

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

Pedigree Dogs Exposed

The complainant said that the BBC had failed to correct errors highlighted by an Ofcom adjudication regarding *Pedigree Dogs Exposed*, which was re-edited after the ruling for sale and broadcast abroad. She argued that the revised version was misleading and failed to comply with the Ofcom findings. The complainant was a contributor to the programme and is UK Breed Guardian for the South African International Breed Foundation.

The Committee concluded:

- that it had been imprecise of the programme to refer to Dermoid Sinus as “a mild form of Spina Bifida”.
- that the description of the ridge as a deformity, given by the RSPCA's Chief Vet in the programme, was an expression of his opinion and that his credentials were clearly given so that the audience could judge his status.
- that the description of the ridge as a deformity was no longer given additional weight and meaning by the erroneous suggestion that the ridge *was* a mild form Spina Bifida, as the script had originally said. (The re-edited script says that “the ridge *predisposes* the dogs to a mild form of Spina Bifida”.)
- that the programme should have given the complainant, who was a contributor, the opportunity to reply to the criticism from the RSPCA's Chief Vet and his allegation that the ridge was a deformity, and that not doing so amounted to a breach of the guideline on fairness.
- that there was no evidence to suggest that there had been a breach of the guideline on accuracy with regard to the figures for the incidence of Dermoid Sinus used by the programme.
- that the guideline on accountability had been breached in the handling of the complaint.

The complaint was partly upheld with regard to accuracy and upheld with regard to fairness and accountability.

For the finding in full see pages 7 to 13.

Pedigree Dogs Exposed

The complainant said the BBC had failed to correct errors following a partly upheld Ofcom adjudication. The complainant said that the BBC had misrepresented the Rhodesian Ridgeback breed and breeders in Great Britain and had misled viewers. The complainant claimed the re-edited programme was still linking the issue of “Spina Bifida” and “deformity”. The complainant also said that the re-edited version of the programme made it appear that the Rhodesian Ridgeback Club of Great Britain (RRCGB) was choosing to cull puppies and to breed from deformed dogs.

The Committee concluded:

- that it had been imprecise of the programme to refer to Dermoid Sinus as “a mild form of Spina Bifida”.

- that the description of the ridge as a deformity, given by the RSPCA's Chief Vet in the programme, was an expression of his opinion and that his credentials were clearly given so that the audience could judge his status.
- that the description of the ridge as a deformity was no longer given additional weight and meaning by the erroneous suggestion that the ridge *was* a mild form Spina Bifida, as the script had originally said. (The re-edited script says that "the ridge *predisposes* the dogs to a mild form of Spina Bifida".)
- that the programme should have given the complainant, who was a contributor, the opportunity to reply on behalf of the RRCGB to the allegation that the ridge was a deformity and the response should have been reflected in the programme, and that not doing so amounted to a breach of the guideline on fairness.
- that there was no breach of the accuracy guideline in stating that "some scientists suggest the problem would be virtually eliminated if breeders would ... breed from ridgeless dogs."
- that it would have been helpful to have outlined the change in the RRCGB's code of ethics at the beginning of the programme as well as the end, however, the endboard satisfied the requirements of the accuracy guideline.
- that this complaint had been under consideration for a lengthy period but there were complex and unusual circumstances which caused the delay and there was no breach of the accountability guideline in this regard.

The complaint was upheld with regard to fairness, upheld in part with regard to accuracy and not upheld with regard to accountability.

For the finding in full see pages 14 to 21.

File on 4, BBC Radio 4, 25 March 2008

The complainant, Anglo American, said that a Radio 4 current affairs programme, *File on 4*, first broadcast on 25 March 2008, breached the BBC's guidelines on impartiality and accuracy. The programme had examined the issue of platinum mining in South Africa and focused on Anglo American and its subsidiary in the region, Anglo Platinum.

The Committee concluded that:

- the programme had fulfilled the guideline requirement on accuracy and had achieved "due impartiality" in relation to the science on which it relied to present its allegations regarding water contamination. The programme had taken adequate steps to verify the validity of its primary source.
- in relation to whether the programme had given Anglo American sufficient detail of the allegations regarding water contamination in a timely manner to enable the company to make an effective response prior to transmission, the programme had made sufficient information available. There had been no breach of the guidelines.
- in relation to the complaint that the programme had reported unchallenged an allegation that the company had bribed people to relocate to make way for the new mine, the use of the word "bribe" on this occasion did not require a right of reply because it was not alleging wrongdoing, iniquity or incompetence.

The company's position had been accurately reflected in the programme in relation to the relocation package on offer.

- the programme had exercised proper editorial judgement and had not mislead the audience in relation to the complaint that the programme failed to reflect the views of the 90% of residents who had relocated and spoke only to the 5-10% who opposed the move. The programme accurately reported the numbers who had moved and what the company had done to help those who had been obliged to relocate.

The complaint was not upheld.

For the finding in full see pages 22 to 42.

Britain's Really Disgusting Food: Dairy, BBC Three, 9 November 2009

The complainant said that references in an episode of *Britain's Really Disgusting Food* to "sustainable" palm oil being "orang-utan friendly" and "100% sustainable" were inaccurate and not impartial.

The Committee concluded that:

- the programme should have provided a more thorough explanation of the complexities of this issue. It had therefore not been duly accurate in describing the palm oil used in the programme as "sustainable" and "orang-utan friendly" without qualification.
- it had not been necessary to include critical views of the Roundtable on Sustainable Palm Oil (RSPO) model in order for the programme to achieve impartiality and the programme had not failed to be duly impartial in this regard.
- concerning whether the programme was misleading with regard to the reference to "100% sustainable palm oil", this phrase was possibly open to interpretation but the presenter had made it sufficiently clear that he was referring to Mars' aim to move to using only sustainable palm oil. There had therefore been no breach of the accuracy guideline with regard to this line in the script.

The complaint was upheld in part with regard to accuracy but not upheld with regard to impartiality.

For the finding in full see pages 43 to 51.

Jeremy Paxman's *Guardian* item, 13 November 2010

The complainant said that, in an article published in the *Guardian* review section on 13 November 2010 about the toppling of a statue of Saddam Hussein in Baghdad on 9 April 2003, Jeremy Paxman had breached the Editorial Guidelines. The complainant said this was because the article was a one-sided view on a controversial issue, expressing a negative view of the Iraq War and the motives behind it.

The Committee concluded:

- regarding the use of the term "dodgy dossier" and the complainant's claim that its use in the context of the article had suggested there was something underhand and dishonest about the way the dossier had been compiled, the Committee

accepted that the term is in widespread use in the media and by politicians. Its use here was appropriate in the context of an article which was seeking to build an argument that not all in that war was what it first appeared to be.

- regarding whether the public's perception of the impartiality, integrity, independence and objectivity of the BBC had been undermined by the statement in the article that: "the cost (of the war) wasn't measured just in blood and treasure but in our ability ever again to trust governments", there was clear evidence that the public's trust in government has been negatively influenced by some aspects of the prosecution of the war. In reflecting this in his article, Jeremy Paxman had reached an evidence-based conclusion and was not advocating a personal view.
- regarding whether the article overall had expressed a wholly one-sided, anti-war viewpoint, the Committee noted the earlier decision by the Director of News to uphold two aspects of the complaint but did not believe that the article as a whole would have resulted in the undermining of confidence in the professional integrity of Jeremy Paxman or the impartiality of the BBC. Accordingly it did not accept there had been a breach of the guidelines on Conflicts of Interest with regard to the article overall.

The complaint was not upheld.

For the finding in full see pages 52 to 58.

Appeal Findings

Pedigree Dogs Exposed

1. The programme

Pedigree Dogs Exposed was first broadcast on BBC One on 19 August 2008. It identified serious issues affecting the health and welfare of pedigree dogs. It claimed that some pedigree dogs suffered from genetic diseases following years of inbreeding. The programme claimed that looks were emphasised over health when breeding dogs for dog shows. One of the breeds featured in the programme as having problems was the Rhodesian Ridgeback.

A fairness complaint had been made to Ofcom on behalf of the Rhodesian Ridgeback Club of Great Britain (RRCGB). Ofcom found that, when the programme alleged that the Rhodesian Ridgeback Club of Great Britain was not doing all it could about a condition called Dermoid Sinus, it did not fairly represent the research on the subject. An inaccurate description of the breed's ridge was likely to have unfairly compounded the impression that the Club was choosing to breed deformed dogs. The BBC subsequently published a summary of the Ofcom adjudication on its website on 9 December 2009 and broadcast the Ofcom finding on BBC One on 11 January 2010.

2. The complaint

The complainant said that the BBC had failed to correct errors highlighted by the Ofcom adjudication when *Pedigree Dogs Exposed* was re-edited after the ruling for sale and broadcast abroad. She argued that the revised version was misleading and failed to comply with the Ofcom findings. The complainant was a contributor to the programme and is UK Breed Guardian for the South African International Breed Foundation.

Stage 1 complaint

The complainant wrote to the Editorial Standards Committee (ESC) of the BBC Trust on 10 March 2010.

The complainant received a reply from the Adviser, Editorial Standards, BBC Worldwide. The Adviser, Editorial Standards said BBC Worldwide was responsible for the distribution of the programme *Pedigree Dogs Exposed* and so was responding in the first instance to the complainant. He said after the publication of Ofcom's ruling, BBC Worldwide had created an amended version of the programme which took account of those elements of the complaints which were upheld, and it was this amended version that was currently being distributed internationally. He added that the programme now included a postscript noting that changes had been made to various breed standards and codes of ethics.

Stage 2 complaint

The complainant exchanged correspondence with the BBC Trust in which she requested, and was provided with, the re-edited version of the programme. The complainant wrote to the BBC Trust again on 28 July 2010 saying that her complaint remained the same after watching the re-edited edition of the programme:

"The only discernible alteration was ... the reference to Ridgeless dogs sometimes having Dermoid Sinus..."

The complainant was also provided with a list of 18 countries where a licence to broadcast the programme had been acquired.

The Adviser, Editorial Standards, BBC Worldwide, wrote to the complainant on 15 October 2010. He apologised to the complainant and said there had been some confusion as to the nature and status of her complaint. He apologised that the complainant's letter of 10 March 2010 was not addressed at Stage 1 of the complaints handling process and went on to reply to several points made by the complainant.

The complainant replied saying that there seemed to be a reluctance to face facts that the Ofcom adjudication went against the BBC and the producers of the programme. She listed six points she wanted taken into consideration:

- That the ridge predisposed the breed to Dermoid Sinus was not scientifically proven
- That it was known that Dermoid Sinus was a form of Neural Tube defect
- That while Dermoid Sinus was recognised as a condition which occasionally was found in the Rhodesian Ridgeback, it was also found in other non ridged breeds of dogs
- That the ridge was a hair pattern factor and was not considered a deformity
- That it was yet to be established as a scientific fact that the ridge was a result of or caused a Neural Tube defect
- That Dermoid Sinus was not and had never been a hole boring down into the skull but expressed itself in the form of a recurring abscess usually found in the top line of the neck and occurring occasionally in a solid tissue form at the set of the tail

The Adviser, Editorial Standards, BBC Worldwide replied to the complainant on 23 December 2010 and said that he had reviewed her letter following the additional points she had made but BBC Worldwide still remained confident that the amended version of the programme met the Ofcom and BBC Editorial Guidelines requirements.

Appeal to the BBC Trust

The complainant appealed to the Editorial Standards Committee of the BBC Trust.

3. Applicable Editorial Guidelines

The following editorial guidelines (BBC Editorial Guidelines 2005) are applicable:

Re-use & reversioning of BBC content

When archive material is rescheduled and/or edited or otherwise reversioned it must comply with the BBC Editorial Guidelines whether for broadcast in the UK or overseas. Re-use of archive material should take into account any findings from the BBC Editorial Complaints Unit, the Governors' Programme Complaints Appeals Committee and Ofcom. The scheduling of a programme which has been the subject of an upheld complaint should be carefully considered or the programme edited in the light of the finding.

Any proposal to repeat a programme which has been the subject of an upheld complaint must be referred to the relevant output controller and Editorial Policy.

Section 3 – Accuracy

Introduction

The BBC's commitment to accuracy is a core editorial value and fundamental to our reputation. Our output 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.

For the BBC accuracy is more important than speed and it is often more than a question of getting the facts right. All the relevant facts and information should be weighed to get

at the truth. If an issue is controversial, relevant opinions as well as facts may need to be considered.

We aim to achieve accuracy by:

- the accurate gathering of material using first hand sources wherever possible.
- checking and cross checking the facts.
- validating the authenticity of documentary evidence and digital material.
- corroborating claims and allegations made by contributors wherever possible.

Section 5 – Fairness, Contributors and Consent

Introduction

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

Fairness editorial principles

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

4. The Committee's decision

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

In reaching its decision the Committee took full account of all the available evidence, including (but not limited to) the Editorial Adviser's report and the subsequent submission from the complainant. The Committee also took account of the Ofcom rulings on this programme.

The Committee noted that the appeal raised issues requiring the consideration of the editorial guidelines relating to accuracy, fairness and accountability.

The Committee was aware that the guideline on accuracy requires BBC output to be well sourced, based on sound evidence, thoroughly tested and presented in clear, precise language.

The Committee noted that the guideline on fairness states that the BBC strives to be fair to all – fair to those the BBC is making programmes about, fair to contributors, and fair to audiences. The guideline stresses that when the BBC makes an allegation of wrong doing, iniquity or incompetence or lays out a strong and damaging critique of an individual or institution the presumption is that those criticised should be given a "right of reply", that is, given a fair opportunity to respond to the allegations before transmission.

The Committee noted that *Pedigree Dogs Exposed* was a documentary investigating the health of pedigree dogs which examined the debilitating level of inherited disease and other welfare issues affecting the dogs. It was subject to adjudication by Ofcom which upheld parts of a complaint made by the Rhodesian Ridgeback Club of Great Britain. The Committee noted that the Ofcom Fairness Committee had ruled that it had been inaccurate to describe the breed's ridge as "a deformity" and as a "mild form of Spina

Bifida" in the original broadcast and this was unfair to the Rhodesian Ridgeback Club of Great Britain. Ofcom also concluded that the programme did not take into account the caveats expressed by the scientist who had conducted research into Dermoid Sinus, a condition affecting some Rhodesian Ridgebacks. The Committee noted that Ofcom ruled that this was also unfair to the RRCGB.

The Committee noted that the complainant believed the BBC failed to correct errors highlighted by the Ofcom adjudication when the programme was re-edited after the ruling for sale and broadcast abroad.

The Committee was aware that the programme had been broadcast by BBC America and is under licence in a number of other countries but noted that BBC America and the other broadcasters to which the programme had been licensed overseas are not regulated by Ofcom. The Committee noted that the complainant raised three points in her appeal:

1. When the programme was re-edited after the Ofcom ruling, it still contained a reference to Spina Bifida. The Committee considered this aspect of the complaint against the guidelines on accuracy.
2. The RSPCA Chief Vet, Mark Evans, described the ridge as a "deformity". This aspect of the complaint was considered against the editorial guidelines on fairness.
3. The programme included Scandinavian statistics which the complainant said did not apply in the UK. The Committee examined this part of the complaint against the guidelines on accuracy.

The reference to Spina Bifida

The Committee considered the complainant's view that it was inaccurate to refer to Spina Bifida in the re-edited programme.

The Committee noted that the original programme described the ridge itself as "a mild form of Spina Bifida".

The Committee noted that Ofcom had concluded that:

"...by describing the ridge as a mild form of Spina Bifida, the programme incorrectly conflated two separate issues: that having a ridge predisposes a percentage of Rhodesian Ridgeback Dogs to Dermoid Sinus; and that Dermoid Sinus – like Spina Bifida – is a neural tube defect. The reference to the ridge as a mild form of Spina Bifida was inaccurate and the allegation was not supported by the scientific evidence."

The Committee noted that the commentary had been amended after the Ofcom ruling and that it now said:

"The ridge predisposes the dogs to a mild form of Spina Bifida."

The Committee noted that the producer had responded that the Spina Bifida reference was a justified verbal shorthand used by the ridgeback community itself and that the phrase a "neural tube defect" was meaningless to most people.

The Committee noted the evidence of scientific experts which was that Spina Bifida and Dermoid Sinus are different diagnoses. The most severe form of Dermoid Sinus is similar to a mild form of Spina Bifida.

The Committee agreed that it would have been accurate to describe Dermoid Sinus, the condition the dogs suffer from, as being "similar to a mild form of Spina Bifida" but that it was imprecise to suggest that Dermoid Sinus *was* "a mild form of Spina Bifida".

Given this issue had been the subject of an Ofcom finding the Committee considered it was incumbent upon the BBC to strive to achieve clarity and precision in the script at this point and whilst the script had improved it was still imprecise. The Committee concluded that there had been a breach of the guideline on accuracy which requires programme-makers to produce content which is “well sourced, based on sound evidence, thoroughly tested and presented in clear, precise language”.

The description of the Ridge as a deformity

The Committee then considered the complainant’s view that the re-edited programme should not include the quote from the RSPCA’s Chief Vet, Mark Evans, describing the ridge as a “deformity”. In her view the Rhodesian Ridgeback was a “strong healthy breed”.

