian: the former was the Irish National Anthem; the latter was a folk song honouring members of the Irish Republican Army (IRA) who fought and died during the struggle for Irish independence, and was not directed against or hostile towards others. Comparison was made with patriotic songs such as *Flower of Scotland* and *Hen Wlad Fy Nhadau (Land of My Fathers)*, neither of which was commonly regarded as sectarian. It was also argued that *God Save the Queen* had historically contained a verse that was highly offensive to Scots, and yet was not considered sectarian. Several complainants noted that, on her recent state visit to Ireland, the Queen had paid her respects to those, including the eponymous "Boys of the Old Brigade", who had fought and died during the struggle for Irish independence. They queried why, if singing the song were sectarian, her act of remembrance was not. One complainant noted that *The Boys of the Old Brigade* could be purchased on iTunes.

Some complainants believed that the presenter had described the conduct of not some but all Celtic supporters as sectarian, which they contended was unfair, inaccurate, biased and defamatory. Some noted that the tarnishing of Celtic supporters' reputation through the inaccurate depiction of their conduct could potentially have a deleterious financial effect on Celtic plc. and its shareholders, through the loss of sponsorship revenue and otherwise.

Some complainants noted discrepancies between *Sportscene's* coverage of the match in question and of the Scottish League Cup Final two months earlier, when no mention had been made of Rangers supporters' singing of *The Billy Boys* and *The Famine Song*, which it was argued were sectarian songs. On that occasion, the BBC had informed complainants that it was not and had never been custom and practice for commentators to offer opinions on chants from the crowd. Some complainants also noted that, earlier in the year, Rangers had been fined by UEFA and its supporters banned from the club's next European away game for sectarian singing, which Celtic and its supporters had never been. Some contrasted the BBC's speed in apologising to Rangers' Manager Ally McCoist (for its allegedly unfair representation of his views on violence and sectarianism) with its slowness in offering an equivalent apology to Celtic fans. A number of complainants regarded the BBC's apparently inconsistent depiction of Celtic and Rangers supporters' conduct as evidence of institutional anti-Celtic, pro-Rangers bias.

In its Stage 1 response, the BBC stated that the decision to discuss the singing (which it stated had come from a minority of Celtic fans) was editorially appropriate, in view of: "the incidents of recent weeks" (which included the making of death threats and the sending of parcel bombs and bullets to Celtic Manager Neil Lennon and others, and an attack on Mr Lennon during a match between Celtic and Hearts); Neil Lennon's statement of 17 May 2011 on Celtic FC's website (entitled *Manager calls for end to offensive chanting*); and the First Minister's assertion that tackling sectarianism would be a priority for the new Government. The BBC noted that sectarianism had been debated in five editions of *Sportscene* in April and May 2011, both generally and in relation to specific incidents such as the sending of parcel bombs and Rangers' UEFA fine. The BBC acknowledged that there was a range of definitions of "sectarian", and that it would have been more accurate for the presenter to have referred to "songs that some people believe to be an expression of sectarianism but which many people nonetheless find both offensive and provocative".

Stage 2

ECU

A large number of complainants escalated the matter to the ECU, and it was decided that, for reasons of speed and efficiency, they would receive a consolidated response. Some complainants argued that the reference in the BBC's Stage 1 response to the topicality of the issue was irrelevant, as the same factors had been present at the time of the Scottish League Cup Final. It was also argued that the BBC's reference to the Celtic Manager's statement, which concerned offensive chanting, illustrated the BBC's habitual conflation of songs that some people found offensive with songs that were sectarian.

The ECU identified the following common complaints:

- the use of the word "sectarian" was inaccurate
- the programme was thus unfair to Celtic supporters
- the programme had lacked impartiality by focusing upon allegations of sectarian behaviour by Celtic supporters and not referring to allegations of recent sectarian behaviour by Rangers supporters.

The ECU noted BBC Scotland's assertion that a message to the studio during the broadcast had been inaccurately paraphrased, suggesting that songs had been sung, whereas the broadcast had in fact contained only one allegedly sectarian song, namely *The Boys of the Old Brigade*. The ECU did not consider this inaccuracy to be particularly significant, the key issue being in its view whether any – not how many – sectarian songs may have been sung.

Citing the opinion of a Scottish anti-sectarian charity, the ECU stated that, in common usage, the definition of "sectarian" was not limited to exclusively religious factors, but included non-religious divisions such as those between rival political groups. The ECU stated that it was reasonable to use the term to refer to the web of inter-communal tensions in parts of Scotland of which both religion and politics formed major parts. The ECU cited the reported views of Strathclyde Police to the effect that singing *The Boys of the Old Brigade* at a football match where it might be expected to give offence could lead to the singer's arrest. The ECU argued that the song could therefore reasonably be described as sectarian if sung at a football match where it might be expected to give offence to others. The ECU did not therefore uphold the complaint that the use of the word had been inaccurate.

On that basis, the ECU did not uphold the consequential complaint, that if the description of the song was inaccurate, it was unfair to describe Celtic fans as having been singing sectarian songs. Noting that Celtic supporters sometimes added the words "Provisional Wing" after "I joined the IRA", the ECU believed that such "add-ons" transformed what was originally a purely historical song into a sectarian and contemporary one. Although the ECU could not determine which version had been sung on this occasion, internet footage suggested that Celtic supporters' singing of the augmented version was common, which tended to undermine the claim that it was unfair to accuse Celtic supporters per se of singing sectarian songs. The ECU also noted that some Celtic fans had conceded in online postings that, in the context of football matches, the song had the potential to give offence and should not be sung.

On the issue of impartiality, the ECU pointed out that the broadcast had included references to sectarian singing by Rangers fans and to Rangers' punishment by UEFA. The studio guest had also stated that it did not matter who was singing, only that they were, and that he would criticise any supporters, including Rangers', for doing so. The ECU also pointed to the pre-match discussion, in which strong sympathy and support for the Celtic Manager had been expressed. In the ECU's view, this undermined the argument that the

programme had an anti-Celtic agenda. The third and final point of complaint was thus not upheld.

Stage 2

BBC Scotland

With regard to the allegation of institutional bias, the Head of Public Policy and Corporate Affairs, BBC Scotland, stated that presenters and commentators did not routinely comment on every occasion where provocative or objectionable chants or songs emanated from the terraces. The discussion in this programme had taken place in the context of significantly heightened public and political interest, and there had been no change in editorial direction since the Scottish League Cup Final.

Appeal to the BBC Trust

Twenty-eight complainants appealed to the Editorial Standards Committee raising various issues regarding accuracy, impartiality, fairness, the reputation of Celtic supporters, and complaints handling.

The Head of Editorial Standards considered together the issues raised by the 28 complainants, and considered whether the consolidated appeal qualified to proceed for consideration by the Committee. She considered that:

1. the appeals on (i) the accuracy of the use of the word "sectarian" and (ii) impartiality (other than the point regarding institutional bias), should proceed for consideration by the Committee, as there was a reasonable prospect of success
2. the appeal regarding institutional bias should not proceed for consideration by the Committee unless the Committee found a breach of impartiality in the output concerned
3. the means by which the message was reported to the production team and conveyed to the presenter and studio guests, and the alleged change in editorial policy in relation to the reporting of allegedly sectarian singing or chanting, were both operational matters and the responsibility of the Executive Board, not the Trust
4. there was insufficient evidence to suggest that there was a reasonable prospect of success on the remaining points of appeal, and appeals should not proceed for consideration by the Committee on those points.

Nine complainants appealed against the Head of Editorial Standards' decision not to proceed with the following points of appeal:

1. The reference to the singing of sectarian songs in the plural was inaccurate.
2. The presenter's use of the phrase "the Celtic supporters ..." implied that all Celtic supporters present at the match were singing sectarian songs, which was inaccurate.
3. Celtic supporters had been defamed and treated unfairly.
4. The BBC had broadcast an inaccurate statement of which it had no proof, and had therefore reported hearsay as fact; moreover, both the message conveyed to the studio and the presenter's statement in its entirety were inaccurate.
5. The ECU had delegated its judgement to Strathclyde police.

6. It was inappropriate for the BBC to have consolidated complaints, and the Head of Editorial Standards' decision had failed to address all the issues that had been raised.
7. The complaints process was too complex, as different aspects of the same complaint had to be addressed to different parts of the BBC.
8. The ECU should have referred operational matters not to the Trust but to the Executive Board.

3. The Committee's decision

The Committee first considered the Head of Editorial Standards' decision not to proceed with some of the points of appeal to the Committee. It then considered the appeal on accuracy and impartiality.

In reaching its decisions the Committee took due account of all the available evidence including (but not limited to):

- The recording of the programme in question
- The final Stage 2 reply from the ECU
- In relation to the challenges to the Head of Editorial Standards' decision:
 - the appeals to the Trust (of the complainants who had challenged the decision not to proceed)
 - the letter from the Trust's Head of Editorial Standards explaining her decision not to proceed with some points of appeal
 - the complainants' challenges to the Head of Editorial Standards' decision not to proceed
- In relation to the appeal on accuracy and impartiality:
 - the Editorial Adviser's report
 - letters/emails from the complainants setting out comments on the Editorial Adviser's report
 - comments on the Editorial Adviser's report from BBC Scotland
- A summary of the points raised by the complainants: challenging the Head of Editorial Standards' decision not to proceed with some of the points of appeal; and commenting on the Editorial Adviser's report.

1. The Committee's decision regarding whether to proceed with some of the points raised on appeal

The Committee noted and agreed with the decision of the Head of Editorial Standards not to proceed with: the complaint that the programme could have a deleterious effect on the finances of Celtic plc and its shareholders; and the complaint that stage 1 and stage 2 responses were not timely. It noted that the Head of Editorial Standards' decision on these points had not been challenged.

The Committee then considered the complainants' challenges to the Head of Editorial Standards' decision not to proceed with some of the points of appeal.

i. The reference to the singing of sectarian songs in the plural was inaccurate.

The Committee noted the Head of Editorial Standards' reasons for deciding this point of appeal did not qualify to proceed, namely:

- the Executive had acknowledged that the presenter's reference to songs in the plural was an inaccurate paraphrase and this issue was therefore resolved
- in any event this inaccuracy was not particularly significant, the key issue being not the number of songs that were sung but whether there had been any sectarian singing at all
- the BBC had not classified *The Soldier's Song* as sectarian either during the programme nor in subsequent correspondence.

The Committee also noted the arguments raised by the complainants challenging the decision not to proceed with this point of appeal, for example:

- the reference to songs in the plural gave the impression that a repertoire of sectarian songs was heard and that *The Soldier's Song* was one of the songs being referred to as sectarian
- BBC Scotland had stated in correspondence that one of the songs in question was *The Soldier's Song*
- an acknowledgement of the inaccuracy by the ECU does not constitute an apology.

The Committee noted that, whilst the Head of Editorial Standards had said that the BBC had not classified *The Soldier's Song* as sectarian in correspondence with one complainant, the Head of Public Policy and Corporate Affairs, BBC Scotland, had initially asserted that the songs noted by the production team were *The Boys of the Old Brigade* and *The Soldier's Song*, and then subsequently stated that the song in question was the former and not the latter. The Committee noted that the ECU and BBC Scotland had made it clear in subsequent correspondence that the song in question was *The Boys of the Old Brigade*. The Committee agreed that in any event, the key issue was whether or not there had been any sectarian singing, not the number of sectarian songs that had been sung.

The Committee noted BBC Scotland's statement, in its response to the Editorial Adviser's report, that it had offered a clarification but not an apology on this issue. In the Committee's view, although the reference to songs in the plural was an unfortunate slip of the tongue for which an early apology would have been appropriate, it was not a serious factual error, and therefore this point of appeal had no reasonable prospect of success. The Committee noted that the Trust and the Executive were engaged in an ongoing dialogue about the desirability of offering timely apologies, where this is appropriate.

The Committee decided that this point of appeal did not have a reasonable prospect of success and should therefore not proceed for consideration.

The Committee decided not to proceed with the appeal on this point.

- ii. The presenter's use of the phrase "the Celtic supporters ..." implied that all Celtic supporters present at the match were singing sectarian songs, which was inaccurate.***

The Committee noted the Head of Editorial Standards' reasons for deciding this point of appeal did not qualify to proceed, namely that:

- the use of this phrase did not imply that each and every Celtic supporter present had been singing sectarian songs, as such an implication would have been self-evidently hyperbolic and absurd - the phrase "the Celtic supporters" served to distinguish Celtic supporters from those of Motherwell

- if viewers remained in any doubt, the studio guest's subsequent appeal to "good fans" to "boo them out, to drown them out" clarified that a minority of supporters was involved in the sectarian singing
- taken in context, the statement would have been understood by viewers to mean that some but not all Celtic supporters had been engaged in the singing.

The Committee noted the issues raised by the complainants challenging the decision not to proceed with this point of appeal. For example, some complainants argued that the presenter implied that most, if not all, Celtic supporters were singing sectarian songs, and this statement was not qualified to clarify that this was a reference to a minority of supporters. Others felt that the presenter intended to give the impression that all Celtic supporters were singing sectarian songs, and nothing was done to dispel this impression. Some complainants argued that normally BBC Scotland would refer to "a section" or "a small number" of supporters but they did not do so in this case.

The points raised by the complainants did not persuade the Committee that this point of appeal had a reasonable prospect of success. The Committee noted that the phrase "the Celtic supporters" had been uttered in the course of a live, unscripted discussion. Although the presenter could have been more precise by referring to "a section of" the Celtic supporters, the Committee concluded that, taking the statement in context, it would have been clear to viewers that the presenter had not intended to refer to all Celtic supporters present at the match. The Committee therefore decided that this point of appeal did not have a reasonable prospect of success and should not proceed for consideration.

