

# Finding of the Editorial Standards Committee of the BBC Trust

Panorama: Primark - On the Rack  
BBC One, 23 June 2008

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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](http://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](http://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 the finding

The programme was an hour long Panorama special which, in the words of the BBC website's pre-programme information, set out to put "Primark's claims that it can deliver cheap, fast fashion without breaking ethical guidelines to the test". In an undercover investigation, the programme focused on the sub-contracting of work in India, apparently in contravention of Primark's own ethical policy, for the purposes of the manufacture of Primark clothes for sale in its high street stores. This included the use of Indian child labour. The programme included undercover footage obtained in a Bangalore workshop of three young boys ("the Bangalore footage"), carrying out an activity described in the programme as "testing the stitching" on Primark brown sequinned vest tops to make sure that the "sequins don't end up falling off in the hands of customers back in Britain..."

Primark complained about the programme to the BBC Executive and then appealed to the Editorial Standards Committee of the BBC Trust ("the Committee") against the decision of the BBC Executive's Editorial Complaints Unit ("the ECU"). The central question in the Appeal was the authenticity of the Bangalore footage. Primark also appealed against the way in which its complaint was handled by the ECU.

## **The authenticity of the footage**

The Committee carefully scrutinised an extensive body of evidence including extracts from the rushes tapes of the programme and emails sent from the journalist in the field to the programme team in the UK. The Committee also considered witness evidence from the programme makers, the journalist who obtained the Bangalore footage, and the witnesses who were present at the time it was filmed, as well as expert evidence regarding the activity being carried out by the boys in the footage.

The Committee noted that, in all probability, no one other than Dan McDougall (the journalist who obtained the Bangalore footage), K (the Indian driver/translator), and the Bangalore witnesses would ever know the truth of the circumstances under which the footage was shot. The Committee considered that there was not one piece of irrefutable and conclusive evidence which would enable it to say for certain (i.e. beyond reasonable doubt) whether the footage was or was not staged.

However, the Committee was not required to reach a view beyond reasonable doubt in order to determine the Appeal. Having carefully scrutinised all of the relevant evidence, the Committee concluded that, on the balance of probabilities, it was more likely than not that the Bangalore footage was not authentic. The Committee particularly noted the following points which, taken together, were considered to be persuasive:

- The fact that the activity being carried out by the boys in the Bangalore footage did not appear to the Committee to be genuine;
- Looking at the delicate and intricate nature of the stitching on the sample of the brown vest top available to the Committee, it felt that the activity being carried out in the Bangalore footage, using large needles, would have been inappropriate for the activity being described by the programme;
- The distance between Pollachi, where the journalist had already filmed women working on the brown sequinned vest tops, and Bangalore made it improbable that he had found the same tops in these two locations on successive days;

- The fact that no brown vest tops other than the ones being worked on by the boys can be seen in the Bangalore footage, whereas it is likely that, if a quality control process was being undertaken, the workshop would have been handling a significant number of the garments;
- The contrast between the way in which other footage of children working on Primark garments had been filmed elsewhere and how they appeared in the Bangalore footage (e.g. the short sequence, the tight focus on the three boys with less focus on their surrounding environment);
- The inconsistencies in the other contemporaneous evidence including the February/ March 2008 emails.

Accordingly, the Committee found that there had been a serious breach of the accuracy and fairness editorial guidelines.

The BBC Executive has already recognised in correspondence that there are lessons to be learned from this Appeal. It has also confirmed that a senior director at the BBC has been asked to consider what changes or additions ought to be made to its editorial policies in light of this Appeal.

The Committee noted that it had the highest regard for the investigative journalism in programmes such as Panorama. Secret (including undercover) recording is an important tool for investigations, and Panorama has used it in other programmes to obtain crucial evidence on significant stories. The Committee agreed that it was important to note that investigations such as these were in the public interest. The investigation in the programme had obtained clear evidence that work was being outsourced from factories in India in contravention of Primark's own ethical trading principles. It also contained other footage of young children working on Primark clothing in a refugee camp just outside Tirupur.

However, the Appeal has highlighted serious failings in the making of this programme. In particular, where a journalist is operating in the field alone, it is incumbent on the programme makers to scrutinise the evidence, including any footage, and to review all the available contemporaneous evidence in order to satisfy themselves as to the circumstances in which it was obtained. The Editor of the programme has overall responsibility for ensuring that the programme's journalism is authenticated before broadcast. The keeping of detailed contemporaneous notes is also critical in order that footage may be verified and authenticated.

The Committee concluded that the issues raised by this Appeal demonstrated serious editorial failings on the part of Panorama. It considered that this was the case regardless of what decision the Committee might have come to in relation to the question of the authenticity of the footage. It appears that the freelance journalist who obtained the footage was given little or no guidance in relation to: the use of secret recording equipment, the guidelines to follow in obtaining secret or undercover footage, or how to appropriately record his approach to the filming and the evidence obtained, in a manner which would ensure that the footage which he obtained could be verified by the programme team. The Committee noted that, in the field of investigative journalism, it is crucial to comply with the BBC's editorial guidelines - to ensure that the BBC maintains the highest standards in its output but also to safeguard the reputation of the BBC, its employees and those working within it in the making of programmes.

## **The handling of the complaint**

The Committee concluded that there was no evidence that the complaint was not handled in good faith by the ECU. The activity over the course of the complaint showed that the ECU had taken steps to ensure that Primark had the opportunity to present its position in the Appeal. The ECU had also obtained legal advice to ensure that the complaint was managed appropriately.

The Committee did not find that the ECU delayed unreasonably in deciding the complaint. It noted that the complaint was particularly complex with a lot of evidence from Primark and other evidence which the ECU itself had obtained in the course of its investigation. Further, the evidence did not suggest to the Committee that Primark was treated discourteously or with a lack of respect.

However, the Committee did criticise two aspects of the ECU's approach: namely, the decision not to take into account Primark's expert report (which was submitted to the ECU only after its provisional decision had been circulated) in finalising its decision; and, the fact that the ECU appeared to have placed the burden on Primark to prove its case in the complaint.

The Committee concluded that the ECU had acted in good faith in handling the complaint and had done so courteously, with respect, and in a timely manner in very difficult circumstances. However, the two respects in which the ECU had failed were found to have caused unfairness to the Complainant (albeit unintentionally and in the course of acting in good faith). The Committee considered that this meant that the accountability guideline had been breached in relation to these two points. The Committee also noted that this Appeal has highlighted important issues (and potential deficiencies) with the current complaints framework at the ECU level which should be considered in the course of the BBC Trust's review of the framework in 2011/12.

## **Outcomes**

The Committee expects the highest standards from Panorama as BBC One's flagship current affairs programme, and this particular edition failed to reach those standards. Due to the serious nature of the breaches the Committee will require a broadcast apology. Therefore, as consequence of this finding:

- The Committee will apologise on behalf of the BBC to the Complainant in respect of the breaches of the editorial standards.
- An apology is to be broadcast on BBC One at the beginning or end of the broadcast of a Panorama programme. The proposed wording, date and time of the apology will be shared with the Complainant and the BBC Executive in advance of the broadcast, but the final contents and arrangements for the broadcast are for the Committee to decide.
- The apology is to be displayed on the front page of the Panorama website for a period of one week from the date of the broadcast apology.
- The BBC Executive is to make enquiries as to whether the programme has been sold or supplied to any third party, e.g. educational bodies. If this is the case, the BBC Executive is to take all reasonable steps to notify any such bodies of this

decision. The BBC Executive is to report to the Trust on action it has taken by no later than 7 July 2011.

- The programme is not to be sold or repeated. The Bangalore footage must not be used in any future programme except in relation to the coverage of this Appeal. Material found to have been in breach of the guidelines should be removed from BBC online immediately.
- The BBC Executive is requested to consider its position in connection with the Royal Television Society Award which was given to the programme in 2009.

*Process remedies*

- The Trust is currently undertaking a review of the Complaints Framework. The issues raised in this Appeal will be carefully considered in connection with this review.
- The BBC Executive has already confirmed that it is considering the lessons to be learned from the facts in this Appeal. The BBC Executive is to report back to the BBC Trust on this issue by no later than 7 July 2011. The items which the Trust expects (as a minimum) to be covered in this report are set out in detail in this decision.

# The Editorial Standards Committee's Finding in Full

## 1. Introduction

At its meeting on 7 June 2011 the Editorial Standards Committee ("the Committee") considered an Appeal by Primark Stores Limited ("the Complainant") in relation to "Primark: On the Rack", a programme in the weekly current affairs series Panorama.

On 23 June 2008, an hour long Panorama special entitled "Primark: On the Rack" was broadcast on BBC1. The programme, in the words of the BBC website's pre-programme information, set out to put "Primark's claims that it can deliver cheap, fast fashion without breaking ethical guidelines" to the test. In an undercover investigation, the programme focused on the sub-contracting of work in India, apparently in contravention of the Complainant's own ethical policy, for the purposes of the manufacture of the Complainant's clothes for sale in its high street stores. This included the use of Indian child labour. The programme included undercover footage obtained in a Bangalore workshop of three young boys ("the Bangalore footage"), carrying out an activity described in the programme as "testing the stitching" on Primark brown sequined vest tops to make sure that "the sequins don't end up falling off in the hands of customers back in Britain..."

The authenticity of the Bangalore footage was the central question in the Complainant's Appeal. The Complainant also appealed against the way in which its complaint had been handled by the Editorial Complaints Unit ("the ECU") at Stage Two of the BBC's complaints process.

## 2. The background to the Appeal

### Stage One of the complaint to the BBC Executive

Through the right of reply process the Complainant had been aware for a number of weeks prior to broadcast that the programme would include the Bangalore footage. The programme team had described the content of the footage to the Complainant. In accordance with standard practice, the footage was not provided to the Complainant at this stage. The Complainant questioned the authenticity of the Bangalore footage but did not provide any evidence to support the contention that the footage was not authentic before the programme was broadcast.

On 1 July 2008 (a week after the broadcast of the programme), the Complainant (through its solicitors) wrote to the Director-General of the BBC to formally complain about the programme. The complaint concerned the Bangalore footage and other elements of the programme which are not relevant for the purposes of this Appeal.

With regard to the Bangalore footage, the complaint focused on the "...reliability of the evidence relating to the work on Primark garments allegedly being carried out by two young boys in Bangalore which was used in the programme..." The Complainant said that it had obtained expert evidence (not supplied with the complaint) that the activity of

"testing the stitching" was "one which would not normally take place", leading to "...the obvious and rather worrying conclusion...that the footage was orchestrated in order to falsely suggest that the tops were finished by the boys in Bangalore".

The Complainant said that it had made enquiries of the factory which had produced the garment in question and it had confirmed that it had no links to Bangalore and that it had traced all tops it had manufactured. The Complainant also raised questions about the footage itself. For example, it said that there did not appear to be any similar garments in the room other than the ones which the boys were working on in the footage.

The Deputy Editor of Panorama<sup>1</sup>, Frank Simmonds, responded to the Stage One complaint on 9 July 2008, rejecting it in its entirety.

### **Stage Two of the complaint to the BBC Executive**

The Complainant was dissatisfied with the Stage One response and so it escalated the complaint to the ECU on 23 July 2008 in identical terms.

The ECU finding dated 5 September 2008 did not uphold the complaint and concluded that:

- The Bangalore footage had been filmed by a journalist employed by Panorama and reporting directly to the Deputy Editor. The ECU was therefore satisfied that the footage was gathered first hand.
- There was nothing in the rushes to suggest that the footage was staged or directed by the journalist.
- The ECU was in no position to judge whether the activity described as "testing the stitching" was commonplace.
- The information provided by the factory that produced the garments was to be treated with caution on the basis that, if the factory had subcontracted work in breach of its agreement with the Complainant, "it was reasonable to regard any claims it makes with a degree of scepticism".
- The programme contained other footage of the Complainant's garments "being made illegally by backstreet contractors, including children, without the company's knowledge". Accordingly, there was "no logical reason" why the programme makers would have included the Bangalore footage in the final programme, if it was not authentic.

### **Reopening of the Stage Two complaint**

On 31 July 2009, the Complainant wrote to the ECU asking for the complaint to be reopened, as it had "...now uncovered significant and persuasive further evidence which supports the contention...that the [Bangalore footage] was deliberately falsified..." The new evidence had been obtained in the course of an investigation carried out by an Indian investigator engaged by the Complainant in late 2008 and included transcripts of interviews conducted in India with local witnesses who were present during the filming of the Bangalore footage.

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<sup>1</sup> Note: there are a number of different Deputy Editors of Panorama. Frank Simmonds was the Deputy Editor of this particular programme.

On 7 August 2009, the Head of the ECU confirmed that, on the basis of the new evidence, the ECU would be reopening its investigation into the complaint as it related to the Bangalore footage.

On 15 September 2009, the Complainant stated "the summary of the essence of the complaint" as:

- The Bangalore footage was deliberately falsified;
- The Bangalore footage gave the impression that child labour was being employed by the Complainant's supplier in this instance, which was untrue and unfair;
- The Bangalore footage formed such a fundamental part of the programme that, without it, the programme would have taken a very different tone and there must be significant doubts about whether it would have been broadcast at all. The manner and timing of the broadcast was relevant as it prevented the proper investigation of the Complainant's concerns;
- The relevant BBC editorial guidelines were accuracy, impartiality, secret recording, contributor consent and protection of children.