The Committee considered this element of the complaint against the guidelines on fairness.

The Committee noted that the guideline states that when the BBC makes “allegations of wrong doing, iniquity or incompetence” or lays out “a strong and damaging critique of an individual or institution the presumption is that those criticised should be given a ‘right of reply’, that is, given a fair opportunity to respond to the allegations before transmission”.

The Committee noted that Mark Evans’ description of the ridge as a “deformity” followed an interview with this complainant who was a breeder of Rhodesian Ridgebacks. The script read as follows:

Interviewee: And we do have trouble nowadays with young vets who tend to see everything in black and white and won’t put them down. It’s a healthy beautiful puppy, there is nothing wrong with it except it hasn’t a ridge. And you say well actually they’re meant to have ridges. It’s not easy and usually we end up having to go to an old vet we’ve known for years to just quietly put them to sleep. I would rather they were put down under my care than they landed in the hands of the fighting people which is appalling.

Commentary: Neutering them instead is also permitted, but it’s still enshrined in the Rhodesian Ridgeback Club’s code of ethics that ridgeless puppies shall be culled.

Chief Vet: It’s morally and ethically absolutely wrong to cull perfectly healthy animals simply because of the way they look. The concept for instance, in Rhodesian Ridgebacks, of actually saying we’re going to deliberately breed them and only harvest the ones that have the ridge, which is a deformity anyway, and the ones that are the healthy ones we kill – that is disgraceful.

The Committee noted Ofcom’s decision in their finding regarding a complaint to them by the Rhodesian Ridgeback Club of Great Britain (RRCGB):

“...the inaccurate description of the ridge as a ‘deformity’ and as ‘a mild form of Spina Bifida that can cause serious health problems’ was likely to have compounded the impression given that the RRCGB was choosing to breed deformed faulty dogs that suffered from Spina Bifida...”

The Committee noted the view of the producer which was that the ridge predisposed the dogs to a condition that led to the death of up to 10% of them and thus it was fair to describe the ridge as a deformity. The producer also said that the ridge met the criteria under the dictionary definition of “a bodily malformation, distortion or disfigurement” as the ridge is caused by a malformation in the development of the underlying tissue.

The Committee considered that Mark Evans' description of the ridge as a deformity was an expression of his opinion. He implicitly linked it to ill-health in the breed. The Committee noted that the description was no longer given additional weight and meaning by the erroneous suggestion that the ridge *was* a mild form of Spina Bifida, as that line in the script that had said that on first broadcast had been changed. The Committee noted that Mr Evans' credentials were clearly given so the audience could judge his status.

The Committee considered that the programme should have given the contributor the opportunity to reply to this criticism and to the allegation that the ridge was a deformity and the response should have been reflected in the programme. This amounted to a breach of the guideline on fairness.

The use of Scandinavian statistics

The Committee then turned to the complainant's concern about the use of Scandinavian statistics which the complainant argued were not relevant to the UK. The Committee considered this complaint against the guideline on accuracy.

The Committee noted that the commentary stated that:

"Five to ten percent of Rhodesian Ridgebacks suffer a nasty condition, Dermoid Sinus."

The Committee noted that the complainant argued that the British figure was "as low as 2.4%".

The Committee noted that the programme's producer thought it would be surprising if the Swedish data was very different from the UK data but that there was no litter data for the UK and that the design for the RRCGB survey which reported a 2.4% incidence was not available.

The Committee noted the expert opinion of two scientists on the frequency of the disease, neither of whom felt they could answer for the accuracy of the figures relating to the UK since no academic study had been conducted in the UK involving the professional recording of litter data.

The Committee considered the view of one expert, Professor Goran Andersson, that even in Sweden the frequency of the disease might be under-reported and/or under-recognised.

Mindful that there is no litter data for the UK and so it was not possible to clearly estimate the frequency of Dermoid Sinus in Rhodesian Ridgebacks in the UK, the Committee concluded that there was no evidence to suggest that there had been a breach of the guideline on accuracy with regard to the figures used by the programme.

Complaints handling

The Committee noted that the complainant felt that her complaint had not been "taken in the least seriously" and was unhappy with a "far from satisfactory response" from BBC Worldwide.

The Committee considered the handling of the complaint against the guideline on accountability, which gives a commitment to audiences that "complaints are dealt with quickly, courteously and with respect".

The Committee agreed that the responses received by the complainant throughout the complaints process had been courteous and respectful.

The Committee then discussed the confusion which arose in the Trust Unit in the handling of the complaint, partly because of its similarity to another appeal on the same subject.

As a result the complainant was returned to Stage 1 (Worldwide) at a late point in the preparation of her appeal.

The Committee concluded that the guideline on accountability had been breached in this instance and offered an apology to the complainant for the delay to her appeal.

Finding: Partly upheld on accuracy and upheld on fairness and accountability

Pedigree Dogs Exposed

1. The programme

Pedigree Dogs Exposed was first broadcast on BBC One on 19 August 2008. It identified serious issues affecting the health and welfare of pedigree dogs. It claimed that some pedigree dogs suffered from genetic diseases following years of inbreeding. The programme claimed that looks were emphasised over health when breeding dogs for dog shows. One of the breeds featured in the programme as having problems was the Rhodesian Ridgeback.

2. The complaint

The complainant, following the broadcast of the programme, complained to Ofcom on behalf of the Rhodesian Ridgeback Club of Great Britain (RRCGB) and claimed that the club had been treated unfairly in the programme. Ofcom upheld parts of the complaint of unfair treatment.

The complainant said the BBC had failed to correct errors following the Ofcom adjudication in its re-editing of the programme and its subsequent sale and rebroadcast abroad. The complainant said that the BBC had deliberately misrepresented the Rhodesian Ridgeback breed and breeders in Great Britain and had misled viewers. The complainant claimed the re-edited programme was still linking the issue of "Spina Bifida" and "deformity". The complainant also said that the re-edited version of the programme made it appear that the Rhodesian Ridgeback Club of Great Britain was choosing to cull puppies and to breed from deformed dogs.

Stage 1 complaint

Following Ofcom's adjudication, the Head of Complaints Management at BBC Vision wrote to the complainant. The Head of Complaints Management explained that BBC America, who were planning a transmission shortly after the Ofcom ruling, were not subject to Ofcom's regulation. However, BBC Vision had decided to make changes to the programme in order to make it compliant, and the section of the programme dealing with Rhodesian Ridgebacks was different from the original transmission. The Head of Complaints Management said that a similar policy would be adopted with any future overseas transmissions on the BBC and other channels.

The complainant asked for the edited version of the programme and was provided with a transcript of the section of the edited version referring to Rhodesian Ridgebacks.

Having read the transcript provided, the complainant's response was that she did not believe the BBC had taken on board the Ofcom finding.

The Head of Complaints Management for BBC Vision replied to the points made by the complainant.

Stage 2 complaint

The complainant wrote to the BBC Trust on 8 March 2010.

The complainant said she had asked where the programme had been sold overseas and following Ofcom's ruling had asked that the Rhodesian Ridgeback section

“... be deleted or at least show reference to their findings.”

The complainant said she had been told the programme had been sold to 13 countries abroad, although the US was not mentioned. The complainant said she had also been told that Ofcom’s adjudication was not relevant outside the UK but the BBC decided it would be appropriate to make changes to the programme to make it compliant with Ofcom’s finding. The complainant went on to respond to the points made by the Head of Complaints Management, BBC Vision.

There was then correspondence between the complainant and the BBC Trust concerning the correct procedure for dealing with the complaint. The BBC Trust apologised to the complainant for the delay in resolving the problem and forwarded the complaint to BBC Worldwide who were responsible for the global sale of programmes on behalf of the BBC.

The complainant received a reply from the Adviser, Editorial Standards, BBC Worldwide on 4 June 2010. The Adviser said that after the publication of Ofcom’s ruling, BBC Worldwide had worked with both the BBC and Passionate Productions to create an amended version of the programme which took account of those elements of the complaints which were upheld. It was this amended version that was currently being distributed internationally. While Ofcom did not have jurisdiction over distribution of most broadcasting outside the UK, BBC Worldwide believed it was correct to follow the adjudication of UK regulators wherever possible.

The Adviser added that BBC Worldwide relied on the editorial expertise of colleagues at the BBC when an amendment was required to a programme which had originally been commissioned by them. However, having reviewed Ofcom’s full ruling, together with the amendments made to the programme in respect of the upheld sections of the complaint, BBC Worldwide were satisfied that the programme was now compliant with the adjudication.

The Adviser answered the complainant’s suggestion that the entire section relating to the Rhodesian Ridgeback should be removed by saying that this was not the conclusion of Ofcom’s adjudication and he did not therefore accept that it would be appropriate. He added that the programme did, however, include a postscript noting that changes had been made to various breed standards and codes of ethics.

Appeal to the BBC Trust

The complainant wrote to the BBC Trust on 29 June 2010. The complainant said she had also received a copy of a reply from BBC Worldwide addressed to another complainant, a Rhodesian Ridgeback breeder who took part in the programme. The complainant said that both letters were identical, word for word, and that she was disappointed that BBC Worldwide had sent out standard replies which appeared to be copied and not individually signed. The complainant said she was still not satisfied that her complaint had been seriously considered or that the programme was now compliant with Ofcom’s adjudication. The complainant asked that the BBC Trust consider her appeal.

In further correspondence between the BBC Trust and the complainant, the Trust confirmed that the letter sent to the complainant from BBC Worldwide had been addressed on original BBC Worldwide letterhead and had been signed personally by the Adviser. The Trust also advised the complainant that a second complaint against the programme was at Stage 2 of the process and that the complainant’s appeal would be held so that both could be taken by the Committee together.

3. Applicable Editorial Guidelines

The following editorial guidelines (BBC Editorial Guidelines 2005) are applicable to this case:

Re-use & reversioning of BBC content

When archive material is rescheduled and/or edited or otherwise reversioned it must comply with the BBC Editorial Guidelines whether for broadcast in the UK or overseas. Re-use of archive material should take into account any findings from the BBC Editorial Complaints Unit, the Governors' Programme Complaints Appeals Committee and Ofcom. The scheduling of a programme which has been the subject of an upheld complaint should be carefully considered or the programme edited in the light of the finding.

Any proposal to repeat a programme which has been the subject of an upheld complaint must be referred to the relevant output controller and Editorial Policy.

Section 3 – Accuracy

Introduction

The BBC's commitment to accuracy is a core editorial value and fundamental to our reputation. Our output 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.

For the BBC accuracy is more important than speed and it is often more than a question of getting the facts right. All the relevant facts and information should be weighed to get at the truth. If an issue is controversial, relevant opinions as well as facts may need to be considered.

We aim to achieve accuracy by:

- the accurate gathering of material using first hand sources wherever possible.
- checking and cross checking the facts.
- validating the authenticity of documentary evidence and digital material.
- corroborating claims and allegations made by contributors wherever possible.

Checking programmes

We must check programmes recorded some time before transmission or being repeated to make sure they have not been overtaken by events, such as the known death of a contributor, the charging of an offender, or significant life changes. In some cases an on air announcement will be required, in others, the alteration or removal of some material.

Section 5 – Fairness, Contributors and Consent

Introduction

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

Fairness editorial principles

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

4. The Committee's decision

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

In reaching its decision the Committee took full account of all the available evidence, including (but not limited to) the Editorial Adviser's report and the subsequent submissions from the complainant and BBC Worldwide. The Committee also took account of the Ofcom rulings on this programme.

The Committee noted that the appeal raised issues requiring the consideration of the editorial guidelines relating to accuracy, and fairness.

The Committee was aware that the guideline on accuracy requires BBC output to be well sourced, based on sound evidence, thoroughly tested and presented in clear, precise language.

The Committee noted that the guideline on fairness states that the BBC strives to be fair to all – fair to those the BBC is making programmes about, fair to contributors, and fair to audiences. The guideline stresses that when the BBC makes an allegation of wrong doing, iniquity or incompetence or lays out a strong and damaging critique of an individual or institution the presumption is that those criticised should be given a "right of reply", that is, given a fair opportunity to respond to the allegations before transmission.

The Committee noted that *Pedigree Dogs Exposed* was a documentary investigating the health of pedigree dogs which examined the debilitating level of inherited disease and other welfare issues affecting dogs. The programme was subject to an adjudication by Ofcom which upheld parts of a complaint made by the Rhodesian Ridgeback Club of Great Britain (RRCGB). The Committee noted that the Ofcom Fairness Committee had ruled that it had been inaccurate to describe the breed's ridge as "a deformity" and as a "mild form of Spina Bifida" in the original broadcast and this was unfair to the Rhodesian Ridgeback Club of Great Britain. Ofcom also concluded that the programme did not take into account the caveats expressed by the scientist who had conducted research into Dermoid Sinus, a condition affecting some Rhodesian Ridgebacks. The Committee noted that Ofcom ruled that this was also unfair to the RRCGB.

The Committee noted that the complainant believed the BBC had failed to correct errors highlighted by the Ofcom adjudication when, after the ruling, the programme was re-edited for sale and broadcast abroad.

The Committee was aware that the programme had been broadcast by BBC America and is under licence in a number of other countries but noted that BBC America and the other broadcasters to which the programme had been licensed overseas are not regulated by Ofcom. The Committee noted that the complainant raised four points.

1. The complainant argued that it was misleading and inaccurate for the BBC to continue to refer to Spina Bifida when the programme was re-edited after the Ofcom ruling. The Committee considered this aspect of the complaint against the guidelines on accuracy.
2. The complainant felt it was unfair to the RRCGB that the RSPCA Chief Vet, Mark Evans, was still quoted describing the ridge as a "deformity". This aspect of the complaint was considered against the editorial guidelines on fairness.
3. The complainant raised an objection that the programme was still referring to a research paper written in 2006 without taking into consideration the caveats given

subsequently by the scientist who conducted the research. The Committee examined this part of the complaint against the guidelines on accuracy.

4. In addition the Committee noted that the complainant was unhappy that the programme was still emphasising the issue of culling puppies, and the Committee considered this issue against the guidelines on accuracy.

The reference to Spina Bifida

The Committee considered the complainant's view that it was inaccurate to refer to Spina Bifida in the re-edited programme.

The Committee noted that the original programme described the ridge itself as "a mild form of Spina Bifida".

The Committee noted that Ofcom had concluded that:

"...by describing the ridge as a mild form of Spina Bifida, the programme incorrectly conflated two separate issues: that having a ridge predisposes a percentage of Rhodesian Ridgeback Dogs to Dermoid Sinus; and that Dermoid Sinus – like Spina Bifida – is a neural tube defect. The reference to the ridge as a mild form of Spina Bifida was inaccurate and the allegation was not supported by the scientific evidence."

The Committee noted that the commentary had been amended after the Ofcom ruling and that it now said:

"The ridge predisposes the dogs to a mild form of Spina Bifida."

The Committee noted that the producer had responded that the Spina Bifida reference was a justified verbal shorthand used by the ridgeback community itself and that the phrase a "neural tube defect" was meaningless to most people.

The Committee noted the evidence of scientific experts which was that Spina Bifida and Dermoid Sinus are different diagnoses. The most severe form of Dermoid Sinus is similar to a mild form of Spina Bifida.

The Committee agreed that it would have been accurate to describe Dermoid Sinus, the condition the dogs suffer from, as being "similar to a mild form of Spina Bifida" but that it was imprecise to suggest that Dermoid Sinus *was* "a mild form of Spina Bifida".

Given this issue had been the subject of an Ofcom finding the Committee considered it was incumbent upon the BBC to strive to achieve clarity and precision in the script at this point and whilst the script had improved it was still imprecise. The Committee concluded that there had been a breach of the guideline on accuracy which requires programme-makers to produce content which is "well sourced, based on sound evidence, thoroughly tested and presented in clear, precise language".

The description of the Ridge as a deformity

The Committee then considered the complainant's view that the re-edited programme should not include the quote from the RSPCA Chief Vet, Mark Evans, describing the ridge as a "deformity".

The Committee considered this element of the complaint against the guidelines on fairness.

The Committee noted that the guideline states that when the BBC makes "allegations of wrong doing, iniquity or incompetence" or lays out "a strong and damaging critique of an

individual or institution the presumption is that those criticised should be given a 'right of reply', that is, given a fair opportunity to respond to the allegations before transmission".

The Committee noted that Mark Evans' description of the ridge as a "deformity" followed a commentary reference to the Rhodesian Ridgeback Club. The script read as follows:

Breeder: And we do have trouble nowadays with young vets who tend to see everything in black and white and won't put them down. It's a healthy beautiful puppy, there is nothing wrong with it except it hasn't a ridge. And you say well actually they're meant to have ridges. It's not easy and usually we end up having to go to an old vet we've known for years to just quietly put them to sleep. I would rather they were put down under my care than they landed in the hands of the fighting people which is appalling.

Commentary: Neutering them instead is also permitted, but it's still enshrined in the Rhodesian Ridgeback Clubs code of ethics that ridgeless puppies shall be culled.