The Committee decided not to proceed with the appeal on this point.

iii. Celtic supporters had been defamed and treated unfairly.

The Committee noted the Head of Editorial Standards' reasons for deciding this point of appeal did not qualify to proceed, including:

- any complainant seeking to establish a breach of Editorial Guideline 6.1 on Fairness must show they have personally suffered unfairness
- the statement "the Celtic supporters" would not have been construed by viewers as denoting each and every Celtic supporter who was present at the match
- as the comments made did not refer to any identifiable individual she could not see that there had been a slur on any individual complainant's reputation or any breach of the guidelines on fairness – nor could she see any complainant was "tarnished by association"
- so far as any potentially unfair treatment of organisations is concerned, the Celtic Supporters' Clubs listed on the Celtic FC website could, for example, properly be described as "organisations", whereas "Celtic supporters", referred to generically, could not; the broadcast did not make mention, express or implied, of any such organisations, and no such organisation has complained that it was treated unfairly.

The Committee noted the complainants' challenges to the Head of Editorial Standards' decision not to proceed with this point of appeal and their arguments that the reputation of Celtic supporters had been damaged by the comments made by the presenter, and that Celtic supporters had been treated unfairly.

The Committee noted its earlier conclusion that, taking the statement in context, it would have been clear to viewers that the presenter had not intended to refer to all Celtic

supporters present at the match. The Committee agreed with the Head of Editorial Standards' interpretation of Guideline 6.1. In the Committee's view, no individual complainant was able to show that the statement, if inaccurate, had referred to them, nor that they personally had suffered unfairness as the result of any breach (if proven) of the Editorial Guidelines on Fairness, Contributors and Consent. The Committee could not see that there had been a slur on any individual complainant's reputation as the comments made did not refer to any identifiable individual. For these reasons the Committee decided that this point of appeal did not have a reasonable prospect of success and should not proceed for consideration.

The Committee decided not to proceed with the appeal on this point.

iv. The BBC had broadcast an inaccurate statement of which it had no proof, and had therefore reported hearsay as fact; moreover, both the message conveyed to the studio and the presenter's statement in its entirety was inaccurate.

The Committee noted the Head of Editorial Standards' explanation that the presenter had made it clear to the audience that his comments were based upon information that had been supplied to him and viewers would have been able to accord those comments the appropriate weight.

The Committee noted the issues raised by the complainants challenging the decision not to proceed with this point of appeal. For example, some complainants argued that the presenter and the BBC treated the statement as fact and no doubt was cast as to its authenticity - the words "allegedly" or "possible" were not used. It was argued that the weight accorded to the statement by viewers is a matter of speculation. The Committee also noted that some complainants had asked for confirmation of who heard the singing, who determined it as "wrongful", and under what pre-arranged guidance they had determined the song was wrongful. One complainant argued that the presenter had acted outside Editorial Guideline 3.1 which states:

where appropriate to the output, we should: gather material using first hand sources wherever possible; check and cross check facts; validate the authenticity of documentary evidence and digital material; corroborate claims and allegations made by contributors wherever possible.

The Committee noted that the Head of Public Policy and Corporate Affairs, BBC Scotland, had stated in correspondence that the information provided to the presenter that there was sectarian singing had been offered by the BBC programme production team. The Committee also noted that the presenter prefaced his remarks with the words "those outside who can hear the songs being sung", which indicated that the source of the information was external to the studio. It further noted the wording of Editorial Guideline 3.2.2, which states:

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.

and of Editorial Guideline 3.4.1, which states:

We should try to witness events and gather information first hand.

As the information had been sourced from BBC staff and gathered first hand, the Committee recognised that it was well sourced and not based on hearsay, and decided that this ground of appeal had no reasonable prospect of success and should not proceed for consideration on appeal.

The Committee decided not to proceed with the appeal on this point.

- v. The ECU delegated its judgement to the Strathclyde Police by unquestioningly accepting its view on the definition of "sectarian".***

The Committee noted that the Head of Editorial Standards had considered that the ECU did not delegate its judgement but merely cited the police's view in support of its argument. It also noted one complainant's argument that the ECU did unquestioningly accept Strathclyde Police's judgement, which (it was argued) is not backed by law.

The Committee noted that the Police were but one of a number of sources that the ECU had cited in support of its decision. In the circumstances, there was no evidence to suggest that the ECU had delegated its judgement to Strathclyde Police.

The Committee decided that for the reasons discussed above, this point of appeal did not have a reasonable prospect of success and it should not proceed for consideration.

The Committee decided not to proceed with the appeal on this point.

- vi. It was inappropriate for the BBC to have consolidated complaints, and the Head of Editorial Standards' decision had failed to address all the issues that had been raised.***

With regard to the consolidation of complaints, the Committee noted that, if a large number of complainants complained about a specific action, paragraph 5.2(c) of the Complaints Framework allowed the Executive to compile a summary of the range of issues raised and to consider complaints together across the full range of issues identified. In light of the large number of complaints, and having itself decided that appeals in this complaint be consolidated in accordance with paragraph 5.3(e) of the Complaints Framework, the Committee agreed that this point did not have a reasonable prospect of success. With reference to the complaint that the BBC's consolidated responses had not addressed certain issues that complainants had raised, the Committee noted that the unaddressed issues in question had not been specified. In the Committee's view, the BBC's consolidated responses had addressed all the issues that were material and therefore this point of appeal did not have a reasonable prospect of success and should not proceed for consideration.

The Committee decided not to proceed with the appeal on this point.

- vii. The complaints process was too complex, as different aspects of the same complaint had to be addressed to different parts of the BBC.***

With regard to the complexity of the complaints process, the Committee noted the arguments that the BBC's complaints procedures were time-consuming, confusing and involved. The Committee also noted that:

- the Trust's Chairman, Lord Patten, had undertaken in his July 2011 Review of BBC Governance that the Trust would address the complaints and compliance systems to make them faster, simpler and more transparent (see: http://www.bbc.co.uk/bbctrust/assets/files/pdf/about/how_we_govern/bbc_governance.pdf)
- a new Chief Complaints Editor would co-ordinate the Executive's handling of complaints
- the BBC website would include a corrections page

- the Trust would publish a guide explaining where complainants should go to complain
- the Trust had undertaken to clarify the test it applied when assessing appeals.

As steps to address this issue had already been identified by the Trust, and proposals are being made upon which it is anticipated that (among other matters) licence fee payers will be consulted, the Committee did not consider this a matter of substance, noting that it would not be cost effective or proportionate for this point to proceed to appeal.

The Committee decided not to proceed with the appeal on this point.

viii. The ECU should have referred operational matters not to the Trust but to the Executive Board.

The Committee noted that the Head of Editorial Standards had explained that the complaints regarding the alleged change in editorial policy, and means by which the message was reported to the production team, concern operational matters which are the responsibility of the Executive Board. It noted that some complainants had complained that the ECU should have referred these matters to the Executive Board rather than the Trust.

The Committee considered that this complaint did not raise a matter of substance, because the suggestion that these matters should have been referred to the Executive Board seemed not to take account of the different roles of the Trust and the Board. In her letter, the Head of Editorial Standards had clearly meant that such matters are the “responsibility” of the Board in the sense that, under the Royal Charter (e.g. articles 7, 9 and 38), the Board is in charge of the BBC’s day-to-day management and so ultimately answerable for operational decisions. The complaints framework does not provide for the ECU to refer specific complaints to the Board, because it is the role of the Trust to be the final arbiter in appropriate complaints, not the Executive Board. The Committee agreed that, conversely, the Trust’s role was not to consider operational issues as such. The Committee noted, however, that if, in considering any of the appeals substantively, it concluded that there had been a breach of the Editorial Guidelines, it was open to it to refer in its finding to any operational issues that it considered had contributed to the breach, and seek a response from the Executive Board. The Committee also noted that the ECU was right to inform complainants that they could request an appeal to the Trust, and that the ECU could do so without purporting to usurp the Trustees’ judgement as to which issues should or should not, form the basis of such an appeal.

The Committee decided not to proceed with the appeal on this point.

4. The appeal

Having decided not to uphold any of the complainants’ challenges to the Head of Editorial Standards’ decision not to proceed on some of the appeal points, the Committee went on to consider the appeal on accuracy and impartiality.

In reaching its decision the Committee took due account of all the available evidence set out above, including (but not limited to) the Editorial Adviser’s report and so far as admissible, the subsequent submissions from the complainants and the BBC programme team.

The Committee noted that some complainants had challenged the admissibility of comments made by BBC Scotland in response to the Editorial Adviser’s report, and that some complainants considered that these comments were the submission of new material

and new arguments by BBC Scotland late in the process and following the investigation. The Committee decided that it would consider the admissibility of the points raised by BBC Scotland and challenged by the complainants if, and only to the extent to which, the Committee intended to rely on such points when making its decision on this appeal.

The Committee also considered whether any of the points raised by the complainants or BBC Scotland in response to the Editorial Adviser's report required further investigation. It noted that complainants had argued:

- the Committee should watch footage of the Scottish League Cup Final in addition to the match in question prior to considering the appeal
- the Editorial Adviser's report should include more information on the coverage of the behaviour of Motherwell supporters, and the assertion of the Head of the ECU that it would be reasonable to focus on the behaviour of Celtic supporters
- the Editorial Adviser's report should include figures from Strathclyde Police for the number of arrests of Celtic supporters for singing sectarian songs
- the Editorial Adviser's report should include more information on Rangers supporters' behaviour.

The Committee did not consider it necessary for there to be any additional investigation, or further information added to the Editorial Adviser's report, prior to considering the appeal, as it was satisfied that it had adequate information to reach a decision on the appeal on accuracy and impartiality.

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.

2. Applicable BBC Guidelines

Section 3 – Accuracy

3.1

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

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

Therefore, we do all we can to achieve due accuracy in all our output, though its requirements may vary...

Accuracy is not simply a matter of getting facts right. If an issue is controversial, relevant opinions as well as facts may need to be considered. When necessary, all the relevant facts and information should also be weighed to get at the truth.

Where appropriate to the output, we should:

- gather material using first hand sources wherever possible
- check and cross check facts
- validate the authenticity of documentary evidence and digital material

- corroborate claims and allegations made by contributors wherever possible.

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.

3.4.1

We should try to witness events and gather information first hand...

Section 4 – Impartiality

4.1

Impartiality lies at the heart of public service and is the core of the BBC's commitment to its audiences. It applies to all our output and services - television, radio, online, and in our international services and commercial magazines. We must be inclusive, considering the broad perspective and ensuring the existence of a range of views is appropriately reflected.

The Agreement accompanying the BBC Charter requires us to do all we can to ensure controversial subjects are treated with due impartiality in our news and other output dealing with matters of public policy or political or industrial controversy. But we go further than that, applying due impartiality to all subjects. However, its requirements will vary.

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

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

4.2.3

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

4.2.4

We are committed to reflecting a wide range of opinion across our output as a whole and over an appropriate timeframe so that no significant strand of thought is knowingly unreflected or under-represented.

4.2.5

We exercise our editorial freedom to produce content about any subject, at any point on the spectrum of debate, as long as there are good editorial reasons for doing so.

4.4.5

We must apply due impartiality to all our subject matter. However, there are particular requirements for 'controversial subjects', whenever they occur in any output, including drama, entertainment and sport.

A 'controversial subject' may be a matter of public policy or political or industrial controversy. It may also be a controversy within religion, science, finance, culture, ethics and other matters entirely.

4.4.7

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

4.4.8

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

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

If such output contains serious allegations, a right of reply may be required, either as part of the same output, or in a connected and clearly signposted alternative.

4.4.13

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.

5. The Committee's decision on the appeal

i. Accuracy

The Committee considered whether the Editorial Guidelines on due accuracy had been complied with in the use of the word "sectarian" to describe the singing at the match.

The Committee noted the relevant exchange between the presenter and studio guest:

Presenter: I'd love to go through a football show without mentioning the word sectarian but I feel we have to at half time because those outside who can hear the songs being sung tell me that the Celtic supporters have been singing some sectarian songs during the first half despite Celtic going very public with their intimation that they wanted it completely stamped out. Lots of publicity for Rangers, punishment for Rangers from UEFA as well, it seems as if it's happening outside from the Celtic supporters, Pat.

Guest: I've actually had a few Celtic supporters during the week...I was very strong for mentioning it last week as well and I've had a few fans saying "Oh they're worse than us". Forget about that. If you sing those sort of songs at a football ground, do you know what? I'm going to mention it every time I hear it and I don't care if it's Celtic or Rangers or Hearts or Hibs or anyone. I will mention it and let's embarrass those teams. I was only slightly disappointed that there will be some who will sing it.

It's up to others, good fans, to boo them out to drown them out and maybe it's up to the police to go in and have a little word or two as well. But they're not listening to their club but their club are saying the right thing.

The Committee noted the complaint that the presenter and studio guest had failed to distinguish between conduct that some might consider offensive and conduct properly described as sectarian. It noted the points made by the complainants regarding the definition of "sectarian", for example, that the definition of "sectarian" employed by the BBC Executive was too broad, and the word "sectarian" can only refer to a dispute between sects.

The Committee noted the complaints that the ECU had: ignored legal precedent and relevant legislation in relation to the interpretation of "sectarian"; failed to consider the opinion of one anti-sectarian organisation which stated that *The Boys of the Old Brigade* does not infringe relevant legislation regarding sectarian behaviour; and failed to provide balanced and credible sources to support its decision.