The ECU commenced its new investigation by contacting individuals involved in the production of the programme, i.e. the Editor, Deputy Editor, Producer, Journalist (who had filmed the Bangalore footage) and the translator who had assisted them in the making of the programme. Apart from the Editor, these individuals were interviewed in person and, in the case of the Journalist, the Deputy Editor and the Producer, provided written responses to the ECU's questions from the ECU prior to their interviews.

The ECU reviewed the production correspondence and documentation and viewed the relevant rushes which included the Bangalore footage. The ECU did not re-interview any of the witnesses who had been interviewed in India by the Complainant's investigator, but did ask the Complainant about the circumstances of its investigation.

The Complainant provided witness statements from its Indian Investigator (Mr S) and the Head of Group Security of its parent company, who had been involved in interviewing the witnesses, by way of explanation of the process it had followed. However, the Complainant declined to provide the ECU with any contemporaneous documentary evidence that would support its account of the conduct of its investigation (on the basis it asserted it was legally privileged).

The ECU issued its provisional finding to the Complainant on 9 March 2010.

The ECU's provisional finding in the re-opened Stage Two complaint can be summarised as follows:

- The BBC's editorial guidelines relating to impartiality and protection of children were not relevant.
- The body of evidence supporting the allegation that the Bangalore footage is not authentic rested on the account of one witness, K, who could not be regarded as a witness of truth, and others to whom K was the Complainant's investigator's "sole conduit" and "whose accounts he had ample opportunity to influence".

- The circumstances in which the witnesses were interviewed “failed to guard against this collusion.”
- The body of evidence was therefore “fundamentally compromised and entirely insufficient to establish the allegation of falsification.”
- The ECU had considered re-interviewing the witnesses who had been interviewed by the Complainant’s Indian investigator, but concluded that this “would be unlikely to yield anything of assistance to our investigation.”
- Although the Complainant had not succeeded “in establishing that there was falsification”, there was nevertheless “an unresolved question about the authenticity of the disputed material”.
- The impression given by the programme was that the Complainant “did not have sufficient control of its supply chain to ensure the application of its professed ethical standards”. That impression had been established by other footage, and the inclusion of the disputed footage “did not materially add” to the negative impression of the Complainant given by the programme as a whole.
- The Bangalore footage had not been adequately verified before it was transmitted. This amounted to a breach of both the accuracy and fairness editorial guidelines.
- The impression given by the programme making team during the right of reply process was that the disputed material was all “substantiated by footage filmed on hidden cameras” and accordingly that “the programme-makers were in possession of other material which authenticated it when in fact they were not.” The impression given was “misleading on a material point” and amounted to a breach of the fairness editorial guideline.
- The public interest was sufficient to justify the decision to secretly record the Bangalore footage, but in circumstances where the programme making team had failed to verify the material in question before transmission, there was not sufficient justification for broadcasting it. This amounted to a breach of the secret recording editorial guidelines.
- The programme was inaccurate in that it created a misleading impression in relation to the viewers’ understanding of what they were seeing in the Bangalore footage. Words spoken to the boys were presented as if spoken by the workshop supervisor, yet the ECU had concluded that those words were in fact spoken by K in his capacity as translator for the journalist.

The Complainant did not accept the ECU’s provisional conclusions regarding the Bangalore footage. It set out various representations on the provisional decision in a letter to the ECU dated 23 March 2010. The Complainant also supplied with this letter an expert’s report commenting on the activity being carried out by the boys in the Bangalore footage.

In finalising its finding, the ECU did not take into account the contents of the Complainant’s expert’s report which had been provided on 23 March 2011. In response to the expert’s report, the Head of the ECU stated in his finding:

“...Such evidence should have been submitted at the outset of my investigation when your client agreed to provide me with all evidence it relied upon to substantiate its allegations... Your client repeatedly referred to having obtained expert evidence on the activity being

undertaken by the boys in correspondence since June 2008 but never sought to adduce such evidence until now."

### **Appeal to the Trust**

The Complainant remained dissatisfied with the ECU's findings and, on 6 April 2010, gave notice of its intention to appeal to the BBC Trust.

On 9 April 2010, the Complainant set out its grounds of appeal (cross-referring to its more detailed representations in its 23 March 2010 letter) which are detailed below.

On 19 May 2010, the Trust Unit, having conducted an initial review of the appeal documentation, confirmed that the case would proceed for consideration by the Committee with reference to the BBC editorial guidelines<sup>2</sup> on accuracy, fairness and accountability.

On 20 May 2010, BBC News wrote to the Trust Unit regarding the expert evidence which had been submitted by the Complainant to the ECU at the same time as it provided its comments on the provisional decision. BBC News requested that the Trust confirm its position as to whether or not the expert's report would be admitted as evidence in the Appeal.

Following this, the Trust decided to consider this question as a preliminary issue in the Appeal. This was considered by the Committee at a meeting on 21 July 2010 where it decided to admit the expert's report as evidence in the Appeal. The details of its decision are set out in paragraph 7 below.

In August 2010, the Trust set out its intentions for the investigation into the matters in issue in the Appeal and made enquiries regarding the availability of witnesses for an interview with an Independent Editorial Adviser who had been appointed by the Trust in accordance with the Editorial Appeals Procedure. The Editorial Adviser's role is to assist the BBC Trust Unit in compiling the relevant information for the purposes of the appeal including preparing a background considerations note summarising the matters to be decided in the complaint. The Trust made arrangements for the exchange of expert evidence between the Complainant and the BBC Executive in relation to the activity being carried out by the boys in the Bangalore footage. This evidence was ultimately exchanged in September 2010. The Editorial Adviser also began collating evidence in the form of written responses to questions from members of the Panorama team.

In September and October 2010, the Trust responded to a number of queries (from the Complainant and the BBC Executive) regarding how the Editorial Adviser's investigation was to be carried out (in particular, how the interviews of the witnesses in India were to be arranged). It also made further enquiries regarding the availability of witnesses including the Journalist who had obtained the Bangalore footage, Dan McDougall. The Editorial Adviser also interviewed the Complainant's Indian investigator, Mr S.

In November 2010, the Editorial Adviser travelled to Bangalore, India, in order to interview certain witnesses who were present at the time the Bangalore footage was filmed (except for K who was interviewed by telephone because he was no longer based in India). The Editorial Adviser also made initial arrangements to interview Dan McDougall.

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<sup>2</sup> Editorial Guidelines in place from 2005 to 2010. The relevant extracts are supplied in the Appendix to this decision.

In December 2010 and January 2011, the Trust made further enquiries as to the possibility of interviews between the Editorial Adviser and the Panorama team and Dan McDougall. As explained below, the terms for these interviews could not be agreed and so the Editorial Adviser supplied questions for the individuals to respond in writing. Dan McDougall supplied his initial responses to the Editorial Adviser's questions in January 2011. In March/ April 2011, the Panorama team and Dan McDougall supplied their supplementary responses to the Editorial Adviser's questions.

The Trust also requested further background documentation in connection with the Complainant's investigation in India (which had originally been requested in the ECU's investigation). This was supplied by the Complainant in January and February 2011.

The Editorial Adviser drafted her Report to the Committee over March and April 2011. This document was circulated to the parties interested in the Appeal together with relevant evidence (which had been compiled by the Editorial Adviser in conjunction with the Trust's legal advisers), a DVD of the programme and other relevant extracts from the rushes tapes for the programme. The interested parties were given the opportunity to comment on the Editorial Adviser's Report and accompanying evidence over the course of May 2011.

### **The remit of the Editorial Standards Committee**

The Committee's functions are outlined in the Royal Charter for the continuance of the BBC ("the Charter") and the Agreement between the Secretary of State for Media Culture and Sport and the BBC ("the Framework Agreement"). The BBC's complaints processes are set out in the "BBC Protocol E3 – Complaints Framework" and "Procedure No 1: Editorial complaints and appeals procedures" (the "Protocol" and "Procedure" respectively).<sup>3</sup>

The Committee must fulfil the BBC Trust's duty under Article 7 of the Charter to exercise "a general oversight of the work of the [BBC] Executive Board". Article 52(3) states that one of the purposes of the BBC's complaints handling framework is to "provide...methods of securing that the BBC complies with its obligations". Paragraph 3.38 of the Procedure provides that the "Trustees are regulators..."

Article 24(2)(g) of the Charter states that the Trust has a specific function to set the "framework within which the BBC should handle complaints (and the framework must provide for the Trust to play a role as final arbiter in appropriate cases)".

Paragraph 3.35 of the Procedure states that the Committee:

"...will come to one of the following findings in your appeal: upheld; upheld in part; not upheld; or already resolved (where an error has occurred and the ESC is satisfied that the Executive has acknowledged a problem and already dealt appropriately with the matter)."

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<sup>3</sup> See [http://www.bbc.co.uk/bbctrust/assets/files/pdf/about/how\\_we\\_govern/charter.pdf](http://www.bbc.co.uk/bbctrust/assets/files/pdf/about/how_we_govern/charter.pdf),  
[http://www.bbc.co.uk/bbctrust/assets/files/pdf/about/how\\_we\\_govern/agreement.pdf](http://www.bbc.co.uk/bbctrust/assets/files/pdf/about/how_we_govern/agreement.pdf),  
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and  
[http://www.bbc.co.uk/bbctrust/assets/files/pdf/regulatory\\_framework/protocols/2010/complaints\\_fr\\_work\\_ed\\_complaints.pdf](http://www.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2010/complaints_fr_work_ed_complaints.pdf)

### 3. The Grounds of Appeal

#### **The decision of the ECU is plainly wrong ("the First Ground")**

The Complainant has challenged the ECU's decision on the basis that:

- The ECU should have come to a definitive conclusion as to whether the Bangalore footage was genuine or falsified;
- Based on the evidence collected by the Complainant and the evidence the Panorama team provided, the ECU, if properly directing itself, could only have come to the conclusion that the Bangalore footage was falsified; and
- The Bangalore footage was fundamental to the programme and, had the footage been known to have been fabricated, the programme would never have been made and broadcast.

In support of these contentions, the Complainant made a number of representations including:

- The ECU could not answer the "inherent implausibility of the (accepted) sequence of events leading to the [Bangalore footage] being obtained";
- The ECU was in possession of "damning evidence" regarding the authenticity of the Bangalore footage;
- The ECU's conclusion that the Complainant's evidence was "unreliable" and should be "disregarded" was "simply wrong";
- The ECU's reliance on a translator (who had assisted the Panorama team on its return to the UK) who has two years of work experience in the Tirupur garment trade 25 years ago for an "expert" view on the activity being carried out in the Bangalore footage was "incredible";
- The ECU "completely ignored" the fact that the Bangalore footage "just does not appear to be genuine when viewed";
- The ECU put forward an "unsubstantiated and un-evidenced explanation" as to why the garments in the Bangalore footage may have been sent 300km from Tirupur to Bangalore.

#### **The approach taken by the ECU in reaching its decision was fundamentally flawed ("the Second Ground")**

The Complainant also challenged the process adopted by the ECU in coming to its decision at Stage Two, making the following assertions:

- The ECU did not take into account the expert's report which it sent to the ECU after it had circulated its provisional decision;
- The approach which the ECU took to the consideration of the evidence in the complaint was "unbalanced and inconsistent";

- The ECU "unreasonably" delayed reaching a decision in the complaint;
- Despite repeated requests the ECU did not provide the Complainant with the underlying evidence obtained in its investigation;
- The ECU did not "properly take account" of the representations made by the Complainant in its 23 March 2010 letter regarding the provisional decision;
- The ECU did not re-interview the witnesses in India;
- The ECU did not adopt a "staged process to the evidence";
- The Complainant also raised an issue regarding the notes of conversations between the Producer of the programme and K (the Indian driver/ translator) which were supplied to the Complainant with the ECU's provisional decision. The Complainant says that this was in breach of an undertaking not to contact the witnesses in India directly;
- After receiving the Editorial Adviser's Report and accompanying evidence, the Complainant also complained about the adequacy of the notes collated in witness interviews by the ECU.

#### **Applicable Editorial Guidelines<sup>4</sup>**

The applicable editorial guidelines in relation to the First Ground are accuracy and fairness. The Second Ground was considered in connection with the guideline on accountability. Extracts from the relevant guidelines are included in the Appendix to this decision.

## **4. The Editorial Adviser's investigation**

In the course of her investigation, the Editorial Adviser sought to obtain first-hand accounts from witnesses who were involved in the production of the programme and those who were present during the filming of the Bangalore footage. In order to identify the relevant witnesses for this purpose, it was necessary to understand the chronology of events in the making of the programme.

### **The chronology of events**

The key chronology of events in the making of the programme (for the purposes of this Appeal) was as follows:

6 November 2007 – First meeting between the Editor of the programme and the Journalist to discuss ideas for a programme.

November 2007 – The decision is made to look at child labour in India and how it relates to the UK high street.

14-23 December 2007 – Journalist's first trip to India: He travelled to Bangalore in southern India posing as a garment buyer visiting workshops to see how obvious any

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<sup>4</sup> Editorial Guidelines in place from 2005 to 2010. The relevant extracts are supplied in the Appendix to this decision.

outsourcing of work might be. During this trip, he visited the workshop, where the Bangalore footage was later filmed, on two different days. He filmed on both occasions.

17-27 February 2008 – The Journalist's second trip to India:

17-21 February 2008 – Delhi

21-25 February 2008 – Tirupur (including Pollachi)

23 February – In a refugee camp on the outskirts of Tirupur, the Journalist films two children working on the Complainant's garments.

24 February – In Pollachi, the Journalist finds the Complainant's sequined vest tops outsourced to home workers.

25-26 February 2008 – Bangalore

25 February – The Bangalore footage is filmed by the Journalist. This footage shows three children working on the same type of sequined vest tops which had been filmed in Pollachi.