Chief Vet It's morally and ethically absolutely wrong to cull perfectly healthy animals simply because of the way they look. The concept for instance, in Rhodesian Ridgebacks, of actually saying we're going to deliberately breed them and only harvest the ones that have the ridge, which is a deformity anyway, and the ones that are the healthy ones we kill – that is disgraceful.

The Committee noted Ofcom's decision in their finding regarding a complaint to them by the Rhodesian Ridgeback Club of Great Britain (RRCGB):

"...the inaccurate description of the ridge as a 'deformity' and as 'a mild form of Spina Bifida that can cause serious health problems' was likely to have compounded the impression given that the RRCGB was choosing to breed deformed faulty dogs that suffered from Spina Bifida..."

The Committee noted the view of the producer which was that the ridge predisposed the dogs to a condition that led to the death of up to 10% of them and thus it was fair to describe the ridge as a deformity. The producer also said that the ridge met the criteria under the dictionary definition of "a bodily malformation, distortion or disfigurement" as the ridge is caused by a malformation in the development of the underlying tissue.

The Committee considered that Mark Evans' description of the ridge as a deformity was an expression of his opinion. He implicitly linked it to ill-health in the breed. The Committee noted that the description was no longer given additional weight and meaning by the erroneous suggestion that the ridge *was* a mild form of Spina Bifida as that line in the script that had said that on first broadcast had been changed. The Committee noted that Mr Evans' credentials were clearly given so the audience could judge his status.

The Committee noted that the programme makers were aware that Ofcom had deemed Mark Evans' description of the ridge as a "deformity" to be unfair to the RRCGB but had chosen to include it in the re-edited version nonetheless, without offering the RRCGB a right of reply.

The Committee considered that the programme should have given the contributor the opportunity to reply on behalf of the RRCGB to the allegation that the ridge was a deformity and the response should have been reflected in the programme. This amounted to a breach of the guideline on fairness.

The research paper

The complainant had also argued that the BBC should not be referring to a research paper without taking into account caveats given subsequently by the scientist who conducted the research.

The Committee noted that the commentary stated that:

“Some scientists suggest that the problem could be virtually eliminated if breeders would accept – and breed from – ridgeless dogs.”

The Committee considered this element of the complaint against the guideline on accuracy. The Committee noted that there was disagreement among the scientists who had produced the 2007 Nature Genetics paper.

The Committee noted that the lead author, Dr Nicolette Salmon Hillbertz, had subsequently expressed reservations in emails to the film maker, before the programme was first broadcast on the BBC, about the paper's conclusion that Dermoid Sinus could be virtually eliminated from Rhodesian Ridgebacks if breeders would breed from ridgeless dogs.

The Committee noted that Ofcom had concluded that:

“...while the programme makers were entitled to rely on published research documents when they came to present this issue, once they had obtained this email correspondence from Dr Hillbertz, they should have taken greater care to reflect accurately her caveats and caution in the programme.”

However, the Committee also considered the fact that Professor Goran Andersson, the more senior author of the same paper and Dr Hillbertz's supervisor at the time remained adamant that breeders should avoid breeding between two ridged dogs to reduce the risk of offspring developing Dermoid Sinus and that he had the support of some academic colleagues at the time as evidenced by a clarifying statement published a month after the broadcast of the programme.

Bearing in mind the requirement of the accuracy guideline that output should be “well sourced, based on sound evidence, thoroughly tested and presented in clear, precise language” the Committee concluded that there was no breach of the accuracy guideline in stating that “some scientists suggest the problem would be virtually eliminated if breeders would ... breed from ridgeless dogs.”

The culling of puppies

Turning to the complaint that the re-edited programme still emphasised the issue of culling puppies, the Committee noted that the complainant argued that the programme allowed overseas viewers to believe Rhodesian Ridgeback breeders were still culling puppies born without ridges. The Committee noted that the current RRCGB Code of Ethics states that members:

“Will agree that no healthy puppy will be culled”.

The Committee noted that the programme commentary states:

“...it's still enshrined in the Rhodesian Ridgeback Club's code of ethics that ridgeless puppies shall be culled.”

The Committee also noted that the current edit of the programme includes an endboard with the following information:

“Since the broadcast of *Pedigree Dogs Exposed*, the Kennel Club has introduced many changes ... these include ... a new Code of Ethics which prohibits healthy dogs being culled for cosmetic reasons.”

The Committee was mindful of the accuracy guideline which requires programme makers to “check programmes recorded some time before transmission or being repeated to make sure they have not been overtaken by events”. The Committee’s view was that it would have been helpful to have outlined the change in the code of ethics at the beginning of the programme as well as the end. However, the Committee accepted that the endboard satisfied the requirements of the accuracy guideline and the guideline had not been breached.

Complaint handling

The Committee noted that the complainant had requested a review of the BBC’s handling of her complaint and that she was unhappy to have received a letter from BBC Worldwide which she felt was a “standard reply”. The Committee took into account that the complainant was not satisfied that her complaint had been taken seriously, and the Committee was mindful of the guideline on accountability which gives a commitment to audiences that “complaints and enquiries are dealt with quickly, courteously and with respect”.

The Committee was satisfied that the complainant had been treated courteously and with respect, and that the BBC’s responses had been appropriate at each stage. The Committee noted that a three-stage complaints process allows for complainants to be provided with fuller replies later in the process.

With regard to timeliness, the Committee accepted that this complaint had been under consideration for a lengthy period but noted the complex and unusual circumstances which caused the delay. The Committee wished to apologise to the complainant for the long delay and the initial confusion over the correct process for handling the complaint, but it did not find a breach of the accountability guideline in this regard.

Finding: Upheld regarding fairness, upheld in part regarding accuracy and not upheld regarding accountability

File on 4, BBC Radio 4, 25 March 2008

1. The programme

The Radio 4 current affairs programme, *File on 4*, first broadcast on 25 March 2008, visited Limpopo Province in South Africa to investigate the operations of the world's largest platinum miner, Anglo American, and its subsidiary in the region, Anglo Platinum.

2. The complaint

Stage 1

The complainant contacted Audience Services on 16 June 2008 alleging that reports on *Today* and *File on 4* breached the BBC's guidelines on impartiality and accuracy. The complaint was made by Anglo American on behalf of its subsidiary Anglo Platinum and concerned activity relating to Anglo Platinum's Potgietersrus Limited mine.

Anglo American alleged that:

- the programme was produced in close cooperation with ActionAid: and it was therefore not impartial, relied on a single source and was inadequately researched
- the transmission of the programme on the same date as the release of a report by ActionAid on the impact of Anglo Platinum on poor communities in Limpopo suggested partiality
- the programme failed to illustrate the positive impact of the company's community programmes
- the programme team should have requested an interview with Anglo Platinum before undertaking their trip.

In relation to the coverage of the process for relocating villagers to purpose-built townships financed by the mine:

- the programme inaccurately asserted that "Anglo Platinum forced the relocation of local villagers" without adequate compensation and by using bribes
- the programme only interviewed villagers who were dissatisfied with the process of relocation but this was the minority view.

In relation to allegations regarding mine blasting:

- the programme gave no opportunity for Anglo Platinum to respond to the allegation that mine blasting posed a danger to local residents and their property.

In relation to allegations that local water had been contaminated by nitrates:

- assertions made by Carin Bosman, the chemist who conducted the water analysis on behalf of ActionAid, were not independently verified by the BBC
- the programme accepted at face value Carin Bosman's claims that the mine was the source of nitrate contamination and failed to explore alternative causes
- water quality issues in the programme were presented in a "sensationalist manner" and were misleading
- ActionAid's findings were not disclosed to the company in good time and it therefore did not have adequate opportunity to respond
- clarification was sought as to whether the results of the analysis were disclosed to the headteacher of the school at Ga Molekane, a local village whose water was

tested, and the relevant public authorities before the interview was conducted for the programme; if the information was withheld for the programme this could have put children at risk

- Anglo Platinum advised it had commissioned isotopic testing of the water at the school and would make its results available to the BBC.

The Editor of *File on 4* responded on 22 July 2008, saying:

- the production team were not guided by a single source of information; he listed a variety of sources consulted by the programme
- the programme made “strenuous efforts” to secure the participation of the company
- early in the programme Anglo Platinum talked about the benefits their operations bring to South Africa
- the transmission date of *File on 4* was fixed – it was ActionAid’s decision to publish its report on the same day.

In relation to the relocation process:

- forced relocation was an accurate description of the process that was happening on the ground
- the programme accurately reflected the number of people resisting relocation.

In relation to mine blasting:

- there was no suggestion that Anglo Platinum did anything outside the law. However, in hindsight the programme should have provided the company with the opportunity to respond.

In relation to water contamination:

- given the expertise of Carin Bosman it was justifiable to report her findings within the programme; the programme passed her report to a leading environmental scientist at Manchester University who verified her findings
- Anglo Platinum were given the right to reply in the programme.

Stage 2

The complainant contacted the Editorial Complaints Unit (ECU) on 14 October 2008 reiterating its earlier complaint and attaching the results of separate subsequent water tests undertaken by the Institute of Groundwater Studies (IGS) which had been commissioned by the company.

- While these tests showed that the nitrate level in the water was high, ActionAid’s and the BBC’s assumption that elevated nitrate levels at the school were the result of mining was now shown to be untrue. Isotope testing was able to identify authoritatively the source of particular types of contamination.
- The research found that the high nitrate levels in the drinking water at Ga Molekane was a feature of the ground water of the region and could not be attributed to mining operations.

The ECU acknowledged the complaint at the end of October, and in December they contacted the complainant to advise that clarification had been sought from Carin Bosman on the water testing issues.

Her report stated:

- Sources of nitrate in natural water results primarily from one or more of three causes: the oxidation of human and animal debris and excrement; the agricultural use of fertiliser; or activities which disturb bedrock (e.g. mining activities) which is high in nitrogen.
- High levels of nitrate and ammonia with bacteriological contaminants (faecal coliforms and ecoli) would be indicative of pollution as a result of human or animal debris or excrement. The school sample did not contain these.
- Elevated levels of nitrate, ammonia and phosphate would indicate agricultural causes. The school sample did not contain elevated phosphate levels.
- Having eliminated two out of three of the possible causes for nitrate pollution, mining activities were considered the most likely cause of the high levels of nitrate at the school.
- High levels of nitrate at mines typically result from the disturbance of bedrock. When this occurs due to large scale anthropogenic activities such as excavation and mining, nitrate can be released in large quantities that can have significant ecological effects. Following the extraction of the mineral being mined, the residues of the mining and minerals extraction process is disposed of in a residue or slimes dam. In this case it is located near to the primary school.

The ECU issued its full finding on 22 May 2009. It did not uphold the complaint. The finding advised that specific complaints about the handling of the story by the *Today* programme had not been dealt with as the programme had not yet been given the opportunity to respond.

The ECU advised that the allegation that information on water contamination was withheld from the authorities in South Africa had not been dealt with, as it did not fall within the ECU's remit.

Regarding the relationship with ActionAid:

- A detailed response from the programme represented strenuous efforts to research the allegations which were being made and did not suggest an unquestioning over-reliance on material provided by ActionAid.

Regarding the relocation process:

- the programme did not say that compensation was inadequate
- the programme presented the figures on relocation clearly and gave an accurate picture on the level of opposition
- the phrase "forced relocation" is not used in the programme
- the word bribe is used by one of the residents – but not in the sense of an unlawful payment, but in the sense of an inducement. The remark does not level wrongdoing at Anglo Platinum and therefore requires no reply.

Regarding mine blasting:

- *File on 4* has apologised for not allowing Anglo Platinum the right of reply in this section of the programme. However, this is not a serious breach of standards.

Regarding water testing the ECU:

- noted that the specific terms of the complaint concerning the water contamination at Ga Molekane has been modified significantly since it was first made. In considering its response the ECU took the final version of the complaint to be that the complainant maintained it had demonstrated that at the primary school:
 “the elevated nitrate levels do not originate from mine explosives or mining activities”
- quoted from the programme where it listed ways in which nitrates could be introduced into groundwater; where it suggested that there is only one way mining can be responsible for elevated nitrate levels – the use of ammonia based explosives; and where it stated that at the school all other possible causes had been excluded except the slimes dam
- concluded that in the course of the technical discussions which had accompanied the investigation there had emerged a consensus between the parties that:
 “insofar as it disturbs nitrogen-bearing bedrock, mining must be considered a contributing factor to elevated nitrate levels, whether or not it can be determined that mine explosives or the slimes dam bear any specific additional responsibility. Both IGS (for the company) and Carin Bosman describe the process whereby mining can contribute to high nitrate levels by disturbing the soil and bedrock in a region with high background levels of nitrogen in the soil.”

The ECU also said:

- “...given Dr Bosman’s recent view that both the slimes dam and the southern pit might be causes of the contamination it is clear that there was a considerable lack of precision to the programme’s claim that the cause had to be the slimes dam and that all other possible causes had been excluded. However, it is hard to escape the conclusion that, regardless of whether the slimes dam is the cause, mining activity more generally is very likely to be.”
- “...on the issue of whether Anglo Platinum was given sufficient opportunity to reply, it is clear that in an email of 8 March it was open to the company to request further information should they wish to do. They did not.”
- “...teachers and local community had been informed of the possible water contamination by ActionAid before the interviews for the programme were conducted. They did not however learn the full implications of the contamination until the visit of Dr Bosman a few days after the interviews. Therefore some of what they learned during the interviews did come as a surprise.”

The complainant responded saying the ECU had taken too narrow a view relating to issues of balance; had looked insufficiently at the collusive nature of the relationship between the programme makers and ActionAid; and urged a re-examination of the fairness of the programme’s allegations regarding forced relocation.

In relation to water testing, Anglo American said:

- The ECU has failed to interpret correctly the scientific evidence on water contamination and overstated the extent of scientific confluence between the company and Dr Bosman.
- The programme carried material which unequivocally stated that the pollution was caused by the slimes dam. This is proven not to be the case based on the data presented in the IGS report (for the company). Such a serious allegation should

not have been made without the BBC commissioning its own independent evidence.

In November 2009 the ECU told the complainant it was seeking external expert advice given the technical nature of the complaint. The ECU issued a revised finding in May 2010, which partly upheld the complaint with regard to water contamination

The ECU had commissioned Dr William Burgess of the Department of Earth Sciences at University College London to review the papers associated with the complaint.

Dr Burgess states:

- Carin Bosman's research withstands scrutiny; she presents a justifiable hypothesis that explosives or mining activity in general may be the cause of the contamination at the school
- counter arguments presented by Anglo Platinum and its consultant are unconvincing and the conclusions drawn from Anglo American's commissioned research, that the contamination cannot have been caused by mining, are unsupportable
- however, Carin Bosman's conclusions, while being a justifiable hypothesis, remain unproven.

The ECU concluded that the categorical way in which Carin Bosman's findings were presented in the programme went beyond that which the ECU now believed could be justified because nothing in the way the claim was presented conveyed any sense that this was a hypothesis that remains unproven.

Appeal to the BBC Trust

The complainant wrote to the BBC Trust in June 2010 stating the intention to appeal and requesting an extension to the usual deadline. An appeal was lodged in July 2010. The appeal included the results of further water testing commissioned by the company. The letter of appeal claimed the latest study demonstrated:

- the elevated nitrate levels at Ga Molekane show no evidence that the mine is responsible for the elevated nitrate observed in this area
- the very high nitrate levels at the primary school are far higher than were measured in other sampling areas such as the tailings dam or the return water system and the isotopic signature is vastly different to that of mining explosives, showing conclusively that the elevated nitrate values do not originate from the mining explosives or mining activities
- slightly elevated nitrate values which had been detected in a sample collected from a local secondary school were within the range of normal background values. The isotopic signature is vastly different to that of mining explosives, showing conclusively that the elevated nitrate values do not originate from the mining explosives or mining activities.

The company requested that the BBC invite the expert from UCL, Dr Burgess, to conduct isotopic testing to back up their claims.

The Head of Accountability for BBC News wrote to the BBC Trust on 23 September 2010 raising concerns about the appeal. The letter stated:

- it is "wholly inappropriate" for the Trust to take into account the report written for Anglo American because any evidence which the ESC is asked to consider must be based on information available to the programme makers at the time of broadcast

- Anglo American are asking the Trust to determine whether the Potgietersrus mine was responsible for high levels of water pollution; to ask the ESC to be arbiter of such a technical question is well outside of any arguable remit
- any evidence which the Trust considers must address an applicable guideline: in this case whether in relying on Carin Bosman's study the programme adhered to the guideline on accuracy that requires the programme's claims to be "well-sourced" and "based on sound evidence"
- Anglo American's new evidence does not address these issues, but instead puts forward a contrary view based on new research which is of no value in determining whether the accuracy guidelines has been breached.

The Head of Editorial Standards at the BBC Trust wrote to the complainant enclosing the letter from BBC News and inviting a response. The complainant was also asked to confirm the scope of its appeal to the BBC Trust.

Regarding the admissibility of new evidence, the complainant argued in response that water tests take several weeks to complete. Anglo American were not informed of these (Carin Bosman's) tests at the time in which they were conducted so were not able to conduct their own before the broadcast, therefore had to commission them after the broadcast.