The Committee noted that there was no consensus on the definition of "sectarian", and there was a wide range of opinions and debates surrounding the definition of "sectarian". This was demonstrated for example by the differing opinions set out in the Editorial Adviser's report. For example, the Committee noted differing interpretations of the word "sectarian" by two anti-sectarian charities – and that this difference of opinion was mirrored in a number of dictionaries. The Committee also noted that some complainants had suggested that a court case earlier in the year had created a legal precedent that the song was not deemed to be sectarian.

The Committee agreed that its role was to consider whether it was duly accurate for the presenter and studio guest to refer to "sectarian" singing in the context of live comment on a football match. The Committee noted that it was the role of the Courts, not the Committee, to interpret a legal definition of "sectarian". The Committee noted that the different opinions and debates on the definition of "sectarian" were useful context. However, it agreed that rather than seeking to precisely define the term "sectarian", a key consideration in deciding whether there had been due accuracy was the likely audience expectation and what the audience would have understood by the reference on *Sportscene* to "sectarian" singing.

The Committee agreed that the word "sectarian" was commonly used in Scotland to refer to cultural, political, religious and historical passions which inform rivalry between football teams in Scotland. It agreed that the reference to "sectarian" would be widely understood by the audience to refer to a range of behaviour and actions, including the singing of some songs at football matches. The Committee then considered the audience's likely expectation as to whether the singing of *The Boys of the Old Brigade* at the match fell within that range of behaviours and actions.

The Committee noted the complaints that *The Boys of the Old Brigade* was not a sectarian song, that there are differing opinions on whether this song is sectarian, and that the ECU's reliance on "add-ons" to say the song was "sectarian" was not relevant.

The Committee noted that it was not clear whether the "add-ons" had been sung at the match, and it did not consider this determinative to its decision on this appeal.

The Committee considered the context in which this song was sung, which was during a football match against Motherwell, by Celtic supporters. It noted that Celtic Football Club, through its Chairman, Chief Executive and Manager had on a number of occasions over many years – and on more than one occasion this year - stated their opposition to offensive singing, and it has also previously stated that this song was one which they did not wish to hear sung at their matches. It also noted that the police had named the song earlier this year as one which would lead to the arrest of anyone singing it. The Committee noted complaints that the police's view should only be taken into account if accompanied with evidence of actual arrests. However, the Committee was satisfied that it was appropriate to take this into account, given the police force had confirmed to the Editorial Adviser that this was still their view.

Having decided that the word "sectarian" is commonly used to refer to cultural, political, religious and historical passions which inform football rivalry; and having considered the context in which this song was sung, and the approach of Celtic Football Club and the police to the singing of this song at football matches, the Committee considered that it was likely that the audience would consider that the singing of this song fell within the range of behaviours and actions which are associated with being "sectarian".

The Committee then considered the context in which the presenter commented on "sectarian" singing. It noted the complaint that if the presenter intended to use the term "sectarian" he should have reflected the debate surrounding this term. It also noted the complaints that the reference to sectarian singing was not consistent with the reality of the match, and that the discussion of sectarian singing was not brief.

The Committee noted the nature and subject matter of *Sportscene* and that the reference to "sectarian" singing was made in the context of live comment on a football match during half time. It noted that the exchange regarding "sectarian" singing lasted just over a minute in a half-time summary lasting fifteen minutes. The Committee agreed that the audience would have expected analysis of the game and surrounding issues during this segment. The Committee noted that issues surrounding sectarianism and offensive behaviour in Scottish football had been the subject of debate during the course of the year and at the time of the match.

Having agreed that it was likely that the audience would consider that the singing of this song fell within the range of behaviours and actions which are associated with being "sectarian", and having considered the context in which the presenter referred to sectarian singing, the Committee did not consider that there had been a breach of the Editorial Guidelines on due accuracy.

With regard to the complaint that the presenter should have reflected the debate surrounding the term "sectarian", the Committee agreed that the audience would not have expected such an analysis when the exchange regarding "sectarian" singing lasted just over a minute in a half-time summary lasting fifteen minutes.

With regard to the complaints that the reference to sectarian singing was not consistent with the reality of the match, and that the discussion of sectarian singing was not brief, the Committee noted that it had already observed that the information about the singing had come from the BBC's own production team, and that it had already recognised that

this information was well sourced and not based on hearsay. Given the context of the discussion, the likely audience expectation that there would be an analysis of the game and surrounding issues, and the time spent discussing sectarian singing, the Committee agreed that the issue of sectarian singing had not been given undue prominence which did not accord with the reality of the match.

The Committee noted that in its first response, the BBC had acknowledged that it would have been more accurate for the presenter to have referred to "songs that some people believe to be an expression of sectarianism but which many people nonetheless find both offensive and provocative". The Committee noted the requirement that clear and precise language is used. However, this was a short exchange in a live broadcast and the guideline requirement was for the BBC to achieve due accuracy which was adequate and appropriate to the output, taking into account the subject and nature of the content, the likely audience expectation and any signposting that may influence that expectation. The Committee concluded that the broadcast had conformed to the Editorial Guideline on due accuracy.

Having agreed:

- that the word "sectarian" was commonly used in Scotland to refer to cultural, political, religious and historical passions which inform rivalry between football teams in Scotland
- the context in which the song was sung and the audience's likely expectation as to whether this fell within the range of behaviours and actions associated with being "sectarian"
- the nature and subject matter of *Sportscene* and the context in which the comments regarding "sectarian" singing were made

the Committee agreed that the BBC had not knowingly nor materially misled the audience by referring to "sectarian" singing. The Committee agreed there had not been any breach of the Editorial Guidelines regarding due accuracy.

The Committee noted that in making its decision on this point it was not necessary to consider the admissibility of the points made by BBC Scotland and challenged by the complainants as the Committee had not relied on such points when making its decision on this point of appeal.

Finding: Not upheld.

ii. ***Impartiality***

The Committee then considered whether there had been a breach of the Editorial Guidelines on impartiality.

The Committee noted that the complaints relating to impartiality were that:

- The BBC was partial against Celtic
- A number of complainants believed that describing singing by some Celtic supporters as "sectarian" in the broadcast of the Scottish Cup Final contrasted with the approach at the Scottish League Cup Final in March. They said that during that match, the singing of sectarian songs by Rangers supporters had been allowed to pass without comment. This they believed was evidence of a lack of impartiality by the BBC
- The Head of Public Policy and Corporate Affairs, BBC Scotland had stated that the discussion in this programme had taken place in the context of significantly

“heightened interest” in this issue, but this “heightened interest” had existed prior to this particular game

- The BBC was equating the behaviour of Celtic supporters with that of Rangers supporters
- The presenter and studio guest were not impartial, and made the comments about the singing deliberately to initiate a debate on the subject.

The Committee first considered whether the discussion of “sectarian” singing was a controversial subject to which particular requirements for impartiality apply under the Guidelines (see paragraph 4.4.5). The Committee noted the events highlighted in the Editorial Adviser’s report, and by the BBC Executive and the complainants, which demonstrated that the subject of sectarian behaviour around Scottish football was topical and the subject of much debate in Scotland. It also noted the fact that the Scottish Government published details of a new bill to tackle provocative behaviour in June, after the broadcast. While noting the high level of public and political interest in the subject of sectarian singing, the Committee agreed that there was consensus in Scotland (including, for example, amongst political parties, football clubs and the police) that sectarian singing at football matches was inappropriate. The Committee therefore agreed that in making comments condemning such behaviour the presenter and the studio guest were not making comments that were controversial, even if, as evidenced by the complaints received subsequently, the question whether it took place at the match in question was a matter of factual dispute.

The Committee considered the context of the discussion regarding “sectarian singing” and concluded that the decision to devote around a minute of the discussion to this issue was justified and was proportionate. It noted that the presenter raised the issue in the form of a fact-based question to the guest – and that the guest had responded. The Committee took particular note of that response; the guest had said:

Guest: I’ve actually had a few Celtic supporters during the week...I was very strong for mentioning it last week as well and I’ve had a few fans saying “Oh they’re worse than us”. Forget about that. If you sing those sort of songs at a football ground, do you know what? I’m going to mention it every time I hear it and I don’t care if it’s Celtic or Rangers or Hearts or Hibs or anyone. I will mention it and let’s embarrass those teams. I was only slightly disappointed that there will be some who will sing it.

It’s up to others, good fans, to boo them out to drown them out and maybe it’s up to the police to go in and have a little word or two as well. But they’re not listening to their club but their club are saying the right thing.

The Committee believed that the exchange had clearly distinguished opinion from fact. The Committee noted that the presenter’s question had referred to previous incidents involving Rangers and the answer from the guest had not specifically singled out the Celtic supporters. It had instead widened the circle of possible condemnation to three other named clubs and any other set of supporters who sing such songs.

The Committee therefore agreed that nothing was said in the exchange between the presenter and studio guest which demonstrates partiality against Celtic. It agreed that due impartiality had been achieved in this broadcast.

The Committee noted the complaint of lack of impartiality as the BBC had not commented on sectarian singing at the earlier Cup Final (Scottish League Cup Final). It noted the complainant's point that the "heightened context" which BBC Scotland had referred to, existed at the time of the earlier Cup Final.

The Committee agreed that, to achieve due impartiality, it was not necessary for there to have been references to the behaviour of Rangers fans at the earlier Cup Final. The Committee noted that the guidelines stipulate that the term "due" means that the impartiality must be adequate and appropriate to the output, taking into account the subject and nature of the content, the likely audience expectation and any signposting that may influence that expectation. For the audience of this broadcast, that had been achieved.

The Committee considered the claim by some appellants that the behaviour of the Motherwell supporters later in the match had also merited comment in order to achieve due impartiality. Taking into account what was actually said in the brief exchange at half time, the Committee did not believe that was the case.

The Committee noted the requirement that a broad range of perspectives should be provided across the BBC's output as a whole. It noted that BBC Scotland Sport had highlighted the issue of sectarianism and offensive chants as a whole on a number of occasions in the immediate past. The guidelines allow for the BBC to exercise its editorial freedom to produce content about any subject, at any point on the spectrum of debate, as long as there are good editorial reasons for doing so.

The Committee agreed that it had not seen any evidence to suggest that the presenter and studio guest had made the comments about the singing deliberately to initiate a debate on the subject. This particular exchange had not been about the issues surrounding sectarianism: it had been an observation and a response to something that had happened. The Committee also noted that for this reason the broadcast did not require a discussion regarding the wider context in order to achieve due impartiality. The Committee noted that it had already agreed that the audience would not have expected the half time discussion to give a detailed analysis of the issues surrounding sectarianism.

The Committee agreed that there had not been any breach of the Editorial Guidelines on impartiality.

The Committee noted that in making its decision on this point it was not necessary to consider the admissibility of the points made by BBC Scotland and challenged by the complainants as the Committee had not relied on such points when making its decision on this point of appeal.

Finding: Not upheld

Complaint handling

1. The background

BBC Radio 2's *Steve Wright in the Afternoon* features a regular astrology slot with Russell Grant, in which he reads horoscopes and offers advice to listeners based upon astrological predictions.

2. The complaint

This appeal relates to the handling of a complaint about BBC Radio 2's regular astrology feature, which the complainant considered potentially harmful. The Head of Editorial Standards at the BBC Trust determined that the substance of the complaint does not have a reasonable prospect of success before the Editorial Standards Committee (ESC), and the Committee endorsed that decision at its meeting on 1 December 2011. The Committee then proceeded to consider on appeal how the BBC had handled the complaint.

Stage 1

On 7 September 2010 the complainant emailed the BBC with her concern about Russell Grant's appearance on BBC Radio 2.

On 21 September 2010 BBC Audience Services replied, apologising for the delay in responding. They stated that:

"We apologise for the delay in replying to your email. We realise that our correspondents appreciate a quick response and we're sorry that you had to wait on this occasion."

The reply then turned to the substantive point of the complaint.

The complainant replied on 23 September 2010. She was dissatisfied with the BBC's response to the substantive issue.

On 19 October 2010 BBC Audience Services replied. They were sorry that the complainant had been dissatisfied with the initial response and provided a further response from the Editor of Programmes at BBC Radio 2.

The complainant was advised that, if she remained unhappy with this response, she was able to escalate her complaint to the Compliance Editor at BBC Radio 2.

Stage 2

On 20 October 2010 the complainant wrote to the Compliance Editor at BBC Radio 2. She remained concerned about the potential harm in offering advice to listeners based on astrological observations.

On 11 January 2011 the complainant contacted the BBC Trust, noting that she had not yet received a reply from BBC Radio 2.

On 25 January 2011 the Correspondence Manager at the BBC Trust Unit replied. He was sorry that the complainant had not yet received a response from BBC Radio 2. He had spoken to the Compliance Editor and understood that he had not received her letter of 20 October 2010. The BBC Trust Unit had therefore forwarded a copy of this letter to Radio 2 who would respond in the next few days.

On 4 April 2011 the complainant wrote to the BBC Trust once more, noting that she had yet to receive a reply from BBC Radio 2, despite sending a reminder dated 23 February 2011.

On 20 April 2011 the new Compliance Editor at BBC Radio 2 responded. His letter did not reference the delay in replying nor offer any apologies or explanation for it, but it stated his respect for the complainant's views on astrology and noted that a large number of people read their horoscopes each day.

No further information was provided about the next step in the complaints process.

On 26 April 2011 the complainant wrote to the Compliance Editor. She was not satisfied with his explanation.