March 2008 – The decision to make the programme.

April 2008 – The Journalist, Presenter, Producer and a cameraman travel to India to complete the filming for the programme.

7 May 2008 – Complainant first notified of allegations intended to be made in the programme (right of reply process).

June 2008 – The decision to make an hour long programme.

23 June 2008 – Broadcast of the programme.

### **The evidence before the Committee**

The Editorial Adviser travelled to India in November 2010 in order to interview the Indian witnesses who were present during the filming of the Bangalore footage, namely the owner of the workshop, S1, and his brother, A1, and the three boys seen in the footage – S, M, and W (collectively, "the Bangalore witnesses"). She also conducted a telephone interview with K, who was the Journalist's driver and translator during his trips to Bangalore in December 2007 and February 2008 and also for the Panorama team in April 2008.

The Editorial Adviser interviewed the Complainant's Indian investigator, Mr S, in order to understand the basis for and remit of his investigation. Mr S was also involved in arranging the Editorial Adviser's interviews with the Bangalore witnesses. The primary reason for this was that he had the contact to make the arrangements. Mr S did not attend any of the interviews with the Bangalore witnesses. Mr S's involvement in this process was recorded in a paper trail which was shared with the parties interested in this Appeal and also provided to the Committee for its consideration.

The BBC Executive and the Journalist objected to Mr S's involvement in this process. However, there was no other viable option for contacting the Bangalore witnesses and persuading them to meet the Editorial Adviser. The Editorial Adviser was transparent as to the purpose of her interviews, and emphasised the fact that she was not interested in

what the witnesses may have said to any other interviewer, she was only interested in the truth.

The Editorial Adviser did not re-interview other Indian witnesses who were identified in the Complainant's investigation, namely S2, N, and A2, in or around Tirupur (collectively, "the Tirupur witnesses"). These were not seen as critical witnesses in the Appeal because they were not present during the filming of the Bangalore footage and, as such, the exercise of obtaining further evidence from them was not considered to be necessary or proportionate. However, transcripts from their original interviews with the Complainant's investigator were supplied to the Committee.

The Editorial Adviser also made enquiries for the purposes of interviewing Sandy Smith (the Editor of Panorama at the relevant time), Frank Simmonds (one of the Deputy Editors of Panorama who was assigned to the programme), Matthew Chapman (the Producer of the programme) and Dan McDougall (the Journalist who obtained the Bangalore footage). However (as explained above), the terms on which these interviews might have taken place could not be agreed. Therefore, the Editorial Adviser obtained their responses to her questions in writing. The Editorial Adviser also obtained written responses to a small number of questions from Tom Heap (the Presenter of the programme).

All of the witness evidence obtained by the Editorial Adviser was supplied to the Committee, together with the relevant evidence provided by the Complainant to the ECU and the relevant evidence which had been obtained by the ECU during the course of its own investigation.

The Committee was also provided with documents contemporaneous with the filming of the Bangalore footage, including emails sent from the field by the Journalist to the Panorama team. The Editorial Adviser reviewed the rushes tapes obtained from the trips to India by the Journalist and the Panorama team and supplied relevant extracts from the rushes to the Committee, as well as the entire programme, and a DVD produced by one of the Complainant's suppliers in connection with footage shown in the programme of a refugee camp in Tirupur.

The Committee was also supplied with expert evidence regarding the activity being carried out by the boys in the Bangalore footage which was submitted in the Appeal by the Complainant and the BBC Executive (this is explained below), together with newspaper articles from the relevant period, photographs of the Bangalore workshop taken by the Editorial Adviser during her trip to India, maps of India, and transcripts of conversations between K and others (including the Producer and the Journalist's wife).

Finally, the parties interested in the Appeal were invited to comment on the Editorial Adviser's report to the Committee and accompanying evidence and these comments were also presented to the Committee.

## **5. First Ground of Appeal**

### **The burden and standard of proof**

The Trust has the general function of holding the Executive Board to account for the BBC's compliance with applicable regulatory requirements and the law and fulfils an essentially regulatory role under the Charter as the "final arbiter" of editorial complaints. In light of this, it is not appropriate for the Committee to impose a "burden" on either the

Complainant or on the BBC Executive to “prove” their case before the Committee, but rather the Committee has sought to decide the question of the authenticity of the Bangalore footage for itself.

The Committee has considered all of the evidence in order to answer the question as to which version of events relating to the question of the authenticity of the Bangalore footage is the most likely to be true (i.e. on the balance of probabilities). The Appeal is not a criminal inquiry into a person’s guilt, but an exercise in establishing, so far as possible, the true facts of a situation in order to determine whether the Appeal should be upheld. As such, a higher standard of proof (i.e. “beyond reasonable doubt”) was not appropriate.

However, the seriousness of the allegations was relevant to the Committee’s consideration of the evidence on the balance of probabilities. The Committee has therefore carefully scrutinised the evidence which has been obtained in the Appeal in order to decide the question of authenticity.

### **The weight of evidence**

With regard to the weight of the evidence, the Committee has taken a number of factors into account.

In considering the question of the authenticity of the Bangalore footage, the Committee has considered the evidence in the round; that is to say, it has not restricted itself to considering each piece of evidence in isolation in order to decide whether it demonstrates that the Bangalore footage is authentic or otherwise. Rather, the Committee has weighed the pieces of evidence by reference to the totality of the evidence before it in order to decide the question of authenticity on the balance of probabilities.

The Committee has applied common sense, logic and experience (including the Committee members' own experiences in broadcasting and journalism) in order to weigh up the evidence in the Appeal. With regard to the witness evidence, it has considered factors such as the passage of time between the witness evidence being supplied and the relevant events in the Appeal, the age of some of the younger witnesses, the manner in which the evidence has been obtained and the witnesses’ motivations in supplying their evidence. The Committee has also taken into account factors such as the cultural difficulties (e.g. language issues) which have arisen in obtaining some of the evidence (both for the programme and the Appeal) and the extent to which a witness’s evidence is internally consistent and/or consistent with the other evidence in the Appeal.

### **The key matters which were considered**

The Committee considered the following matters (and weighed the relevant evidence against them) in order to decide the question of authenticity:

- The brief for making the programme;
- The footage of the workshop in Bangalore which was obtained during the Journalist's trip to India in December 2007;
- The events and filming which took place in Tirupur immediately before the filming of the Bangalore footage in February 2008;

- The Journalist's reasons for returning to the workshop where the Bangalore footage was filmed in February 2008;
- The Bangalore footage itself;
- The activity being carried out by the boys in the Bangalore footage;
- The modus operandi adopted by the Journalist in compiling the footage for the programme generally, and specifically in relation to the Bangalore footage;
- The emails sent by the Journalist from the field to the Panorama team in February/ March 2008.

The Committee assessed the weight, cogency and persuasiveness of the witness evidence obtained by the Editorial Adviser and by the Complainant and the ECU in their investigations, including the evidence of:

- The Journalist who obtained the Bangalore footage;
- The Panorama team;
- The witnesses in India, i.e. the Bangalore witnesses, the Tirupur witnesses and K; and
- Mr S, the Complainant's Indian investigator.

The Committee also considered the expert evidence submitted by the Complainant and the BBC Executive and the evidence relating to the Complainant's investigations in India.

#### *The brief for making the programme*

The Committee discussed the genesis of the programme in order to put into context what the programme maker's objectives were at the start of the filming, what evidence was required in order to get a programme commissioned, and how the objectives evolved as the material for the programme was compiled. The Committee considered that this backdrop would assist in reviewing the contemporaneous evidence in the Appeal.

In October 2007, Dan McDougall (the Journalist who also became the Associate Producer of the programme), a newspaper journalist who describes himself as a dedicated campaigner against child labour and the exploitation of children, had completed an investigation for the Guardian Newspaper into the use of Indian child labour in the supply chain of a major US retailer. The story had been picked up by BBC News and came to the attention of Sandy Smith, the Editor of Panorama at the time. The Committee noted that Frank Simmonds, the Deputy Editor of the programme, said that Mr McDougall was considered to be a highly respected print journalist, known to have worked in India for several years with very good contacts in ethical trading circles. The Committee also noted Mr McDougall's credentials and recognition in the newspaper industry.

The Committee noted that a meeting was arranged between the Editor and the Journalist on 6 November 2007 to discuss ideas for a Panorama programme. The Editor said that the Journalist pitched a number of ideas but the meeting gravitated towards ethical trading as he was keen to explore whether Panorama could work with a western retailer (such as the one identified by the Journalist's article in the Guardian Newspaper) to examine whether their ethical trading statements were being followed. The Journalist

recalled the Editor telling him "...according to the BBC guidelines, the programme makers needed prima facie evidence before sanctioning a full investigation".

Prior to going into the field, the Journalist was sent a copy of the BBC's secret recording<sup>5</sup> guidelines by the Deputy Editor. The Committee noted that secret filming permission was obtained on the basis of an investigation into "children working in Dickensian conditions" in Southern India "creating garments for the Western Market". The Journalist also stated in the secret filming permission forms that he would be using one of his contacts who had been "engaged in the fight against child labor [sic] for the past twenty years", to discuss how best to start his investigation for Panorama. The Committee noted that child labour was a central theme for the purposes of the Journalist's trip to India in December 2007.

### *The December 2007 trip to India*

The Journalist travelled to Southern India in December 2007. He travelled to Bangalore on 14 December and returned to the UK on 23 December 2007.

The Committee noted that the Journalist employed K in India as his driver throughout this trip. K accompanied him wherever he went and the Journalist said that it became clear that his English was good enough for him to act as a translator.

The Committee considered extracts from rushes tapes obtained by the Journalist during his time in Bangalore in December 2007, in particular, footage showing the same workshop as is featured in the disputed Bangalore footage from February 2008. The Committee observed that, in the December footage (extracts of which were also seen in the programme), the same boys as seen in the Bangalore footage were filmed working on large wooden frames (together with two other boys who were not in the Bangalore footage), carrying out zari (hand embroidery) work on garments. The Committee also observed that the boys appear to be using the same tool or implement for this work as they were later seen using in the Bangalore footage.

The Committee noted the fact that the boys were carrying out a different activity in the December footage to that which they are seen doing in the Bangalore footage was not in itself probative of the matters in issue in the Appeal. The Committee noted that the nature of the garment industry in India was such that it was feasible that a backstreet or slum workshop could undertake different types of work depending upon demand.

The Committee then considered the Journalist's and Bangalore witnesses' evidence regarding what discussions were had between the Journalist and any individuals in the workshop during his December visits.

The Committee noted that the Journalist said to the ECU that, during this visit, "one of the sweatshop supervisors, he did not identify himself as [S1], told me that they worked on major orders from all over the South, from Chennai, Coimbatore and Tirupur. He identified three areas in Tirupur and Coimbatore where he had contacts...These leads would eventually lead me to major sub-contracting by [F] and two other as yet unidentified contractors, and eventually the refugee camp at Kottur where refugee children were hand-stitching thousands of garments for Primark. Without one leading to the other it is simply looking for a needle in a haystack". He later informed the Editorial Adviser that, although he thought he had spoken to the supervisor, on reflection, he did not know this to be the case. He said that the man he had spoken to could simply have

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<sup>5</sup> The Committee noted that "secret filming" includes footage which is filmed overtly but on an undercover/ subterfuge basis.

been another worker and he did not know his name. The Committee noted that the Journalist said he did not make any contemporaneous notes of this conversation (and it was not recorded on camera).

The Committee noted that A1's and S1's evidence is that they did not have any such discussions with the Journalist.

The Committee noted that this was relevant to the question of the Journalist's reasons for returning to the workshop on the day he filmed the Bangalore footage in February 2008.

#### *The February 2008 trip – Tirupur*

Following his trip in December 2007, the Journalist agreed with Panorama that links between child labour and British retailers was worthy of further investigation. He said that "During my visit, I had witnessed and filmed Primark garments in sweatshops of all shapes and sizes and it was clear that the company's Indian suppliers were subcontracting on a significant scale". The Committee noted that no footage of the Complainant's garments was included on any of the rushes tapes from December 2007.

The Deputy Editor explained that a follow up trip to India was approved as the Journalist "had shown that garments were being outsourced from Primark's Indian suppliers (and others) and on a significant scale. This was against Primark's company policy of no home working and in breach of its promise as a signatory to the Ethical Trading Initiative. Dan predicted that it would only be a matter of time before (with the right garment i.e. one needing a lot of hand finishing work) we would find children at work in this hidden production process. [The Editor] and I therefore approved a second trip." The Committee noted that the Journalist said in correspondence at the time that it would be necessary for him to operate a hidden camera in order to capture "live footage of children".

On 17 February 2008, the Journalist flew to Delhi at the start of his trip to India. During this trip he travelled from Delhi to Tirupur on 21 February, from Tirupur to Bangalore on 25 February, then from Bangalore back to Delhi on 26 February before returning to the UK on 27 February. The Journalist's driver in Tirupur was A2.

On 23 February 2008, at a Sri Lankan refugee camp at Bhavanisagar, the Journalist obtained footage of two children working on the Complainant's garments. Extracts from this footage were shown in the programme.

The Committee considered the potential relevance of a DVD produced to the Complainant by one of its suppliers and shown by the Complainant to the Panorama team during the right of reply process. The DVD showed individuals from the footage obtained of the Bhavanisagar refugee camp saying that these events were staged and that the children did not work in the camp. The Committee decided to place no weight on this evidence. It was not produced by the Complainant itself but by one of its suppliers soon after the allegations in the programme were first made known to it. There was clearly a motive for that supplier to seek to protect its reputation and contract with the Complainant. The Complainant said later on in the right of reply process that it did not rely upon the DVD to make an argument regarding the authenticity of the footage of the refugee camp. The Committee did not consider that the DVD had any bearing on the question of the authenticity of the Bangalore footage.