The complainant confirmed that the complaint against the programme was, and remained, "broad-ranging". In addition to the criticisms of Carin Bosman's research the complainant asked the Trust to consider:

- the use of "highly loaded language" in the programme. For example the unchallenged assertion that Anglo Platinum had "bribed" communities to move
- the programme's claim to report "community views": it only interviewed the opinions of the 5-10% of residents who were against the terms of the resettlement and ignored the 90% who have moved without objection.

The complainant was advised that the majority of issues raised in its final letter would be considered by the ESC on appeal, with the exception of one issue which had not been raised at either Stages 1 or 2.

3. Applicable Editorial Guidelines

The complaint was judged against the 2005-2010 Editorial Guidelines which were in force at the time.

Section Three – Accuracy

The BBC's commitment to accuracy is a core editorial value and fundamental to our reputation. Our output 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.

For the BBC accuracy is more important than speed and it is often more than a question of getting the facts rights. All the relevant facts and information should be weighed to get at the truth. If an issue is controversial, relevant opinions as well as facts may need to be considered.

We aim to achieve it by:

- the accurate gathering of material using first hand sources wherever possible.
- checking and crossing checking the facts.

- validating the authenticity of documentary evidence and digital material.
- corroborating claims and allegations made by contributors wherever possible.

Misleading Audiences

We should not distort known facts, present invented material as fact, or knowingly do anything to mislead our audiences.

Correcting Mistakes

We should normally acknowledge serious factual errors and correct mistakes quickly and clearly. Inaccuracy may lead to a complaint of unfairness. An effective way of correcting a mistake is saying what was wrong as well as putting it right.

Section Four – Impartiality and Diversity of Opinion

Impartiality lies at the heart of the BBC's commitment to its audiences. It applies across all of our services and output, whatever the format, from radio news bulletins via our web sites to our commercial magazines and includes a commitment to reflecting a diversity of opinion.

The Agreement accompanying the BBC's Charter requires us to produce comprehensive, authoritative and impartial coverage of news and current affairs in the UK and throughout the world to support fair and informed debate. It specifies that we should do all we can to treat controversial subjects with due accuracy and impartiality in our news services and other programmes dealing with matters of public policy or of political or industrial controversy. It also states that the BBC is forbidden from expressing an opinion on current affairs or matters of public policy other than broadcasting. Special considerations apply during the campaign periods for elections.

In practice, our commitment to impartiality means: (relevant clauses)

- we seek to provide a properly balanced service consisting of a wide range of subject matter and views broadcast over an appropriate time scale across all our output. We take particular care when dealing with political or industrial controversy or major matters relating to current public policy.
- we strive to reflect a wide range of opinion and explore a range and conflict of views so that no significant strand of thought is knowingly unreflected or under represented.
- 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.
- we can explore or report on a specific aspect of an issue or provide an opportunity for a single view to be expressed, but in doing so we do not misrepresent opposing views. They may also require a right of reply.
- we must ensure we avoid bias or an imbalance of views on controversial subjects.

Achieving impartiality

Impartiality must be adequate and appropriate to our output. Our approach to achieving it will therefore vary according to the nature of the subject, the type of output, the likely audience expectation and the extent to which the content and approach is signposted to our audiences.

Impartiality is described in the Agreement as "due impartiality". It requires us to be fair and open minded when examining the evidence and weighing all the material facts, as

well as being objective and even handed in our approach to a subject. It does not require the representation of every argument or facet of every argument on every occasion or an equal division of time for each view.

News, in whatever form, must be presented with due impartiality.

Section Five – Fairness

Fairness editorial principles

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

Right of reply

When we make allegations of wrong doing, iniquity or incompetence or lay out a strong and damaging critique of an individual or institution the presumption is that those criticised should be given a “right of reply”, that is, given a fair opportunity to respond to the allegations before transmission.

Our request for a response must be properly logged with the name of the person approached and the key elements of the exchange. We should always describe the allegations in sufficient detail to enable an informed response. The response should be reflected fairly and accurately and should normally be broadcast in the same programme, or published at the same time, as the allegation...

4. The Committee’s decision

The Committee considered the complaint against the relevant editorial standards, as set out in the BBC’s editorial guidelines (2005-2010 version). The guidelines are a statement of the BBC’s values and standards.

In reaching its decision the Committee took full account of all the available evidence, including (but not limited to) the Editorial Adviser’s report.

The appeal raised issues requiring the consideration of the editorial guidelines relating to accuracy, impartiality and fairness.

The Committee considered the complaint under four headings:

- i the science on which the programme relied to present its allegations regarding water contamination was not reliable
- ii the programme did not give Anglo American sufficient detail of the allegations regarding water contamination in a timely manner to enable the company to make an effective response prior to transmission
- iii the programme reported unchallenged an allegation that the company had bribed people to relocate to make way for the new mine
- iv the programme failed to reflect the views of the 90% of residents who had relocated and spoke only to the 5-10% who opposed the move

i. The allegations concerning contamination of water supplies

The Committee noted that it was not required to determine whether Anglo Platinum’s mining activities were the cause of high nitrate levels in some of the drinking water in the

area. The Committee confirmed that its role in relation to water contamination claims in the programme was to examine the validity of the science on which this section of the documentary was based and to test the accuracy, impartiality and fairness with which the programme presented the scientific conclusions against the relevant guidelines.

The Committee noted that in addition to Dr David Polya who was consulted by the programme, and the UCL scientist consulted by the ECU, the editorial adviser for the BBC Trust had consulted a third expert in the field, Dr Robert Kleinmann. Dr Kleinmann is vice-president of the International Mine Water Association, Editor in Chief of *Mine Water and the Environment*, the author of more than 90 publications on mining environmental technology and formerly Senior Management Technical Advisor at the US Department of Energy's National Energy Technology Laboratory.

The Committee noted that the ECU had partially upheld one point from the original complaint: that the programme presented as proven the allegation that Anglo Platinum's mine was contaminating drinking water at the nearby primary school. It noted what the ECU said:

"The categorical terms in which Carin Bosman's findings are presented in the programme do, I feel, go some way beyond those which I now believe to be justified. Nothing in the way the claim is presented conveys any sense that this was a hypothesis, a possibility allowed by the evidence gathered so far, but something which remains unproven. So while I cannot agree ... that Carin Bosman's view is demonstrably wrong, I do agree that it was presented as proven when this was not so and to that extent its presentation was significantly inaccurate."

The Committee noted the ECU specifically did not accept Anglo American's argument that mining activities could not have contaminated the drinking water, only that the BBC should not have presented Carin Bosman's data as proving that was the case. The Committee noted the complainant's contention that the company had proved with demonstrable certainty that their mine was not responsible.

The Committee noted that the complainant submitted for consideration the results of a number of studies which included data sets and interpretation thereof. The Committee confirmed that the issue for consideration was not what each party has argued in the course of this complaint but specifically whether what was broadcast in the programme met the guideline requirements, in this case in relation to accuracy, impartiality and fairness. None of the analysis derived from samples collected by Anglo American post broadcast were considered for the following reasons:

- the programme can only be expected to have taken into account information that was available at the time and which programme makers could reasonably be expected to take into account
- the above point notwithstanding, the water samples on which the submissions from the complainant are based were extracted a year and more after the programme was broadcast.

In relation to the second bullet point, the Committee noted that Dr Robert Kleinmann, the mining groundwater specialist consulted by the Editorial Adviser said:

"some of the parameters most likely change seasonally - South Africa has distinct wet and dry seasons, and so surface and ground water quality at a single site will vary greatly over time. This variation is not reflected as a range of uncertainty provided in the Anglo American data, as would normally be done."

The Committee noted that the complainant had supplied a fresh set of data and a new analysis for this appeal and that although the contents could not be taken into account for the reasons stated above, the report was passed to Dr William Burgess, the scientist who consulted to the ECU, as a professional courtesy. The Committee noted that in an email to the editorial adviser Dr Burgess wrote:

“It is worth reiterating that the new isotope data (for N and O in nitrate) employed in the new interpretation presented in the Oates Anglo American Report is absolutely different to the data presented previously by Anglo Platinum for the same water sources. This absolute difference passes without comment, yet it indicates temporal variation and/or sampling + measurement errors which remain unexplained and which contribute to uncertainty concerning the Anglo American position.”

The Committee noted the specific allegations relating to the programme’s presentation of water contamination issues which had been raised by the complainant:

- Carin Bosman’s research for ActionAid was not independently verified by the BBC
- viable alternative causes of high nitrate levels in the water at Ga Molekane were not explored in the programme
- Carin Bosman’s data was not shared in good time with Anglo American
- the methodology adopted by Carin Bosman in reaching her findings was not adequate: isotopic testing of water samples, would have been the correct approach.

On the last point the Committee noted that it was required to assess whether the methodology which was used by Carin Bosman and on which this section of the programme derived its information was well sourced, based on sound evidence and thoroughly tested. That other analytical methods may have been available to Ms Bosman would only be relevant if the omission of those methods rendered the study invalid.

What steps did the programme take to verify the scientific data on which the claims about water contamination were based?

The Committee noted the complainant’s allegation at Stage 1:

“the broadcasts are essentially based upon an assertion of fact by Carin Bosman that does not appear to have been independently verified by the BBC.”

The Committee noted the programme’s contention that they reported Dr Bosman’s findings after satisfying themselves of her academic and technical credentials and then by getting an independent scientist to review and comment on her conclusions. The Committee noted the view of the expert consulted by the programme, Dr David Polya, Reader at the School of Earth, Atmospheric and Environmental Sciences at Manchester University. The Committee noted his comments were invited prior to the team setting off for South Africa and that the Editorial Adviser had had sight of the email trail which included the programme’s first approach to Dr Polya in early February 2008. The Committee noted Dr Polya’s advice that it appeared to be a “sound piece of work”, but that it was a limited study, and that isotopic sampling would be a useful additional step to try to identify the source of the nitrate contamination.

The Committee noted that Dr Polya was contacted by the programme team again in July 2008 following the submission of this complaint and was asked to put in writing the conclusions he had reached the previous February. The Committee noted his conclusions:

- the sampling strategy seemed to be commensurate with the aims and scope of the report
- the analytical test results (reproduced in the appendix of the report) were presented in a manner commensurate with that expected from a reputable and competent testing laboratory which was implementing a range of quality control and quality assurance measures
- the conclusions reached seemed plausible on the basis of the laboratory findings
- while sewage and agricultural pollution were the most common forms of nitrate pollution, research in other parts of the world has shown that use of certain commonly-used explosives can lead to groundwater contamination by nitrates
- nitrogen and other stable isotopes might be useful in better establishing the source or sources of the elevated nitrate concentrations in the area covered by the report
- while the small number of test sites and samples taken combined with the complexities of the environment being investigated meant an unequivocal conclusion as to the origin of all the observed nitrates could not robustly be made, the worrying levels of nitrates found at some of the test sites and the rational process of elimination described in the report meant that there was clearly “a case for the mining company to answer”.

The Committee noted that both the ECU expert, Dr William Burgess and the third independent source consulted by the Trust, Dr Robert Kleinmann in the United States, agreed with Dr Polya that Carin Bosman’s research was a valid study which reached plausible conclusions.

The Committee noted the complainant’s assertion that anything short of isotopic testing of the samples could not produce an accurate conclusion as to the source of the contamination: that isotopic testing is the Gold Standard for determining the issue:

“Sources of water cannot be precisely determined by routine chemical analysis alone and for correct source finger-printing isotopes are required. This is not an unusual approach and we have been using such techniques, as required, for the last 12 to 15 years.”

(letter to the ECU from Anglo American 11 March 2009)

The Committee noted that while consideration of the data derived from isotopic testing conducted by Anglo American post broadcast was not admissible in respect of this appeal, consideration of the principle behind it was. In this respect, the Committee noted that Dr Burgess disagreed that isotope testing is able to identify authoritatively the source of particular types of contamination, because while the isotopic signature of nitrates from fertilizer or human excrement were well established, that for explosives for example, was not. In the opinion of Dr Burgess, isotopic testing would not have produced a conclusive result:

“...the mechanisms of nitrate release from explosives have not been established, the chemical associations of explosive-derived nitrate and the systematics of Nitrogen and Oxygen isotopes in explosive-derived nitrate are not well known. The variety of explosives concerned complicates the situation.”

“...It is incorrect to state that ‘to produce a definitive account of the source of pollution, the samples should have been subject to isotope testing’. Isotope characteristics of N and O in groundwater nitrate in combination with isotopic

determinations of potential sources ... *might* have a bearing on the hypothesis (they might strengthen or weaken the hypothesis) but could *not* prove the hypothesis."

The Committee further noted Dr Burgess' comment that without access to the mine to take water samples there would have been no point in Ms Bosman commissioning isotopic testing:

"The absence of isotopic measurements was entirely normal in such a 'preliminary' assessment. It would have been of little value to interpret isotopic characteristics of the water (and nitrate) samples collected from around the mine, without samples from the sources *within* the mine for comparison. The same is not true for the major chemical analyses, as the normal major chemical associations of the mine water discharges could justifiably be assumed at the stage of a 'preliminary' assessment."

The Committee agreed that the programme had taken adequate steps to verify the validity of its primary source. It had checked the credentials of the author, her methodology and the conclusions she reached and had her entire research peer reviewed prior to the programme going into production. The Committee agreed that the programme met the guideline test for accuracy, specifically the requirement that material is well sourced and based on sound evidence and that allegations by contributors are corroborated wherever possible.

Finding: Not Upheld

Did the programme present the findings accurately and impartially?

The Committee noted the complainant's allegation as reflected in its letter to the ECU:

"The manner in which the BBC presented the water tests carried out by Carin Bosman ... could well constitute a breach of the BBC's commitment to present a balanced view."

The Committee noted the company's acknowledgement that the water is contaminated at various sampling points, but that they dispute their mine is the source of that contamination. It noted the specific claim that the programme failed to reflect viable alternative causes of the high nitrate levels observed at the Primary School borehole in Ga Molekane:

"We consider those parts (of the programme) ... that discuss water quality issues in the area and, in particular, in Ga Molekane village, to have been presented in a sensationalist manner and potentially to have misled the BBC's audience."

The Committee noted where the script reflected the study's finding that other sources were considered and eliminated:

BOSMAN: The water supply at the Ga-Molekane village, the secondary school and the community, has got extremely high levels of nitrates and bacteriological contamination. The water supply at the primary school, extremely high levels of nitrates, which according to South African water quality guidelines far exceeds safe levels and especially is of concern when water of that kind of quality is provided to children in their developmental years.

REPORTER: You went through a process of elimination to see where the problem may lie, in terms of those high nitrates, what were your findings?

BOSMAN: Nitrates is something that does not naturally occur in the environment. It's normally found where you get human or animal excrement, or fertilizer

use, or use of explosives, ammonia-based explosives. At the primary school the only possible cause that we could identify was the slimes dam, where obviously the waste products from explosive, from the blasting etc, together with the bi-products of the mineral processing is disposed where you would get high ammonia levels. We eliminated other sources.

REPORTER: You're absolutely categoric about that - it had to be from the mine?

BOSMAN: On the basis of the samples we took that day, and the results that we obtained that day, you have to conclude that the other sources have been eliminated.

The Committee noted that the ECU had already found the programme was "materially inaccurate" in how it presented the contention that the mine contaminated the drinking water at the primary school.

The Committee noted that beyond the specific point raised by Anglo American in relation to Ga Molekane, the consideration on appeal was whether the remainder of the allegations concerning the drinking water were presented accurately and impartially as tested against the guidelines.

The Committee noted that statements made in the programme by both the reporter and by Carin Bosman accurately reflected the conclusions of her study for ActionAid: the relevant section in the programme encompassed the key findings of Carin Bosman's report and accurately reported the risks to health that she documented.

The Committee decided the programme was fair and even handed in how it reported the allegations concerning water contamination. Having already accepted that the science on which the programme relied was valid, the Committee also decided that there was no evidence that without isotopic testing the programme overstated the case (notwithstanding the previous partial uphold regarding the certainty with which the programme presented Carin Bosman's hypothesis). In reaching this decision, the Committee did not accept the complainant's claim that isotopic testing would have brought certainty to the argument and that without it the claims made in the programme were invalid.

Therefore the Committee decided the programme fulfilled the guideline requirement on Accuracy:

"Our output 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.

"...All the relevant facts and information should be weighed to get at the truth. If an issue is controversial, relevant opinions as well as facts may need to be considered."

And also that it was impartial, achieving the "due impartiality" required by the guidelines, which requires programme makers to be:

"fair and open minded when examining the evidence and weighing all the material facts, as well as being objective and even handed in our approach to a subject. It does not require the representation of every argument or facet of every argument on every occasion or an equal division of time for each view."

Finding: Not Upheld

ii. Was Anglo Platinum given sufficient detail to enable an informed response to the allegations?

As this was a first party appeal, the Committee noted the requirement that it consider the Fairness guideline.

