

Editorial Standards Findings:

Appeals and editorial issues considered by the Trust's Editorial Standards Committee

Russell Brand, Radio 2, 18 and 25 October 2008

Chris Moyles, Radio 1, 21 October 2008

Friday Night with Jonathan Ross, 2 May 2008

Remit of the Editorial Standards Committee

The Editorial Standards Committee (ESC) is responsible for assisting the Trust in securing editorial standards. It has a number of responsibilities, set out in its Terms of Reference at bbc.co.uk/bbctrust/about/meetings_and_minutes/bbc_trust_committees.html.

The Committee comprises five Trustees: Richard Tait (Chairman), Chitra Bharucha, Mehmuda Mian, David Liddiment and Alison Hastings. It is advised and supported by the Trust Unit.

In line with the ESC's responsibility for monitoring the effectiveness of handling editorial complaints by BBC management, the Committee considers appeals against the decisions and actions of the BBC's Editorial Complaints Unit (ECU) or of a BBC Director with responsibility for the BBC's output (if the editorial complaint falls outside the remit of the ECU).

The Committee will consider appeals concerning complaints which allege that:

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

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

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

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 a statement on any remedial action taken.

It is published at bbc.co.uk/bbctrust or is available from:

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Russell Brand show, Radio 2, 18 & 25 October 2008 and Chris Moyles, Radio 1, 21 October 2008

BBC Trust report

The BBC received in total 42,851 complaints regarding The Russell Brand show. The finding by the ESC represents the third and final stage of the BBC complaints and appeals process.

1 Background

The Russell Brand show was broadcast on Radio 2 between 2100 and 2300 on Saturdays. From April 2008 it was made by Vanity Projects an independent production company owned by Russell Brand and others. It featured music and discussion between Brand and a co-host or celebrity guest. It was frequently pre-recorded.

Following the broadcast of 18 October 2008 BBC management received 5 complaints from members of the public. BBC management also received a complaint on behalf of Andrew Sachs from his agent which was sent on Thursday 23 October but was not read by the Controller of Radio 2 until Sunday 26 October.

Following coverage in the Mail on Sunday on Sunday 26 October 546 complaints were received (figure as of 9am on Monday 27 October). On Monday 27 October BBC management issued an apology and announced an investigation. The Trust requested a report from the Executive.

The BBC Trust's Editorial Standards Committee considered the relevant material from the Russell Brand show of 18 and 25 October 2008. The Committee also considered relevant material on the Chris Moyles Show on Radio 1 on 21 October 2008 at 08.23. The Committee also considered the written report from the Executive.

2 Summary

2.1 Russell Brand

The Editorial Standards Committee concluded that the material recorded regarding Mr Sachs and his granddaughter Ms Baillie in the Russell Brand show of 18 October and 25 October was so grossly offensive that there was no justification for its broadcast.

The recording and broadcast of these remarks was humiliating to Mr Sachs, Ms Baillie and their families and represented an unacceptable and deplorable intrusion into their private lives. No BBC content should reveal intimate details about the

private lives of individuals without their consent or without editorial justification for example that the revelation was in the public interest. The broadcast of these comments represents an abuse of the privilege given to the BBC to broadcast to its audiences. It fell far short of the standards the licence fee payer expects of the BBC.

In addition it was the view of the Committee that the programme of 18 October contained other unacceptably offensive material for a BBC service.

The Committee considered there had been three failings – a failure to assert editorial control by Radio 2, a failure to follow the compliance systems in place and a failure of editorial judgement.

Had satisfactory editorial control been in place it may have prevented the recording of the material in the first place.

Had the compliance processes in place been followed and had the correct editorial judgements been applied this material would not have been broadcast.

The Committee found that there had been a breach of the BBC Editorial Guidelines regarding privacy in that there was an unjustified infringement of the privacy of Mr Sachs and Ms Baillie both in the making of the programme of the 18 October (when messages were recorded on Mr Sachs's voice mail regarding his granddaughter) and in the broadcasts of 18 and 25 October.

The Committee also found that the relevant material broadcast on the 18 and 25 October was a breach of the editorial guidelines regarding offence.

The Committee also found that there had also been a breach of the offence and privacy guidelines in the provision of relevant material to the public in the pod cast and video cast. The Committee also found the video cast should have had an adult only warning.

The Committee agreed these breaches were serious.

2.2 Chris Moyles

The Committee found that there had been a breach of the privacy guidelines in that there had been an unjustified infringement of the privacy of Mr Sachs and Ms Baillie in the broadcast of the programme.

The Committee also found that there had been a breach of the offence guidelines and that the material had been broadcast at a time when children were likely to have been listening which was a further breach of the guidelines.

3 Finding of the Editorial Standards Committee

In approaching this finding the Committee considered events chronologically.

It considered the recording and broadcast of the material in light of the BBC Editorial Guidelines regarding Harm and Offence and Privacy particularly in relation to the use of the most offensive language, explicit sexual allusions and the portrayal of women, and of unfair treatment and infringement of privacy in relation to recording and broadcasting offensive and intrusive material without the informed consent of the parties involved.

3.1 The recording of the programme of 18 October

The Committee noted that this edition of the programme was pre-recorded on Wednesday 15 October as Russell Brand was unavailable for the live recording.

The Committee noted that the decision to call Mr Sachs had been made in advance and had been agreed with him but that the subject of the call which had been agreed with Mr Sachs was not about Ms Baillie.

The Committee noted that this remained the case at the pre-recording production meeting and that although Russell Brand had mentioned Ms Baillie there had been no intention at the meeting to raise Ms Baillie in the call.

The Committee noted that that when the presenters Russell Brand and Jonathan Ross called Mr Sachs on Wednesday 15 October as they pre-recorded the show of the 18 October there had been no decision to mention Ms Baillie.

The Committee agreed that although the first offensive comment recorded on the voice mail by Jonathan Ross regarding Ms Baillie would therefore have been unexpected it was immediately incumbent upon the producer to have stopped the recording at once so as to prevent further remarks from being recorded on Mr Sachs's voice mail. Even so that grossly offensive comment would have been recorded on Mr Sachs's voice mail and an unacceptable breach of privacy would have occurred in the making of the programme. At that stage all necessary steps should have been urgently taken to refer the incident to senior managers within the BBC and to apologise.

The Committee considered that exposing the private life of a woman to her grandfather made this breach of privacy particularly unacceptable and distressing to the people concerned.

At this stage a serious breach of the BBC's Guidelines had already occurred.