On 24 February 2008, at the office of a subcontractor working with one of the Complainant's suppliers in Pollachi (approximately 70km south-west of Tirupur), the Journalist first filmed the brown sequined "Atmosphere" vest that is also featured in the

Bangalore footage. The Committee observed that the footage shows a number of women working on the brown vest top and the same top in grey and blue.

The Committee considered the evidence regarding the samples of the vest top which the Journalist purchased in Pollachi. This issue was relevant to the question of the authenticity of the Bangalore footage because, if the footage had been staged, it would have required the Journalist to obtain samples of the brown vest tops in advance of filming the footage. The Complainant had alleged that these samples were purchased in Pollachi.

The Committee noted that the Journalist told the ECU that it was likely that he bought a sample as he was accumulating samples from all over India, but he could not remember exactly what he had bought. He later said to the Editorial Adviser that, to the best of his recollection, he bought two or three garments from Pollachi, but the tops he bought were different colours (he said he did not buy garments of the same colour because only one sample is necessary as a piece of evidence).

The Committee also noted A2's (i.e. the Journalist's driver in Tirupur during the February 2008 trip) evidence. A2 said that he saw the Journalist buy three different coloured samples - one brown, one pink and one yellow. The Committee noted that there was no yellow version of the Complainant's sequinned vest top seen in the footage. A2's evidence was provided to the Complainant's investigator, but he was not interviewed by the Editorial Adviser. The Complainant also supplied a note of a conversation alleged to have taken place between the Head of Group Security of the Complainant's parent company (who was involved in the Complainant's investigation in India) and N (identified as the local guide and translator used by the Journalist in February 2008). This stated that N said that the Journalist bought three tops from a "local woman" (he did not specify what colour the tops were). The Committee also noted the evidence of S2 who worked for the subcontractor and sold the tops to the Journalist (again, she was only interviewed by the Complainant's investigator). She said that she sold him three vest tops. She was not specifically asked what colours the tops were but she did refer to "this garment" being the brown vest top which is seen in the footage.

The Committee decided that the evidence on the issue of how many and what colour tops the Journalist bought from S2 was too inconsistent and confused to be reliable. The Committee also noted that a significant period of time had passed in the period between these events and the witnesses providing evidence. Therefore, the Committee considered the evidence on this issue to effectively be of neutral weight, i.e. it did not prove or disprove the Complainant's allegations regarding the purchase of samples in Pollachi.

#### *The 24 February 2008 email*

The Committee observed that, when the Journalist returned to his hotel after he had filmed the sequinned vest tops, he sent an email to the Deputy Editor, confirming he was still in Tirupur and due to leave for Bangalore the next morning. The email said:

"... I'm still in Tirapur in the south of India and heading to Bangalore a.m. Radio silence until now as I wanted to gather as much as I could before I contacted you – I hate giving updates when there is no update. Basically (largely because they seem to have a lot of orders in the pipeline) I have been painstakingly tracking down the chain of Primarks [sic] Indian suppliers and confident I have them banged to rights for sub-contracting not only to slums but to Sri Lankan refugees who are drifting to Tirapur to carry out what is effectively slave labour. I have filmed two separate [sic] groups of children, aged between 9 and 13, hand beading and stitching Primark Summer Season blouses, the first group are Sri

Lankan refugees, living in a colony...about 80 kms out of Tirapur, hand-stitching childrens [sic] blouse vests for 2 rupees per item so they basically make no more than 30 rupees a day – about 50p – the main reason the sub-contractors and agents are using them – the kids don't go to school. The Second group is in a slum on the outskirts of Tirapur, hand beading sequined [sic] women's tops for [sic] ATMOSPHERE – Primarks [sic] flagship womens [sic] wear range Primark has 125 stores in the UK and is rapidly expanding in Europe – they have never been caught with anything as bad as this.. [sic] managed to get full samples and samples of the thread, sequins and labels being used..."

The Committee noted that the Journalist appears in this email to be referring to having filmed two sets of children working on the Complainant's garments (including one group the description of which given by the Journalist appears to accord with the scene in the Bangalore footage) when, at this stage, he had only filmed the children in the refugee camp.

When questioned by the ECU regarding this discrepancy, the Journalist said: "...There may have been a number of reasons at the time, most specifically I would say that I had a lot of evidence and information going on and as I mentioned with reference to the children I did find children in numerous sweatshops in all four locations, Bangalore, Delhi, Tirapur and Coimbatore and did not always film them because I discounted upon entry and sometimes I got that wrong".

When asked the same question by the Editorial Adviser for the purposes of this Appeal, he gave a different explanation which was that it was an error, he had meant to say "two separate groups including of children", and that the description of the "second group" was, in fact, the group of women filmed working on the sequined vest tops in Pollachi.

The Committee noted that, if this was not an error, the Journalist's email would appear to have been referring to a scene he had not yet filmed. The Committee also considered the Journalist's explanation that this was a mistake in the context of the email as a whole.

The Committee considered the objectives of the programme makers at this particular stage in the filming. As noted above, the focus at this stage was on child labour and not on Primark's ethical trading policy more generally (although this became the more general focus of the programme when it was finally compiled and broadcast) . The Committee therefore questioned whether if the Journalist had been referring to only one piece of footage with children working on Primark garments (and a second piece of footage of adult slum workers) he would have observed that the Complainant was "banged to rights" or had "never been caught with anything as bad as this" in respect of the brief he had been given by Panorama. Conversely, the Committee noted that the amendment proposed by the Journalist in his evidence was to one word only and the description of the "second group" could apply to the scene of the women hand-sewing sequins in slums of Pollachi. Further, the sentence in which "banged to rights" was written could have been describing (separately) the women in the slums of Pollachi and the children in the refugee camp outside Tirupur: "...confident I have them banged to rights for sub-contracting to slums but to Sri Lankan refugees who are drifting to Tirapur to carry out what is effectively slave labour..."

In light of these observations, the Committee considered that, although the email was not by itself probative of any issue in the Appeal (and there was a fair explanation for the error), it nevertheless raised certain question marks which needed to be considered and tested against the other contemporaneous evidence.

### *The February 2008 trip – Bangalore*

On the morning of Monday 25 February 2008, the Journalist flew from Tirupur to Bangalore. The Committee noted that the distance between the two cities was approximately 300km. The Journalist explained that he arranged for K to pick him up from the airport and they travelled to the slum area they had visited previously in December 2007.

The Committee considered the Journalist's reasons for returning to this area and, in particular, to the workshop shown in the Bangalore footage. He said to the ECU that he headed back to the workshop "where I believed the original foreign order which I believed would be Primark, that they had previously said they were waiting on, would have been delivered in the days previous and my assumption was correct although it was not the yellow beaded top I expected but a brown atmosphere vest I had come across in Pollachi and Tirupur". He said to the Editorial Adviser that he returned to the workshop "Because of the direct information passed to [K] that they were receiving sub-contracted orders from Pollachi. I knew the chances of finding the children working on foreign garments was high. I had established a link between sub-contracting in Pollachi and the [S] unit. I was therefore prepared to risk returning to the [S] unit in order to determine whether this was in fact the position". When specifically asked why he had returned to a workshop where he had seen no evidence of the Complainant's garments previously, the Journalist said "informed instinct. If you follow the trail, you eventually get lucky".

The Committee considered the likelihood of the Journalist finding children working on identical tops in Bangalore to those he had filmed the women working on in the slum in Pollachi a day earlier. The Committee noted that, in its experience, luck sometimes played a significant part in achieving important breakthroughs in stories and the scenario outlined by the Journalist was not wholly inconceivable.

The Committee considered why the Journalist would have spent his final day of filming travelling 300 km if he had not known what he might find in Bangalore. It noted that the Journalist went to a different workshop in Bangalore on the same day (to film children working on material for another western retailer) and it was plausible that he had decided to maximise his time in the city by returning to a workshop he had visited on his previous trip where he says he had discussed the prospect of orders for export arriving a number of weeks later. However, a significant period of time had elapsed between his original visit in December 2007 and the visit on 25 February 2008 (around nine to ten weeks). The Committee noted that this did not accord with the Journalist's explanation given to the ECU that "...if it's a time of year when the retailers are setting up their summer range - the notice could be as much as six weeks".

The Committee noted that the likelihood of finding the same top 300km and less than twenty-four hours apart was, on the face of it, low. While this factor was not, by itself, determinative of any issue in the Appeal, this did raise question marks for the Committee, which felt that the Journalist's explanation was improbable, albeit not inconceivable.

### *The Bangalore footage*

The Committee considered the contents of the Bangalore footage and viewed the rushes and the relevant extract from the programme during the meeting.

The Committee noted the Journalist's explanation of the events leading up to the footage and what he saw in the workshop: "In the...unit though I was initially met with hostility and told to go away by the supervisor - when he calmed down I was able to switch on the camera and film the young men working as he shouted at them to work harder...In the

unit itself there was clear evidence of other Primark garments and the young boys filmed were working on identical vests to the ones we had discovered all over Tirupur. This matched the supply chain we believed we had penetrated...In the corner of the...sweatshop there were perhaps 300/400 brown jerseys in thick plastic bags underneath the zari racks". The Journalist informed the Editorial Adviser that "I saw the same clear plastic sacks I had seen in Pollachi with brown garments inside. They were underneath a rack and there were pots of brass sequins containing what appeared to be identical sequins to the ones on the brown vests. I was not in a position to look in the sacks, but presume that they contained more of the brown vests which were being worked on by the boys. He said he was not able to film this evidence because "I would have had to crawl underneath the tight racks with the camera and my feeling was to get what I could and get out before I was compromised. The focus had to be on the children working on the vests. In a sweatshop time is a luxury you do not have."

The Committee noted that the Journalist had been asked by the Editorial Adviser three times to provide a rough sketch of the workshop and to identify where in that sketch he saw the bags of garments, but he had not done this. The Committee acknowledged that a significant period of time had elapsed between this request and the time when the footage was filmed: however, no such explanation for not providing the sketch had been given by the Journalist.

The Committee also noted the Bangalore witnesses' and K's accounts regarding the scene in the footage. When interviewed by the Editorial Adviser, although their recollections of certain dates and other details were confused, S1, A1 and the three boys said that, when the Journalist visited the workshop in February 2008, he brought the brown vest tops with him and he told the boys (with K acting as a translator) to pretend to work on the tops. K said in his Affidavit (which was obtained by the Complainant) that the Journalist "showed [S1] a garment that he wanted the boys to work on and asked him whether he could make this kind of garment. [S1] said that he could not. [The Journalist] said that he wanted the boys to work on this sample garment and that he wished to film the boys working on pieces of his sample garment. He said that if [S1] let him do that, he would try and give him export business..." All of the Bangalore witnesses said they had not previously seen the tops, and had not seen them since. They said that K spoke to the boys while the Journalist filmed and, when he had finished filming, he took the brown vest tops away with him. They also said that the long needle seen in the footage is a needle from the workshop used by the boys to sew beads or sequins onto material. S1 said that his workshop only undertakes embroidery work on material destined for the Indian market.

The Committee made a number of observations regarding the Bangalore footage (based on the original rushes tape):

- As stated above, the Committee did not consider that the fact the boys were seen carrying out a different activity in the Bangalore footage to that which they were doing in the December 2007 to be probative of the question of authenticity. The Committee noted that it was feasible that the boys could be carrying out different activities on garments for import or export markets from time to time. The nature of the garment industry in India is such that the processes are often ad hoc and responsive.
- No bags containing the brown vest tops or empty plastic bags (of the sort described by the Journalist) can be seen in the rushes. The Committee noted that it would expect there to be a significant number of tops in the workshop. It observed that, in the other footage where garments were being worked on, there were piles of similar garments clearly visible. The Committee did not consider the

Journalist's explanation that in the workshop there were "300/400 brown jerseys in thick plastic bags" to be credible. Such a volume would take up a significant amount of space which does not appear to be plausible from the footage. The Committee noted that it was possible that this figure was simply an over-estimate by the Journalist.