The Committee noted that all of the key allegations concerning water contamination made in the programme were put to Anglo Platinum in an interview with its Executive Head of Corporate Affairs. The Committee considered the allegation that the company were given inadequate notice of the interview, and in particular were not given the results of the water-testing in order for them to formulate a considered response. In particular it noted the letter of appeal, in which it states that the fact the programme only contacted Anglo Platinum after arriving in Limpopo indicates there was "little or no attempt to prepare a balanced documentary".

The Committee noted the programme's explanation (as given to the ECU) as to why they delayed informing the company about the programme until they had arrived in South Africa:

"in an area like Limpopo many people rely on Anglo Platinum for their livelihoods and we wanted to discover their views independently. However, within two days of arriving in Limpopo, having assured ourselves the story stood up – we contacted the press office at Anglo Platinum on Wednesday March 5. We explained what we were doing, invited Anglo Platinum's involvement via interview and/or facility and explained that we would be in South Africa until the following Wednesday."

The Committee noted the detailed email sent to the company outlining the points the programme wished to raise and that all of the major issues raised in the subsequent programme were in the bullet point list supplied prior to the interview. The Committee noted that Anglo Platinum were specifically asked if they had carried out water testing at two named sites, and whether the company could supply results. It noted too a separate email which listed interviewees who would be appearing in the programme including

"the environmental scientist who carried out water quality tests in the area".

In addition, the Committee noted that four days before the interview Anglo American were sent a list of question areas by the Producer and that the email referred explicitly to water tests carried out by Action Aid:

- "3) Has Anglo checked water quality in the River at Ga Pila which local people are drinking from?
- 4) Does Anglo Platinum routinely publish details of water quality tests it conducts in the communities around mines?
- 4) Has the company ever tested the water at:
 - a) Podile primary school in Ga Molekane
 - b) The Langalibalele secondary school in Ga Molekane
 - c) The village bore hole at Ga Molekane

(tests carried out for the charity Action Aid suggest this water is unfit for human consumption. The test report blames mining-related contamination)."

The Committee noted that the Editorial Adviser had also had sight of correspondence between ActionAid and Anglo Platinum which showed the company were aware from late February about the water testing and the conclusions which had been reached:

"Action Aid has commissioned independent water sampling analysis which has discovered serious water pollution – including high levels of total dissolved salts,

sulphates and nitrate – at four sites near Anglo Platinum mines, and the independent report states that the likely cause is mining activities.”

The Committee noted the Editor of *File on 4*'s response when asked at what point the programme gave Anglo Platinum a copy of Carin Bosman's study:

“We didn't - we were never asked to, either before or after the interview. Before the interview Anglo American were fully briefed on all the issues we wanted to raise - including questions arising from the Bosman research - and they responded on that basis without ever asking for fuller particulars.”

The Committee noted the Editor's comment, that the research was commissioned by Action Aid and not the programme and that the charity was in dialogue with the company and therefore had the opportunity to request Carin Bosman's research directly.

The Committee noted that in an email sent to the programme subsequent to the programme's interview with Anglo Platinum's Head of Corporate Affairs, she clarified points discussed during the interview, conceding there was leakage from two of Anglo Platinum's dams at the mining site into the underlying aquifers and that there were high levels of nitrates in some of the downstream monitoring points. The Committee noted the email stated it was “highly unlikely” that any pollution from the dams would “migrate against the gradient” towards Ga Molekane. The Committee noted that *File on 4* reported these clarifications in script form in the programme, and that the programme also reported that Anglo Platinum were planning to ask ActionAid for their data and that if there were problems they would seek to deal with them “as a matter of urgency”.

The Committee considered the evidence in relation to the following clause from the guideline on impartiality:

“we can explore or report on a specific aspect of an issue or provide an opportunity for a single view to be expressed, but in doing so we do not misrepresent opposing views. They may also require a right of reply.”

And from the section on achieving impartiality:

“Impartiality is described in the Agreement as “due impartiality”. It requires us to be fair and open minded when examining the evidence and weighing all the material facts, as well as being objective and even handed in our approach to a subject. It does not require the representation of every argument or facet of every argument on every occasion or an equal division of time for each view.”

It also considered the same evidence in respect of the guideline on fairness, which stipulates:

“We will be open, honest and straightforward in our dealings with contributors and audiences, unless there is a clear public interest in doing otherwise...”

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

And in the section on right of reply states:

“When we make allegations of wrong doing, iniquity or incompetence or lay out a strong and damaging critique of an individual or institution the presumption is that those criticised should be given a ‘right of reply’, that is, given a fair opportunity to respond to the allegations before transmission.

“... We should always describe the allegations in sufficient detail to enable an informed response. The response should be reflected fairly and accurately and

should normally be broadcast in the same programme, or published at the same time, as the allegation..."

The Committee was comfortable that the company was aware of the research which had been carried out regarding water quality and of its imminent publication. From the email trail the Committee concluded the programme was aware of their responsibilities in relation to the company's right to make an informed response and executed those responsibilities in good time and that it made sufficient information available to the company. Accordingly, in the Committee's view there had been no breach of the guidelines.

Finding: Not Upheld

iii. Was the programme in breach of the guidelines when it broadcast, unchallenged, an assertion from a contributor that Anglo Platinum had "bribed" communities to move?

The Committee noted the relevant section of script:

Commentary: Anglo Platinum's operations in Limpopo are expanding and more people are on the move. This is Ga-Puka, another village, another problem.

James Notwana: Anglo, he know very well, bribe the people to move this site. Because people, they like money. You see, if you are a poor man or a poor wife, the man who got money, he's coming to you and bribe you.

The Committee noted the commentary explains that James Notwana is "holding out – determined to stay in his home". Mr Notwana explains that three of his children are buried next to the house and the graves of his grandfather, father, mother and wife are there too and can not be moved. The commentary continues:

Commentary: Two hundred yards from James' house a Pickfords removal team awaits instructions from their supervisor. This is a community on the move. Thousands have been resettled already, others are leaving now. Anglo Platinum says it has learnt from previous resettlements. It says it's providing better housing, farmland and an improved financial deal. But this isn't just about compensation...

The Committee noted that the programme put Mr Notwana's case to Mary-Jane Morifi, Anglo Platinum's Executive Head of Corporate Affairs:

Commentary: We spoke to one gentleman, a pensioner. He didn't want to leave his home because he had three children buried next to his house. Can you understand why he wouldn't want to go?

Morifi: I can understand why he would be concerned about his ancestors being left behind, which is why the relocations agreement included the relocation of grave sites.

Commentary: Digging up the graves?

Morifi: Yes

Commentary: He's got no choice has he, he's got to go?

Morifi: It is a negotiated settlement. It is part of the relocation agreement that the graves will need to go close to where the community is going to go to.

The Committee noted the complainant's point on Appeal:

"The programme broadcast, unchallenged, an assertion that Anglo Platinum had 'bribed' communities to move. In fact the compensation arrangements had been negotiated over several years with government oversight and the provision of free legal support to communities."

The Committee noted the ECU's comment at Stage 2:

"I think it is clear that Mr Notwana is using the word 'bribe' not in the sense of an unlawful payment, but in the sense of an inducement. Collins Dictionary, for example, offers two uses of the word: one relating to illegal payments, the other to 'any persuasion or lure. This, I think it is clear, is the sense in which Mr Notwana intended it. He is saying that if poor people are offered enough money they will acquiesce in the move and go to the new settlements."

It noted too the complainant's rejection of that explanation in its response to the ECU finding:

"The use of the word 'bribe' in the British media when applied to a developing country would, regrettably, be taken, we would suggest by a casual listener, to mean that the company had indulged in, at least, immoral and possibly, illegal activities. A right of reply should have been given."

The Committee noted the subsequent sequence in the programme, an interview with the author of the ActionAid report into Anglo Platinum's activities in Limpopo, and the rhetorical questions posed by the reporter:

Reporter: It's very easy to criticise a big mining company. At the end of the day, it's global demand for platinum that is fuelling this, and there are a limited number of places where you can find it. These people would have to be resettled, displaced if we're going to continue down the road of catalytic converters – a greener, cleaner world?

As this is a first party complaint, the Committee considered whether the programme had fulfilled the guideline on fairness, specifically the clause relating to the requirement for a right of reply when:

"we make allegations of wrongdoing, iniquity or incompetence or lay out a strong and damaging critique of an individual or institution".

The Committee considered the wider context in which Mr Notwana's remarks were presented and how that context might have affected the audience's interpretation of the meaning of the word "bribe". The Committee noted that the word "bribe" was used in a contribution from a man who was emotionally attached to his home and his ancestors and was clearly unhappy with the situation. The Committee said it was clear from the context that English was not the interviewee's first language and that it would have been clear to the audience that Mr Notwana was referring to the inducements that were being offered for him to leave, and that he was not suggesting anything illegal or underhand had taken place. The Committee were further satisfied that the programme accurately and comprehensively described what form those inducements took: cash, new homes, clean water. The Committee concluded that the use of the word "bribe" on this occasion did not require the right of reply allowed for in the guidelines because it was not alleging wrongdoing, iniquity or incompetence; in addition the company's position was accurately reflected in the programme in relation to the relocation package on offer.

Finding: Not Upheld

iv. Did the programme breach the guidelines by only broadcasting the opinions of the 5-10% of residents against resettlement and “ignoring the majority of the community who had moved without objection”?

The Committee noted that the programme conducted interviews with a number of people who had refused to leave their homes and described in some detail their reasons for not going, but that, as the complainant alleges, there are no interviews with any of those who have moved. The Committee noted too that the programme does not state whether those who have moved profess to be happy or unhappy with their new homes. However, the Committee also noted that the programme accurately reports the numbers who have moved and that they have been given a relocation package which includes financial compensation and land. The Committee noted that Anglo Platinum employees are heard stating the company's case on a number of occasions in relation to the relocations.

The Committee noted how the reporter introduces this aspect of the story:

“With the platinum rush, new concessions are opening up in South Africa. Anglo Platinum has historically played a canny game. In the early 1990s, in the dying days of white rule, it signed lease agreements with tribal leaders, acquiring their ancestral homelands for as little as 50 cents – that’s about four pence per hectare. And in these new areas the technology has changed. Rather than deep pit mining, massive open cast mines are coming on stream. And to make way, thousands of people – villagers – have been forced from their ancestral lands. They’ve been relocated to purpose built townships financed by the mine, offered compensation and new land. The mine says that it has provided better housing and that now the vast majority of villagers are better off. But not everyone is happy to go.”

The Committee noted the programme's reference to “140 people (who) are holding out” and its interviews with two of those who are refusing to leave.

The Committee noted how the commentary explains that 7000 people took up the Anglo Platinum offer to move from the village of Ga-Pila (to the new community of Sterkwater), and that those who have refused to go say they are being “targeted”: their electricity has been cut off, their farmland fenced off and they have no access to water. The Committee noted that the programme reports Anglo Platinum's denial that it had disconnected vital services.

The Committee noted the section which dealt in some detail with the reasons why some people were resisting relocation:

Commentary: Two hundred yards from James' house a Pickfords removal team awaits instructions from their supervisor. This is a community on the move. Thousands have been resettled already, others are leaving now. Anglo Platinum says it has learnt from previous resettlements. It says it's providing better housing, farmland and an improved financial deal. But this isn't just about compensation...

The Committee noted that the reporter explained that ten months earlier members of the community who were refusing to move engaged in a peaceful demonstration; the police opened fire on them with rubber bullets resulting in injuries to a number of the villagers, one of whom had surgery to remove a bullet lodged in her cheekbone:

Commentary: ...Anglo Platinum paid for her operation, but says it was not responsible for the police opening fire. Mary-Jane Morifi of Anglo Platinum is adamant that there is no discontent and says everyone has signed off on the relocation deal.

Morifi: I know we have 100% of the homeowners who have signed up and said we are going to relocate.

Reporter: Why are there demonstrations then?

Morifi: I don't know that there are demonstrations. To date we have moved about eight hundred households.

Reporter: You are not aware of demonstrations at Ga Puka?

Morifi: Not this week, not last week. I'm not aware of those.

Reporter: Last year?

Morifi: Those were because one sector of the community wanted to move and another sector did not want them to relocate. The police came in, not at the instructions of Anglo Platinum, and rubber bullets were fired.

Reporter: It's not going particularly well though, is it? I mean, last year ...

Morifi: Eight hundred people, households have moved out of 956.

Reporter: You have people who have told us they don't want to move. Last year you had a demonstration, a 65 year old woman was shot in the face with a rubber bullet. It's not going well, is it?

Morifi: If you have homeowners who say they do not want to move, we would like to understand what their issues are.

Reporter: We spoke to one gentleman, a pensioner. He didn't want to leave his home because he had three children buried next to his house. Can you understand why he wouldn't want to go?

Morifi: I can understand why he would be concerned about his ancestors being left behind, which is why the relocations agreement included the relocation of grave sites.

Reporter: Digging up the graves?

Morifi: Yes.

Reporter: He's got no choice has he, he's got to go?

Morifi: It is a negotiated settlement. It is part of the relocation agreement that the graves will need to go close to where the community is going to go to.

The Committee noted the complainant's allegation on appeal to the BBC Trust:

"While the programme claimed to report 'community views', it in fact only broadcast opinions from the five to ten per cent of residents who were against the terms of the resettlement, and ignored the views of the 90 per cent or more of the community who were satisfied and who have subsequently moved to their new, significantly improved living conditions without any objection. By the BBC's own admission (letter 22 July 2008) the programme team did not visit the communities who had willingly resettled at Mothlotlo (from Ga Sekhlelo and Ga Puka) so cannot possibly claim to have provided a balanced view of that resettlement.

"(The reporter) when interviewed on the *Today* programme on March 25 was able to claim in response to a question asking whether anyone was in favour of the resettlement that he hadn't met anyone who was. Because they had intentionally

decided not to visit resettled families, his response was technically accurate but highly misleading."

The Committee noted the response at Stage 1 from the Editor of *File on 4*:

"We went to great lengths to sample a range of opinion but the fact is that most people we spoke to in the five villages we visited, did seem to have a complaint of one sort or another about the activities of Anglo Platinum.

"You are correct to say that we did not visit the new settlements at Ga Puka and Ga Sekhaelelo. We did, however, visit the new settlement at Sterkwater which was also, as we understood, built by Anglo Platinum in cooperation with the community. Of those we spoke to in Sterkwater, none was content with the terms of the relocation. We are accused (in the original complaint page 3) of not interviewing 'the leadership of the community organisation responsible for overseeing the resettlement'. In fact we did interview a senior officer of the Section 21 company in Sterkwater who told us he could no longer hold consultative village meetings because they degenerated into violence. There was no space to include this in the programme."

The Committee noted the range of people who the programme say they contacted:

"...in collecting material on location, we spoke to something approaching 100 people including:

- (a) People who had been invited to relocate to a new settlement, and declined to do so. There were the people at old Ga Pila
- (b) People from old Ga Pila who had agreed to the relocation process and moved to the company's new settlement at Sterkwater
- (c) People who were now resisting the move from Motholotlo"

The Committee noted the complainant's contention that the programme was not fair to the company:

"the production team failed in its duties to gather relevant information first hand and to reflect Anglo Platinum's opinion on the relocation process."

In this respect, the Committee noted the interview exchange with Anglo Platinum's Executive Head of Corporate Affairs, in which the reporter asked her about the circumstances of the relocations and in which the Executive Head of Corporate Affairs stated the company's point of view. The Committee also noted where the commentary stated:

"The mine says that it has provided better housing and that now the vast majority of villagers are better off."

"Anglo Platinum says it has learnt from previous resettlements. It says it's providing better housing, farmland and an improved financial deal. But this isn't just about compensation..."

The Committee concluded the company was afforded a fair opportunity to express its point of view regarding relocations and also to respond to the specific criticisms of the relocation policy made by contributors to the programme.

The Committee concluded the programme was not necessarily obliged to report the views of those who had moved. It had demonstrated that it had spoken to a wide range of people and having gathered material using first hand sources, as suggested by the guidelines, it had weighed all the material facts in deciding what to include and what to

omit. The Committee was satisfied the programme had exercised proper editorial judgement in this instance and the omission of the views of those who had moved did not lead to a bias or imbalance of views. The programme accurately reported the numbers who had moved and what the company had done to help those who had been obliged to relocate. Therefore, in the Committee's view by choosing to report on a specific aspect of the story it did not misrepresent other views nor did it mislead the audience in any way in respect of the relocations.

Finding: Not Upheld

Britain's Really Disgusting Food: Dairy, BBC Three, 9 November 2009

1. The programme

First broadcast on BBC Three on 9 November 2009 and repeated through to June 2010, this was the second in a series of programmes looking at the manufacture of food. The series covered meat, dairy and fish.

2. The complaint

This was the second episode in the series, covering the dairy industry. It contained a 12-minute item by reporter Alex Riley looking at the issue of palm oil production and its use in food such as chocolate. The complainant said that the references in the programme to "sustainable" palm oil being "orang-utan friendly" and "100% sustainable" were inaccurate and not impartial.

Stage 1

The complainant first wrote to BBC Audience Services on 16 December 2009. He said that the programme had rightly highlighted the harm being caused by palm oil but said the description of "sustainable" palm oil as "100 % orang-utan friendly" and "100% sustainable" was "...unsubstantiated, biased and partisan..."