The Committee noted that it was the intention of the producer (who was employed by the BBC but accountable to Vanity Projects) in allowing the recording to continue to have edited out the material regarding Ms Baillie before broadcast. Whilst that may have been his intention it ignored the fact that further unacceptably offensive material which breached the privacy of Mr Sachs and Ms Baillie was being recorded on Mr Sachs's voice mail. The Committee agreed that the management of Radio 2 had failed to ensure that there was a producer within Vanity Projects with sufficient seniority and experience to oversee this challenging programme from week to week.

In addition it agreed that an executive producer for the BBC should have been present at the recording.

3.2 Consent for broadcast and Mr Sachs and Ms Baillie

The Committee noted that there is a tradition of recording unsolicited calls in entertainment shows which are broadcast with the consent of the person who has received the call. The Committee noted that the producer now sought to achieve consent for broadcast from Mr Sachs by means of a phone call either on the 15 or 16 of October.

The Committee noted that Mr Sachs and the producer had a different view of the phone call that had taken place between the producer and Mr Sachs - the producer believed he had obtained consent to broadcast; and Mr Sachs believed he had not consented to broadcast.

The Committee agreed that it is incumbent upon the BBC to receive consent to broadcast private material unless not to gain consent is justified e.g. by being in the public interest. That consent must be fully informed and should be properly recorded with a contemporary record. This is because where such disputes occur it is often because both the BBC and the person who has been recorded have different understandings and recollections as to what was agreed. The Committee concluded that in this case it is quite clear that Mr Sachs was neither fully informed or had given his consent. The producer had thought he had consent if the content was 'toned down' but he had not played back the 'toned down' version to Mr Sachs to gain his informed consent.

The Committee noted that additionally consent would have been required from Ms Baillie. On the basis of the Executive report it noted that it appears that Russell Brand did leave a voicemail message with Ms Baillie which briefly described the message he had left for her grandfather and for which he said he was sorry. The Committee also noted that Ms Baillie has referred to the message in a newspaper and is reported as saying that at the time she believed the programme was live and that therefore it was too late to do anything about it. Accordingly the Committee concluded that informed consent was not obtained from Ms Baillie.

The Committee then considered the implicit belief that if consent had been gained this material was appropriate for broadcast. The Committee noted that the audience would have been unaware that permission had been given. It was the view of the Committee that the material was of such a nature that its broadcast would have been offensive even if consent had been obtained to its broadcast because of the intimate revelations to a grandfather regarding his granddaughter expressed in crude and gratuitously offensive language and the discussion of a woman's intimate life on air without editorial justification.

3.3 Referral within the BBC for permission to broadcast on 16 October

The Committee noted that the producer specifically referred the first message left on Mr Sachs's voicemail and the first hour of the programme to the Head of Compliance on Radio 2 on Thursday 16 October for permission to broadcast. The producer also noted there was further material later in the show. It agreed that the wording of the referral had not identified the issues comprehensively but that the crucial material was identified and provided and that that would have been sufficient to have prevented the broadcast of other related material had this referral led to a refusal for broadcast.

The referral process was made more difficult because the producer believed and said that he had obtained consent to broadcast from Mr Sachs:

“Andrew Sachs AKA Manuel is aware of it and happy - I spoke to him afterwards”.

Notwithstanding the Committee concluded that anyone hearing the first recorded extract, as the Head of Compliance for Radio 2 did, should have realised that even with consent this was not acceptable for broadcast. This was because of the unacceptably offensive and intrusive comments about the private life of Ms Baillie, the need to obtain informed consent from Ms Baillie and because the audience would have considered that these comments were being left without consent and were humiliating and offensive. The Committee agreed that the decision by the Head of Compliance for Radio 2 to recommend to the Controller of Radio 2 that this material should be broadcast was wrong and an unacceptable misjudgement.

The Committee noted that the Head of Compliance at Radio 2 referred his decision to the Controller of Radio 2 by email on the same day.

The Committee noted that the referral to the Controller of Radio 2 was made in terms of a request to broadcast the most offensive language in line with the requirement that the most offensive language is signed off by a channel controller prior to broadcast.

The Committee agreed that whilst the Controller of Radio 2 could not have anticipated that the Head of Compliance for Radio 2 had made a severe error of judgement the words of the email sent to her should have nonetheless alerted her to the possibility that the material she was being asked to clear contained unacceptable material with its reference to:

“Jonathan uses the f-word 52 mins into the first hour in a sequence about Russell 'f*****' Andrew Sachs granddaughter.”

The Committee concluded that the decision to authorise broadcast with a strong language warning was a serious misjudgement by the Controller of Radio 2. The Committee agreed that the sexual use of the f word in relation to an identifiable individual should have raised alarm bells.

The Committee believes that referral at the BBC can only work if junior staff can rely on more senior staff to advise them. In this case referral had occurred and a serious misjudgement had been made by Radio 2.

3.4 Delivery of the programme

The Committee noted that the Head of Compliance was sent the first half of the show on Thursday 16 October but that the full programme was not delivered to the BBC until the day of broadcast Saturday 18 October and that no arrangements had been put in place to listen to it before broadcast by the BBC. In addition it noted that the producer had concluded that as the compliance form could not be read before broadcast he would send it in after broadcast.

The Committee agreed that this exposed a serious failure of compliance by Radio 2. The programme had not been listened to in its entirety by an executive at Radio 2 before broadcast in accordance with the Audio and Music compliance procedure. Given this show posed significant risk the Committee considered that this demonstrated a failure of editorial control by senior management at Radio 2.

The Committee also noted that the BBC relied upon the producer's sign off without also requiring an executive producer for the independent company to sign off on the recording in terms of compliance as was envisaged by the contract. The Committee agreed that this was another failure to apply the compliance mechanisms which had been put in place to ensure that BBC Editorial Guidelines were not breached.

The Committee concluded that whilst the producer's actions in delivering the programme on the Saturday and filing the compliance form after broadcast may have seemed pragmatic (in that there was no one there to listen to the programme or read the form) the fact that he was able to do this without being asked as to how the programme would be listened to and the form delivered and assessed was clear evidence that a robust compliance system was not being applied even though the correct checks were theoretically in place. It rested with the senior management at Radio 2 to assure themselves that correct compliance processes were in place and were being adhered to.