The complainant also sent two emails to BBC Audience Services on 17 May 2011 to separate advisers who had previously handled her complaint at Stage 1. In one email she explained that she had appealed to the Trust. In the second she explained that she had written to the person initially named as Compliance Editor at BBC Radio 2 [who had by now left the BBC] but had not had any response or acknowledgement. She asked if BBC Audience Services could chase this for her or advise on what she could do next. The Trust Unit does not have a record of a response to this email.

Appeal to the Trust

In her appeal to the BBC Trust of 13 July 2011 the complainant stated that she had not received a reply to the letter she had sent to the Compliance Editor for Radio 2 on 26 April 2011. The complainant noted that she had found the BBC's complaints procedure hard to follow and did not know how to progress her complaint further.

Following other correspondence the BBC Trust wrote to the complainant on 9 November 2011 advising her that the BBC Trust's Head of Editorial Standards had determined that the main point of her appeal (regarding astrology) did not have a reasonable prospect of success before the ESC. However, the Head of Editorial Standards did believe that the ESC should consider the element of the appeal that related to the BBC's handling of the complaint. In reaching this decision she had taken into account the fact that the BBC Editorial Guidelines require that "complaints should be responded to in a timely manner" (19.4.2).

3. Applicable Editorial Guidelines

The following editorial guidelines are applicable to this case:

Section 19 – Accountability

Feedback and Complaints

Our commitment to our audiences is to ensure that complaints and enquiries are dealt with quickly, courteously and with respect.

Any response to a complainant should inform the complainant of the next step in the process for taking the complaint further if applicable and where, if applicable, to pursue the complaint outside the BBC.

Complainants should be responded to in a timely manner.

Other guidance relevant to this case:

Protocol B2 (Complaints Framework)

A complainant/member of the audience who contacts the BBC at Stage 1 with a comment or complaint should be informed in the reply that there is a complaints process and that there may also be a way of pursuing a complaint outside the BBC.

Any response to a complaint should inform the complainant of the next step in the process for taking the complaint further if applicable and where, if applicable, to pursue the complaint outside the BBC.

BBC general complaints and appeals procedure

Stage 1: target response of ten working days for the initial response

Stage 2: target response of twenty working days

BBC editorial complaints and appeals procedure

Stage 1: target response of ten working days for the initial response

Stage 2: target response of ten working days to set out the editorial guidelines against which the complaint will be considered. Target of twenty further working days to complete the investigation (or 35 days for complex cases).

4. The Committee's decision

The Committee noted that BBC Audience Services had responded within ten working days to the complainant's initial email. Whilst BBC Audience Services had apologised for the delay in replying, the Committee accepted that this was in the interests of good customer service, as complainants appreciate a swift response. The BBC had met its target response date for initial Stage 1 complaints.

BBC Audience Services responded to the complainant's second email at Stage 1 after 18 working days. There is no KPI set for a second response at stage 1. Such replies usually require consultation with programme teams. The Committee accepted that internal referral to BBC Radio 2's Editor of Programmes for further information resulted in a fuller response to the complainant, which required more time to prepare.

The Committee noted that the responses sent at Stage 1 referred the complainant either directly to the next step in the process, or to online information about the complaints process, which included details on potential next steps.

At Stage 2 the complainant did not receive a response for twenty weeks, despite intervention by the BBC Trust Unit. When the response eventually arrived from BBC Radio 2 it did not contain an apology, nor a reason for the delay. It did not provide information about the next step in the complaints process.

The Committee noted the delays and lack of apology at Stage 2.

The Committee agreed that the handling of the complaint at Stage 2 of the process had fallen short of best practices and had been in breach of the BBC's guidelines on Accountability, which require that complainants are dealt with quickly, courteously and with respect. The Accountability guideline also requires that complainants are informed of the next step in the process for taking the complaint further, and this had not happened at Stage 2. The Committee therefore found that the guidelines on Accountability had been breached at Stage 2 of the process.

The Committee wished to apologise to the complainant on behalf of the BBC for her experience in pursuing the complaint.

Finding: upheld

Rejected Appeals

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

Complaint handling

The complainant appealed to the Editorial Standards Committee following the decision of the Head of Editorial Standards, BBC Trust, not to accept his complaint on appeal.

Stage 1

The complainant wrote to the BBC about two articles on the BBC website which he said were trying to sway the public and influence the outcome of a question about religion on the census that was due to be completed shortly. The first article entitled "Two-thirds of Britons not religious, suggests survey" was published on 21 March 2011. The second, "Religion may become extinct in nine nations, study says", was published on 22 March 2011.

BBC Audience Services responded saying they could not see why the BBC would be trying to alter the outcome of the census. The publication of the article on 22 March 2011 coincided with the presentation of a paper on the subject to the American Physical Society.

Stage 2

The complainant wrote to the BBC's Editorial Complaints Unit (ECU), citing two additional articles which had appeared on the BBC website earlier in March and also in February. He said the BBC was attempting to manipulate responses to the census question on religion by drawing attention to the "No religion" box on the form. The complainant said the articles gave extensive coverage to the British Humanist Association, but none to any Christian, Buddhist or Hindu organisations. The complainant said religion was a controversial subject and outlined the BBC editorial guidelines he felt had been breached.

The ECU Complaints Manager said the complaint was beyond the ECU's remit: impartiality across a range of output, choice of what to include in an item and the timing of its publication were editorial decisions, responsibility for which lies with news management. The complaint was referred to the Head of Accountability for BBC News.

The Head of Accountability addressed each of the articles cited by the complainant, noting where a Christian had been included on one occasion, explaining the link to the scientific conference on another and pointing out there had been additional online articles which addressed the religion question in the census, including one about Pagans and another reporting how Muslims in Wales were being encouraged to tick the religion box.

Appeal to the BBC Trust

The complainant appealed to the BBC Trust, arguing that the items complained about were individual articles and therefore they fell within the ECU's remit. They had only been grouped together by the complainant because he was making the same complaint about all of them.

The Trust's Head of Editorial Standards wrote to the complainant explaining that the Trust does not adjudicate on every appeal that is brought to it, and part of her role is to check

that appeals qualify for consideration by the Trust (or one of its complaints committees) under the Complaints Framework.

The Head of Editorial Standards said that she had read the relevant correspondence and she considered that the appeal did not have a reasonable prospect of success and should not proceed to the Editorial Standards Committee of the Trust.

The Head of Editorial Standards said it was clear from the way the complaint had been framed that the complainant was questioning the impartiality of a range of BBC output and the timing of the articles. She noted the initial email at Stage 1 began by saying "the BBC is trying to alter the outcome of the census on the religion question by feeding articles such as this one prominently displayed on the front page of BBC News". She noted too the phrasing of the complaint to the ECU, "The BBC attempted to manipulate how people completed the Census question by running a whole series of articles in the weeks and days before the census completion date."

The Head of Editorial Standards agreed with the ECU that an allegation of intentional bias over a spread of output is a matter for the News division and is beyond the ECU's remit. She noted too that the Head of Accountability for BBC News had investigated the issues raised by the complainant, examining each of the four articles and analysing their content.

Having read the Head of Accountability's replies and the articles, the Head of Editorial Standards did not consider there was a reasonable prospect of success for the appeal and that it should not therefore proceed.

The complainant requested that the Trustees review the decision of the Head of Editorial Standards not to accept his appeal against the decision of the ECU not to consider his complaint. The complainant clarified that this appeal was against the ECU decision not to consider his complaint and not the substance of the complaint which was being addressed separately by BBC News. The complainant said that the items complained about were individual items and therefore fell within the ECU's remit. He said that the specific subject matter was completion of Box 20 on the census form. The complainant said that the guidelines on impartiality over time had not been followed and that this was therefore a matter for the ECU. The complainant listed the BBC Guidelines which he said had been breached by the series of articles.

The Committee's decision

The Committee was provided with the complainant's appeal to the Trust, the response from the Trust's Head of Editorial Standards, and the complainant's letter of appeal against the Head of Editorial Standards' decision. The Committee was also provided with the Stage 2 response from the Editorial Complaints Unit.

The Committee noted that it was not being asked to consider the substance of the complaint but whether or not the appeal against the decision of the ECU to pass the complaint to News management had a reasonable prospect of success.

The Committee noted that in escalating his complaint to the ECU the complainant had said:

"The BBC attempted to manipulate how people completed the Census question by running a whole series of articles in the weeks and days before the census completion date."

The Committee concurred with the view of the Head of Editorial Standards that it was clear from the way the complaint had been framed that the complainant was questioning the impartiality of a range of BBC output and the timing of the articles.

The Committee noted that an allegation of intentional bias over a spread of output is a matter for the News division and is beyond the ECU's remit. The Committee also noted that the Head of Accountability for BBC News had investigated the issues raised by the complainant, examining each of the four articles and analysing their content with regard to the requirements of the Editorial Guidelines. The Committee agreed that the appeal against the decision of the ECU not to take the complaint did not have a reasonable prospect of success.

The Committee was therefore satisfied that the decision not to proceed with the appeal was correct.

Coverage of the Easter Messages, BBC News, 24 April 2011

The complainant appealed to the Editorial Standards Committee following the decision of the Head of Editorial Standards, BBC Trust, not to accept his complaint on appeal.

The complaint

Stage 1

The complainant wrote to the BBC saying that a report by the BBC's Religious Affairs correspondent was biased in favour of the Roman Catholic Church, claiming that the time devoted to representatives of the Roman Catholic Church was "disproportionate and unfair to other denominations in Britain" and that the report gave the impression that Britain is a Roman Catholic country. The complainant said the report began with the Pope's Easter message, included references to the message of the Catholic Archbishop of Westminster and the head of the Roman Catholic Church in Scotland, but made no mention of the Easter messages of the leaders of other Christian denominations in Britain. The complainant's impression was that the Roman Catholic Church received a disproportionate amount of coverage overall in BBC News.

BBC Audience Services responded saying that coverage is not weighted in favour of any religion and although it is not possible or practical to reflect all the different opinions on a subject in one piece, editors ensure that over time they reflect the range of significant views, opinions and trends in their subject area. Audience Services pointed to the content of the item, saying that the dual themes of humanitarianism and threats to Christianity that appeared in the Easter messages from all three Catholic representatives meant it was not unreasonable to hear from them in this context. The newsworthiness of their messages was the primary reason for their inclusion on this occasion, not their denomination.

Stage 2

The complainant wrote to the Director of BBC News reiterating the points he had made earlier and repeating a request he had made at Stage 1 for details of how much time BBC TV News had devoted over the previous 12 months to the different Christian denominations in the UK.

BBC News said it was not possible to provide such information. However, the Religious Affairs correspondent had been asked to review his coverage in light of the complaint, and had provided a detailed response.

The Religious Affairs correspondent rejected the allegation that there had been any bias in coverage in favour of the Roman Catholic Church. He suggested that the Church of England had in fact been the dominant institution in terms of the numbers of stories covered and choice of interviewees and highlighted occasions on which other branches of the Christian faith had also featured in news coverage. The Religious Affairs correspondent explained that in covering stories about Christianity in general, the decision of whom to interview is based on how articulate, prominent or expert a contributor is, not necessarily on their denomination. On other occasions the choice is informed by the nature of the story itself and the relevance to a particular branch of the church.

The focus on Roman Catholic clergy in the story which is the subject of this complaint was made on the basis of the newsworthiness of the comments they made. The Religious Affairs correspondent noted that by contrast, the previous Christmas, it was the Archbishop of Canterbury's comments rebuking the banking industry which made up a large proportion of the day's reports, again on the grounds of newsworthiness.

BBC News rejected the complainant's assertion that coverage of the mainstream non-Anglican protestant churches in the UK was non-existent: it was a reflection of the news agenda, not of bias.

The complainant questioned how the criterion of newsworthiness had been applied in relation to the Easter messages, saying it appeared to have been based on which had the most controversial and topical content, rather than the effective communication of Christian teaching (as in the Archbishop of Canterbury's message).

Appeal to the BBC Trust

The complainant appealed to the BBC Trust saying it was superficial to justify the inclusion of extracts from three Roman Catholic sermons on the basis that they were newsworthy. He repeated the points he had made earlier and said he was concerned that the BBC was completely uninterested in institutions which have played, and continue to play, a major role in the religious history of this country.

The Trust's Head of Editorial Standards wrote to the complainant explaining that the Trust does not adjudicate on every appeal that is brought to it, and part of her role is to check that appeals qualify for consideration by the Trust (or one of its complaints committees) under the Complaints Framework.

The Head of Editorial Standards said that she had read the relevant correspondence and she considered that the appeal did not have a reasonable prospect of success and should not proceed to the Editorial Standards Committee of the Trust.

The Head of Editorial Standards noted the requirement in the BBC's editorial guidelines for due impartiality which states that it will be applied

"...to all subject matter and will reflect a breadth and diversity of opinion across the output as a whole, over an appropriate period, so that no significant strand of thought is knowingly unreflected or under-represented."

"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 echoed the point made at Stage 2, that BBC News include stories in news bulletins on the basis of what is newsworthy and stated it is not the role of BBC News to use the criterion of the effective communication of Christian teaching, as suggested by the complainant.

The Head of Editorial Standards noted the editorial justification applied by BBC News in choosing to focus on the messages from the Roman Catholic clergy on this occasion. She considered how the Pope spoke directly about the growing conflict in Libya, addressing a plea to European countries to show compassion to refugees. And that this came at a time when the refugee crisis and attempts to escape from Libya by boat had been prominent in the news. She noted the Roman Catholic Archbishop of Westminster, Vincent Nichols, also made reference to Libya when he reflected on wars and the Japanese Tsunami – to point out that death is always present in life – and that the third Roman Catholic element included was also in its own right newsworthy – the attack by Cardinal Keith O'Brien, the leader of the Roman Catholic Church in Scotland on "aggressive secularism". The Head of Editorial Standards noted that the introduction to the item referred to the Easter message of the Archbishop of Canterbury:

"The Archbishop of Canterbury has delivered his Easter message, urging Christians to seek happiness rather than prosperity. Dr Rowan Williams said there was more to life than gross national product..."