The complainant said that the more palm oil was consumed, the more new plantations had to be constructed and that much of the land used for new plantations was biodiverse forest since palm oil required land in a moist equatorial climate. A substantial part of the new land taken was peatland, which progressively released large quantities of CO₂ over many years of cultivation.

The complainant said that it appeared that the programme referred to palm oil certified by the Roundtable on Sustainable Palm Oil (RSPO). He said that the RSPO did not currently stop its members participating in the replacement of forest with plantations to produce non-RSPO oil. Oil palms planted on peatland, which progressively released large quantities of CO₂ over many years of cultivation, could qualify for RSPO certification. Palm oil from existing plantations merely had to fulfil technical standards to qualify as RSPO-certified. The complainant said this did little or nothing to change the patterns of expansion of plantations overall to meet rising overall demand. The complainant said the unsustainability of palm oil and threat to orang-utans were a consequence of its overall expansion. Orang-utans were not able to live in the middle of a palm oil plantation.

The complainant concluded by saying that an internet search would have brought up many articles by critics of the RSPO. He added that 200 smaller NGOs had signed an International Declaration Against the Greenwashing of Palm Oil by the Roundtable on Sustainable Palm Oil (RSPO).

The complainant included a transcript of relevant parts of the programme that were part of his complaint.

BBC Audience Services replied to the complainant on 6 February 2010 acknowledging his letter but responding to another complaint that the complainant had made in his letter of 16 December 2009 about an item on the BBC News website. The complainant replied to BBC Audience Services on 13 February 2010 informing them that they had not responded to his original complaint.

BBC Audience Services replied to the complainant on 11 March 2010 including a response from Lisa Dunn, Series Producer of the programme. The Series Producer said that the programme had set out to raise awareness that palm oil production could be hugely

damaging to the environment; that it was very common in many products consumed in the West; and that consumers rarely saw palm oil labelled as such.

The Series Producer said that the certified sustainable palm oil featured in the programme could not be made by clearing forest, as opposed to RSPO plantations which could be cleared. She asked if the complainant had confused palm oil from RSPO members and RSPO certified sustainable palm oil. She said there was a difference between palm oil from palm oil producers that were members of the RSPO (which may be from non sustainable sources) and RSPO certified sustainable palm oil. "If the standards of certified sustainable palm oil are correctly enforced this should not damage Orang-utan habitat."

The Series Producer added that certified sustainable palm oil should change the industry's pattern of expansion as it did not allow the construction of new plantations on rainforest. She agreed with the complainant that this had no impact on the palm oil plantations which had already been made by clearing out the rainforest.

The Series Producer concluded that all the conservationists the programme had spoken to believed that calling for a total ban of palm oil, which would be the best option for the environment, would be a waste of time as it would never happen. "The RSPO certified sustainable palm oil would seem to be the best realistic option."

The Series Producer acknowledged there were legitimate questions to be asked about the RSPO organisation but she said she would draw a distinction between palm oil from palm oil producers that are members of the RSPO and RSPO certified sustainable palm oil.

The complainant replied to BBC Audience Services on 19 March 2010. He said that the response from the Series Producer of the programme had not addressed his complaint. There was no response as to how the programme substantiated its claims, or how alternative points of views were discounted.

The complainant acknowledged that the programme did not specifically call RSPO palm oil "100% orang-utan friendly" as he had previously stated but he said it did refer to the RSPO palm oil as "orang-utan friendly" without qualification, with associated imagery to illustrate this as well as banner captions "...and unequivocally portrays it as the best solution for saving the orang-utan and the rainforest, if only more companies could be persuaded to pay the small premium for it."

The complainant said that his complaint about claims being made about RSPO certification had been sidestepped. He added that his original complaint had pointed out the difference between palm oil from RSPO members and RSPO certified palm oil, which the Series Producer wondered if he had confused. He said the programme did not address the problems of why RSPO certified "sustainable" palm oil was likely to do little to change the pattern of expansion in the industry. He outlined several reasons.

The complainant asked if the programme makers, who in their response to him said that RSPO certified sustainable palm oil seemed to be the best realistic option, were saying that switching to RSPO certified palm oil was not "100% sustainable" and not "orang-utan friendly", without qualifications. If that was the case, he believed his complaint was vindicated. If not, he asked why had the programme makers used language which did not appear in the programme.

The complainant added that Greenpeace did not agree that RSPO certification was the best realistic option and had put forward many alternative options to seeking RSPO certified palm oil. The complainant concluded that instead of presenting several different options, the programme "... made over-egged claims for just one potential remedy".

BBC Audience Services replied to the complainant on 24 March 2010, including a second response from the programme's Series Producer.

The Series Producer said the food series, which had been broadcast on BBC Three, was a series with a mischievous and irreverent tone, designed to appeal to a younger audience. She said the palm oil item was 12 minutes long and, given the short amount of time and the complexity of the surrounding issues, it was not possible to explore in greater detail all the issues about sustainability and palm oil.

"Our main aim was to get across a key point, that palm oil is being used in most chocolate, unbeknown to most consumers, as it's only listed as vegetable oil on the ingredients."

The Series Producer said the programme went on to show that although sustainable palm oil was available, the industry did not use it as it was more expensive "...therefore establishing that profit was more important than environmental concerns".

The Series Producer said the programme obtained a commitment from the confectionery company Mars to move to using sustainable palm oil in their products. She said that at no point did the reporter claim that the sustainable palm oil was 100% sustainable. She said the term "100% sustainable" was used on two occasions and set these out. She added that on both occasions the reporter was specifically referring to Mars' stated aim to move towards ensuring that 100% of the palm oil used in their products would come from sustainable sources. She added that the reporter was not saying that sustainable palm oil was 100% sustainable.

The Series Producer acknowledged that the programme did say that sustainable palm oil was orang-utan friendly, and added that in broad terms it was. "If the standards of Certified Sustainable palm oil are correctly enforced this should not lead to further damage of the remaining orang-utan habitat." She added that in substantiating this claim, the programme makers had spoken to WWF, Friends of the Earth, Greenpeace and a specialist journalist. She also quoted from the WWF website.

The Series Producer agreed that the RSPO had been criticised for some "loopholes" including their stance on allowing members to continue to source and produce non sustainable palm oil. But she added that in a short 12 minute item, the programme focussed on the broader issues of sustainable palm oil. She said the same NGOs were clear that using RSPO certified sustainable palm oil was helping to stop the extinction of orang-utans. She said there was no mention of the RSPO in the item apart from the reporter reading out the statement from Mars, which she quoted.

The Series Producer said it was not possible to provide the level of detail the complainant had complained about in a multi-item film. She said the programme was trying to draw the audience to the subject in an accessible way. She said that Greenpeace had welcomed Nestlé agreeing to stop using palm oil and to use only sustainably sourced palm oil by 2015.

The Series Producer said that in an interview with Greenpeace their spokesman had said that they had to be realistic as palm oil use was so widespread and in many products. The spokesman added that it could be produced sustainably and needed only one big supplier to become a preferred supplier for supermarkets for there to be a domino effect within the industry and this was the kind of model the industry should be working towards. The Series Producer added that Greenpeace's position on the RSPO was neutral.

Stage 2

The complainant wrote to the Editorial Complaints Unit (ECU), the second stage of the BBC's Complaints Procedure, on 6 July 2010. The Head of Editorial Complaints, ECU replied to the complainant on 9 August 2010 saying he would consider the complaint.

The Head of the ECU provided his full response to the complainant on 4 October 2010. The complaint was considered in relation to the Editorial Guidelines, in particular the guideline on accuracy. The complaint was not upheld on the following grounds:

- The Head of the ECU said he understood the complaint to be that the programme's references to "sustainable" palm oil (i.e. RSPO certified palm oil) as "orang-utan friendly" and "100 % sustainable" were significantly misleading. The Head of the ECU said that the reporter did not say that any variety of palm oil was 100% sustainable, therefore he was not able to uphold that aspect of the complaint.
- The Head of the ECU accepted there were serious questions about the degree to which the RSPO certification scheme assisted in the conservation of habitat but he added that the programme did not refer to (or set out to assess the merits of) any particular scheme and limited itself to the suggestion that sustainable production of palm oil would reduce pressure on orang-utan habitat.

"I would consider this suggestion to be misleading if it could be said that there were no realistic prospect of moving towards genuine sustainability in palm oil production, but it seems that even those who are critical of the RSPO scheme ...don't take that view."
- The Head of the ECU went on to quote the interview with the Greenpeace spokesperson, quoted in the Series Producer's second response to the complainant. He considered it was a fair representation of what had been said, and that he could not uphold this aspect of the complaint.
- The Head of the ECU said that as he was not able to find a breach of the guidelines on accuracy, the question of whether the programme contained inaccuracies which gave rise to bias did not arise. But he added he was left in no doubt that the topic of sustainability in relation to palm oil production was a potentially controversial one.

The complainant replied on 18 October 2010, asking for the decision to be reconsidered. The complainant said the programme stated more than once that the "sustainable palm oil" that had already been delivered to the UK was "orang-utan friendly." He said that the "sustainable" palm oil was RSPO certified palm oil, although the programme did not mention this. The complainant asked how it was valid for the programme to state that the palm oil which had been imported into Hull and which was offered to Mars was orang-utan friendly, simply because they hadn't mentioned it was RSPO-certified? RSPO was the only "sustainable" certified/labelled palm oil that had been promoted in the UK at the time the programme was broadcast (as opposed to products containing palm oil being described as ethically sourced).

The complainant quoted the reporter who had said, after meeting the representative from AAK (a vegetable oil refiner), that using palm oil would cost them half a pence more per bar.

The complainant said the programme painted the picture that if companies could move faster to using "100% sustainable palm oil" in their products, the deforestation/orang-utan issue could be solved. The Greenpeace model for promoting the source of palm oil from sustainable sources was not the same model as the RSPO which WWF supported.

The complainant added that the programme makers failed in “impartiality and diversity of opinion” by not reporting dissent of any kind from the model they presented of seeking to promote the purchase/use of palm oil that had been certified “sustainable”.

The complainant considered the reference to “100% sustainable palm oil” was “ambiguous and therefore misleading”.

The complainant wrote again to the ECU on 3 December 2010 asking about the status of his complaint. The Head of the ECU replied to the complainant on 17 December 2010 saying that the points the complainant had made would have had force only in a context where a particular sustainability scheme had been identified and where its merits were at issue. The Head of the ECU said that as the programme did not identify a particular scheme, the validity of the complainant’s criticisms of the scheme the programme makers had in mind went to an issue which would not have arisen in the minds of viewers.

The Head of the ECU added that the complainant’s criticisms would potentially have had force if deployed in favour of the stronger claim that no current scheme yielded or offered the prospect of yielding “orang-utan friendly” results, but in view of the comments from the Greenpeace spokesman this was not a claim that he would support. The Head of the ECU also said that he disagreed with the complainant’s final point. He said it did not seem to him to be the natural interpretation of the phrases used in the programme which clearly had the sense of “... moving towards 100% use of sustainable palm oil, rather than the sense of moving toward the use of palm oil which is 100% sustainable”.

Appeal to the BBC Trust

The complainant emailed the BBC Trust Unit on 14 January 2011 appealing against the ECU decision on the grounds that the programme was inaccurate and not impartial.

The complainant raised the following points in relation to the impartiality and accuracy of the programme:

1. Whether it was duly accurate to describe the palm oil used in the programme as “sustainable” and “orang-utan friendly” without qualification.
2. Whether the programme failed to be duly impartial in that it did not include critical views of the RSPO model.
3. Whether the programme was misleading with regard to the reference to “100% sustainable palm oil”.

3. Applicable Editorial Guidelines

The complaint was judged against the 2005-2010 Editorial Guidelines which were in force at the time.

Section 3 – Accuracy

The BBC’s commitment to accuracy is a core editorial value and fundamental to our reputation. Our output 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.

For the BBC accuracy is more important than speed and it is often more than a question of getting the facts right. All the relevant facts and information should be weighed to get at the truth. If an issue is controversial, relevant opinions as well as facts may need to be considered.

We aim to achieve it by:

- the accurate gathering of material using first hand sources wherever possible.
- checking and cross checking the facts.
- validating the authenticity of documentary evidence and digital material.
- corroborating claims and allegations made by contributors wherever possible.

GATHERING MATERIAL

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

Where this is not possible, we should talk to first hand sources and, where necessary, corroborate their evidence.

We should be reluctant to rely on a single source. If we do rely on a single source, a named on the record source is always preferable.

We should normally only rely on an agency report if it can be substantiated by a BBC correspondent or if it is attributed to a reputable national or international news agency.

We should record our interviews with sources wherever possible.

In circumstances where recording might inhibit the source, full notes should be made, preferably at the time, or if not, then as soon as possible afterwards.

MISLEADING AUDIENCES

We should not distort known facts, present invented material as fact, or knowingly do anything to mislead our audiences. We may need to label material to avoid doing so.

Section 4 – Impartiality

Impartiality lies at the heart of the BBC's commitment to its audiences. It applies across all of our services and output, whatever the format, from radio news bulletins via our web sites to our commercial magazines and includes a commitment to reflecting a diversity of opinion.

The Agreement accompanying the BBC's Charter requires us to produce comprehensive, authoritative and impartial coverage of news and current affairs in the UK and throughout the world to support fair and informed debate. It specifies that we should do all we can to treat controversial subjects with due accuracy and impartiality in our news services and other programmes dealing with matters of public policy or of political or industrial controversy. It also states that the BBC is forbidden from expressing an opinion on current affairs or matters of public policy other than broadcasting.

In practice, our commitment to impartiality means:

- we seek to provide a properly balanced service consisting of a wide range of subject matter and views broadcast over an appropriate time scale across all of our output. We take particular care when dealing with political or industrial controversy or major matters relating to current public policy.
- we strive to reflect a wide range of opinion and explore a range and conflict of views so that no significant strand of thought is knowingly unreflected or under represented.

- 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.
- we can explore or report on a specific aspect of an issue or provide an opportunity for a single view to be expressed, but in doing so we do not misrepresent opposing views. They may also require a right of reply.
- we must ensure we avoid bias or an imbalance of views on controversial subjects.
- the approach to, and tone of, BBC stories must always reflect our editorial values. Presenters, reporters and correspondents are the public face and voice of the BBC, they can have a significant impact on the perceptions of our impartiality.
- our journalists and presenters, including those in news and current affairs, may provide professional judgments but may not express personal opinions on matters of public policy or political or industrial controversy. Our audiences should not be able to tell from BBC programmes or other BBC output the personal views of our journalists and presenters on such matters.
- we offer artists, writers and entertainers scope for individual expression in drama, arts and entertainment and we seek to reflect a wide range of talent and perspective.
- we will sometimes need to report on or interview people whose views may cause serious offence to many in our audiences. We must be convinced, after appropriate referral, that a clear public interest outweighs the possible offence.
- we must rigorously test contributors expressing contentious views during an interview whilst giving them a fair chance to set out their full response to our questions.
- we should not automatically assume that academics and journalists from other organisations are impartial and make it clear to our audience when contributors are associated with a particular viewpoint.

Achieving Impartiality

Impartiality must be adequate and appropriate to our output. Our approach to achieving it will therefore vary according to the nature of the subject, the type of output, the likely audience expectation and the extent to which the content and approach is signposting.

Impartiality is described in the Agreement as “due impartiality”. It requires us to be fair and open minded when examining the evidence and weighing all the material facts, as well as being objective and even handed in our approach to a subject. It does not require the representation of every argument or facet of every argument on every occasion or an equal division of time for each view.

4. The Committee’s decision

The Committee considered the complaint against the relevant editorial standards, as set out in the BBC’s Editorial Guidelines (2005–2010 version). The guidelines are a statement of the BBC’s values and standards.

In reaching its decision the Committee took full account of all the available evidence, including (but not limited to) the Editorial Adviser’s report and the subsequent submissions from the complainant and the BBC.

This appeal raised issues requiring consideration of the guidelines relating to Accuracy and Impartiality.

Accuracy

The Committee began by looking at whether it was duly accurate to describe the palm oil used in the programme as “sustainable” and “orang-utan friendly” without qualification.

The Committee noted that the only palm oil branded as sustainable and being imported to the United Kingdom was that certified by the Roundtable on Sustainable Palm Oil (RSPO) and that the BBC had acknowledged that the tanker of palm oil used in the programme had been certified by the RSPO.

The Committee also acknowledged that there had been and continues to be criticism of the RSPO by green pressure groups over its certification process and its ability to monitor and promote sustainability within the palm oil industry. As a result, it noted that, while the RSPO might be the best option for achieving sustainable palm oil production in the future, question marks remained over whether the palm oil it was currently certifying as sustainable was stopping the deforestation and habitat destruction that was threatening the survival of species like the orang-utan.

The Committee then considered the response of the BBC that the reason the remarks about the sustainability of palm oil and its impact on orang-utans were not qualified was because the piece was a short item for a BBC Three audience, and that they were attempting to put across other key messages on a complex issue.