3.5 The broadcast of 18 October and 25 October and the related pod casts and video casts

The Committee concluded that the material regarding Mr Sachs and his granddaughter Georgina Baillie broadcast in the Russell Brand show of 18 October and 25 October was so grossly offensive that there was no justification for its broadcast or of its provision to the public via the web cast and pod cast.

The recording and broadcasting of these remarks was humiliating to Mr Sachs, Ms Baillie and their families and represented an unacceptable and deplorable intrusion into their private lives. No BBC content should ever reveal intimate details about the private lives of individuals without their consent or without editorial justification for example that the revelation was in the public interest. The broadcast of these

comments represents an abuse of the privilege given to the BBC to broadcast to its audiences. It fell far short of the standards the licence fee payer expects of the BBC.

In addition it was the view of the Committee that the programme of 18 October contained other unacceptably offensive material for a BBC service

This was a serious breach of the BBC's editorial guidelines regarding offence and privacy. This was not a case where material had been broadcast accidentally in a live show. In this case the material had been pre-recorded, edited and broadcast.

The Committee considered the decision to include an 'apology' on the 25 October and the decision to rebroadcast the 'sung apology' of 25 October exacerbated the intrusion of privacy and the offence. This was an unacceptable breakdown of editorial control in a live programme.

3.6 The complaint from Mr Sachs's agent

The Committee noted that the complaint had been sent by email and had not been read until after the broadcast of the 25 October. The Committee noted that under the red flag system had the complaint been lodged through the complaints process it would have been noted at Deputy Director-General level on the day it was lodged. The Committee concluded that the Executive should consider and set in place handling systems to check Controller emails even when they were absent to avoid such a situation again.

3.7 Conclusion

The Committee considered there had been three failings – a failure to assert editorial control by Radio 2, a failure to follow the compliance systems in place and a failure of editorial judgement.

Had satisfactory editorial control been in place it may have prevented the recording of the material in the first place.

Had the compliance processes in place been followed and had the correct editorial judgements been applied this material would not have been broadcast.

The Committee agreed that a compliance system that should have been effective was in place given:

- the requirement for all independent programmes which are pre-recorded (except those which are high volume, low risk) to be listened to by a senior executive at the BBC pre-broadcast
- the identification of this strand as of significant risk
- the requirement for a compliance form to be lodged at the BBC pre broadcast
- the requirement for referral pre broadcast where required by the guidelines or where the producer was in doubt

- the requirement for a senior executive at the independent production company to listen to the show pre broadcast for compliance purposes
- the contractual requirement within the independent company's contract to abide by the guidelines

The Committee agreed that sufficient editorial control in relation to the making of this challenging programme had not been established by Radio 2 given:

- the management of Radio 2 had failed to ensure that there was a producer within Vanity Projects with sufficient seniority and experience to oversee this challenging programme from week to week.
- the BBC relied upon the producer's sign off without also requiring an executive producer for the independent company to sign off on the recording in terms of compliance as was envisaged by the contract.
- The lack of a BBC editorial executive representing the BBC as broadcaster in the control gallery at the recording.

The Committee agreed that there had been

A failure of editorial judgement in relation to privacy

- In recording the voice mails
- In not cutting the material out of the recording
- To realise that the phone conversation did not amount to consent in that the producer had not played the 'toned down' material to Mr Sachs, had not recorded a file note or asked for and received consent in writing and to realise that consent was also necessary from Ms Baillie.

A failure of editorial judgement in relation to offence

- To realise that the programme contained material that was unacceptable in terms of the offence given irrespective of whether consent was obtained from those referred to
- To realise that the written request for consent to broadcast from the BBC should not have been simply in terms of the use of the f word but about the material in the round.

A failure of Compliance at Radio 2 in relation to privacy

- To make arrangements to receive and listen to the entire programme pre broadcast such that the programme would not have been broadcast in this form and that the breach of privacy in making the recording would have been identified and dealt with
- To make arrangements to receive and check the compliance form pre broadcast such that the programme would not have been broadcast in this form and that the breach of privacy in making the recording would have been identified and dealt with
- To identify that the consent not only of Mr Sachs but also Ms Baillie was required in relation to this intrusive material before broadcast could be considered and then only subject to those considerations in relation to harm and offence (set out below)

- To deal with the specific referral from the Producer and thereby to identify the breach of privacy in the material and the failure to obtain proper consent such that the programme would not have been broadcast with the intrusion of privacy included and to ensure that Mr Sachs and Ms Baillie were contacted so that proper apologies could have been proffered for the making of the calls

A failure of compliance at Radio 2 in relation to Harm and Offence

- To make arrangements to receive and listen to the entire programme pre broadcast such that the programme would not have been broadcast in this form because of considerations of harm and offence
- To make arrangements to receive and check the compliance form pre broadcast such that the programme would not have been broadcast in this form because of considerations of harm and offence
- To deal with the specific referral from the Independent and thereby to identify the issues of offence arising and that the material should not be broadcast because of the offence caused by it.

The Editorial Standards Committee concluded that this incident represented a serious failure of judgement as to what was acceptable on the BBC and a catastrophic breakdown of editorial and compliance control by the BBC. Insufficient thought had been given by senior management at Radio 2 as to the control required to oversee a show which presented significant risk. The recording and live broadcast had been clearly out of the producer's control. The subsequent attempts to seek consent and gain permission for broadcast for the programme of 18 October and the delivery of the programme for broadcast without compliance in place had demonstrated a spectacular and dismal failure of Radio 2's compliance systems. The broadcast of 25 October had demonstrated a failure of editorial control on a live programme.

3.8 Decision

The Committee found that there had been a breach of the BBC Editorial Guidelines regarding privacy in that there was an unjustified infringement of the privacy of Mr Sachs and Ms Baillie both in the making of the programme of the 18 October (when messages were recorded on Mr Sachs's voice mail regarding his granddaughter) and in the broadcasts of 18 and 25 October.

The Committee also found that the relevant material broadcast on the 18 and 25 October was a breach of the editorial guidelines regarding offence.

The Committee also found that there had also been a breach of the offence and privacy guidelines in the provision of this material to the public in the pod cast and video cast. The Committee also found the video cast should have had an adult only warning.

The Committee agreed these breaches were serious.

3.9 Actions

The Editorial Standards Committee confirmed that it was content the conclusions it had reached and the actions the Trust had required upon receipt of an early oral report on 30 October were appropriate.

The Editorial Standards Committee would recommend to the Trust that the actions proposed by the Executive were appropriate.

The Committee agreed that it expected the Executive to consider the treatment of women in entertainment content as part of its work into the boundaries of generally accepted standards.