And she noted too that the Religious Affairs correspondent's report also included an extract from the Archbishop's sermon. The Head of Editorial Standards concluded the complainant had not made a case that the report was biased in favour of the Roman Catholic Church.

The Head of Editorial Standards then considered the complainant's assertion that non-Anglican Protestant churches in the UK – specifically the Methodist and other Free Churches – were not covered in the report and are ignored by the BBC.

The Head of Editorial Standards noted the Religious Affairs correspondent's comments:

“Although these views [those of the Archbishop of Canterbury] were reported, including a clip from the sermon of the Archbishop, they, and the other messages available from large Protestant churches did not match the force of the Roman Catholic sermons.”

The Head of Editorial Standards reiterated the point she had made earlier, namely that the BBC decides what to include on the basis of its newsworthiness and that it is not the role of the BBC to use the criterion based on the “effective communication of Christian teaching”.

In relation to the coverage of Christianity overall on BBC News, the Head of Editorial Standards recalled again the relevant section from the guidelines relating to impartiality, about the requirement to include a range of views “over time”. She noted the detailed assessment by the Religious Affairs correspondent of his own coverage which was provided to the complainant at Stage 2, which included several examples where views had been sought from representatives of non-Anglican Protestant churches:

“I reported the Coptic Christmas, non-Conformist Christian foster parents being banned by Derby City Council, and the problems faced by the Lutheran Church in Finland of thousands of members resigning each month...”

“Studying the record, I featured Anglican schools in a report on school assemblies, Lutheran and Anglican clergy in a report on the Norwegian shootings and the problem of evil, and the cases of non-Conformist Christians in a report about the Equality Commission announcing that it would support them in the European Court of Human Rights. A story about the Big Society for the Ten O'clock news was based on a number of churches in Philadelphia, of which I chose projects at an Anglican and Methodist church to feature. Reports on the reinvention of Christianity in Holland to meet the perceived demands of a secular society featured the Dutch Protestant Church. I also reported from the General Assembly of the (Presbyterian) Church of Scotland, and its debate about gay clergy.”

While the Head of Editorial Standards noted that some of the Religious Affairs correspondent's examples were from abroad and not from the UK, she nevertheless concluded the evidence did not support the complainant's claim that non-Anglican Protestant churches were ignored by the BBC.

The Head of Editorial Standards decided that the complainant had not made a case for the Executive to answer and that the complaint should not therefore proceed to appeal.

The complainant requested that the Trustees review the decision of the Head of Editorial Standards not to accept his appeal against the decision of the ECU not to consider his complaint. The complainant reiterated his original complaint that the BBC TV News report of the Easter message from the Christian Churches, on Easter Sunday, gave disproportionate coverage to the Roman Catholic Church, which was unfair to the other Christian denominations in the UK.

Noting that the BBC said that balance was to be achieved over “a reasonable period”, the complainant said that the BBC had not provided any details of the amount of time that had been given to coverage of the different Christian Churches over the past year, a period which he took to be reasonable. The complainant asked how the BBC could judge that balance had been achieved if it was unable to say how much coverage had been given to the various Christian denominations.

The complainant also challenged the criterion of “newsworthiness”, noting that there was no definition of what this meant and stating that it was applied subjectively and seemed to depend on whether the content was topical or controversial rather than the quality of the religious message.

The complainant repeated his concern that the non-Anglican Protestant Churches in the UK are ignored by the BBC, stating that the response from the BBC’s Religious Affairs correspondent confirmed this impression.

The Committee’s decision

The Committee was provided with the complainant’s appeal to the Trust, the response from the Trust’s Head of Editorial Standards, and the complainant’s letter of appeal against the Head of Editorial Standards’ decision. The Committee was also provided with the Stage 2 response from the Head of Editorial Compliance and Accountability for BBC News.

The Committee noted that the complainant had complained about the BBC’s coverage of the Easter messages on 24 April in particular and about the BBC’s coverage of non-Anglican Protestant denominations in general.

With regard to the coverage of the Easter messages on 24 April, the Committee noted the reasons given by the BBC’s Religious Affairs correspondent for the decision to focus on the messages from the Roman Catholic clergy on this occasion. The Committee agreed that the BBC had clearly explained the criteria for choosing what to include in its reports on that day on the basis of newsworthiness. The Committee noted that the complainant had taken issue with the BBC’s application of the criterion for “newsworthiness”; however, it agreed that such a judgement related to the creative and editorial output of the BBC and was therefore a matter for the BBC Executive and not the Trust. The Committee agreed with the Head of Editorial Standards’ view that it is not the role of BBC News to use the effective communication of Christian teaching as a criterion for judging what to include in its output. The Committee agreed that an appeal on this basis did not have a reasonable prospect of success.

With regard to the complainant’s point about the BBC’s coverage of the non-Anglican Protestant Churches in general, the Committee noted that the BBC’s religious affairs correspondent had provided examples of occasions where non-Anglican denominations had been included in his own coverage. The Committee agreed with the Head of Editorial Standards’ conclusion that these examples did not support the complainant’s claim that these Churches are ignored by the BBC.

The Committee noted that the complainant said that he had not been provided with information regarding the level of coverage given to non-Anglican Protestant Churches, and it noted that the BBC had said it was unable to provide such information. The Committee considered that the responses given to the complainant by the BBC were sufficient to demonstrate that there was not a case to be made with regard to bias by omission. The Committee agreed that the analysis which the complainant had requested was not required.

The Committee was therefore satisfied that the decision not to proceed with the appeal was correct.

Consent to use of footage

The complainant appealed to the Editorial Standards Committee following the decision of the Head of Editorial Standards, BBC Trust, not to accept his complaint on appeal.

The complaint

The complainant said he had consented to the use of footage in which he appeared on the basis of inaccurate information about the nature of the programme. He also felt his complaint had been poorly handled by the BBC, and that the Editorial Guidelines were not sufficient to cover the circumstances in which he found himself.

Stage 1

The complainant said that having been filmed walking through Spitalfields, the complainant was asked to sign a consent form. He had twice asked for the programme's name and been told that it was a "small business programme". After giving consent the complainant's friend spotted a contestant from *The Apprentice*. Had he known that the footage was for *The Apprentice*, the complainant would not have signed the consent form; he asked that his consent be withdrawn.

The complainant said he had some difficulty eliciting a response to his request despite leaving two telephone messages with the programme makers, Talkback Thames. He felt that he had not been able to make an informed decision to consent because he had been given inaccurate information about the nature of the programme.

The BBC's Executive Producer of the programme noted the complainant's request and agreed that the footage would not be included in the broadcast. The Executive Producer stated that the description the complainant had been given of the programme was accurate and that the complainant had separately been advised by Talkback Thames that due to the high profile nature of the series, there was a need for confidentiality, hence the reason he was not told the name of the programme when he requested it.

Stage 2

The complainant disagreed that a programme maker's desire for confidentiality "trumped a member of the public's right to be told the truth when asking a direct question for a good reason". The circumstances did not justify being misled.

The Controller, Entertainment Commissioning responded on behalf of BBC management. He noted the BBC had explained the reason for withholding the title of the programme. He said that the guideline requirements in relation to consent depended on the level of contribution, stating that in the case of the complainant, the appearance would have been fleeting. The Controller concluded the complainant had been provided with sufficient information on which to make an informed decision.

Appeal to the BBC Trust

The complainant appealed to the BBC Trust saying the BBC had failed to address the issues of principle and policy that he had raised. The BBC had not responded in a timely manner, had failed to address all aspects of the complaint and had been wrong to delegate the responsibility for responding to an independent production company.

In the complainant's opinion, *The Apprentice* was first and foremost a reality show. But the issue for the complainant was not the description but his view that he had not been

placed in a position where he could exercise his own judgement as to whether to give informed consent.

The Trust's Head of Editorial Standards wrote to the complainant explaining that the Trust does not adjudicate on every appeal that is brought to it, and part of her role is to check that appeals qualify for consideration by the Trust (or one of its complaints committees) under the Complaints Framework.

The Head of Editorial Standards said that she had read the relevant correspondence and she considered that the appeal did not have a reasonable prospect of success and should not proceed to the Editorial Standards Committee of the Trust.

The Head of Editorial Standards said for an appeal to be considered it had to engage the BBC's Editorial Guidelines. She explained that the guidelines can only be applied to the BBC's output, to the material that the BBC broadcasts or publishes and to activities relating to preparing that output. Because the complaint raised issues in relation to footage that the programme makers had expressly undertaken not to broadcast, the Editorial Guidelines had not been engaged by the appeal.

But the Head of Editorial Standards acknowledged it was a matter about which the complainant had strong feelings and to which he had devoted considerable time and effort in bringing to the BBC's attention. She also recognised that the appeal raised important issues in relation to fairness, consent and privacy and that it would be unhelpful not to offer the complainant a substantive response. The Head of Editorial Standards advised the complainant that she would consider the appeal on the hypothetical basis that the Editorial Guidelines had been engaged by the broadcast of the footage in which the complainant appeared, in order to illustrate how the BBC Trust addressed potential breaches of the relevant guidelines.

The Head of Editorial Standards considered the appeal against the Editorial Guidelines on Fairness, Contributors and Consent (section 6) and Privacy (section 7).

She also considered the BBC's Guidance on Informed Consent, which guides programme makers in implementing the corresponding section of the Editorial Guidelines, and which can be found here: www.bbc.co.uk/guidelines/editorialguidelines/page/guidance-consent-summary.

It was pointed out to the complainant that they are guidelines. Their primary purpose is to help programme makers comply with the BBC's editorial standards and they are not drafted with a view to being construed as statutory materials. A certain margin of appreciation, informed by accepted standards of current industry practice, is therefore permitted in their application.

Fairness, Contributors and Consent

Editorial Guideline 6.2.1 states:

We will be open, honest, straightforward and fair in our dealings with contributors and audiences unless there is a clear public interest in doing otherwise, or we need to consider important issues such as legal matters, safety, or confidentiality.

The Head of Editorial Standards believed that the programme makers were entitled under this Guideline to have withheld the title of the programme, notwithstanding the fact that the complainant had twice requested it.

Informed consent

In the absence of what might be termed full and frank disclosure of the programme's identity (this having been withheld for reasons of confidentiality), the complainant stated that he was unable to exercise his own judgement about whether to consent.

The relevant Editorial Guideline (6.4.1) states:

We should treat our contributors honestly and with respect. Our commitment to fairness is normally achieved by ensuring that people provide 'informed consent' before they participate. 'Informed consent' means that contributors should be in possession of the knowledge that is necessary for a reasoned decision to take part in our content.

Before they participate, contributors should normally know:

...

- *the context of the content.*

The corresponding Guidance on Informed Consent states:

The model of informed consent comes from medical practice. It encompasses freewill, capacity and knowledge. The individual concerned needs to have the capacity to come to a freely made decision, based on sufficient knowledge for them to come to a properly informed decision to agree or refuse. For the BBC therefore, achieving informed consent requires a potential contributor to be in possession in of sufficient knowledge about our plans for a reasoned decision to take part in our content.

Notwithstanding the differences of tone, style and emphasis that exist between (and indeed within) documentaries and reality programmes, the Head of Editorial Standards considered that they could both be classified as factual output.

Whereas it may be argued that the overriding aim of documentaries is to inform and of reality programmes to entertain, the Head of Editorial Standards' view was that both were essentially non-fictional in nature. When evaluating "the context of the[ir] content", it was legitimate and indeed appropriate to regard them as having a common context, not as belonging to discrete genres as the complainant argued. In the Head of Editorial Standards' view, the description of the episode in question (which concerned the setting up of a small flower business) as a "small business programme" was duly accurate. The fact that the activity was being filmed for *Junior Apprentice*, rather than a business programme under a different factual strand, was, in her view, immaterial to the question of whether the complainant was in possession of sufficient knowledge about the programme makers' plans.

Guideline 6.4.1 continues:

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

The corollary of this was that, the less significant the contribution, the less detail need be provided.

The corresponding Guidance on Informed Consent states:

The term 'contributor' covers a wide range of people taking part in content under very different circumstances. Therefore they have very different needs. Varying levels and types of knowledge will be required for an informed decision to be possible. ...

Had it been broadcast, the complainant's appearance would have been fleeting. The Head of Editorial Standards was therefore satisfied that the information he was given was appropriate and proportionate to the significance of his contribution.

The Head of Editorial Standards noted that there was nothing in the Editorial Guidelines or accompanying Guidance that required programme makers to give full and frank disclosure of the identity of the programme in question, or that implied that anything less than complete disclosure of the programme's identity vitiates informed consent.

The Head of Editorial Standards' concluded the complainant was in possession of sufficient knowledge about the programme makers' plans to have made a properly informed decision about his participation, had the footage of him been broadcast.

Privacy

Editorial Guideline 7.4.3 states:

When filming openly in public and semi-public places, we do not normally obtain express consent from individuals who are incidentally caught on camera as part of the general scene, unless they are engaged in an activity where they have a legitimate expectation of privacy that is not outweighed by a public interest in showing them.

Similarly, in relation to unrecruited participants such was the case here, the Guidance on Informed Consent states:

Unrecruited Participants are those who not been invited to take part in our output; they are individuals caught up without warning in the production process, for example during observational documentary making.