- The Committee would expect the tops to be near to the boys so that they would not have to move around the workshop to start on a new top or to add a checked top to a completed pile. The Committee noted the Journalist's explanation that the tops were under the zari rack which the boys were working on: however, it was not possible to see under this rack in the footage and the bags could not be seen under any of the other racks. Although the Committee considered this to be one possible explanation (albeit it did not accept that it was plausible that 300-400 vest tops were under the rack), it did not find the Journalist's explanation as to why he did not film underneath the rack to be persuasive. One of the reasons he gave for this was the pending aggression he felt from certain adults in the workshop and the need to focus on the activity being carried out by the children and to exit the workshop quickly. The Committee noted that the adults in the workshop were seen smiling in the footage and appeared relaxed. In the rushes tape, the Journalist starts to exit the workshop before returning to it for a final shot of the two adults (K and S1) at the entrance of the workshop - this whole process takes 32 seconds. There was nothing in this scene to indicate any aggression from the adults in the workshop. Further, the Journalist's evidence to the Editorial Adviser was that he purchased a sample brown vest top from the workshop before he left in February 2008 (which he asked K to negotiate because he did not speak the language). This was also difficult to reconcile with his evidence that he had to leave the workshop quickly because of the pending aggression he felt from certain adults in the workshop. The Committee also found it difficult to understand why the Journalist would have needed to crawl underneath the rack in order to film it, as the underneath of other racks was clearly visible from the footage (and it considered that panning down for a short period might have been sufficient to capture an image of the brown vest tops).
- The Journalist's evidence was that the three boys in the Bangalore footage were scared of the workshop supervisors. However, it did not appear from the footage that the boys were afraid of S1 or A1 and they were smiling at the camera. The Committee acknowledged the Journalist's explanation that smiling is a common reaction to a foreigner with a camera even where the children are in very difficult circumstances (and it accepted this might have been the case). However, given the behaviour of the adults in the footage, the Committee did not find this explanation to be convincing.
- The sequins in the pot on the zari rack the boys were working on (gold) were not the same colour as the sequins on the brown vest top (brown/ brass). This was consistent with the perception that the boys were not carrying out any sequin work on the tops.
- An adult's voice is heard in the footage speaking to the three boys in a local language or dialect and these words are sub-titled during the programme as "get on with the work, little boy" and "keep quiet and get on with the job, boy". These words were presented in the programme as having been spoken by the boys' supervisor. However, the ECU concluded (with the assistance of a BBC World Service translator) that they were probably spoken by K (the Journalist's driver/ translator). Therefore, the ECU upheld this aspect of the Complainant's complaint and found that this constituted a breach of the accuracy editorial guideline.

- The Committee also made a number of observations regarding the activity being carried out by the boys in the Bangalore footage (which is considered in detail directly below).

*The activity being carried out by the boys in the Bangalore footage*

The Committee noted the different explanations as to what the boys were doing in the Bangalore footage. In its first right of reply letter to the Complainant in May 2008, Panorama described what the boys were doing in the Bangalore footage as "sewing on sequins". At a meeting later that month the Complainant argued that the boys could not have been sewing the sequins onto the vests as the embroidery equipment was not being used appropriately and the garments could not physically be made in the manner suggested by the footage.

The Deputy Editor informed the Editorial Adviser that this description was his error. He said that the Journalist's description when he first supplied the footage was that the boys were checking/ finishing the garments, but that the Deputy Editor had not picked up on the difference between sewing and finishing. The Journalist's recollection did not strictly accord with this. He told the Editorial Adviser that when he entered the workshop and saw the boys working on the brown vest tops they were "carrying out needlework". He said to the ECU that "from my rather rapid entry and exit it fully appeared that the boys were carrying out zari work in terms of the sequins and beading that was being done". He said he did discuss the issue of "sewing vs finishing" with the Panorama team and having consulted his contacts in India "it was feasible they could've been doing either. The nature of the shots and the speed of getting in and out of the sweatshop made it hard to ascertain".

Following concerns raised by the Complainant, the Deputy Editor asked the Producer to review the Bangalore footage with one of the BBC World Service's Tamil/ Hindi translators who by chance had had experience a long time ago in the Tirupur garment trade. She said that, from her own experience, what the boys were doing was a normal method to reinforce the stitches. The Committee noted that there have been a number of different descriptions for the process being carried out by the boys but, in general, they point to some form of quality control process (i.e. "testing the stitching").

Having considered the Bangalore footage very carefully, the Committee observed that the activity being carried out by the boys in the Bangalore footage did not appear to be genuine. The Committee observed the different techniques being adopted by the boys in the Bangalore footage. For example, one of the boys appears to be twisting the needle in a circular motion while another appears to be prodding at the sequins. One of the boys seemed to work on the same area of the garment throughout the filming, rather than moving from sequin to sequin as might have been expected. The Committee observed that, although it was not inconceivable that the boys would use the same embroidery needle as they were seen using on an apparently much tougher material in the December 2007 (because that may have been the tool that they were familiar with), using such a needle to "test" the stitching on the brown vest top would appear to be, at best, heavy-handed, at worst, potentially damaging of the garment. The Committee looked at the actual sample brown vest top which had been retained by the BBC and noted the "criss-crossing" of stitching on the inside of the garment where the sequins had been sewn on. It concluded that using the large needle would not be of use on such an intricate garment.

The Committee further noted that the concept of shipping the garments 300km for quality control purposes (when the Indian workforce is so vast and competitive in the cities and

outskirts) was difficult to comprehend. The Committee tested this proposition by considering whether S1 might have had a special arrangement with a contact in Tirupur or whether the work might have been a "back hand" deal. However, it concluded that this was unlikely, particularly in an industry which is fast-moving, competitive and highly cost-conscious. The workforce in the Indian cities where the garment trade is prevalent was likely to be significant and it was difficult to understand how any "back-hander" could have resulted in a relatively small proportion of garments being shipped this distance when there would have been plenty of workers available to do the job locally.

The Committee concluded that the Bangalore footage raises serious question marks in terms of the authenticity of the scene. Although this was not determinative of the question of the authenticity of the footage in itself, the Committee considered that these factors raised doubts as to whether the scene in the footage really was that which it purported to represent.

#### *Expert evidence relating to the activity*

The Committee also considered the expert evidence regarding the activity being carried out by the boys in the Bangalore footage.

The Committee noted that the BBC World Translator who had been consulted by the Producer also provided evidence to the ECU regarding her experiences with the garment trade in India. This was taken into account by the ECU in coming to its decision:

"Having discussed this in detail with the translator who worked with Panorama, and who...has experience in the Tirupur garment trade, I am of the view that the activity, whether staged or not, was a genuine one...."

The Complainant criticised the ECU's reliance on this evidence in its Appeal letter: "The ECU's reliance on a translator who has two years work experience in the Tirupur garment trade 25 years ago for an 'expert' view on the activity being carried out by the boys in the footage is incredible".

The Committee considered that the Complainant's position is understandable given the limited and dated experience of the BBC World translator on the subject on which she was commenting, although it noted that, at the time the ECU came to its provisional decision, it did not have any other expert evidence regarding this issue (because although the Complainant had indicated that it had obtained expert evidence, none was supplied to the ECU until after it had circulated its provisional decision). The Committee noted that it was questionable whether the BBC World translator was qualified to give "expert" evidence on the activity. Therefore, her evidence was more likely to be the opinion of one person with limited experience in a particular field - as opposed to "expert evidence" per se. Further, the translator declined to provide any evidence to the Editorial Adviser in the Appeal. For these reasons, the Committee decided that no weight would be placed on the translator's evidence to the ECU for the purposes of the Appeal.

As explained in detail below, the Committee decided in July 2010 to admit the expert evidence which the Complainant had submitted after the ECU's provisional decision had been circulated in the Appeal and had subsequently invited the BBC Executive to provide its own expert analysis. The Committee considered the contents of these reports.

The Complainant's expert report was supplied by Mr Mittal from Technopack (a management consultancy firm covering a number of different service industries). Mr Mittal explained that he has nearly 10 years of "apparel manufacturing experience and [has] worked with apparel manufacturers across India... [He] started [his] career with a

North India based apparel manufacturer/ exporter as a Quality Executive..." He also explained that he has been at Technopak for nearly 8 years: "These 8 years have given me an opportunity to work with a variety of manufacturers and suppliers and to understand different manufacturing processes. My experience includes working with both knit and woven apparel along with home furnishings. This includes hand embellishments..." Mr Mittal goes on to explain that he has a Masters in Apparel Manufacturing from the Indian National Institute of Fashion Technology.

Mr Mittal's analysis of the Bangalore footage was as follows (extract only):

"The final stage in the production of garments upon which embellishment has been carried out is quality control testing of the work. I have never seen quality control testing process being carried out in the way that the boys are shown to be acting in the footage.

The checking of embellishment, including sequins and beading such as that on the garments shown in the footage, is normally carried out by a qualified quality assurance individual (known as a "QA"). In order to become a QA it is usually necessary to have at least 5-6 years of related experience in the garment industry...

The QAs will always check embellishment work when standing up, or sitting on a high stool. They work on a table which is around 4ft high. The method of checking is that they wear gloves and then run their hands over the garments to check whether the embellishment...is properly attached...

In contrast to the normal process described above, the boys in the footage are working on a table which appears to be 2.5ft tall and they appear to be sitting or kneeling on the floor. I have personally never seen such a table being used for checking the embellishment on garments.

Further, the boys in the footage are not wearing gloves and they are using tools, rather than their hands, on the garments. They appear to be using the needle/forceps to poke repeatedly at the sequins on the garment, rather than running their hands over the garments...

In my view, whilst it appears that the boys are attempting to do some kind of work with the garments, they are not carrying out any activity which I recognise as part of the production of garments such as those the boys are seen to be holding."

The expert report supplied by the BBC Executive is written by Ms Singh of the NGO Cividep-India. Ms Singh has written articles such as "Fashionable and famous – at the garment worker's cost" for InfoChange India, which publishes news and analysis on the country's development and social issues. She is also the author of the study "Richer Bosses, Poorer workers" on Bangalore garment industry for SOMO (Centre for Research on Multinational Corporations).

Ms Singh states her experience as: "I work on issues affecting garment workers in Bangalore, India. As part of my job I regularly visit places of work where clothes are manufactured for the western and Indian market. I have considerable experience of the wide range of places in which these clothes are made – from large factories to backstreet workshops which often have little respect for the law or the rights of the workers. It is from drawing on this extensive experience, particularly around Bangalore, where CIVIDEP is based that I made my analysis of the film."

Ms Singh's analysis is as follows:

"This technique is used to carry out the sequin work first of all and then later to test the strength work done on a piece of garment. Initially the sequins are either sewn on by hand or in some types of sequin work the wooden frame is used to spread the garment tightly to stitch the fabric. Later it is tested with a bigger needle-like thing as is shown in the video. I have seen the technique shown in this film being done in very very small workshops. As well as clothes for western market sequin work done on Indian garments so I am very well aware of this technique.

Employers normally prefer to employ young children to carry out stitching and testing of sequin work because of their nimble fingers and also for the fact that they can pay smaller amounts to these children for their work thus reducing the cost of the work."

Both experts signed their reports with statements of truth as to the contents.

The Committee noted that expert witnesses in ordinary civil matters have certain duties to the court which do not apply to the experts in this Appeal. In particular, they have a duty to the court which overrides any obligation they have to the person from whom the expert has received instructions or by whom they are paid. The purpose of this duty is to ensure the integrity and independence of the relevant expert evidence.

The same principles do not apply in relation to the expert evidence in this Appeal. Although both experts signed statements of truth, neither of the experts has a duty to the Committee in relation to the Appeal. The Committee expected that both experts might have been paid or have obtained some other advantage (commercially, politically or otherwise) in providing their analysis.

The Committee also noted that the question both experts have considered is not one for which there is a readily identifiable body which can provide a definitive view. The industry shown in the Bangalore footage is effectively a "cottage industry" where standard practices may not generally apply.

The Committee found that the Complainant's expert's evidence was too focused on standard/ regulated practice and procedure without considering the sort of industry which takes place in India outside of the factories he may be used to working in or overseeing the work in. By contrast, the BBC Executive's expert does not have a specific background in the garment trade but speaks from general experience of visiting workshops in India. The Committee's view was that both pieces of expert evidence have merit but also are deficient in certain respects and, as such, the one effectively neutralises the weight of the other.

As explained above, the Committee's own perception of the footage raised doubts as to whether the scene in the footage really was that which it purported to represent.

*The 27 February email*

The Journalist left Bangalore on 26 February and returned to the UK from Delhi on 27 February 2008. He emailed the Deputy Editor on the same day, stating:

"...I got back this morning at 8.30am – was on the nightflight [sic] from [sic] Delhi. I went back to the [name] sweatshop [relating to another Western retailer

- not the Complainant] in Bangalore and got footage of about twenty girls working some as young as 12 but the sample eluded me – I have the Primark samples here now...

I have to bring in this camera kit and I could go through the Primark kids footage with you on Friday morning if you have time - would only take ten minutes - it's completely damning and we can discuss what you want to do from here. Primark have just drawn up a new ethical charter and have recently joined the ETI but being in India for much of the last three years I didn't realise how huge they had become so they could be a really good peg for this. I looked [sic] at the footage with [my wife] now and she thinks one of the girls is about 8 - and she is a Sri Lankan refugee to boot..."

The Committee considered why the Journalist did not expressly refer to the Bangalore footage in this email. It noted that, if it were to accept the Journalist's explanation for the 24 February email (i.e. that this did not refer to the Bangalore footage), then, there is no express reference to the Bangalore footage in any written communication between the programme team and the Journalist. The Committee remarked that this was odd given the potential significance of the Bangalore footage and the way in which he reported in writing his findings in Tirupur and his findings concerning another Western retailer in Bangalore.

The Committee considered the Deputy Editor's explanation to the Editorial Adviser that the Journalist had "called me from Bangalore as he was pulling out, very elated, to say that he'd filmed Primark sequined vests being finished by kids in a slum sweatshop. I asked about the labelling but I wasn't very encouraged by his description of a printed "Life, Love Fashion" logo on the neck. He said it was a Primark line but I had my doubts and decided it could only be resolved with further work when he brought it back. I remember it clearly because I was worried about the provenance of the garment". The Committee noted that the Deputy Editor had not mentioned this phone call to the ECU when he was interviewed during its investigation, although he did later refer to it in an e-mail dated 29 January 2010. When asked about this by the Editorial Adviser, the Journalist told her "it is difficult to recall specific conversations from three years ago but my best recollection is that we discussed the boys".