4 Chris Moyles

The Committee then considered the short extract from an interview with Russell Brand which was broadcast live on Tuesday 21 October at 8.23am. It noted what had been said:

Russell Brand (RB):

... and could I take this opportunity to apologise to British institution and Manuel actor from Fawlty Towers, Andrew Sachs, whose answerphone message I besmirched ... or more importantly, Jonathan Ross who I know was problematic when he came on your show Chris ... He was ... I phoned up Andrew Sachs to apologise for a matter live on radio and Jonathan Ross blurted out an expletive regarding Andrew Sachs's grand-daughter who I'd in inverted commas recently "met".

RB:

I met her brains out.

Chris Moyles (CM):

Wow ..

RB:

Right

CM:

What a ... wow.

Male:

And she's in the hot tub?

RB:

There was a hot tub incident, but remember, that hot tub in a way is like Lourdes – people come there to be cleansed ...

RB:

... and play cricket.

The Committee noted that the programme team on the Chris Moyles show were not aware that Russell Brand was going to raise this matter.

The Committee agreed that it was unacceptable to broadcast material about the intimate private life of an individual without seeking consent or without editorial justification. The Committee noted that this occurred in the context of a live interview in which the subject was raised by the interviewee Russell Brand and that Chris Moyles moved the conversation on. The Committee agreed that nonetheless Ms Baillie's privacy and Mr Sachs's privacy had been breached again and that the references to Ms Baillie's private life in this manner without consent or without editorial justification were offensive and unacceptable.

This exacerbated the breach of 18 October.

The Committee noted that the audience at that time would have included children under 15 but that it was not possible to be sure of the number of children listening. It may have been in the region of 300,000 but this was an indicative figure only. The Committee considered that the allusions had been veiled so that young children would not have understood what was being said. However older children may well have understood what was being said. The Committee agreed that this material should not have been broadcast when children were likely to have been listening.

4.1 Decision

The Committee found that there had been a breach of the privacy guidelines in that there had been an unjustified infringement of the privacy of Mr Sachs and Georgina Baillie in the broadcast of the programme.

The Committee also found that there had been a breach of the offence guidelines and that the material had been broadcast at a time when children were likely to have been listening which was a further breach of the guidelines.

BBC Executive report - The Russell Brand programme

This report from the BBC Executive explains the nature of the *Russell Brand* show; how the edition on 18 October 2008 was made; what referral and compliance processes were in place and utilised leading to transmission; highlights the key issues arising from the affair; and sets out the Management's response including immediate actions.

The paper represents a factual account based on a series of interviews and discussions with individuals involved in the programme's recording and clearance for transmission, together with a detailed review of relevant materials. We have not been in a position to talk directly to Russell Brand or Georgina Baillie.

I Background

The *Russell Brand* programme was broadcast weekly from the BBC's radio studios at Western House in London between 21:00 and 23:00 on Saturday evenings. It was on air for some two years. Until this year it was a BBC in-house production.

From the end of May 2008 it became an independent production made by One Arm Bandit Ltd which trades as Vanity Projects. The company is jointly owned by Russell Brand and others.

BBC Radio 2 expected the programme to be live whenever possible but recognised that Russell Brand's commitments made some pre-recordings necessary. A total of 101 editions were broadcast of which around half were pre-recorded.

The format was Russell Brand and a co-host in conversation with guests interspersed with music. Until recently there was a regular co-host. However, after he left the programme, a number of celebrities were invited to co-host.

The programme was comedic in nature and revolved around the spontaneous, unscripted musings of the hosts on a wide variety of subjects. A particular feature was Russell Brand's frank discussion of sexual matters. This made explicit sexual descriptions and remarks a regular part of the programme.

The programme attracted an average audience of around 400,000 listeners. Their average age was 50 and more than 40% were over 55. Just over half were women.

The programme was made available on the BBC iPlayer for seven days after broadcast. The edition of 18 October 2008 received 33,000 requests from UK-based users and a total of 44,000 around the world. It was also made available as a podcast

for seven days from Monday 20 October and was downloaded 130,000 times in the UK and a total of 168,000 times around the world.

The programme attracted considerable attention and won a Sony Gold Award in May 2008.

2 Compliance Framework

The BBC Audio & Music Group operates a standard compliance framework for pre-recorded independent productions across its networks. This requires the supplier to ensure that relevant staff are familiar with BBC Editorial Guidelines and to demonstrate they have completed the BBC's Safeguarding Trust training. They are required to refer to the BBC on those occasions on which the Guidelines mandate referral. A compliance form must be completed in advance of transmission for each pre-recorded programme and the form indicates the nature of the information which should be provided.

Once the compliance form is complete and the programme is ready for transmission a designated senior editorial figure in the independent production (generally the executive producer) is required to sign the compliance form to confirm that the programme is fit for broadcast. The form is then delivered to the relevant network.

Within the network, details of the compliance form are loaded into the compliance area of the BBC's Proteus management system alongside data from in-house productions. At this point a nominated executive within the network is required to listen to the production. Once the BBC executive is satisfied the programme is suitable for broadcast, he or she authorises it within the Proteus system to confirm that the programme may be transmitted.

In the case of independently produced programmes which are deemed to be 'high-volume, low-risk' programmes, the BBC executive may approve transmission without listening but must confirm that the programme has sign-off from the designated executive in the independent production company. The Proteus system also prompts the BBC executive to state a reason for not listening.

Recordings of the *Russell Brand* programme did not fall into the category of 'high-volume, low-risk'. The programme was regarded by the network as a significant risk, although it was not laid out as such in any readily available formal documentation.

The compliance framework for *Russell Brand* was reflected in a Programme Production Agreement with Vanity Projects which required programmes to comply with BBC Editorial Guidelines. It also required the Executive Producer to complete the BBC's Safeguarding Trust editorial training. (Separately, the BBC Audio & Music Group required all regular presenters to have completed the Safeguarding Trust training and the records show both Russell Brand and Jonathan Ross completed this training.)

The Company was also required to complete a BBC compliance form which was to be signed off by the Executive Producer. Compliance forms were to be delivered to the Radio 2 Commissions and Schedules Manager as soon as possible after completion of each pre-recorded edition. Recordings of the programme and the associated podcast and videocast were to be made available for review ahead of transmission.