The Committee acknowledged that the primary aim of this item in the programme was to make viewers aware that most chocolate was produced using palm oil, unbeknown to the majority of consumers as it is only listed as vegetable oil on the ingredients, and that this has environmental consequences unless a sustainable palm oil is used. The Committee also noted that the programme was campaigning in style.

However, the Committee felt that, while well intentioned and informative for a younger audience, the programme should have provided a more thorough explanation of the complexities of this issue given the item was 12 minutes in duration. As a result, it agreed that concerns about the sustainability of the palm oil used in the programme and its ability to help the orang-utan should have been alluded to. By failing to do so, the programme had not been duly accurate.

The Committee then went on to examine whether the programme was misleading with regard to the reference to “100% sustainable palm oil”.

The Committee noted that the presenter had said:

“You know what. They’re probably sitting there thinking how are we going to get to 100% sustainable palm oil. We don’t even know where to get it from. We turn up. We can help them. Job done.”

The Committee noted that the complainant took this to mean the palm oil in the tanker was completely sustainable palm oil which, in the light of the known issues concerning the sustainability of palm oil certified by the RSPO, could not be the case. However, it also noted that the BBC believed it was clear that this reference was to the aim of the confectionery company Mars of only using palm oil which is sustainable.

The Committee’s view was that, while this phrase was possibly open to interpretation, the presenter had made it sufficiently clear that he was referring to Mars’ aim to move to using only sustainable palm oil. The Committee concluded that there had been no breach of the accuracy guideline with regard to this line in the script.

Impartiality

The Committee then went on to consider whether the programme failed to be duly impartial by not including views critical of the RSPO model.

The Committee noted that the only palm oil branded sustainable that was entering the UK was that certified by the RSPO. However, it noted that the BBC had only mentioned the RSPO in the programme in relation to Mars. The Committee considered the content of the programme and concluded that the programme was not seeking to highlight or promote any specific sustainability scheme with the tanker of oil that it used. The Committee's view was that the inclusion of voices critical of the RSPO model was not required in order to achieve impartiality. The Committee concluded that the programme had not failed to be duly impartial by not including such views given the primary purpose of the piece.

Finding: Upheld in part with regard to accuracy. Not upheld with regard to impartiality.

Jeremy Paxman's *Guardian* item, 13 November 2010

1. The item

In November 2010 Jeremy Paxman was one of ten writers invited by the *Guardian* newspaper to select their image of the decade from two published collections of photo-journalism. Their choices were published in the *Guardian* review section on 13 November 2010. Each image was accompanied by a short commentary from the writer explaining their selection. Jeremy Paxman chose an image of the toppling of a statue of Saddam Hussein in Baghdad on 9 April 2003.

<http://www.guardian.co.uk/artanddesign/2010/nov/13/jeremy-paxman-photograph-decade>

2. The complaint

The complainant said Jeremy Paxman had breached the Editorial Guidelines because the article was a one-sided view on a controversial issue, expressing a negative view of the Iraq War and the motives behind it.

Stage 1

The complainant wrote initially to Audience Services on 25 November 2010. Quoting from the article, the complainant said that Mr Paxman had:

- written about “the Iraq war hanging over this decade like a very bad smell; images of poor David Kelly leaving the House of Commons before he killed himself; grinning American guards posing with their hooded, humiliated prisoners; little George Bush strutting on the deck of an aircraft carrier with that ‘Mission Accomplished’ banner”.
- referred to “the initial lies that took us to war”, to “Tony Blair striding around with his new best friend” in his “excruciating ball crushing jeans” and to the “dodgy dossier”.
- gone on to talk about “the truth of the war” that “the most powerful nation on earth had destroyed a fly-blown tyranny” and had disguised the fact by replacing the American flag with the Iraqi flag when the statue of Saddam was toppled.
- concluded that “we shall probably forget the Iraq war in much the same way as we have forgotten the humiliation in Mesopotamia in the first world war. But it ought to make us a lot more wary about everything we see and hear when powerful states decide to pursue ‘vital interests’”.
- ignored the alternative view which saw the war as a noble and successful endeavour to uphold UN resolutions, liberate the Iraqis and remove any possible threat of weapons of mass destruction being used in the region again.

Audience Services replied at the beginning of December stating that the BBC had strict guidelines which included advice on maintaining impartiality. The author of the reply said she appreciated that the complainant felt Mr Paxman's article was inappropriate, and she had registered the complaint on the BBC's audience log which was circulated to senior staff and programme makers.

The complainant replied that the BBC appeared to have upheld the complaint but had not indicated that any action would be taken against Mr Paxman. On 19 January 2011 the Complaints Adviser for News and Current Affairs responded. He stated that the vast majority of Mr Paxman's article was consistent with BBC Guidelines and was written in a

challenging and engaging style, familiar to *Newsnight* audiences. However, he accepted that the phrase “the lies that took us to war” could have been phrased differently and this had been discussed among the Editorial team.

Stage 2

The complainant wrote to the Director of News reiterating his concerns about the article and his dissatisfaction with the responses thus far. The Director of News responded on 10 February stating that the article needed to be reviewed in the context of Mr Paxman’s broadcasting style on *Newsnight*. The test had to be whether what Mr Paxman had written would be acceptable if he said the same things on air. She felt for the most part, the answer to this question was “yes”.

Referring to the extracts which the complainant had highlighted, the Director of News said:

- It was true to say that the war hung over the decade like a “bad smell” since even now the decision to go to war was highly divisive and fair to refer to images of “poor David Kelly.....” and “grinning American guards.....” since these things had happened.
- The description of the dossier as “dodgy” was also fair shorthand since the Iraq Survey Group had subsequently concluded that there was no evidence of weapons of mass destruction.
- The comment that “the most powerful nation on earth had destroyed a fly-blown tyranny” and disguised the fact was also a reasonable statement of the balance of forces involved and of what had happened when the statue of Saddam Hussein had been toppled on live TV.
- The sentence beginning “we shall probably forget the Iraq war” was an historical prediction while that beginning “but it ought to make us a lot more wary” was a reasonable observation that the government’s reasons for going to war – the threat of WMD – were not supported by any evidence discovered afterwards.

The Director of News upheld two aspects of the complaint:

- It was inappropriate to refer to “the initial lies that took us to war” since such a motive could not be attributed to Tony Blair’s government and making such an unequivocal statement gave a partial impression.
- Tonally, it sounded somewhat sneering to refer to “little George Bush”. The references to “Tony Blair striding around with his new best friend” and “the excruciating ‘ball crushing jeans’” were also borderline in terms of tone.

The Director of News said that she would be drawing Mr Paxman’s attention to her views on aspects of the article and reminding him of the need to appear impartial at all times and to seek prior approval from the Head of Department before publication.

Appeal to the BBC Trust

The complainant wrote to the Editorial Standards Committee on 23 February 2011 saying that the Director of News had failed to address the general one-sided tenor of the article. He pointed out that the term “dodgy dossier” had been used by opponents of the war to suggest, not that the contents were mistaken, but that there was something underhand and dishonest in the way it had been compiled. He also argued that the Director of News had put the most innocent interpretation possible on other extracts from the article

without making any connection with their general anti-war context or that others might have different opinions.

The complainant did not accept that the words chosen by Mr Paxman were just a matter of description, prediction or reasonable observation, as the Director of News had suggested. He said they were very much related to where Mr Paxman stood on the war and that, even Mr Paxman's comments which could plausibly be described as descriptive dwelt on the downside of the war. The complainant said that, accordingly, the whole article could be said to have been inappropriate in terms of the BBC's impartiality requirement.

3. Applicable Editorial Guidelines

The Committee noted that the complaint did not relate to material broadcast on a BBC platform and therefore neither the accuracy nor the impartiality sections of the editorial guidelines required consideration. The appeal was solely concerned with any effect the article might have had on the public's perception of the BBC's impartiality, as defined in the relevant clauses from the editorial guidelines on Conflicts of Interest.

Section 15 – Conflicts of Interest

Principles

(15.2.1) External activities of individuals working for the BBC must not undermine the public's perception of the impartiality, integrity, independence and objectivity of the BBC. Nor should they bring the BBC into disrepute.

Practices

(15.4.1) News and current affairs output may at any time deal with any issue, cause, organisation or individual and there must be no doubt over the integrity and objectivity of editorial teams. For this reason, there are specific constraints on those working in BBC News and Current Affairs, Global News and news output in the Nations. Staff, correspondents and freelancers primarily known as BBC news presenters or reporters are affected by these constraints.

(15.4.3) BBC staff, correspondents on non-staff contracts and freelancers primarily known as presenters or reporters on BBC News and Current Affairs programmes must not:

- express a view for or against any policy which is a matter of current party political debate
- advocate any particular position on a matter of public policy, political or industrial controversy, or any other 'controversial subject'

4. The Committee's decision

The Committee considered the complaint under three headings:

- A) The use of the term "dodgy dossier" and the complainant's claim that its use in the context of the article suggested there was something underhand and dishonest about the way the dossier had been compiled.
- B) Whether the public's perception of the impartiality, integrity, independence and objectivity of the BBC was undermined by the statement in the article that: "the cost (of the war) wasn't measured just in blood and treasure but in our ability ever again to trust governments".

- C) The article as a whole, and the complainant's contention that it expressed a wholly one-sided, anti-war viewpoint and that by allowing a presenter to express a partial view on a controversial issue the BBC is in breach of the guidelines on Conflicts of Interest.

A) The use of the term "dodgy dossier"

The Committee noted the term "dodgy dossier" was coined by the media shortly after it was revealed that most of the contents of a briefing document on Iraq issued by the Prime Minister's office in February 2003 had been plagiarised from a postgraduate thesis. The Committee noted that Tony Blair had stated in parliament at the time of its publication that the briefing document was the work of the intelligence services and that this turned out not to be the case. The Committee noted that although "dodgy dossier" had been adopted by the media in part to distinguish the February document from the earlier more substantial document released in September 2002 (which included the claim that Iraqi forces could launch biological weapons within 45 minutes of receiving an order to do so), media reports then and now appear sometimes to confuse the two dossiers, calling them each at separate times "dodgy". The Committee noted that it was not entirely clear which of the two documents Jeremy Paxman was referring to in his article.

The Committee noted that the Director of News had found the use of the term "dodgy dossier" acceptable and described it as "fair shorthand" for a document "which alleged that Iraq had weapons of mass destruction, claims for which the Iraq Survey Group subsequently concluded there was no evidence".

The Committee noted the complainant did not accept the Director of News' argument:

"This justification completely ignores the fact that the term was/is used by the opponents of war to suggest, not that the dossier's contents were mistaken but that there was something underhand and dishonest about the way it had been compiled to back up their (and Mr Paxman's) view that we went to war on a lie."

The Committee noted that Jack Straw, who was Foreign Secretary at the time of the publication of the February dossier, has since called it "a complete Horlicks" and an embarrassment to the Government. Alastair Campbell referred to it in his diaries as "a bad own goal". The Foreign Affairs Select Committee in its 2003 report "The Decision to go to War in Iraq" said the document undermined the credibility of the Government's case for going to war and was "almost wholly counter-productive". The Editorial Standards Committee noted too that the Select Committee used the term "dodgy dossier" 11 times in its report, albeit in inverted commas.

In considering the complainant's assertion that the use of the term implied the government was being underhand or dishonest, the Committee noted that dictionary definitions of the word "dodgy" include "unreliable" and "questionable". The Committee concluded that there was clear evidence that the shortcomings in the presentation of the February dossier could be described as "unreliable" and "questionable". The Committee also concluded that even if Jeremy Paxman had been referring to the September dossier, the now infamous 45-minute claim could equally be described as dodgy using the same dictionary definitions because the claim turned out to have been based on unreliable intelligence gathering.

The Committee did not accept the complainant's contention that the use of the term "dodgy dossier" implied that Jeremy Paxman was advocating an anti-war position. The Committee accepted that the term is in widespread use in the media and by politicians and its use here was appropriate in the context of an article which was seeking to build an argument that not all in that war was what it first appeared to be.

B) The public's perception of the impartiality, integrity, independence and objectivity of the BBC

The Committee noted the words complained of in the newspaper article:

"From the initial lies that took us to war, through to the summoning of clubby members of the House of Lords to conduct later "inquiries" that claimed so much and revealed so little, it tarnished everything it touched. The cost wasn't measured just in blood and treasure but in our ability ever again to trust governments."

The Committee noted the complainant's contention that the words chosen by Jeremy Paxman were

"not just a matter of description, prediction or reasonable observation. They were very much related to where he stood on the war..."

"... there is another view, that we went to war, not on a false premise but because Saddam was in breach of UN resolutions designed to make sure (by unfettered inspections) that he did not have WMD. The fact that no evidence of WMD was discovered after the invasion ... was immaterial in this context. From this perspective there was no breach of trust as Mr Paxman's words imply and they cannot be regarded as a reasonable (and therefore impartial) observation."

The Committee noted there have been numerous opinion polls conducted in the UK since 2003 which have included questions about the public's faith in the government and politicians. These included an opinion poll conducted by Ipsos MORI in July 2003 in which respondents were asked whether they thought Tony Blair could be trusted. 41% said yes, 49% said no and 10% didn't know. A YouGov poll for the *Sunday Times* in September 2003 asked the same question. 37% of respondents said they trusted Tony Blair to tell the truth most or all of the time, compared with 61% who said they did not. An internet poll commissioned by the British Life and Internet Project¹ in 2004 received 2890 responses from a representative panel of the public. Respondents were asked whether, if WMD were not found in Iraq, they would be willing to trust Tony Blair to tell the truth on political issues generally. 55% said they did not trust Tony Blair anyway; only 22% said they trusted him then and would continue to do so whether or not WMD were found. Respondents were also asked whether they trusted the result of the Hutton inquiry into the death of Dr David Kelly. Only 30% felt the outcome could be trusted.

In 2007 the BBC commissioned a poll from ICM. This was one of the questions:

"Given the experience of the war in Iraq in 2003, to what extent would you now trust or distrust a British government if it said military action was needed because a country posed a direct threat to Britain's national security?"

51% of those polled said they would not trust a British government in those circumstances, 32% said they would. 50% of all those polled said the war would be very or fairly important in making up their mind at the next general election.

Whilst the Committee noted the complainant's contention that the Government's stated reasons for going to war, namely that Iraq was in breach of UN resolutions, remain valid and meant there had been no breach of trust in that respect, it did not consider it relevant in the context of the statement in the article: the comment was clearly describing

¹ The British Life and Internet Project comprises a consortium consisting of researchers from the University of Sheffield and City University, eDigitalResearch.com, and the Independent Newspaper Group.

public sentiment following the war as reflected in numerous opinion polls, such as those cited above.

The Committee concluded there is clear evidence that the public's trust in government has been negatively influenced by some aspects of the prosecution of the war. In reflecting this in his article, Jeremy Paxman was reaching an evidence-based conclusion and was not advocating a personal view.

C) The article as a whole in relation to the guidelines on Conflicts of Interest

The Committee noted the context of the article: an extended photo caption in which a number of writers had been invited to select their image of the decade and to explain their choice.

The Committee noted the view of the Director of News, at Stage 2 of the complaints process:

"...the feature needs to be reviewed in the context of Jeremy Paxman's broadcasting style on *Newsnight*, which ... is "challenging and engaging". The test has to be whether what he wrote would be acceptable if he said the same things on air.

"For the most part, I think the answer is 'yes'."

The Committee noted the two occasions on which the Director of News felt the article went beyond what would be considered acceptable: the reference to the "lies that took us to war" and the description of George Bush and Tony Blair in "ball-crushing jeans" shots.

The Committee noted the complainant's points on appeal including the following summary arguments:

"(the Director of News) failed to address the general one-sided tenor of the piece (against the Iraq war) and implausibly found that many other remarks made in the article were acceptable..."

"...she lent over backwards to put the most innocent interpretation on (other) extracts from the article without making any connection with the general anti-war context of these extracts and the fact that others might have different opinions to those expressed in the article.

"...the whole article ... can be said to have been inappropriate in terms of the BBC requirement that its journalists and presenters should not identify themselves with one side of the argument on a controversial issue. His piece was riddled through with bias."

The Committee decided that the brief article did not purport to be an analysis of the rights and wrongs of the Iraq War. It took one of the iconic photographic images of that war, recalled several others, and concluded that we should all be wary about what we see and hear when powerful states decide to pursue their vital interests. The Committee's view was that it was essentially a defence of scepticism in taking anything for granted, however compelling it may appear at first sight. The Committee noted that due scepticism was a hallmark of robust journalism. That at times the article may also have reflected some of the arguments of those who opposed the war was, in the Committee's view, incidental to the theme on which Jeremy Paxman chose to focus. The Committee therefore did not accept the complainant's argument that Jeremy Paxman was obliged to reflect other views of the war.

The Committee agreed with the Director of News that the style of the article was in keeping with the combative and provocative approach Jeremy Paxman adopts on *Newsnight*.