The Committee determined that the lack of any reference to the Bangalore footage in this email was not in itself probative of any issue in the Appeal, but that it was nevertheless surprising that the Bangalore footage was not specifically mentioned in this or any other email, especially as it may have been the footage which would have clinched the programme's commission. It was equally surprising that the phone call, which might explain the absence of specific reference in the 27 February email, was not mentioned by the Journalist or the Deputy Editor during his interview with the ECU. Notwithstanding this, the Committee noted that the phone call was not, in itself, probative of the key issues in connection with the question of the authenticity of the Bangalore footage.

### *The 3 March email*

The next recorded contact between the Journalist and the rest of the Panorama team was in an email from him to the Deputy Editor three or four days later on 3 March 2008. In that email, he sets out his "Primark Child Labour Brief" and says:

"The backbone of the Prima facie child labor evidence is against Primark...

#### FOOTAGE

We have footage of children hand sewing clothes for Primark in two locations; The Lakshmi Nagar slum/commercial district of Tirupur, the second in Banasagar ? a permanent refugee camp for Sri Lankan refugees about 80 kilometres south of Tirupur. On camera the girl in the first stream of footage claims to be 11 years old ? she is clearly younger. The young boy beside her is around 10? they all admit to earning less than 50 rupees a day? around 60p. In the second stream the three boys are all under 12."

The Committee observed that the reference to "Lakshmi Nagar slum/ commercial district of Tirupur" is simply wrong. There was no footage of children working on the Complainant's garments in the "Lakshmi Nagar slum/ commercial district".

The Journalist told the Editorial Adviser that this was a "simple error. I confused the names. I had meant T Nagar in Bangalore and not Lakshmi Nagar in Tirupur...I mixed up my Nagars which is a generic market term..."

The Committee noted that this error, if that is what it was, was made only a few days after the Journalist returned to the UK. It also noted that the 3 March email was consistent with the 24 February email, but that the Journalist had since changed his explanation for the 24 February email, which meant that the 3 March email was now incorrect. The Committee's view was that it was possible that there was an innocent explanation for this email, but equally there were question marks over it. It was noteworthy that, if the Deputy Editor had spoken to the Journalist about the Bangalore footage on or around 25 February 2008 (two days before this email), the Deputy Editor did not pick up on the error in the email (although the Committee noted that the Deputy Editor had not himself travelled to India and may not have appreciated the particular geography of the relevant scenes at this stage). Further, given the interest in the footage, the Committee might have expected the Journalist to have been more accurate with the details (particularly given the proximity of events between filming the footage and writing the email). Once again, the Committee concluded that this particular email was not of itself determinative of any issue in the Appeal, but must be considered along with and tested against all the other evidence in the round.

#### *Modus operandi in obtaining footage for the programme*

The Committee observed that the recording equipment used by the Journalist during his February 2008 trip left a watermark on the footage showing the date and time the footage was filmed. This could only be seen when the footage is watched back on a desk top viewer and the watermark can then be accessed by using a remote control unit. It could not be seen when viewing the footage on the camera on which it was recorded.

The Committee noted that the Bangalore footage was filmed secretly (i.e. undercover as to the reasons the boys were being filmed), but not covertly (i.e. using a secret or disguised camera). The Journalist explained that he had some trouble using the secret recording equipment and so had not used it to film the Bangalore footage - it had, however, been used at other times for the purposes of making the programme (including during the course of filming other footage in February 2008). The Committee noted that one advantage of using secret filming methods would have been that the audience (or the reviewer of the rushes tapes) would have been able to see the entire scene relating to the footage (e.g. the Journalist's entry into the Bangalore workshop, what the boys were doing at the time he arrived and for the duration of the footage, and the manner in which

the Journalist left the workshop). In the absence of such a visual record of the scene, other contemporaneous notes (e.g. written notes) become even more important for the purposes of verifying the footage. As detailed below, the Journalist has explained that no such notes were kept (or very minimal notes were kept and have not been retained).

The Committee noted that the Bangalore footage was filmed on the same tape as the footage of the women working on the sequined vest tops in Pollachi. This was unusual because, before filming the Bangalore footage on 25 February 2008, the Journalist had filmed footage of children working on material for another western retailer in a different Bangalore workshop. After he had obtained this footage (which lasted approximately 8 minutes and was filmed on a new tape with plenty of space remaining) he took this tape out of the camera and replaced it with the tape from the previous day.

The Journalist's evidence to the ECU was that he had no exact recollection as to why he had changed the tapes twice on 25 February, but that it would have been for a reason such as separate tapes for separate subject matter, and that, as a print journalist, he was a layman when it came to this kind of thing. He said to the Editorial Adviser that "as an untrained camera operator it seemed logical to me to keep the tapes separate as they featured different targets and I was concerned that multiple targets on one tape would confuse things". He said he did not receive any "formal training in terms of filming, storing or logging tapes", he just did what he thought was best on the day. He rejected any suggestion that he had changed the tapes to give the impression that the Bangalore footage was shot in Tirupur.

The Committee also noted that the Journalist did not provide an explanation as to why he was sure that what he would find at the S workshop would be the Complainant's garments. He said he "believed there was a strong chance it could be Primark" but he had no way of knowing for certain. He was only able to know what was being worked on in the S workshop when he arrived there. He said that, as far as he can recall, he re-inserted the Primark tape in the camcorder when he was in the car after he had filmed the separate footage of the other western retailer, but at that time he did not know what (if anything) he would find in the S workshop. The Journalist confirmed that he had both the used tapes and some spare tapes in his shoulder bag at the time.

The Committee noted that it was not the Journalist's general practice to use the same tapes for the same retailers. In fact, on a number of tapes there was footage of several different retailers, sometimes in the same location, sometimes in separate locations. He had never previously changed a tape in this way. Given that the Journalist did not know what he was going to find in the S workshop it was difficult to understand why he might have changed the tape in the camcorder while he was on his way there. The Committee noted the Journalist's lack of experience in television journalism and the fact that he did not have one systematic approach to the footage he shot. It was possible he had put in a part used tape in error. However, the Committee considered that changing of the tapes, although not probative of any matter in the Appeal on its own, does raise question marks in the same way as a number of the other points identified above.

### *Note-keeping*

The Committee noted that it was regrettable that the Journalist did not take detailed (and sometimes any) notes of his activities during his investigation. The Journalist said to the Editorial Adviser that he did not keep detailed notes of what he had seen but been unable to film. He said he did not discuss the taking of extensive notes with either the Editor or Deputy Editor of the programme. He said that his failure to keep detailed notes was due to safety concerns and "the fact that I was the most high profile journalist exposing child

labor [sic] in India I was fearful of having my tapes or notes confiscated". He confirmed that he made only simple notes of locations and contact names, but he was not now able to trace them.

The Committee acknowledged that, in certain circumstances when conducting an investigation, it might be difficult to retain comprehensive notes. However, it noted that the Journalist did send emails from the field and it would have been possible for him to do this as a form of record-keeping. If detailed notes had been obtained, these could have assisted the Panorama team in verifying the Bangalore footage and been of assistance in this complaint in verifying the Journalist's evidence on matters such as his conversations with workers in the Bangalore workshop in December 2007.

#### *The decision to make the programme*

The Deputy Editor told the ECU that, after he had viewed all the footage when the Journalist returned from the February 2008 trip, although it was "understandably fragmented because of the circumstances in which it was shot it seemed to put Primark in the frame". Accordingly, the Editor decided to green light a half hour programme which focused on the Complainant. The Editor told the ECU that the footage from the refugee camp was the main factor for this decision.

The Producer was brought on board in mid-March 2008 and the Presenter was lined up to work as a second reporter on the programme. A third trip to India was planned for April 2008 where the Journalist would be accompanied by the Producer, the Presenter and a cameraman. The Producer explained to the ECU that "The aim was to trawl sweatshops in Delhi for Primark or other British brands, liaise with a local anti child slavery NGO and record an interview with a member of that NGO. We then planned to fly down to Tirapur and follow up Dan's success in the refugee camp at Bhavanisagar. This we chose over the Bangalore vest as it provided potentially more scope for different issues to be highlighted, the plight of Tamil refugees in India etc. I had always the option of returning to Bangalore as well. Several things weighed against it principally safety...However I left that as an option which we could consider when on the ground. Secondly we knew that often sweatshops only work on one line of clothing from one supplier for a day or two at the most and then go on to something entirely different. I did not think it would be worth making such a major detour to Bangalore to visit a single sweatshop which would by now be producing something entirely different". The Committee noted this explanation but it considered that it was regrettable that the Panorama team chose not to revisit the workshop seen in the Bangalore footage during the April 2008 trip (in addition to the areas which had been filmed in and around Tirupur in February 2008).

The Committee noted that the Journalist has advanced the argument that the Panorama team engaged K for the purposes of the April trip to India and that, if the Complainant is correct in its contention that the Bangalore footage was staged, it would not have made sense for him to engage an Indian contact who had been present at the time of the filming of the Bangalore footage. The ECU considered that this argument had some weight and was contextually relevant – however, it was not probative of the matters in issue in the Appeal in and of itself.

By June 2008 (and following the commencement of the right of reply process with the Complainant), the Panorama team considered their programme to be strong enough to warrant a one hour special. The edition was to include a number of pieces of footage filmed in India over the course of the February and April 2008 trips focusing on the sub-contracting of work in India, apparently in contravention of the Complainant's ethical policy, for the purposes of the manufacture of the Complainant's clothes for the high street in the UK. This included footage of adult workers in slums and a refugee camp as

well as two scenes of children (one of which was the Bangalore footage). A request was made to the Controller of BBC One and the longer programme was commissioned. The Editor told the ECU "There was clearly a lot of picture work to be done to get to the longer duration and I asked for fashion show shots and more high street footage, music plus the Mary Portas interview or similar as we were moving from a targeted undercover report to a more inclusive look at the ethics of fast fashion fuelled by typical BBC One audience type consumers". The programme was broadcast on Monday 23 June 2008.

#### *The cogency of the witnesses' evidence*

The Committee considered the cogency of the individual witness evidence in the Appeal:

#### *K (the Journalist's driver and translator)*

The Committee decided that it would place no weight on K's evidence which included an Affidavit and transcript obtained by the Complainant, a number of transcripts of telephone calls involving K and (separately) the Producer, Journalist's wife, and the Editorial Adviser's translator, plus a transcript of an aborted telephone interview between the Editorial Adviser and K. This was because his evidence was inconsistent, apparently tailored to his audience (according to which story he thought that they wished to hear) and because he had made repeated requests of various parties for significant sums of money in exchange for his co-operation at interview. The Committee therefore considered K to be an unreliable witness.

#### *The Bangalore witnesses*

The Committee noted that S1 and A1 were breaking the law in employing children in their workshop. This meant that they were potentially highly motivated to create a story in order to protect their own position. It is also meant that they were in a position of vulnerability in terms of potential pressure or exposure to the Indian authorities and/or from K or Mr S. The Committee observed that S1 had a considerable amount of contact with K, who the Committee did not consider to be a truthful witness. There was therefore no way of knowing the extent to which S1's evidence may have been tainted. There were also certain inconsistencies in their evidence which were common to all of the Bangalore witnesses - which may also be indicative of collaboration between them (e.g. they all gave the same erroneous dates for the Journalist's visits to their workshop). The evidence of the three boys was also of low weight for similar reasons. The Committee also factored in the vulnerability of the children and the fact that it is always difficult to test the veracity of the evidence of a child particularly when this is combined with language and cultural difficulties. The Committee therefore considered that it could place little or no weight on the Bangalore witnesses' evidence in light of these factors.

#### *The Tirupur witnesses*

The Committee noted that the usefulness of the Tirupur witnesses' evidence was largely limited to the question of what sample(s) the Journalist purchased in Pollachi. The Editorial Adviser did not interview these witnesses because, in view of factors such as the limited relevance of their evidence and the passage of time, this was not considered to be a proportionate exercise. The Committee considered that the entire body of evidence on the question of what sample(s) the Journalist purchased in Pollachi was inconsistent. The Committee also noted that the evidence (particularly the note of the conversation between the Head of Security at the Complainant's parent company and N) was multiple hearsay. Therefore, the Committee decided that it could place no weight on the evidence of the Tirupur witnesses.

*Mr S (i.e. the Complainant's Indian investigator)*

The Committee observed that there were certain inconsistencies in Mr S's evidence: the key point was his statement to the Editorial Adviser that he did not have any suspicions or was not given instructions regarding the authenticity of the Bangalore footage at the outset of his investigation. When the background documentation to the Complainant's Indian investigations was eventually supplied to the Trust, it was apparent that this was not correct. It was clear from early investigation reports which were eventually supplied by the Complainant that, at the very least, Mr S suspected that Primark was seeking to establish whether the footage was authentic.

The Committee nevertheless considered that, while it could not rule out the possibility of Mr S having influenced the Bangalore witnesses (particularly given the language he adopted in the conversations he had with S1 in order to set up the interviews with the Editorial Adviser - which, it was noted, might have been misinterpreted because of cultural differences), on the basis of the background documentation supplied by the Complainant there was nothing to suggest that he (and the Complainant) had not gone about his investigation in a professional manner.

In any event, the Committee noted that his evidence was only relevant in determining what weight might be attached to the Bangalore witnesses' evidence as he was not himself a witness of fact in connection with the question of authenticity. Mr S's evidence was therefore of limited value to the Committee.

The Committee also noted that, prior to engaging Mr S, the Complainant had (via its agents) engaged another investigator known as "the Brigadier". The Brigadier's investigation had been terminated because of a disagreement between the Complainant and the Brigadier as to the way in which he was to pursue his investigation and the Complainant's representatives had formed an "unfavourable view of the Brigadier on a professional level". The Committee noted that the Brigadier apparently had caused K distress during that investigation. However the Committee considered this did not impact on its conclusions regarding K's evidence.