Radio 2's Head of Specialist Music and Compliance (referred to from this point on as the Head of Compliance) was an experienced editorial figure with programme responsibilities at Radio 2 beyond compliance. According to the Radio 2 Controller, the Head of Compliance was expected to listen to the *Russell Brand* programme before authorising transmission. However, the Head of Compliance, himself, has said that responsibility for listening to the programme before broadcast lay elsewhere and that there was a requirement to listen to only the parts of the programme over which specific concerns were raised. The Head of Compliance has told us that he was an Editorial Compliance Advisor in relation to all programmes, along with other designated senior editorial persons, and that this role required him to advise in relation to a number of standard issues arising from the BBC's Editorial Guidelines, including language.

Live programmes, both independently produced and those made in-house, are the subject of separate arrangements, set out in Editorial Policy's Live Output Guidance, which require networks and sometimes individual programmes to have in place protocols designed to ensure live output is made within the Editorial Guidelines.

In the case of Radio 2, a Statement of Practice describes the various processes and meetings which take place in the network in order to deliver compliance in live output. The document covers training, the level of editorial supervision required in live studios, the briefing of contributors, responses in the event of a breach or potential breach of the Editorial Guidelines while on-air, and the relevant referral processes.

3 Supervision of the *Russell Brand* Programme

The executive producer named in the Programme Production Agreement is the head of the agency which manages Russell Brand. He is also a director and shareholder of the production company. The BBC editorial representative named in the Agreement was the Controller of Radio 2. Although discussions may have taken place between the Controller and the Executive Producer, in practice, week-to-week editorial management of the programme lay with the Producer.

The Producer during October 2008 was and is a BBC employee who was provided to Vanity Projects for two days each week under a formal loan-out agreement. He joined the production team in September 2008 but had previously produced *Russell Brand* when it was an in-house production. According to the Producer, he took routine responsibility for the programme, booked guests, directed the presenters and contributors in the studio and managed the relationship with Radio 2.

The programme was regarded in Radio 2 as challenging because of the deliberately spontaneous and anarchic humour of the presenter which trod the boundaries of acceptable standards.

The Producer joined the BBC in 2004 and had completed relevant training but was relatively inexperienced to take sole charge of a talented but challenging performer. Moreover, the arrangements put in place between the BBC and Vanity Projects meant the Producer was being paid to act in accordance with the instructions of Vanity Projects while remaining an employee of the BBC. This was unsatisfactory and likely to lead to conflicts of interest.

According to the Producer, he would generally refer to Vanity Projects on logistical matters and plans for guests, but he referred editorial matters to the BBC. He also completed and submitted compliance forms on behalf of Vanity Projects. The Producer said his point of contact in the BBC was the Radio 2 Head of Compliance who in turn reported to the Controller of Radio 2.

When the *Russell Brand* programme became an independent production, the Radio 2 Head of Compliance arranged face-to-face training for the Company's editorial staff at Western House. This covered both Safeguarding Trust and the BBC Editorial Guidelines.

4 Chronology of Events leading to Transmission

4.1 Week beginning Saturday 11 October

In the edition of the *Russell Brand* show on Saturday 11 October, which was pre-recorded, there was a reference to the Satanic Sluts, a dance troupe of which Andrew Sachs's grand-daughter, Georgina Baillie, is a member. Brand's co-host for that edition described visiting Brand's home when members of the Satanic Sluts had been present and said one of the troupe was the grand-daughter of Andrew Sachs who played Manuel in the popular television series *Fawlty Towers*. Brand implied that members of the troupe would have been available to him for sex:

The Satanic Sluts, I urge all of you listeners to look at their website, they are a Gothic dance troupe. Also though, if you are me, which I am, they are available to seduce and sleep with.

The reference to the Satanic Sluts raised a number of potential editorial issues, as did other elements of the programme's content. These risks were flagged on the compliance form submitted by the Producer. The form was countersigned by the Radio 2 Head of Compliance but only in the week following the programme as he said he was in fact on holiday between Friday, 10 October and Monday, 13 October (inclusive). The form records that the Radio 2 Head of Compliance was the network person who had approved the programme for transmission and he had not listened to it, but the Producer had.

The Producer recalls that, during the early part of the week that followed, he suggested to Russell Brand that Andrew Sachs might make a good guest. He says he

did so because he knew Brand was a fan of *Fawlty Towers*. Brand agreed and Mr Sachs was invited to take part to talk about *Fawlty Towers* and his career thereafter.

Mr Sachs agreed to an interview for the next edition of the programme. At the time, he told us, he was aware of Russell Brand as an entertainer but unfamiliar with his Radio 2 programme. He was also aware that his grand-daughter was acquainted with Brand.

By this time it had been agreed that the edition of Saturday 18 October would be pre-recorded, as live, on Wednesday 15 October. Andrew Sachs was due to be recording a contribution to a radio play in Maida Vale that day. He provided a mobile phone number where he could be reached at about 13:00.

4.2 Wednesday 15 October

Recording of the programme was due to start around midday at the Radio 2 studios in Western House, London W1 and Jonathan Ross had been booked to co-host.

At a production meeting that morning Russell Brand was provided with notes about Andrew Sachs. These contained no reference to his grand-daughter. However by this time the Producer was aware that Brand claimed to have had a sexual relationship with her.

According to the Producer, the purpose of the planned interview was principally to talk to Andrew Sachs about the character Manuel, but at the meeting Russell Brand asked whether he should mention his association with Georgina Baillie. The Producer told us that he said it wasn't a good idea but that Brand said he might mention it in the programme, albeit not directly to Andrew Sachs. The matter was left at that.

About ten minutes into the recording, Brand began to talk about Andrew Sachs's grand-daughter and implied that he had had a sexual relationship with her. Later he made that explicit but suggested Mr Sachs would be unaware of the relationship.

In a minute we're gonna be talking to Andrew Sachs, Manuel actor. The elephant in the room is what Andrew doesn't know is I've slept with his grand-daughter.

When the time came to introduce Andrew Sachs, the Producer says he made two phone calls to Mr Sachs's mobile telephone number which reached voicemail. At the third attempt the voicemail was put through to the studio. It was the programme's practice to put a humorous message on answering devices on-air when booked guests could not be reached. As Russell Brand was recording his message, Jonathan Ross interrupted and shouted:

*He f***** your grand-daughter*

The Producer says he was shocked at what Jonathan Ross had said but took no specific action at the time. Instead he resolved to deal with the issue in the edit.

Russell Brand's reaction on the recording suggests he knew the programme had gone too far because he said that while it might be possible to cut the remark from the programme it could not be retrieved from Andrew Sachs's voicemail.