The requirement for consent is a judgement that balances the individual's legitimate expectation [sic] of privacy with the need to report in the public interest. ... [C]onsent need not normally be sought if the material is gathered in a public place and an individual is merely incidental or illustrative and not-named. ...

...

The following considerations can help when assessing the requirement for consent, whether it should be expressed or may be implied, and the level of information required.

- *Is the behaviour essentially public and the recording or filming for broadcast apparent? ...*

The Head of Editorial Standards believed that there was no requirement on the programme makers to obtain consent: the complainant was incidentally 'caught on camera' as part of the general scene; the material was gathered in a public place and the

complainant was merely incidental or illustrative and not named; walking through Spitalfields is behaviour that is essentially public; and the recording or filming for broadcast was not covert, but apparent.

Withdrawal of consent

Editorial Guideline 6.4.9 states:

Occasionally people who have willingly contributed to our output try to withdraw their consent prior to broadcast. Generally no one has the right in such circumstances to prevent their contribution being used, but we should listen carefully to any reasonable objections. ...

The corresponding section of the Guidance on Informed Consent states:

Generally, no contributor who has given properly informed consent has the right to withdraw it.

However, that does not mean we should simply disregard requests to withdraw from our output. Just because we have the right to use a contribution does not always mean that it is appropriate to do so – particularly when we are dealing with contributors already known to be vulnerable. We should normally invite the contributor to explain their concerns and then give them due consideration, taking account of the likely consequences.

We should also consider whether there has been a significant change in the circumstances of the programme or the contributor which would have affected their decision to participate had it been known at the time.

Nevertheless, where informed consent has been properly obtained, we should protect our rights to use the material. Our ability to make programmes and other content depend on a clear and binding consent process. On the rare occasions when a contributor's request to withdraw consent is granted, we should be clear of the specific and distinct circumstances that have made withdrawal appropriate.

For reasons explained above, the Head of Editorial Standards was satisfied that the complainant had given informed consent. That he subsequently changed his mind when he became aware of the identity of the programme did not amount to a significant change in circumstances such as to oblige the programme makers to grant his request to withdraw consent. Their decision to allow him to do so, thereby waiving the BBC's rights to use the material, was made *ex gratia*, and not because the Editorial Guidelines required it.

Complaint handling

The complainant received a response to his phone call to the production company 12 working days after he called. This was two days outside the 10 working day response target specified in the Complaints Procedures¹ and, while the delay was regrettable, it did not in the Head of Editorial Standards' view amount to a serious breach of the BBC's

¹http://www.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2010/complaints_fr_work_ed_complaints.pdf.

performance standards.

In relation to the complaint that it had been wrong to delegate responsibility to the independent production company, the complainant was advised this was normal procedure, particularly as the programme itself (whether made in-house or by an independent production company) is often best-placed to provide a detailed response. In this context, the Head of Editorial Standards noted that it was the complainant who contacted Talkback Thames in the first instance, and that he also received substantive Stage 1 responses from the BBC's in-house Executive Producer.

The Head of Editorial Standards concluded that, had the footage been broadcast and the Editorial Guidelines engaged, the complaint would nevertheless not have raised a matter of substance. In those circumstances, the Head of Editorial Standards would have determined that there was no reasonable prospect of success for the appeal, and that it was not appropriate that it proceed to the ESC for consideration.

The complainant replied saying that he appreciated the detailed response to his complaint but wished the Trustees to review the decision of the Head of Editorial Standards on one specific point. The complainant said that, irrespective of whether confidentiality was required by the programme team, he should not have been misled. The complainant suggested that the programme team could have told him that they were unable, on the grounds of confidentiality, to tell him the name of the programme. He could then have decided on that basis whether he was prepared to give his consent. The complainant suggested that the guidance given to programme makers should be amended to include such a provision.

The Committee's decision

The Committee was provided with the complainant's appeal to the Trust, the response from the Trust's Head of Editorial Standards, and the complainant's letter of appeal against the Head of Editorial Standards' decision. The Committee was also provided with the Stage 2 response from the Controller of Entertainment Commissioning.

The Committee noted that the complainant had requested it to look at one specific aspect of the complaint, namely the information provided to him by the programme team when obtaining his consent. The Committee noted the Head of Editorial Standards' view that the Guidelines on Informed Consent did not require the programme makers to obtain consent in this case. It noted the reasons she had cited for coming to this conclusion: the complainant was incidentally 'caught on camera' as part of the general scene; the material was gathered in a public place and the complainant was merely incidental or illustrative and not named; walking through Spitalfields is behaviour that is essentially public; and the recording or filming for broadcast was not covert, but apparent.

The Committee noted that the footage in question had not been broadcast, did not engage the Editorial Guidelines and therefore was not a matter which it was appropriate for the Committee to consider on appeal. Notwithstanding this, the Committee noted the complainant's suggestion that the precise position with regard to confidentiality should have been made clear to him. The Committee stated that it was sympathetic to the point made by the complainant regarding the guidance given to programme makers and would bring the matter to the attention of the BBC's Director of Editorial Policy and Standards.

The Committee was therefore satisfied that the decision not to proceed with the appeal was correct.

Radiation Levels at Fukushima, BBC Breakfast, BBC One, 16 March 2011

The complainant appealed to the Editorial Standards Committee following the decision of the Head of Editorial Standards, BBC Trust, not to accept his complaint on appeal.

The complaint

The complaint concerned alleged inaccuracies in an item about the levels of radiation found at the Fukushima nuclear facility in Japan following the earthquake and explosion there. During the course of the complaint issues also arose about the efficiency with which it was handled.

Stage 1

The complainant alleged that a comparison in the report between radiation contamination at Fukushima and Chernobyl was inaccurate in how it presented the relative levels of radiation.

BBC Audience Services responded by saying the figures stated in the programme were correct and that they were the same as those quoted by other media sources at the time. The response noted:

“The ‘Breakfast’ piece you refer to explained the differences between the release of radiation at Chernobyl and Fukushima; referring to the differing levels of atmospheric concentration, wind direction, distances from the reactors and strength of respective explosions. This was further explained by guest Dr Gerry Thomas - Director of Chernobyl Tissue Bank at Imperial College London.”

Stage 2

The ECU investigated two assertions:

- the programme gave an inaccurate and misleading impression that the fallout from Fukushima posed a greater threat to human health than the fallout from Chernobyl
- the programme had inaccurately stated that Chernobyl residents were exposed to 350 millisieverts of radiation.

The relevant section was the graphic sequence which preceded a studio interview with Professor Geraldine Thomas from the Chernobyl Tissue Bank. This was what was said:

- Bill Turnbull: One of the big questions facing Japan now is how much of a danger that leaked radiation from the Fukushima plant can pose to human health.
- Sian Williams: (Graphic: Natural radiation 2-3mSv per year) Radiation is measured in units, they're known as millisieverts. Natural radiation in the atmosphere accounts for around 2 to 3 millisieverts per year.
- BT: (Graphic: Increased cancer risk 100mSv) Medical research suggests that an increased risk of cancer is evident at an exposure level of 100 millisieverts.
- SW: (Graphic: Chernobyl 350mSv) At the world's worst nuclear disaster - Chernobyl in 1986 - residents were exposed to 350 millisieverts.
- BT: (Graphic: Fukushima plant 400mSv) But around the Fukushima plant, levels of up to 400 millisieverts have been recorded. Experts

point out that the risk though is diminished the further away you are.

The ECU agreed with the complainant that the levels of radiation at Chernobyl quoted by presenter Sian Williams were not consistent with the generally held view. Citing figures from the International Atomic Energy Agency (IAEA) and the United Nations Scientific Committee on the Effects of Atomic Radiation (UNSCEAR) the ECU agreed that the average dose for the 116,000 people evacuated from the 30km "exclusion zone" at Chernobyl was in the region of 30mSv, or less than one tenth of the figure given by the programme, and the average dose for the 270,000 residents of the "strict control" zones (areas with high levels of deposited Caesium 137) was in excess of 50mSv.

The ECU said the programme-makers had acknowledged their error and had asked that their apology be passed on to the complainant. But the ECU did not uphold the complaint as a breach of accuracy, stating the programme had not materially misled viewers on the issue of whether the fallout from Fukushima posed a greater threat than that from Chernobyl. The ECU noted that the programme had explained that the level of risk diminished the further away a person was. The ECU said:

"This would have indicated to viewers that the Fukushima recording was taken close to the nuclear plant rather than in a residential area (as in the case of Chernobyl) and that those living further away from the Fukushima plant would not have been exposed to such high levels of radiation".

The ECU said the subsequent interview with Professor Geraldine Thomas from the Chernobyl Tissue Bank would have corrected any potential misunderstanding and ensured that the level of fallout from Fukushima was put into context.

Sian Williams: Let's get some clarity with Dr Gerry Thomas who joins us this morning. She is the director of the Chernobyl Tissue Bank at Imperial College London. When we talked about that 400 milli-Sieverts at the Fukushima plant that was measured around one reactor and dissipated fairly quickly the further you went.

Geraldine Thomas: I spoke to a Norwegian reporter yesterday who told me that the next reactor over they were measuring at tenfold less, so it dissipated very quickly from where it was actually measured.

SW: How much danger are Japanese people in at the moment from a radiation leak?

GT: From the information that we have at the moment, very little danger. The right precautions have been taken, they've moved the population from the area closest to the plant which is where the biggest danger would be and they have given the right information to the population to avoid exposure by staying indoors, keeping doors and windows shut...there isn't evidence that there has been a lot of contamination, that we have at least, away from that very close in area around the reactors themselves, so at the moment, people should really not be worried.

The chances are this is a very low level release and we really mustn't panic the population out there but we don't have any evidence to suggest that this is going to be a serious consequence. And even if the worst case scenario happened and we had another Chernobyl, and it is highly unlikely that that is likely to occur, the right measures have been put into place, stable

iodine has been given to the population around the immediate vicinity of the plant.

Appeal to the BBC Trust

The complainant wrote to the BBC Trust stating that the accuracy of any item "cannot be judged to be reasonable if there is an error of fundamental fact within it":

"(the) verbal and visual comparison of numeric data between the two incidents was not only factually inaccurate but also misleading. As a result, a casual observer may well have concluded that the radiation levels at Fukushima were indeed higher than Chernobyl, the 'world's worst' disaster".

The ECU's claim that the subsequent interview with an expert was sufficient to ensure no misleading impression would be given was "an unreasonable and inadequate justification for not upholding (the) complaint".

The complainant also asked the Trust to consider the "series of shortcomings" in the handling of his complaint, including the failure to acknowledge the error for more than five months.

The Trust's Head of Editorial Standards wrote to the complainant explaining that the Trust does not adjudicate on every appeal that is brought to it, and part of her role is to check that appeals qualify for consideration by the Trust (or one of its complaints committees) under the Complaints Framework.

The Head of Editorial Standards said that she had read the relevant correspondence and she considered that the appeal did not have a reasonable prospect of success and should not proceed to the Editorial Standards Committee of the Trust.

The Head of Editorial Standards for the BBC Trust noted that there had been a factual error in the graphic and that it had been reiterated by the presenter's description of it. However, the Head of Editorial Standards agreed with the ECU that the material point being made in the item was that the Fukushima accident was likely to be less harmful than that at Chernobyl. She noted that the point was made by the presenter and also explained and set out in detail by the expert interviewee. The Head of Editorial Standards noted that the BBC had apologised for the error, as required by the guidelines. Nevertheless, the item as a whole was clear as to the relative dangers of the two incidents and that "further investigation and publication from the ESC would elicit little in the way of fresh facts and would not be value for money".

The Head of Editorial Standards then commented on the problems experienced by the complainant in pursuing his complaint through the system. She noted that the original response at Stage 1 had not addressed the complainant's point, that a substantive reply was not received for almost four months and that it was only when it reached the ECU that the error was acknowledged. Also noted was the breakdown in communication in parallel correspondence which the complainant had pursued via his MP with the BBC Executive.

The Head of Editorial Standards noted the guideline requirement that "complaints should be responded to in a timely manner" (19.4.2).

She offered an apology on behalf of the Trustees, both for the factual inaccuracy, and for the poor handling of the complaint. The Head of Editorial Standards advised that as a result of the BBC Chairman's review of the complaint system, a new senior position of Chief Complaints Editor had been created within the BBC. The complainant was advised that details of his complaint would be passed to the Chief Complaints Editor. The

complainant was also sent a link to the results of the Chairman's review², and also to the results of a "mystery shopping exercise" which looked at BBC complaints handling and had identified some areas of concern for the BBC Executive³.

The Head of Editorial Standards said it would be disproportionate to proceed to appeal: the complainant had been advised that the Trust was fully aware of the difficulties complainants had had in 2011 because of technical issues with the introduction of new complaints handling software and he had already received an apology from Audience Services. The Head of Editorial Standards said she considered the matter resolved, and that it would not be appropriate, proportionate or cost effective for the Trust to address an appeal in respect of complaint handling.

The complainant requested that the Trustees review the decision of the Head of Editorial Standards not to proceed with the appeal. The complainant said that he had complained about a specific statement made during the programme and not about the overall content of the item. The complainant said that it took over four months for the BBC to acknowledge that a factual error had been made, and had then concluded the complaint was not upheld. The complainant said he wished the Trustees to consider the circumstances in which a complaint about a specific factual error is found to be valid but the complaint is not upheld.

The Committee's decision

The Committee was provided with the complainant's appeal to the Trust, the response from the Trust's Head of Editorial Standards, and the complainant's letter of appeal against the Head of Editorial Standards' decision. The Committee was also provided with the Stage 2 response from the Editorial Complaints Unit.