*The Panorama team*

The Committee noted that the Panorama team (i.e. the Editor, Deputy Editor, Producer and Presenter) could not provide any direct evidence on the question of authenticity as they were not present during the filming of the footage. However, they were in a position to provide information against which the other evidence could be tested such as the Deputy Editor's explanation as to his phone call with the Journalist regarding the Bangalore footage on or around 25 February 2008.

In the case of the evidence given to the Editorial Adviser, the answers provided by the Panorama team were prepared in writing and with the assistance of the BBC's lawyers. The Committee was disappointed that the members of the Panorama team had not agreed to be interviewed in person except as a group with a BBC lawyer present, as this would have allowed the Editorial Adviser to test the evidence, for example, that relating to the telephone call the Deputy Editor said he had received from the Journalist from Bangalore. The Committee would have valued the opportunity to explore questions such as why the Deputy Editor did not mention that call in his interview with the ECU. As explained above, the terms on which the interviews might have taken place with the Panorama team could not be agreed. The Committee noted that it was not in a position to compel witnesses to give evidence, unlike a court of law, but that it would have expected the Panorama team to agree to meet the Editorial Adviser individually,

particularly given the serious nature of the Complainant's allegations and where issues of fact were in dispute.

### *The Journalist*

As noted above, it was also not possible to agree terms for an interview with the Journalist, Dan McDougall. This was of particular concern given that the Trust had made it clear that he was the most critical witness in the investigation because he had been present during all of the relevant events. The Journalist was the only person in a position to know exactly what happened at all times and in all places during the investigation in India. The Committee noted that the Trust had gone to considerable lengths to persuade the Journalist to be interviewed because of his importance to the investigation, such as allowing him to be accompanied by a lawyer at his interview (this being a highly unusual step in the Trust's processes). At one stage, it appeared that he had agreed to be interviewed and arrangements were made for the interview to take place. However, the Journalist then stipulated further conditions involving the Complainant, and a stalemate was reached between them. The Complainant and the Journalist have advanced differing perspectives on the effect of this, which were taken into account by the Committee.

Although the Committee did not draw any adverse inference from the Journalist's decision not to attend an interview, it did observe that that the Committee could not attach as much weight to the Journalist's evidence as it might have done, had it had the opportunity to test that evidence by means of an interview with the Editorial Adviser. As it was, the Journalist's evidence consisted of written responses to questions, drafted with the assistance of his legal advisers.

The Committee also observed that the absence of any contemporaneous notes taken by the Journalist made it difficult to assess the veracity of certain explanations he gave in response to the Complainant's allegations. Further, there were a number of examples where his evidence was inconsistent particularly as between what he said to the ECU and the evidence he gave in writing to the Editorial Adviser. The Committee noted that time had elapsed and this might have affected his recollection of events. Notwithstanding this, this also had an impact on the weight which could be given to his evidence.

### *Overall conclusions on the evidence of the witnesses*

For the above reasons, the Committee concluded that the witnesses' evidence as a whole was generally of low weight, inconsistent and unpersuasive. It was not possible for the Committee to place any high degree of reliance on any witness's evidence. It therefore considered that the key evidence for the purposes of it deciding the Appeal was the contemporaneous evidence, particularly the rushes tapes obtained by the Journalist during his investigation and the emails sent around the time the footage was filmed.

### **The decision**

The Committee noted that, in all probability, no one other than the Journalist, K, and the Bangalore witnesses would ever know the truth of the circumstances under which the footage was shot. The Committee considered that there was not one piece of irrefutable and conclusive evidence which would enable it to say for certain (i.e. beyond reasonable doubt) whether the footage was or was not staged.

However, the Committee was not required to reach a view beyond reasonable doubt in order to determine the Appeal. Having carefully scrutinised all of the relevant evidence and weighed up the body of evidence in the round, the Committee concluded that, on the balance of probabilities, it was more likely than not that the Bangalore footage was not

authentic. The Committee particularly noted the following points which, taken together, were considered to be persuasive:

- The fact that the activity being carried out by the boys in the Bangalore footage did not appear to the Committee to be genuine;
- Looking at the delicate and intricate nature of the stitching on the sample of the brown vest top available to the Committee, it felt that the activity being carried out in the Bangalore footage, using large needles, would have been inappropriate for the activity being described by the programme;
- The distance between Pollachi, where the Journalist had already filmed women working on the brown sequinned vest tops, and Bangalore made it improbable that he had found the same tops in these two locations on successive days;
- The fact that no brown vest tops other than the ones being worked on by the boys can be seen in the Bangalore footage, whereas it is likely that, if a quality control process was being undertaken, the workshop would have been handling a significant number of the garments;
- The contrast between the way in which other footage of children working on Primark garments had been filmed elsewhere and how they appeared in the Bangalore footage (e.g. the short sequence, the tight focus on the three boys with less focus on their surrounding environment);
- The inconsistencies in the other contemporaneous evidence including the February/ March 2008 emails.

### **The importance of the Bangalore footage to the programme**

The Committee considered what impact this conclusion might have had if it had been known or suspected by the programme makers when the programme was being compiled. It was clear that the Bangalore footage should not have been broadcast. This has already been acknowledged by the BBC Executive. However, the Committee concluded that it was not possible to second guess what the programme team would have done in relation to the programme as a whole. This was a question of editorial discretion and it was not appropriate for the Committee to speculate as to whether a version of the programme would still have been aired. The Committee also considered it important to note that the Bangalore footage and the directly associated footage shown in the programme (i.e. the interview with a customer who viewed and commented on the Bangalore footage) constituted only a small proportion of the programme. The programme also included footage of at least three other instances where the Complainant's garments were filmed being worked on outside the Complainant's direct supply chain, in apparent contravention of its own ethical guidelines.

## **6. Accuracy and Fairness**

The Committee concluded that, as it had decided that it was more likely than not that the Bangalore footage was not authentic, it must follow that the accuracy guideline has been breached.

The Committee also concluded that the fairness guideline had been breached. This is because the Bangalore footage was broadcast in order to substantiate allegations in the

programme relating to the Complainant's foreign practices. In short, broadcasting this footage was not fair to the Complainant.

**Finding: Upheld**

## **7. Second Ground of Appeal**

### **Admissibility of Complainant's expert evidence**

The Committee decided the question of the admissibility of the Complainant's expert evidence as a preliminary issue in the Appeal at a meeting on 21 July 2010. Here, the Committee noted that submissions had been made on behalf of the Complainant, the programme team and by the ECU regarding the ECU's decision not to accept Mr Mittal's report as evidence. The Committee decided that it was appropriate to take the ECU's submissions into account if they were simply clarifying the reasoning given for this decision at the time, but not if it consisted of new reasoning.

#### *The admissibility of Mr Mittal's report*

The Committee noted that the Complainant considered Mr Mittal's report to be relevant to the question of whether the activity featured in the Bangalore footage ordinarily takes place in manufacturing or finishing garments. The Committee also noted that the ECU did not say that the report was irrelevant, but that it was submitted too late. The Committee considered the contents of the report and decided that, although it was not possible for the Committee to say what bearing the report may have had in the ECU's decision, it was in principle admissible before the ECU because it went to the question of the genuineness of the activity being carried out by the boys in the Bangalore footage.

#### *The ECU's decision not to accept the report as evidence*

The Committee considered the circumstances leading to the decision by the ECU not to accept Mr Mittal's report as evidence. It noted that the ECU had corresponded with the Complainant over a period of months regarding the evidence to be provided to the ECU and that the Complainant referred to expert evidence without taking the opportunity to provide that evidence. The Committee also noted that, whilst the evidence of the BBC World translator had been referred to during the right of reply process before the broadcast of the programme, the Complainant said that it did not appreciate the way in which that evidence would be referred to and relied upon until the ECU shared its provisional decision.

The Committee noted that the ECU had the discretion to admit the report after the publication of the provisional decision and, had it done so, the ECU may then have considered it necessary to evaluate the quality and weight to be attached to that evidence and to offer the programme team an opportunity to comment upon it. The Committee was not in a position to form a view as to the weight that the ECU might have attached to the report or whether it would have altered the substance of the ECU's decision, but decided that the report would likely have been relevant to the ECU's consideration of the nature of the activity featured in the Bangalore footage.

#### *The Committee's decision*

The Committee acknowledged that the ECU had been asked to consider new evidence at a very late stage in the process. On balance, the Committee concluded that, on receipt of

the report in response to the provisional finding, the ECU ought in fairness to both parties to have accepted the report and to have considered the implications of this new information for its process and decision. The decision not to accept the report undermined, in the Committee's opinion, the integrity of the ECU's process thereby constituting unfairness which affected both parties. The Committee observed that any unfairness which might be caused to the BBC by admitting the report at such a late stage would have been mitigated by giving the BBC the opportunity to comment on it. The Committee accordingly concluded that the ECU should have accepted the report as evidence and that the report should be admitted in the Appeal.

Given these conclusions, the Committee resolved to allow the BBC Executive the opportunity to admit its own expert evidence on the issue. This was submitted in September 2010 and the Complainant was given an opportunity to reply. As explained above, this evidence has been considered by the Committee in connection with the substantive issues in the Appeal.

### **The ECU's approach to the evidence**

#### *The ECU's role in editorial complaints*

The Committee noted the role of the ECU by having regard to the Charter. Article 38 of the Charter states that the BBC Executive Board is responsible for ((1)(d)): "ensuring compliance with all legal and regulatory requirements placed on the BBC (including the initial handling of complaints about the BBC)..." Further, Article 52 of the Charter notes that:

"(3) Complaints have an important role to play. The BBC's complaints handling framework (including appeals to the Trust) is intended to provide appropriate, proportionate and cost effective methods of securing that the BBC complies with its obligations and that remedies are provided which are proportionate and related to any alleged non-compliance."

The Protocol and Procedure (specifically paragraphs 2.8 to 2.18) set out the ECU's role in considering editorial complaints. Paragraph 2.12 of the Procedure provides that the ECU will "usually" reply to a complaint letter setting out the Editorial Guidelines against which the complaint will be considered within 10 working days. According to paragraph 2.15, the ECU will then aim to complete its investigation into the complaint within 20 working days (from the date of the summary of the complaint being sent to the complainant); although a target of 35 working days is applied "to a minority of cases which are judged to be unusually complex".

The Procedure summarises the ECU's role in considering the complaint as being to: (a) independently investigate the complaint; (b) decide if it is justified; (c) inform the complainant of the reasoned decision; and (d) ensure that the programme or division takes appropriate action in response to the finding (paragraph 2.14).

The Committee also noted the difference between this and the duties and role of the BBC Trust as the "final arbiter" in these matters.

#### *ECU's analysis of the evidence before it*

The Committee considered the approach and tests which appear to have been applied by the ECU at Stage Two.

The Committee noted that it is difficult to discern exactly what standard of proof was applied by the ECU in coming to its decision. However, it is clear that the ECU placed an expectation or burden on the Complainant to "prove" its case in the Appeal. For example, the ECU concluded:

"Bearing all these considerations in mind, and having already made clear that I do not regard the results of [the Complainant's] investigation as reliable...I do not think [the Complainant's] case succeeds in establishing that there was falsification. However, I am driven by the evidence - most notably the emails of 24 February - 3 March 2008...to conclude that there is an unresolved question about the authenticity of the disputed material. Even taking this into account, in view of the seriousness of the allegation and the quality of the evidence which would be necessary to establish it, I do not believe the evidence as a whole entitles me to conclude that the disputed material was in fact falsified"

The Committee considered that this was not the correct approach in the circumstances. The Committee noted that, as this was the ECU's starting point, there were occasions in its decision where the approach to the evidence was not as balanced as it might have been. The Committee's view was that, although this may have caused unfairness to the Complainant, there was no evidence that the complaint was not handled in good faith. It also noted that the ECU obtained legal advice in the course of reaching its decision in the complaint.

The Committee noted that the Protocol and Procedure does not assist the ECU in deciding what approach to adopt in complaints where the authenticity of a piece of footage is in issue. It obliges the ECU to decide whether complaints are "justified" which, on the face of it, requires that the complainant advance a positive position as to why its complaint should be upheld. However, it is unclear how this might apply to determining complex questions of fact such as in this complaint, and the Committee considered that this might explain why the ECU concluded that it was not in a position to determine the question of authenticity definitively.

As noted below, the Committee proposed that this wording of the Protocol and Procedure be considered by the BBC Trust in the course of its current review of the complaints framework and, in particular that consideration be given to providing more detailed guidance as to the approach to take to the evidence in complaints involving complex factual disputes.

## **Delay**

The Committee considered the chronology of the re-opened investigation at Stage Two including the following overview:

- 31 July 2009 - The Complainant's request for the complaint to be re-opened on the basis of new evidence. Names of witnesses to be withheld at this stage for their safety and evidence will not be available until concerns about confidentiality have been satisfied;
- 7 August 2009 - ECU confirms that the complaint will be reopened. ECU unlikely to be able to reach a conclusion unless the programme makers have a full and fair opportunity to respond to the case against them - may be incompatible with the Complainant's concern to preserve the anonymity of the witnesses;
- 3 September 2009 - ECU summary of the issues in the complaint;

- 15 September 2009 - Complainant's confirmation and refinement of the ECU summary;
- 23 September 2009 - ECU request for the Complainant to provide all the underlying evidence to be considered by it in its investigation;
- 9 October 2009 - ECU inspects evidence at Complainant's solicitors' offices and receives copies of the evidence;
- 14 October 2009 - confirmation by the ECU that now that the evidence has been made available the ECU investigation can proceed;
- 26 October 2009 - ECU expresses concern about the veracity of the statements obtained by the Complainant and with the integrity of the process by which they were obtained. Request for disclosure of written reports provided to the Complainant by its investigators;
- 19 November 2009 - Complainant's refusal to disclose investigators' written reports (asserting legal privilege over the documents) but provision of a witness statement from Mr S, together with details concerning the conduct of its investigations;
- November 2009 - January 2010 - evidence of the Panorama team obtained (five witnesses interviewed in person and/or provided written accounts);
- 9 March 2010 - ECU provisional findings sent to the Complainant;
- 23 March 2010 - Complainant argues that approach adopted by the ECU is fundamentally flawed. Provides expert evidence as to whether the activity undertaken by the boys in the Bangalore footage is a recognised one;
- 3 April 2010 - ECU issues finalised findings.