That's his answer phone ... Even if we cut it out of the show... It's still on the ans-it's on the answer phone.

Ross then made an apology of sorts but the matter was treated lightly.

Despite their apologies the two men went on to make fun of the likely impact of their actions on Andrew Sachs.

Later on in the programme recording, the presenters returned to the subject and three further calls were made to Andrew Sachs's voicemail. These purported to be apologies but included further lewd and intrusive material, some of which was included in a song of apology the two men concocted and which later formed part of the podcast and video available from the BBC. Brand also insincerely asked for permission to marry Ms Baillie.

The Producer explained that he recognised that there were issues with this content but that his approach was to deal with them afterwards. To that end he recorded additional material in the knowledge that edits would probably be needed.

During the recording, Andrew Sachs succeeded briefly in talking to the studio control cubicle in response to a message left for him providing the number. Accounts differ as to what happened. Mr Sachs recalls that he was told the recording was almost over and he could not be put on. The Producer's recollection is less clear but he thinks he said he could not put Mr Sachs on at that point and offered to try to ring back later in the programme.

According to the Producer, once the programme was over both presenters said they wanted the calls to Andrew Sachs left in, if possible, for their comic value. The Producer says he accepted that this would require the consent of both Mr Sachs and the BBC. He did not believe permission would be given.

Jonathan Ross, for his part, said he made it clear to Russell Brand at the time that the material should be included only if both Andrew Sachs and Georgina Baillie consented. He said he checked with Russell Brand later and was reassured that both had agreed. It appears that Russell Brand did leave a voicemail message with Georgina Baillie which briefly described the message he had left for her grandfather and for which he said he was sorry. Georgina Baillie has referred to the message in a newspaper and is reported as saying that at the time she believed the programme was live and that therefore it was too late to do anything about it.

While the programme was being made at Western House, Andrew Sachs had been at Maida Vale recording a Sherlock Holmes mystery in which he was playing Dr Watson. At a break for lunch he went with a fellow actor to a nearby café where

they sat outside. He was expecting to be called by the *Russell Brand* programme which he mistakenly believed to be live.

He told us he was alerted to a number of messages on his mobile phone and replayed them. The voicemail recording was not particularly clear and there was traffic noise where he was sitting. He gathered some of what was said and that it was about his grand-daughter but did not hear Jonathan Ross say that Brand had 'f*cked' her. In addition, not all the material about Mr Sachs and his grand-daughter, which later formed part of the programme, appeared to have been recorded on his telephone. In particular he said he did not hear the song of 'apology'.

At the time Andrew Sachs was principally concerned that he had failed to keep a broadcasting commitment. (Eventually, as explained above, he managed to get through to the studio but says he was told that it was too late.)

4.3 Thursday 16 October

The following day the Producer began the referral process by emailing Radio 2's Head of Compliance:

Could I have a chat with you at some point today re. Russell's pre-record?

The Producer also telephoned Andrew Sachs. Their accounts of what each took from the conversation differ and Mr Sachs believes it may have taken place on Wednesday afternoon rather than Thursday, although the time difference does not appear material and on either account no proper consent was obtained such as to justify transmission of the material in question.

The Producer said the conversation was cordial. He asked whether Mr Sachs had heard the messages and Mr Sachs said that he had, adding words to the effect of 'they're a bit wild, aren't they'. The Producer asked whether the programme could use the recordings and he recalls Mr Sachs saying 'Yes, as long as you tone it down a bit', or words to that effect.

The Producer said there was then a discussion about Mr Sachs appearing on a future edition of the programme and the conversation ended amicably with the Producer agreeing to contact him again about a date for his appearance.

Andrew Sachs, for his part, confirmed that the Producer sought his consent but says he demurred. He recognised, however, that he did not do so in strong terms and he agreed that he said that the content needed toning down. He added that he would have reacted more strongly had he heard everything that had been said on the programme.

Mr Sachs also agreed that the conversation went on to discuss his possible future appearance on the programme which by now he knew had been pre-recorded that week. Mr Sachs understood this future appearance was to be instead of using the material which had already been recorded.

Mr Sachs was prepared to accept that it was possible the Producer had taken away the view that his consent had been obtained and that the future appearance was in addition to the transmission of the existing material, but in his view that would, at best, have been 'wishful thinking'.

The Producer did not check what Mr Sachs had actually heard on his voicemail, made no record of his conversation with Mr Sachs and no file note was made afterwards. Even if one accepts the Producer's account, it remains clear that no proper consent was obtained. Consent in these circumstances would depend on ensuring that Mr Sachs was properly aware of what the programme intended to say about him and his family and what was to be edited out in order to tone it down. Nor could Mr Sachs consent on behalf of his grand-daughter whose separate consent would also be required. However, other than a voicemail that Russell Brand is said to have left for Ms Baillie, no steps appear to have been taken to obtain informed consent from Ms Baillie.

At about 15:00 the same day, the Producer wrote again to Radio 2's Head of Compliance, this time setting out the editorial issues as he saw them.

The first hour of the programme is here [hyperlink]

*Scroll through to the phone call at 52 mins in. Russell and Jonathan call Manuel's answerphone... (Andrew Sachs AKA Manuel is aware of it and happy - I spoke to him afterwards). The problem comes when Jonathan says that Russell 'f*cked' Sachs' granddaughter.... I would say take it out, but it forms the crux of the call and is VERY funny. In the second hour of the show, they go on to call the answerphone back about three times to apologise and it makes for some brilliantly funny radio... Let me know what you think! Russ and Jonathan both VERY keen for it to go out.*

The Producer did not mention that Andrew Sachs had asked for the content to be toned down but he did highlight the issue of whether the material should be removed. He did so in the knowledge that if that passage was excised the later 'apologies' would also have to go. He says he was extremely uncomfortable about the material but at the same time felt he owed it to Vanity Projects to make its arguments for inclusion with the BBC. That reflected the conflict of interest with which he found himself as an employee of the BBC while on loan to Russell Brand's company.

The Radio 2 Head of Compliance said he listened to the identified section of the programme twice and then rang the Producer who confirmed that he believed that Andrew Sachs was content for the calls to be broadcast. The Radio 2 Head of Compliance subsequently emailed the Controller of Radio 2 with the following message:

*Russell is pre recorded this week with Jonathan Ross as his co-host. Jonathan uses the f-word 52 mins into the first hour in a sequence about Russell f*****' Andrew Sachs granddaughter. They are speaking into Sachs's answer machine at the time,*

and it's very funny - there then follow more calls to the answerphone in the 2nd hour, again v funny.