With regard to the substance of the complaint, the Committee noted that the programme-makers had acknowledged that there had been an error and had apologised to the complainant for that error. The Committee noted that the Editorial Complaints Unit had not upheld the complaint as a breach of accuracy, stating the programme had not materially misled viewers on the issue of whether the fallout from Fukushima posed a greater threat than that from Chernobyl.

The Committee agreed with the Head of Editorial Standards that the material point being made in the item was that the Fukushima accident was likely to be less harmful than that at Chernobyl. The Committee noted that the complainant had objected to the overall item being considered but the Committee agreed that in judging whether the Guideline requirement for "due accuracy" had been met it was appropriate to consider the item as a whole. The Committee agreed that the item as a whole was clear as to the relative dangers of the two incidents and that further investigation by the Trust would not be appropriate.

With regard to the handling of the complaint, the Committee noted that the Head of Editorial Standards had apologised on behalf of the Trustees both for the factual inaccuracy and for the poor handling of the complaint. The Committee noted that the complainant had been advised of the outcome of the BBC Chairman's review of the complaint process, and had been told that details of his complaint would be passed to the Chief Complaints Editor. The Committee agreed that it would not be appropriate, proportionate or cost effective for the Trust to address the appeal in respect of complaint handling.

² http://www.bbc.co.uk/bbctrust/news/press_releases/july/bbc_governance.shtml

³ http://www.bbc.co.uk/bbctrust/our_work/other/complaints_framework.shtml

The Committee was therefore satisfied that the decision not to proceed with the appeal was correct.

The Andrew Marr Show, BBC One, 13 March 2011

The complainant appealed to the Editorial Standards Committee following the decision of the Head of Editorial Standards, BBC Trust, not to accept his complaint on appeal.

The complaint

The complaint concerns an interview with the jazz performer Gwilym Simcock on *The Andrew Marr Show*, in particular the presenter's introduction which said:

"Gwilym – you have had a huge success with your first album, a lot of people have been following you up and down the country for your concerts. But - one thing about jazz – I know Stephen Sondheim doesn't have jazz influences at all – is that – as I understand it, abroad, out of this country, you get quite a lot of twenty-something people watching, who come to jazz concerts. In this country, without being unkind, it tends to be older fat blokes."

Stage 1

The complainant wrote to the Director-General of the BBC objecting to Andrew Marr's interview with the jazz performer, Gwilym Simcock.

The complainant objected to Andrew Marr referring to jazz fans in the UK as "older fat blokes".

The complainant said this was inaccurate as women comprise 44% of the audience for jazz and, in the 15-24 age range, more people attend jazz concerts than classical music or opera.

The complainant also questioned why Gwilym Simcock played a Stevie Wonder piece rather than one of his own compositions. He said he felt that Gwilym Simcock was treated in "a cavalier manner".

The Director-General's reply included comments from the Editor of *The Andrew Marr Show*. The Editor explained that the programme is primarily a current affairs show and occasionally "there are very brief musical performances at the end of the programme aimed at lifting the tone". It was felt that giving Gwilym Simcock exposure on the show with an audience of 2 million people would help "boost both his profile and that of jazz music".

The Editor said that the interview was conducted in "a colourful, light-hearted way" and the comment about "older fat blokes" was prompted by a comment Mr Simcock himself made in an earlier press interview, which mentioned that he attracted a younger crowd when playing abroad.

The Editor went on to explain that it was a brief interview as the programme had a heavy news agenda that day covering the earthquake in Japan and unrest in Libya. The Editor did not believe Gwilym Simcock was treated in a "cavalier" manner as the intention "was briefly to introduce Gwilym to viewers and to give them a sense of his approach to music".

The Editor stated that Mr Simcock had agreed to play the Stevie Wonder track which appears on one of his albums and seemed entirely happy with the performance and interview "telling one of our producers that he was delighted with how the morning went".

The complainant responded saying that: the comment "old fat white blokes" was not conducive to raising the tone of the programme; the comment was inaccurate; and that Gwilym Simcock would not probably have chosen a Stevie Wonder tune in preference to his own material as he would earn royalties on his own material.

Stage 2

The Editorial Complaints Unit replied to the complainant at Stage 2 of the process. The ECU said it recognised that the complainant had found the comments offensive, but it pointed out that the programme-makers did not believe that Gwilym Simcock was offended in any way. The ECU reply said that it could understand how some viewers might have felt that Andrew Marr's comment about "older fat blokes" relied on an outdated stereotype, but it was picking up on comments made by Mr Simcock about the differences between audiences here and abroad. On that basis, the ECU concluded that the discussion would not have exceeded audience expectations and, therefore, did not constitute a breach of the standards as expressed in the BBC's guidelines.

The ECU took into account that the comment appeared to be a personal observation on Andrew Marr's part and was mitigated to a certain extent by its humorous nature. The ECU concluded that the audience would not have been materially misled by the comment and there was no breach of the guidelines on Accuracy.

The complainant said that he did not believe the ECU's letter addressed his original complaint. The ECU replied, explaining that the ECU's remit was to investigate complaints within the context of the BBC's Editorial Guidelines and some of the complainant's comments did not raise any issues in relation to the guidelines.

The ECU said that the complaint did raise issues concerning offensiveness and accuracy and so was considered in the light of the Editorial Guidelines on Harm and Offence and those on Accuracy. The ECU's previous letter of 30 August 2011 gave the reasons why the ECU did not consider that these guidelines had been breached.

The ECU asked if the complainant wanted the programme-makers to comment on those aspects of the complaint which did not involve the Editorial Guidelines, or if he wished to bring his concerns to the attention of the BBC Trust.

Appeal to the BBC Trust

The complainant wrote to the BBC Trust enclosing his previous correspondence. The complainant said he appreciated the ECU's work but felt that it was a matter for the Trust.

The Trust's Head of Editorial Standards wrote to the complainant explaining that the Trust does not adjudicate on every appeal that is brought to it, and part of her role is to check that appeals qualify for consideration by the Trust (or one of its complaints committees) under the Complaints Framework.

The Head of Editorial Standards said that she had read the relevant correspondence and watched the programme in question. She noted that this was a matter about which the complainant felt very strongly; however, she did not think that the appeal should proceed to the Editorial Standards Committee.

The Head of Editorial Standards explained that, when dealing with a matter of offence or accuracy in a BBC programme, it is judged against the BBC's Editorial Guidelines. These guidelines set out the standards required of everyone making programmes for the BBC. Listeners and viewers expect high standards from the BBC and the guidelines on Accuracy and Harm and Offence incorporate these principles. The Head of Editorial Standards quoted the parts of the Accuracy and Harm and Offence guidelines that were applicable in this case.

The Head of Editorial Standards noted that the editor of *The Andrew Marr Show* had explained that the Gwilym Simcock segment was a short entertainment interlude in a current affairs programme. Regular viewers of the show would have appreciated that Andrew Marr's introduction of Gwilym Simcock was only a brief conversation and not an

in-depth interview on the current state of British jazz. As such the majority of the audience would have acknowledged the light-hearted approach and not have expected a demographic breakdown of jazz audiences.

The Head of Editorial Standards said that this was a throwaway, light-hearted comment responded to by the interviewee in the same terms. In terms of due accuracy, therefore, she did not believe that the appeal had a reasonable prospect of success.

The Head of Editorial Standards noted that it had been explained that the comment about "older fat blokes" was a direct reference to Gwilym Simcock's own press interview. Andrew Marr did not use the adjective "white" in this comment. The Head of Editorial Standards said she could understand that some viewers may be offended by the use of stereotypes, but depending on the context it is not automatically offensive to use this kind of shorthand in references to certain groups. In this case, the humorous intent and Gwilym Simcock's reaction seem to have mitigated any potential offence.

Having considered the comments in relation to Generally Accepted Standards as outlined in the guidelines, the Head of Editorial Standards did not believe that this interview would have exceeded the majority of viewers' expectations. She said it was regrettable that the complainant felt the interview was of poor quality. However, she said that editorial and creative matters are the responsibility of the BBC Executive rather than the Trust according to the BBC's Charter, unless the Editorial Guidelines are engaged.

The Head of Editorial Standards added that the ECU had addressed the major part of the complaint in its replies, but she noted that the choice of music played by Mr Simcock did not fall within the remit of the guidelines. She said that, as Gwilym Simcock had already recorded the Stevie Wonder track on an album, it may have been considered a more accessible piece for non-jazz fans than one of his own compositions.

For these reasons, the Head of Editorial Standards did not consider that there was a reasonable prospect of success in referring the appeal to the ESC. She also did not believe it would be cost-effective or proportionate to take the matter further.

Lastly, the Head of Editorial Standards apologised for the confusion over the BBC's complaints procedure that had occurred during the complainant's correspondence with the BBC. She said that it would have been preferable if the complainant had been given the link to the website at an earlier stage of his complaint.

The complainant requested that the Trustees review the decision of the Head of Editorial Standards not to proceed with the appeal. He referred to the guidelines on Accuracy and reiterated his point that the audience for jazz comprises 44% women and that jazz has a higher attendance in the 15-24 age range than either classical music or opera. The complainant said the comment that the audience for jazz is older, fat blokes was not well sourced, not based on sound evidence, not thoroughly tested nor presented in clear, precise language.

The Committee's decision

The Committee was provided with the complainant's appeal to the Trust, the response from the Trust's Head of Editorial Standards, and the complainant's letter of appeal against the Head of Editorial Standards' decision. The Committee was also provided with the Stage 2 response from the Editorial Complaints Unit.

The Committee noted that the Head of Editorial Standards considered that the guidelines on Accuracy and Harm and Offence were applicable in this case.

With regard to Harm and Offence, the Committee noted that the Head of Editorial Standards had observed that the comment about "older fat blokes" was a direct reference

to Gwilym Simcock's own press interview. Andrew Marr did not use the adjective "white" in this comment. The Committee agreed with the Head of Editorial Standards' view that the humorous intent and Gwilym Simcock's reaction seem to have mitigated any potential offence, and the interview would not have exceeded the majority of viewers' expectations.

With regard to Accuracy, the Committee agreed with the view expressed by the Head of Editorial Standards that the majority of the audience would have acknowledged the light-hearted approach and not have expected a demographic breakdown of jazz audiences. The Committee agreed that this was a throwaway, light-hearted comment responded to by the interviewee in the same terms.

With regard to the statistics put forward by the complainant which he said contradicted the comment that jazz audiences in this country tend to be "older fat blokes", the Committee agreed with the Head of Editorial Standards that the consideration was that of due accuracy. In the context of the item and given the light-hearted nature of the discussion there was not a reasonable prospect of success for an appeal on the grounds that the Accuracy guidelines had been breached.

The Committee agreed that the additional comments made by the complainant about the programme did not fall within the remit of the Guidelines and were therefore not a matter for the Committee to consider.

The Committee was therefore satisfied that the decision not to proceed with the appeal was correct.

Steve Wright in the Afternoon, BBC Radio 2, 18 October 2010

The complainant appealed to the Editorial Standards Committee following the decision of the Head of Editorial Standards, BBC Trust, not to accept her complaint on appeal.

The complaint

The complaint concerns the broadcasting of a feature about astrology on BBC Radio 2's *Steve Wright in the Afternoon* and the broadcasting of astrology more generally. The complainant also appealed concerning the handling of her complaint, which was investigated separately and considered by the Editorial Standards Committee at its meeting on 1 December 2011.

Stage 1

The complainant emailed BBC Audience Services with her concern about Russell Grant's appearance on BBC Radio 2.

"It is outrageous that astrology should be broadcast by the BBC. Scientifically disreputable, it preys on vulnerable, perhaps unbalanced, people."

BBC Audience Services replied, apologising for the delay and setting out that:

"It is not always possible or practical to reflect all the different opinions on a subject within individual programmes. Editors are charged to ensure that over a reasonable period they reflect the range of significant views, opinions and trends in their subject area. The BBC does not seek to denigrate any view, nor to promote any view. It seeks rather to identify all significant views, and to test them rigorously and fairly on behalf of the audience."

The complainant was dissatisfied with this explanation, saying:

"There are many ideas/opinions/views which the BBC obviously does not explore, such as flat-earth theories, or racism, and astrology should be in such a category."

The complainant was concerned that Russell Grant's advice to listeners was potentially harmful as it was "...said to be astrologically indicated but without the slightest idea as to the person listening and their situation".

BBC Audience Services replied including a response from the Editor of Programmes at BBC Radio 2, who agreed that there was no scientific basis to astrology:

"However, this is clearly an entertainment show and does not purport to impart any scientific credibility. It's a popular feature of the programme, and astrology is actively enjoyed by many listeners. Those who ring in to take part are clearly aware of the boundaries and the content is taken within the style of the programme."

Stage 2

The complainant wrote to the Compliance Editor at BBC Radio 2 stating her concern about the potential harm in broadcasting advice to listeners based on astrological observations. She cited advice given by Russell Grant to a listener who wanted to know whether to attend a job interview or not. She said she considered that this was not entertainment but rather it was "dangerous and preying on vulnerable, perhaps gullible people".

The complainant said that broadcasting such material was against the BBC's "function of education and informing the listener".

After an exchange of correspondence in which the complainant chased a reply, the Compliance Editor at BBC Radio 2 responded. He said that he respected the complainant's views on astrology but noted that a large number of people read their horoscopes each day. He said the programme reflected that interest and added:

"With regard to the comment about Russell Grant advising a listener without knowing her situation, she requested the advice and clearly will have taken a personal view on the suggestion offered to her."

The complainant replied saying she was not satisfied with his explanation as, although the listener had requested advice from Russell Grant, "that doesn't mean that the BBC should allow nonsense to guide her". The complainant stated her concern that potentially vulnerable people were being used to "increase ... audience numbers".