As explained above, the Procedure provides that the ECU will "usually" reply to a complaint letter setting out the Editorial Guidelines against which the complaint will be considered within 10 working days. The ECU will then aim to complete its investigation within 20 working days from the summary of the complaint being sent to the complainant; although a target of 35 working days is applied to a "minority of cases which are judged to be unusually complex". The Committee observed that, in real terms, the guidance of 45 working days for complex cases means approximately 9 weeks (or 2 to 3 months) from when the complaint is received to the investigation being completed.

The Committee noted that it took the ECU 8 months to determine the Complainant's complaint. On the face of it (and viewed against the standards set out in the Procedure), this appears to be an unsatisfactory timeframe. However, the Committee considered the following factors:

- The specific complexities of the complaint. The complaint involves difficult questions of fact and the evaluation of a wide range of factual evidence. The Committee noted that the time the Trust has taken to compile and consider the evidence is demonstrative of the difficult issues contained in the complaint. This sort of complaint is highly unusual.
- The initial correspondence with the Complainant agreeing the summary of the issues in the complaint was exchanged over a six week period.

- Between September and November 2009 the ECU made repeated requests for further information relating to the investigation carried out by the Complainant and the process by which it collated its evidence in support of its complaint. These requests were also made by the Trust Unit in this Appeal and the Complainant ultimately agreed to provide this information in late 2010 and early 2011.
- Interviews with the Panorama team and the Journalist took place between November 2009 and January 2010 and the provisional finding followed in early March 2010.

For these reasons, the Committee concluded that the ECU had not delayed unreasonably in reaching its decision. It noted that the complaint was particularly complex with a lot of evidence from Primark and which the ECU itself obtained in the course of its investigation.

### **The provision of underlying evidence to the Complainant**

The ECU explained in its decision that it had put the Complainant's questions to the Panorama team including the Journalist (and it outlined the "gist" of their responses in its decision) and considered all of the contemporaneous evidence and that supplied by the Complainant in the course of its complaint.

Paragraph 3.23 of the Procedure states that, before making an appeal, a complainant "can normally ask to be informed of the gist of the material which the ECU or a senior manager relied on in responding to [its] complaint" (emphasis supplied). The Committee noted that, although this approach was standard practice (and the reasons for this approach are sound), difficult issues arise in cases such as this, particularly where a burden is placed on a complainant to prove its case.

The Committee recommended that the Trust consider, as part of the BBC Trust's review of the complaints framework, the question of what material should be provided to complainants in order to ensure fairness and provide guidance to the ECU on this issue.

### **Other complaints**

The Complainant has also complained that:

- The ECU's approach in providing the Panorama team and the Journalist with the Complainant's evidence before giving their own evidence was wrong;
- The ECU erred in not interviewing the Bangalore and/or Tirupur witnesses;
- The ECU did not observe or effectively police undertakings relating to contact between witnesses;
- The ECU did not take into account the representations in its 23 March 2010 letter before finalising its decision. The ECU provided its provisional decision to the BBC Executive approximately three weeks before sharing it with the Complainant;
- After receiving the Editorial Adviser's Report and accompanying evidence, the Complainant also complained about the adequacy of the notes collated in witness interviews by the ECU.

In response to these complaints, the Committee concluded:

- The Committee noted the requirements of Article 52 of the Charter that the BBC's complaints handling framework is to provide "appropriate, proportionate and cost effective methods of securing" compliance. The Committee considered that the approach adopted by the ECU in deciding not to re-interview the witnesses in India and in providing the initial round of the Complainant's evidence to the programme makers before they provided their own evidence was appropriate and proportionate in the circumstances.
- The Trust had itself experienced difficulties in policing undertakings provided by the witnesses in the Appeal to avoid contact with other witnesses. Although this position was not ideal, both the Trust and the ECU had taken steps in order to mitigate against this risk and had obtained records of the conversations between witnesses which were outside of the undertakings (so they might take a view as to the contents of these conversations).
- The Committee noted that the approach taken by the ECU in providing its provisional decision to a first party complainant was standard (although the Committee did note that this approach might also be considered in the context of the BBC Trust's review of the complaints framework). It also noted that the fact that the ECU did not make significant amendments to its final decision having reviewed the Complainant's comments in its 23 March 2010 letter did not mean that it had not taken these into account.
- With regard to the adequacy of the notes obtained by the ECU, the Committee noted that the ECU had produced aide memoires of its interviews with the Journalist and the Panorama team. The Committee understood that these aide memoires were produced from contemporaneous notes taken at the time but the ECU did not get these notes endorsed by the interviewees. The ECU had also collated various witness evidence in writing from the same witnesses. The Committee's view was that this was a sufficient exercise for the purposes of obtaining the relevant witnesses' evidence and, ultimately, relaying the "gist" of this to the Complainant in its decision.

## **The Decision**

As noted above, the Committee concluded that there was no evidence that the complaint was not handled in good faith by the ECU. The ECU had taken steps over the course of the complaint to ensure the Complainant had the opportunity to present its position in the Appeal. The ECU had also obtained legal advice in order to ensure that the complaint was managed appropriately.

The Committee did not find that the ECU delayed unreasonably in deciding the complaint. It noted that the complaint was particularly complex with a lot of evidence from Primark and other evidence which the ECU itself had obtained in the course of its investigation. Further, the evidence did not suggest to the Committee that Primark was treated discourteously or with a lack of respect.

However, the Committee did criticise two aspects of the ECU's approach: firstly, the decision not to take the Complainant's expert report into account (even though it arrived late in the day), and, second, the fact that it placed the burden on the Complainant to prove its case. It noted that these had the effect (albeit unintentionally) of causing unfairness to the Complainant.

## 8. Accountability

The Committee noted the requirements of the accountability guideline to "act in good faith by dealing fairly and openly" with the BBC's audiences and to "ensure that complaints and enquiries are dealt with quickly, courteously and with respect".

The Committee concluded that the ECU had acted in good faith in handling the complaint and had done so courteously, with respect, and in a timely manner in very difficult circumstances. However, the two respects in which the ECU had failed were found to have caused unfairness to the Complainant (albeit unintentionally and in the course of acting in good faith). The Committee considered that this meant that the accountability guideline had been breached in this relation to these two points. The Committee also noted that this Appeal has highlighted important issues (and potential deficiencies) with the current complaints framework at ECU level which should be considered in the course of the BBC Trust's review of the framework in 2011/12.

### **Finding: Upheld in part**

#### **Lessons to be learned**

The Committee noted that the BBC Executive had accepted in correspondence that there were lessons to be learned from the matters in issue in this Appeal. It also confirmed that a senior director at the BBC has been asked to consider what changes or additions ought to be made to its editorial policies in light of this case.

The Committee noted that it had the highest regard for the investigative journalism in programmes such as Panorama. Secret (including undercover) recording is an important tool for investigations and Panorama has used it in other programmes to obtain crucial evidence on significant stories. The Committee agreed that it was important to note that investigations such as these were in the public interest. The Journalist had obtained clear evidence that work was being outsourced from factories in India in contravention of Primark's own ethical trading principles. The Journalist also obtained other footage of young children working on Primark clothing in a refugee camp just outside Tirupur. However, the Appeal has highlighted serious failings in the making of this programme. In particular, where a journalist is operating in the field alone, it is incumbent on the programme makers to scrutinise the evidence, including any footage, and to review all the available contemporaneous evidence in order to satisfy themselves as to the circumstances in which it was obtained. The Editor of the programme has overall responsibility for ensuring that the programme's journalism is authenticated before broadcast. The keeping of detailed contemporaneous notes is also critical in order that footage may be verified and authenticated.

The Committee concluded that the issues raised by this Appeal demonstrated serious editorial failings on the part of Panorama. It considered that this was the case regardless of what decision the Committee might have come to in relation to the question of the authenticity of the footage. It appears that the freelance journalist who obtained the footage was given little or no guidance in relation to: the use of secret recording equipment, the guidelines to follow in obtaining secret or undercover footage, or how to appropriately record his approach to the filming and the evidence obtained, in a manner which would ensure that the footage which he obtained could be verified by the programme team. The Committee noted that, in the field of investigative journalism it is crucial to comply with the BBC's editorial guidelines - to ensure that the BBC maintains the highest standards in its output but also to safeguard the reputation of the BBC, its employees and those working within it in the making of programmes.

As explained below, the Committee has requested that the BBC report back to the Trust on the "lessons learned" from this Appeal, and to propose changes to its practices in light of this decision. The BBC is requested to ensure that the following issues are addressed:

- The need for making and maintaining records and notes, made as contemporaneously as the situation will allow, to ensure that footage which is obtained to support factual allegations can be documented and validated. The Committee's view was that such mechanisms are essential tools to authenticate the circumstances under which material which might later be disputed was obtained, and to protect the reputation of the BBC and its employees and agents.
- Effective training of journalists in the field, especially where they may operate alone, and effective oversight of their work, especially where they lack extensive production experience. The Committee considered that, even if it had decided on the balance of probabilities, that the Bangalore footage was authentic, it would still have considered that there were serious failings by the BBC in the making of the programme, including the apparent lack of guidance given to the Journalist in this case. Effective supervision and training of journalists with limited experience in programme production is a key management responsibility.
- Effective measures to ensure that the BBC can stand by the work of non-BBC journalists (as well as BBC staff) particularly where those journalists have a commitment to campaigning journalism which might call their objectivity into doubt.
- The BBC is asked to consider what safeguards and practices it might put in place in order to mitigate against the risk of the serious editorial failings identified in this Appeal from arising in the future.

## 9. Outcomes

In view of the serious nature of the breaches of the editorial guidelines in this Appeal, the Committee's decision is that:

- The Committee will apologise on behalf of the BBC to the Complainant in respect of the breaches of the editorial standards.
- An apology is to be broadcast on BBC One at the beginning or end of the broadcast of a Panorama programme. The proposed wording, date and time of the apology will be shared with the Complainant and the BBC Executive in advance of the broadcast, but the final contents and arrangements for the broadcast are for the Committee to decide.
- The apology is to be displayed on the front page of the Panorama website for a period of one week from date of the broadcast apology.
- The BBC Executive is to make enquiries as to whether the programme has been sold or supplied to any third party, e.g. educational bodies. If this is the case, the BBC Executive is to take all reasonable steps to notify any such bodies of this decision. The BBC Executive is to report to the Trust on action it has taken by no later than 7 July 2011.

- The programme is not to be sold or repeated. The Bangalore footage must not be used in any future programme except in connection with the coverage of this Appeal. Material found to have been in breach of the guidelines should be removed from BBC online immediately.
- The BBC Executive is requested to consider its position in connection with the Royal Television Society Award which was given to the programme in 2009.

*Process remedies*

- The Trust is currently undertaking a review of the Complaints Framework. The issues raised in this Appeal will be carefully considered in connection with this review.
- The BBC Executive has already confirmed that it is considering the lessons to be learned from the facts in this Appeal. The BBC Executive is to report back to the BBC Trust on this issue by no later than 7 July 2011. The items which the Trust expects (as a minimum) to be covered in this report are set out in detail in this decision.

## APPENDIX:

### APPLICABLE EDITORIAL GUIDELINES<sup>6</sup>

#### 1. 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 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 then as soon as possible afterwards.....

#### NOTE-TAKING

**We must take accurate, reliable and contemporaneous notes of all significant research conversation and other relevant information.**

**We must keep records of research including written and electronic correspondence, background notes and documents.** It should be kept in a way

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<sup>6</sup> Editorial Guidelines in place from 2005 to 2010.

that allows double checking, particularly at the scripting stage, and if necessary by another member of the team....

## **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.

## **2. FAIRNESS, CONTRIBUTORS AND CONSENT**

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 to reply.

## **3. ACCOUNTABILITY**

The BBC is accountable to its audiences. Their continuing trust in the BBC is a crucial part of our contract with them. We will act in good faith by dealing fairly and openly with them.

We are open in admitting mistakes when they are made and encourage a culture of willingness to learn from them.

We will use the BBC's online presence to provide proper reporting to the public on complaints we have received, and actions we have taken...

### **FEEDBACK AND COMPLAINTS**

Audiences are at the heart of everything the BBC does. Audience feedback is invaluable to us and helps to improve programme quality.

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

### **EDITORIAL COMPLAINTS UNIT**

The Editorial Complaints Unit deals with serious complaints about breaches of the BBC's editorial standards. It deals with complaints about any BBC service or product where the BBC has editorial responsibility. This includes international, public and commercial services and BBC branded magazines.

If complainants are not satisfied by the Editorial Complaints Unit finding, they can appeal to the Governors' Programme Complaints Committee.

For the most serious upheld complaints, an apology or correction from the BBC may be published online or on air.

**END**