Having discussed it with [the Producer] and listened to the sequence, I think we should keep in and put a 'strong language' warning at the top of the hour. I think it's editorially justified in this context and certainly within audience expectations for Russell's show and the slot. Certainly preferable to bleeping, which would make it obvious anyway (and we don't bleep now for this reason). Jonathan also apologises and Russell's shocked reaction is hilarious.

Andrew Sachs is aware and is happy with the results which were recorded his end for him to hear). Are you happy with this as a plan of action?

The Controller was away from her office on business and did not respond that day.

4.4 Friday 17 October

At 12:22 on Friday the Controller sent a one word reply from her BlackBerry authorising inclusion of the material

Yes

The Controller explained her reasoning for the authorisation was that she had been informed that Andrew Sachs was happy for Jonathan Ross's remark about his granddaughter to be included and it was also on the basis of the judgement of the Head of Compliance, whom she assumed had listened to the programme. She also said that she had assumed that Mr Sachs had participated in the programme.

The Controller said she trusted the judgement of her Head of Compliance who in her experience had 'never got it wrong before'. If he had heard the material and judged it acceptable and funny, then she was prepared to trust that judgement provided Andrew Sachs was also happy which she had been told he was. The issue then became one of language and she was prepared to sanction the use of the word 'f***' provided there was a strong language warning at the beginning of the programme.

There are differences of recollection as to whether there was also a follow up phone call to discuss the issue further though there is no suggestion that it was in materially different terms from the email.

Following that exchange the Controller mentioned her decision to the BBC Audio & Music Group Head of Editorial Standards. She did so as a point of information, the decision itself having already been made. No objection was raised.

The Head of Compliance emailed the Producer at 12:24 authorising the inclusion of the contentious material.

I've just got sign off from [the Controller] So keep. I'll do an email re wording for Pres¹, which I will copy you in on.

The Producer said that by Friday evening he had still to complete editing of the programme and submit a compliance form and that he then decided to complete the editing on Saturday.

By Friday evening no compliance form had been submitted to Radio 2, nor had the programme been completed. The Radio 2 Head of Compliance said that he understood the Producer would put the programme into the playout system and deliver a compliance form ahead of transmission.

The Radio 2 Head of Compliance said that he recognised that as a result of the situation described above no-one in Radio 2 would read the compliance form or listen to the programme before it went to air. It was his judgement that he did not need to see the compliance form or hear the programme ahead of transmission.

The Head of Compliance said he recognised the principle that independent programmes should be listened to inside the BBC but not that it was his responsibility: 'We hadn't discussed how this was to happen – perhaps there was an assumption I would do it.'

The Head of Compliance was adamant that it was not his responsibility to listen to the programme and to sign it off. The Controller believed that it was. It was not possible to reconcile these conflicting understandings, nor was documentation available to clarify the position. In the event, no-one in Radio 2 listened to the programme in full. The Proteus compliance form records that the Head of Compliance approved the programme for transmission in the following week saying he had not listened to it but the Producer had.

4.5 Saturday 18 October

During the day the Producer completed editing of the programme. He said he removed what he regarded as the most offensive material in response to Mr Sachs's request to tone it down. However the Producer did not complete and submit a compliance form. He said he did not do so because he knew that there was no-one at Radio 2 to receive and read the form, therefore he elected to complete the form the following week.

As a result of the events described above, the edition of the *Russell Brand* show of 18 October 2008 was transmitted in the absence of a compliance form and without being listened to in advance by the BBC, save for the section heard by the Radio 2 Head of Compliance on 16 October 2008 which contained the first message left on Andrew Sachs's answering machine.

¹ Radio 2 presentation

A language and content warning was contained at the beginning of the programme². The programme contained grossly offensive and intrusive material in relation to Andrew Sachs and Georgina Baillie which should not have been recorded or broadcast. In addition to the indefensible content about Andrew Sachs and his grand-daughter, the programme contained other unrelated material which would have merited the most careful consideration at a senior level before a decision to broadcast could be contemplated.

Much, although not all, of the contentious material was subsequently highlighted in the compliance form, but that was not available at the time of transmission. As a result, content which should have been the subject of rigorous scrutiny was broadcast without the prior knowledge of the BBC, let alone its approval.

The transmission was in breach of the principal safeguards within BBC Audio & Music's compliance procedures which are designed to ensure that inappropriate content does not go to air, in that:

- The programme was not listened to in full before being signed off by an executive inside the BBC, as required for all but low risk independently produced output.
- No compliance form was provided to the network ahead of transmission.

5 Events Following Transmission

5.1 Sunday 19 October

The complaints log over the weekend showed two complaints about the programme. One of the complaints referred directly to some of the most offensive material in relation to Mr Sachs.

5.2 Monday 20 October

On Monday 20 October, a reporter from the *Mail on Sunday* telephoned a Radio 2 publicist, and asked how many complaints had been received about the programme. The Publicist said that the reporter said this was a preliminary enquiry. He was told two complaints had been received but, on the advice of BBC Information, the Publicist declined to provide details.

On Monday afternoon, the Producer completed editing the *Russell Brand* podcast and sent a link to the Radio 2 Head of Compliance. The Radio 2 Head of Compliance formally authorised the Audio & Music Interactive department to upload and publish the content later that afternoon. The Head of Compliance has confirmed that he listened to the podcast and authorised its publication. He said he did so in the light

² The programme content warning stated: '*The next programme contains some strong language which some listeners may find offensive.*'

of the Controller's decision on the content he had referred previously. A content warning was contained in the podcast³.

5.3 Tuesday 21 October

Russell Brand appeared live as a guest on the Chris Moyles breakfast programme on Radio 1. Before Russell Brand went on-air, a producer from the show briefed him about the usual guidelines of participating in a live programme and reminded him that it was a breakfast audience which included children and that Russell Brand had to be careful about what he said regarding innuendo and sexual content. Neither Chris Moyles nor any of the production team knew about the content of the Russell Brand programme on 18 October regarding Andrew Sachs and Georgina Baillie.

In the course of the interview he referred to his Saturday night programme and again apologised to Andrew Sachs but again implied by innuendo that he had had a sexual relationship with Mr Sachs's grand-daughter. However, on this occasion, no strong language was used and it was no more than a passing reference in a long interview.