Appeal to the BBC Trust

The complainant appealed to the BBC Trust referring to what she described as "the very disreputable, unscientific and potentially dangerous ideas of astrology". She added that, "not only is astrology contrary to Christianity, it is utterly discredited scientifically". The complainant said that she believed it would be in the public's benefit to ban astrology-related broadcasts. She wrote again to the Trust Unit to clarify that she was appealing not only concerning the specific Radio 2 broadcast, but also "about astrology wherever and whenever it might be broadcast by the BBC". The complainant also raised issues with the handling of her complaint.

In response to a request from the BBC Trust, the complainant forwarded correspondence she had had with Ofcom in which Ofcom considered the complainant's comments as part of a wider re-examination of its policy on "paranormal" practice in programming and advertising. Ofcom did not believe that there were grounds to uphold the complaint.

The BBC Trust wrote to the complainant with a response from the Trust's Head of Editorial Standards. The letter explained that the Trust does not adjudicate on every appeal that is brought to it, and part of the role of the Head of Editorial Standards is to check that appeals qualify for consideration by the Trust (or one of its complaints committees) under the Complaints Framework.

The Head of Editorial Standards had read the relevant correspondence and listened to the item from *Steve Wright in the Afternoon* and considered that the appeal did not have a reasonable prospect of success and should not proceed to the Editorial Standards Committee (ESC) of the Trust.

The Head of Editorial Standards addressed two key points the complainant made on appeal: firstly the general request that the BBC should not include astrology in its programmes; and secondly the content of the specific item featuring Russell Grant on Radio 2.

With regard to the complainant's objection to the BBC carrying any item about astrology wherever and whenever it might be broadcast by the BBC, the Head of Editorial Standards explained that the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC draw a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. She said that "the operational management of the BBC" is specifically defined in the Charter (paragraph 38, (1) (c)) as a duty that is the responsibility of the Executive Board, and one in which the Trust does not usually get involved. Decisions such as those relating to the coverage of astrology are day-to-day operational matters and as such are the responsibility of the BBC Executive and not for the Trust to consider.

The Head of Editorial Standards did not consider that there was a reasonable prospect of success for the complaint that the Steve Wright item breached the BBC's Editorial Guidelines.

The Head of Editorial Standards noted that the BBC's Editorial Guidelines on Harm and Offence say:

"At any time, demonstrations of exorcism, the occult, the paranormal, divination or any related practices in factual programmes must be treated with objectivity appropriate to the output. In all our output, such demonstrations must not contain advice about health, finance, employment or relationships which encourages people to make life-changing decisions."

She said that this has been carefully written with an understanding that astrology is a subject that forms part of daily life for many people who read their horoscopes in the newspapers or on the internet and that it may therefore be used in programmes for entertainment but that harm should be avoided.

The Head of Editorial Standards had listened to the item in question with care, given the complainant's concerns, and considered that the advice offered by Russell Grant was unexceptional advice that simply suggested the caller should spread her net wider in terms of looking for work. She concluded that it did not have the force of advice which would encourage the caller to make a life-changing decision. It was in line with an entertaining, light-hearted approach to astrology.

The Head of Editorial Standards therefore determined that there was no reasonable prospect of success for either aspect of the substantive appeal and that it was not appropriate that these aspects of the appeal should proceed to the Trust for consideration.

With regard to the handling of the complaint, the Head of Editorial Standards did consider that this matter should be put before the Trustees and this element of the complaint was investigated separately and considered by the Editorial Standards Committee at its meeting on 1 December 2011.

The complainant requested that the Trustees consider the Head of Editorial Standards' decision not to proceed with the appeal. The complainant said that her grounds for appealing this decision were that it was an important subject and she wanted it to be considered by more than one person. She also said that the Head of Editorial Standards had seen Ofcom's decision not to uphold the complaint before coming to her decision and the complainant wanted other people not so influenced to make a decision.

The Committee's decision

The Committee was provided with the complainant's appeal to the Trust, the response from the Trust's Head of Editorial Standards, and the complainant's letter of appeal against the Head of Editorial Standards' decision. The Committee was also provided with the Stage 2 response from the Editorial Complaints Unit.

The Committee noted the complainant's strong feelings about the subject of astrology and it agreed that it was an area which required careful treatment, as set out in the Editorial Guidelines. Having heard the broadcast in question, however, the Committee agreed that in this case the nature of the advice given to the caller was not such that it came under the category of "life-changing decisions" as referred to in the relevant guidelines on Harm and Offence.

With regard to the complainant's more general concerns about featuring astrology in the BBC's output, the Committee agreed with the Head of Editorial Standards that this was an

operational matter which was the responsibility of the Executive and therefore not a matter in which the Trust should get involved.

The Committee was therefore satisfied that the decision not to proceed with the appeal was correct.

Mic Righteous freestyle performance, BBC Radio 1Xtra, 4 December 2010

Complaints

Following the broadcast of a performance from Mic Righteous on BBC Radio 1Xtra in December 2010 the BBC received a large number of complaints about the decision by the production team to add a sound effect in order to cover a "free Palestine" shout by the artist.

Stage 1

In response to complaints on this issue, the Executive explained that BBC Radio 1Xtra and the BBC as a whole had a duty to be impartial. In this instance, the production team felt that Mic Righteous was expressing a political viewpoint which, if it had been aired in isolation, would have compromised impartiality. They also had in mind that, as this was a music programme, there would have been little expectation from the audience that matters of political controversy would be aired; and that the video of the programme would be available on third party websites in isolation from the programme.

The production team's motivation in editing the programme was therefore to move away from any potential claim of not maintaining due impartiality. However, the Executive acknowledged that this had not proved to be the case and they were looking to learn from how the issue had been handled.

Stage 2

The Head of Editorial Standards for Audio & Music investigated complaints on this issue further and wrote explaining that the BBC Radio 1Xtra producers were not expecting Mic Righteous, who had no obvious previous interest in Middle East politics, to make a political statement. Normally, if artists wished to express views, the BBC allowed this but made sure that a range of other views from artists were featured over time. This was in line with the BBC guidelines on Impartiality which state:

The audience expects artists, writers and entertainers to have scope for individual expression in drama, entertainment and culture. The BBC is committed to offering it. Where this covers matters of public policy, political or industrial controversy, or other 'controversial subjects', services should normally aim to reflect a broad range of the available perspectives over time. Consideration should be given to the appropriate timeframe for reflecting those other perspectives and whether or not they need to be included in connected and signposted output taking account of the nature of the controversy and the subject matter.

The producers judged on this occasion that, since it was not obvious when other views might be featured, it would be better to avoid getting into the subject of freedom for Palestine which was a contentious issue.

The Head of Editorial Standards for Audio & Music went on to say that he understood that BBC Radio 1Xtra had recently recorded an interview with Mic Righteous in which his song had been discussed and contextualised, and that they planned to play the song in full.

Appeals to the Trust

The BBC Trust received twelve appeals following the decision of the Head of Editorial Standards for Audio & Music not to uphold the complaints. The complainants said that editing out the word "Palestine" amounted to bias. Complainants also said that the decision to make the edit, and the reasoning provided by the BBC for this decision, was flawed.

The Trust's Senior Editorial Strategy Adviser replied to the complainants on behalf of the Trust's Head of Editorial Standards explaining that the Trust does not adjudicate on every appeal that is brought to it. She said that part of the role of the Trust's Head of Editorial Standards is to check that appeals qualify for consideration by the Trust (or one of its complaints committees) under the Complaints Framework.

The Senior Editorial Strategy Adviser said that the Trust had received a large number of appeals which raised the same substantive issues. She said that the Head of Editorial Standards had read each appeal and considered their respective merits individually in deciding whether each qualified for consideration by the Trust. Following her review, the Head of Editorial Standards did not consider any of the appeals submitted to the Trust, arising from this matter, to have a reasonable prospect of success. The Senior Editorial Strategy Adviser said that, in order to ensure administrative and cost efficiency, it had been deemed appropriate to send the Head of Editorial Standards' response to all of the complaints received on this issue, which she had decided do not qualify to proceed for consideration by the Trust.

The Senior Editorial Strategy Adviser explained that the Head of Editorial Standards had noted the matter had aroused strong reactions from many people and that this was evident from the correspondence received by the BBC. However, the Head of Editorial Standards considered that the BBC Executive had dealt with the complaints in a reasonable manner. The Head of Editorial Standards said that there was no question that the treatment of the issue of Palestine is a controversial matter which attracts widely differing views. She said that the normal forum for raising this issue would be a documentary or news programme where some explanation could be given of the background to the dispute and the different points of view. Given the circumstances of the BBC Radio 1Xtra broadcast, it was understandable, in the Head of Editorial Standards' view, that the production team should have decided to take the action which they did. She noted that the Executive had acknowledged that the BBC was looking to learn from how this had been handled and that the Head of Editorial Standards for Audio & Music had indicated that the song was likely to be played in full, with suitable contextualisation, in the future.

In the light of this, the Trust's Head of Editorial Standards did not consider that the appeals had a reasonable prospect of succeeding if the ESC were to consider them. The Head of Editorial Standards said that it would not be appropriate, proportionate or cost effective to proceed further with the appeals.

Nine of the complainants responded with a request for the Trustees to review the decision of the Head of Editorial Standards not to proceed with the appeals.

The main point made by complainants who challenged the decision of the Head of Editorial Standards was that the BBC Executive and Trust had ignored their central complaint, namely that by editing out the words "free Palestine", the BBC had demonstrated bias against Palestinians. Complainants argued that, because the occupation of Palestine is a matter of fact, and is viewed as a breach of international law and Palestinian human rights, there is nothing controversial about shouting "free Palestine". The BBC therefore need not have been concerned about whether a range of other views from other artists would be featured over time.

The Committee's decision

The Committee was provided with the complainants' appeals to the Trust, the decision of the Trust's Head of Editorial Standards, and the complainants' appeals against the Head of

Editorial Standards' decision. The Committee was also provided with the Stage 2 response from the Head of Editorial Standards for Audio & Music.

The Committee noted that the complainants all felt strongly that the decision to edit out the reference to Palestine had been incorrect, and noted the suggestion by some that it had demonstrated bias.

The Committee noted the points raised by the complainants, including the following comments:

- The specific complaint has been ignored: the well-known international legal position is that Palestine is occupied; that this is disputed by Israel does not make it controversial. Therefore there would be no need to give the alternative view for the purposes of impartiality.
- It is incorrect to say that Mic Righteous was expressing a political viewpoint. The lyrics containing the reference to "free Palestine" show that it was simply one way of saying "I've not sold out". It was the act of censorship rather than the words censored which was the political act.
- Since the statement "free Palestine" is neither contentious nor political, the obliteration of these words was an infringement of the artist's right to free speech.
- The BBC had wrongly censored the words "free Palestine", and this meant the BBC was not impartial.
- The Executive response to the complaint had stated that Palestine does not exist. This denies the existence of Palestine from the Bronze Age to the present day. It is a misleadingly partial account of the status of Palestine and is expressing an opinion on the Palestinian issue which the BBC Executive says it does not do.
- It is incorrect to say that there would be little expectation by the audience or producers that matters of political controversy would be aired. Hip hop and rap have been concerned with matters of political controversy since their inception, as has much pop music.
- The words "free Palestine" were part of an artist's composition. They were in no way inciting violence or denying the rights of any other population but rather highlighting the situation of people who are denied basic human rights in violation of all international conventions.
- The producer made the wrong choice in deciding to edit the programme and this evinced confusion over the nature and application of the BBC impartiality guidelines. In particular, the requirement for impartiality applies to BBC presenters and producers, not to artists and commentators. By intervening, the producer did not avoid the debate as he hoped but instead entered into it and gave it a much greater imbalance, slanted against Mic Righteous's views on Palestinians.
- The intent of the guidelines is that balance is served by including more material rather than erasing content. If the "free Palestine" shout was controversial, the BBC should have been able to find contrary artistic voices to balance it. By saying this was difficult, the BBC appears to be saying that the shout was not controversial.

- The Trust claimed that the appeal did not raise a matter of substance. However, the fact that the BBC Executive was considering compensatory measures (i.e. to broadcast the song in full, alongside an interview, at a later date) suggested that there was substance to the complaint.

The Committee agreed that it is for the Executive to decide what to include and what not to include in a broadcast, provided the result does not lead to a breach of the BBC's Editorial Guidelines. The Committee agreed that its duty was to assess whether the material as broadcast was likely to have been in breach of the BBC's Editorial Guidelines, in this case those relating to impartiality. The Committee therefore considered the material as broadcast and not the reasoning provided by the Executive for the decision to edit out the reference to Palestine.

The view of the Committee was that, while the BBC's treatment of the matter had perhaps been overcautious, the effect of removing the word "Palestine" did not render the material which was broadcast biased. The Committee noted that the Executive had acknowledged that it was looking to learn from the way the matter had been handled and that the BBC had said that the song would be likely to be played in full, with contextualisation, in the future.

With regard to the argument that the appeal raised a matter of substance, the Committee was mindful that the criteria for deciding whether an appeal is appropriate for consideration by the Trust are not the same as those employed by the Executive in considering its response to complaints.

The Committee agreed with the Trust's Head of Editorial Standards that the appeals would not have a reasonable prospect of success and that it would not be appropriate, proportionate or cost effective to proceed further with them.

Finally, the Committee noted that some of the complainants had asked for details of when the broadcast would be scheduled, and it agreed that this information, if available, should be provided to the complainants in the appeal along with the Committee's decision.

The Committee was therefore satisfied that the decision not to proceed with the appeals was correct.