The Committee noted the earlier decision by the Director of News to uphold two aspects of the complaint. However, the Committee did not believe that the article as a whole would have resulted in the undermining of confidence in the professional integrity of Jeremy Paxman or the impartiality of the BBC. Such a conclusion was not a proportionate response to the extent of the breaches. Accordingly it did not accept there had been a breach of the guidelines on Conflicts of Interest with regard to the article overall.

Finding: Not Upheld

Rejected Appeals

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

Absence of phrase “WMD” in News coverage

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 originally contacted the BBC on 9 February 2010 to complain about the reporting of the death of Ali Hassan al-Majid, the man known as Chemical Ali and noted that:

“the BBC never described the weapons used to carry out the genocide of 5,000 people as weapons of mass destruction. I would like to know how many people does there need to be killed for a weapon to be classified as such. Also is it because they were not nuclear devices? Do chemical and biological weapons not qualify as weapons of mass destructions [sic]?”

The complainant received a response from BBC Audience Services which explained that the most widely-used definition of a weapon of mass destruction (WMD) is that of nuclear, biological or chemical weapons, but added that there is no treaty, or definition in international law, that contains an authoritative description as to what constitutes a WMD. Therefore, BBC News would tend to refer to specific categories of weapons (such as chemical weapons in the case of al-Majid) rather than the catch-all phrase WMD.

The complainant replied stating that he did not feel this answer explained why the phrase had been omitted and that it did not satisfactorily address his point.

BBC Audience Services replied, apologising for the severe delay in providing a second response which was due to a major fault in their systems. They went on to explain the context of the story and added that the BBC had clearly set out in all its reporting that Chemical Ali was sentenced for genocide – the gravest crime that can be committed in international law. They also set out that the coverage had clearly stated the detailed crimes that had led to that sentence, including events at Halabja and the use of chemical weapons there.

Stage 2

The complainant wrote to Helen Boaden, Director of News, on 29 September 2010 re-stating that he believed the BBC had not provided a satisfactory answer to his complaint. He believed the responses had been an “attempt to disassociate Chemical Ali from crimes of WMD which flies in the face of all the many prior pieces carried by the BBC on the subject”. The complainant also believed that the handling of his complaint had been confused and subject to delay.

The complainant also raised a separate complaint regarding the Taiwanese animation of Gordon Brown featured in programming on BBC Two.

The Head of Editorial Compliance and Accountability for BBC News replied on behalf of the Director of News on 4 November 2010. She said that the appellant had been correct in noting that the term WMD/Weapons of Mass Destruction had not been used in main bulletin or website news reports.

The Head of Editorial Compliance and Accountability explained that she did not believe it had been necessary to do so. Pointing out that the scenes included in the report depicted the outcome of a chemical attack, she said BBC News believed that viewers could form their own judgements as to whether the weapons used to kill the people were of “mass destruction” or not and there was no editorial obligation to use the phrase. She pointed out that the report had clearly stated that Chemical Ali had been sentenced to death for genocide, had listed the crimes for which he had been given death sentences and that the inclusion of the phrase WMD would have added nothing to the viewer’s or reader’s understanding of the story. She then provided a further explanation as to when, on other occasions, the BBC had decided to use the term WMD.

With regard to the complaint about the Taiwanese animation of Gordon Brown, the Head of Editorial Compliance and Accountability explained that the complainant had first raised this in a letter of 24 April 2010, referring to a broadcast on 26 February 2010. She said that she agreed with the response from BBC Audience Services which had said “too much time has elapsed since transmission of the animation ... I can’t comment further”.

Appeal to the BBC Trust

The complainant wrote to the Trust on 20 December 2010, questioning further why it was not necessary to use the term “Weapons of Mass Destruction” and denying that it would not have added to the story.

In his letter he also set out concerns about complaints handling, stating that there appeared to be one rule for the BBC and one for complainants in terms of timescales.

The complainant also raised the matter of his complaint regarding the Taiwanese animation of Gordon Brown featured in programming on BBC Two.

The BBC Trust’s Head of Editorial Standards replied to the complainant on 3 February 2011. She explained 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 first addressed the complaint regarding an animation of Gordon Brown, which BBC Audience Services had not answered because it was out of time. The Head of Editorial Standards noted that the BBC Editorial and General Complaints Process² sets out that complaints should be made within 30 working days of transmission.

She said that she could understand the complainant’s frustration at the length of time it had taken for the complaint to progress, and that he felt it was unfair for the BBC to impose time restrictions on complainants which they do not meet themselves. She noted that he had received apologies for the delays in dealing with his complaint and therefore, while she was sure the Trustees would also wish her to pass on their apologies, she did not believe it would be proportionate to put the complaints handling aspect to the Trustees for further consideration. The Head of Editorial Standards told the complainant that the Trustees were aware of the systems failure which affected the handling of his complaint and had required the Executive to take steps to clear the backlog of complaints, such as this one, which had built up due to the systems failure. The complainant could,

² <http://www.bbc.co.uk/complaints/handle.shtml#code>

however, appeal to the Trust regarding the decision not to proceed with this aspect of his complaint for the reason that it was out of time.

With regard to the substantive complaint, the Head of Editorial Standards noted that the complainant had not appealed to the Trust within the given time limit of 20 working days. She explained that the Trustees may consider an appeal received out of time if reasons are given (and accepted by the Trustees) as to why the delay occurred and why an exception should be made. She said that the complainant had not given any reasons for the delay and therefore she concluded that the appeal should not proceed to the Trust because it was out of time.

The Head of Editorial Standards then set out her reasons for concluding that, irrespective of the lateness of the appeal, the complaint did not have a reasonable prospect of success on appeal and should therefore not proceed to the Trust.

The complainant replied on 2 April 2011 reiterating his concerns that the BBC's responses were delayed while he was required to meet deadlines.

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 appeal against the Head of Editorial Standards' decision. The Committee was also provided with the final Stage 2 reply from the Head of Editorial Compliance and Accountability, BBC News.

The Committee acknowledged the complainant's frustration at the delays he had experienced as a result of the systems failure at Stage 1 of the process, and the Committee agreed that it wished to add to the apologies already received by the complainant for these delays.

Nevertheless, the Committee noted that deadlines were necessary in a system which handles the volume and complexity of contacts that come to the BBC. The Committee noted that exceptions to the deadlines can be, and have been, made where there are good reasons. However, in this case the complainant had not provided any reasons why his complaint should be exempted from the normal rules which apply to all complainants. The Committee agreed with the view of the Head of Editorial Standards that BBC Audience Services had been correct to judge the complaint about the Gordon Brown animation as out of time. The Committee also agreed with the decision of the Head of Editorial Standards not to proceed with the substantive complaint about the use of the phrase WMD on the grounds that the appeal was received out of time.

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

***Hardtalk*, BBC News Channel, 28 April 2010**

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 contacted the BBC on 14 May 2010 saying that a *Hardtalk* interview with the Prime Minister of Thailand had inaccurately accused the government of Thailand of coming to power with the aid of a military coup. The complainant said that the programme had been “inflammatory, inaccurate, biased and (in short) irresponsible”.

BBC Audience Services replied on 16 September 2010, apologising for the very severe delay in replying, which was due to a major fault in the BBC’s systems. The reply did not answer the complainant’s specific points but defended the conduct of the interviewer who had been appointed “on the basis of her experience and talent”.

The BBC reply said that the interviewer was aware of the BBC’s commitment to impartial reporting and that her role had been to “put the questions likely to be in the minds of informed viewers and to look for answers. While this can lead to forceful and persistent questioning, most leading politicians expect their views to be put under scrutiny and are prepared to respond with corresponding firmness.”

The complainant replied on 17 September 2010, stating that the BBC’s response was about 170 days late. He said that if the interviewer was competent, why did she “go armed into the interview with phrases like ‘you yourself have never won an election’ with regards to a 7-times-elected MP?”

The complainant said that no-one, including BBC presenters, can be truly impartial. He added that informed viewers would know that the Prime Minister had indeed been elected and they did not need that question posed on their behalf.

The complainant concluded by saying that he did not accept the BBC’s apology for the delay.

BBC Audience Services replied on 8 November 2010. They reiterated their apology for the delay in responding to the complainant and quoted the programme’s Editor, who said that technical difficulties had beset the interview and it had been interrupted by satellite drop out. The Editor added:

“As a result I do think that this affected the focus of this interview and the result was that some of the terminology we used was not as accurate as we would normally see on *HARDtalk*. This was the case in describing the mandate the Prime Minister has in his right to govern and we were inaccurate in some of the language we used in this line of questioning. I do think you have some justification in your complaint in this area and we apologise for that.”

“*HARDtalk* is a programme that prides itself on accuracy and on this occasion we do agree that we fell short. However we are keen at some stage to do a further interview with Prime Minister Abhisit Vejjajiva on *HARDtalk* so do please keep watching.”

Stage 2

The complainant wrote to the Editorial Complaints Unit (ECU) on 22 November 2010. He said that the technical difficulties of the broadcast were not enough to explain its failings.

The complainant said *Hardtalk* had repeated the allegations made by the “redshirts”, opponents of the government, and that these were “wild accusations” and “propaganda”. The complainant said that it was unlikely this was the result of a simple mistake and added that a number of questions about the source of the information given by, and available to, the interviewer needed to be answered for him to be satisfied.

The complainant concluded by saying that it was inaccurate to state that the Prime Minister had no mandate to govern, that he had never won an election. The complainant said that this is what the opponents of the Prime Minister allege and that the BBC should not have chosen to repeat it. The complainant sought assurances about the future editorial decision making on this subject.

The ECU acknowledged the email on 22 November 2010 and replied in full on 16 December 2010, explaining that the ECU can only consider issues about what is actually broadcast – not how it came to be broadcast nor any consequences of the broadcast.

The ECU reply summarised the complaint as being that the interview was inaccurate in that it claimed that Mr Abhisit Vejjajiva, the Prime Minister of Thailand, had no mandate to govern and had never won an election. The ECU said that it would consider the complaint against the BBC’s Editorial Guidelines on Accuracy.

The complainant replied substantively on 14 January 2011. He asked about details of the complaints process as he said he was a member of a larger complainant group in Thailand and wanted to be able to advise them accurately. The complainant suggested a number of other guidelines against which he thought the complaint should be assessed.

The ECU responded on 19 January 2011, citing the programme transcript of the critical section and noting:

“[the interviewer] does preface her observations about the constitutional legitimacy of Mr Abhisit’s position with the words ‘you know what is feeding this grievance, because there are those, your political opponents, who say you yourself, Abhisit Vejjajiva never won an election...’ I think this makes it quite clear the allegation which she is putting to the Prime Minister, and the more detailed elaboration of it which follows, is not being put as a statement of fact in itself, but as a claim being made by his political opponents.”

The ECU found this a legitimate way of framing the question and did not uphold this part of the complaint.

On the complainant’s point regarding elections, the ECU finding said the question “...refers specifically to the process through which he became Prime Minister and not to his overall electoral record”.

The ECU finding acknowledged that this was a less than perfect formulation but said that it would not have misled the audience as it was clarified by the Prime Minister and not contradicted by the interviewer. The ECU found no serious breach of editorial standards.

The ECU reply then went through the guidelines which the complainant had suggested should be engaged. He said, citing the guidelines to which the complainant had referred:

“1. We should be reluctant to rely on a single source. If we do rely on a single source, a named on the record source is always preferable.”

I am afraid that I do not consider this to be a requirement that every statement of a factual nature made in an interview or a report has to be attributed to a particular source within the report.

2. We must check and verify information, facts and documents, particularly those researched on the internet. This may include confirming with an individual or organisation that they posted material and that it is accurate. Even the most convincing material on the web may not be what it seems.

[The same reasoning applies here.]

3. We should normally identify on air and online sources of information and significant contributors, as well as providing their credentials, so that our audiences can judge their status.

This particular guideline refers to situations where claims or allegations are being made which may be in dispute. As I have indicated above, I do not believe that is so in this case.

[The guideline on correcting mistakes did not apply here as the complaint had not been upheld.]

4. In the global context, some controversial subjects such as national elections or referendums will obviously have varying degrees of global significance but will be of great sensitivity in that country or region in which they are taking place. We should always remember that much of the BBC's output is now available in most countries across the world.

[This guideline was not engaged by the complaint.]

...your view that this guideline may have been breached is based on an underlying belief that what was said about Mr Abhisit was inaccurate. While it may be the case that inaccuracy can give rise to a lack of impartiality, I do not believe that this is so in this case. As I have already said, it does not seem to me that what was said was itself inaccurate, and that where it may have been, the inaccuracy was inadvertent and quickly remedied by the uncontested response from Mr Abhisit."

The complainant replied on 1 February 2011, saying that his concerns about the line regarding the Thai government "coming to power assisted by a coup" had not been considered and that the ECU's consideration was over-selective.

The complainant said it was disputed that the Prime Minister was a direct beneficiary of the 2006 coup and disagreed with the ECU's claim that the interviewer was expressing opponents' criticisms as would be legitimate in an interview of this sort.

The complainant said that he understood that the ECU could only consider what was broadcast but that it needed to be seen in the context of the power, privilege and Eurocentrism within which it is said.

The complainant disagreed with the ECU's conclusion that what was said was not in itself inaccurate and argued that the Editor of *Hardtalk* had already conceded that it was.

The complainant concluded by saying that the ECU had ignored a substantial part of his complaint regarding the coup. He said that the response should have addressed both the statement about the coup and the next phrases "that doesn't look good" and "people don't like that".

The ECU responded on 17 February 2011 saying that its finding remained unchanged:

"Overall, it seems to me that the assertions being put to the Prime Minister by Zeinab Badawi are covered by the broad caveats she enters at the start - that these are views held by his opponents or criticisms made by them. I do not believe

that such caveats have to preface individually everything she put to him in order for it to be clear that this is the case.”

Referring back to the alleged contradiction between the ECU’s finding and the Editor’s response on whether there had been an inaccuracy, the ECU said:

“Whilst the formulation used was not, on one reading, inaccurate, I agreed that on another reading it might have the potential to create a misleading impression. However, I was happy that even if an inaccurate impression had been given, this was quickly remedied so that the audience had not been misled and there had not been a serious breach of editorial standards. I am sorry if I did not express myself clearly.”

Appeal to the BBC Trust

The complainant wrote to the BBC Trust on 16 March 2011, saying that he was alleging serious inaccuracy and bias. The complainant said that his complaint had evolved but that at its core it was that the allegation made on the programme that the Prime Minister was the direct beneficiary of the 2006 coup in Thailand was untrue. The complainant said that the Prime Minister was asked to accept the claim and comment on it, and that his rebuttal was not agreed to or commented on by the interviewer.

The complainant asked whether the BBC was aware that the claim was false. He went on to list other questions and statements in the programme which he considered to be either inaccurate or biased.

The Prime Minister “came to government assisted by a military coup and that doesn’t look good”.

The Prime Minister “came to power without an election, and people don’t like that”.

The Prime Minister “never won an election. You’ve never won an election”.

The complainant said that he had been offered divergent explanations and that this was why he thought his complaint warranted consideration by the Trust.

The complainant added that the ECU had never dealt properly with his complaint about the questioning around the “coup”.

The BBC Trust’s Head of Editorial Standards replied on 8 April 2011. She addressed the matter of the complaint regarding the questioning around the “coup” and said that if the complainant would like this to be taken up by the ECU again he should let her know.

The Head of Editorial Standards explained 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 provided a transcript of the key part of the interview on *Hardtalk*. She then explained that she had reviewed the material in question and noted that it was an extremely robust interview in the *Hardtalk* style. She said that the style would not be appropriate for many interviewees, who would be out of their depth, but as an experienced politician and a Prime Minister on the international stage it was not inappropriate for Mr Vejjajiva. She said that without doubt he would have been fully aware of the style of interview before he accepted the invitation to appear.

The Head of Editorial Standards noted the ECU’s response that, when asking the questions referred to by the complainant, the interviewer explained at the start of this

section that his political opponents were saying that he had never won an election. Her succeeding questions extrapolated this point.

The Trust's Head of Editorial Standards went on to say that the programme was half an hour long and in an interview format in which Thailand's Prime Minister had every opportunity to respond to all the questions posed. Referring to the transcript, the Head of Editorial Standards said that any potential misunderstanding or inaccuracy, for example, that he had not personally won an election, was clarified by Mr Vejjajiva. Given these circumstances, the Head of Editorial Standards said that she did not think it probable that the Editorial Standards Committee would consider the interview other than duly accurate and duly impartial.

The Head of Editorial Standards said that the complaint had been answered in detail by the ECU and that she did not think it probable that further investigation would be likely to elucidate different information or arrive at a different conclusion.

The complainant replied on 25 April 2011 requesting that the Trustees review the decision of the Head of Editorial Standards not to proceed with his appeal, and asking for the matter regarding questioning about the coup to be put back to the ECU.

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 appeal against the Head of Editorial Standards' decision. The Committee was also provided with the final Stage 2 reply from the ECU.

The Committee noted that complainant remained unhappy with the response from the ECU at stage 2 of the process. It also noted the Head of Editorial Standards' reasons for concluding that further investigation would be unlikely to elucidate different information. The Committee agreed that the complaint had been answered in detail by the ECU and it agreed that there was no reasonable prospect of success for this complaint on appeal.

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