The inclusion of the material raised potential editorial issues. The Chris Moyles programme has a much bigger audience. It is broadcast at a time of day when families may be listening together and the audience includes children. However, the oblique terms in which Russell Brand referred to the matter made it extremely unlikely that young children would understand what he meant and Chris Moyles himself swiftly steered the conversation on to safer ground. The subject was not mentioned again in the course of an hour-long interview. There were no recorded complaints from listeners to the BBC after the interview. Russell Brand had twice previously appeared on the Chris Moyles programmes without incident.

As this was a live programme, compliance procedures for pre-recorded programmes did not apply.

On the same day, the *Russell Brand* programme Producer completed and submitted an independent production company compliance form for the programme of 18 October which was then loaded into the BBC's Proteus system. Once in the system the Radio 2 Head of Compliance retrospectively approved transmission. The form records that he was the network person who had approved the programme for transmission and he had not listened to it but the Producer had.

At 10:30 on the morning of Tuesday 21 October, Radio 2's weekly Editorial Compliance Review Committee convened with the Controller in the chair. Both the network Head of Compliance and its Head of Communications were present. The minutes of the meeting contain two notes about the *Russell Brand* programme.

F-word in Russell Brand – agreed with CR2 [Controller, Radio 2] – action point – [Head of Compliance] to send email chain to [A&M Head of Editorial Standards] for info.

³ The podcast content warning stated: 'Please be aware that the following programme contains adult material.'

Russell Brand – 2 complaints about F-word in last Saturday’s show – Daily Mail inquiry about suitability for R2.

Later that day, as agreed at the meeting, the Radio 2 Head of Compliance emailed the BBC Audio & Music Head of Editorial Standards who replied acknowledging that the Controller had previously mentioned sanctioning the use of strong language and confirming that she was satisfied.

5.4 Wednesday 22 October

By Wednesday morning the Audio & Music Interactive department had received the video cast of the Russell Brand programme from Vanity Projects. This was forwarded to the Radio 2 Head of Compliance for review. Later that morning he approved publication in writing. The Head of Compliance has since confirmed that he viewed the video cast before authorising publication. He said he did so in the light of the Controller’s decision on the content he had referred previously.

The video cast, which had a content warning on the Radio 2 website⁴, contained, among other things, the offensive song performed by Jonathan Ross and Russell Brand as well as additional linking material which had been shot in the studio after the programme. This included further material which merited careful BBC editorial scrutiny, including a crude graphic.

Andrew Sachs’s agent, Meg Poole, says that on Wednesday 22 October she received a call from a reporter on the *Mail on Sunday* who asked whether she had heard the programme on Saturday and she replied that she had not. The reporter quoted sections of the programme. Ms Poole contacted Andrew Sachs whom she says was surprised because he had believed the material about his grand-daughter would not be transmitted. However, she said that at that stage Mr Sachs did not wish to complain and he instructed Ms Poole not to comment. At that point Mr Sachs had not heard the programme.

5.5 Thursday 23 October

According to Ms Poole, the *Mail on Sunday* contacted her again and made it clear that it intended to publish a story whether or not her client commented. She says that at that point Mr Sachs resolved to make a complaint and asked Ms Poole to do so on his behalf. That evening at 17:20 she sent an email to the Controller of Radio 2.

I would like to make an official complaint against the way Andrew Sachs was treated by Russell Brand and Jonathan Ross on their show which went out on Radio 2 last Saturday 18th October.

⁴ The video cast content warning stated: ‘Please be aware that these videos contain material that listeners may find offensive.’

Andrew Sachs was asked to come on to the show to talk about "Fawlty Towers and life beyond". He was not available to come to the studio but gave his mobile phone number in good faith so Russell Brand could call him. In the event as I am sure you know Russell Brand told Jonathan Ross (and your listeners) that he had slept with Andrew's grand-daughter, he repeated this a second time referring to Andy's grand-daughter by name. They then called Andrew several times leaving messages of increasing crudity which both of them clearly found hilariously funny, on his mobile.

[The Producer] rang Andrew after the recording and asked if he had been upset. Andrew who had not managed to hear everything that had been said, told him that he had been upset by it and understood [the Producer] to say that the material would be cut.

All I can say to that is that if anything was cut a very large amount was left in, and they ran the 'joke' for an astonishingly long time.

I cannot believe that Radio 2 or the BBC could possibly be proud of this, and I hope you will find your way to issuing a unreserved apology to Andrew Sachs, who was asked to contribute to the programme under false pretences, and then found both his family and himself being treated by the stars and the producer with complete contempt.

That email was not seen by the Controller until the evening of Sunday 26 October.

5.6 Friday 24 October

In the absence of a response from the BBC, on Friday afternoon Meg Poole converted the text of her email of complaint into a letter and posted it to the BBC. At about the same time, the reporter from the *Mail on Sunday* rang the BBC and told a Radio 2 Publicist that he understood Andrew Sachs had complained to the BBC and he asked how many complaints about the programme had been received to date.

The Publicist contacted the Producer and the Head of Compliance, neither of whom was aware of any complaint from, or on behalf of, Mr Sachs. She then consulted the Controller who said she, too, was unaware of a complaint. Vanity Projects was informed of the *Mail on Sunday* interest and the Publicist replied to the newspaper saying the BBC was unaware of a complaint from Andrew Sachs and that no new listener complaints had been received since the weekend.

5.7 Saturday 25 October

During the afternoon the reporter from the *Mail on Sunday* rang the Head of Communications for Radio 2 who was on duty that day to ask when the *Russell Brand* programme had been recorded and who would have been responsible for clearing it for broadcast. He declined to provide detail about his story and the Head of Communications declined to provide him with details.

Throughout the period of the *Mail on Sunday*'s enquiries, no-one contacted Andrew Sachs or his agent to clarify whether or not he had complained, nor is there any evidence that anyone reviewed the original programme to establish whether or not

Mr Sachs might have grounds for a complaint. The Controller has told us that at this point she still assumed that the programme had been listened to in its entirety.

That evening's *Russell Brand* programme was live. A pre-programme production meeting took place at 19:30 at which there was a discussion about whether to mention the *Mail on Sunday*'s interest in what had been said the previous week. The Producer says he suggested leaving it alone but that Russell Brand said he wanted to apologise. The Producer asked him to be careful and warned him that the newspaper would be listening.

During the first ten minutes of the programme Russell Brand apologised for a phone call to Andrew Sachs the preceding week but limited it to an apology for the use of a swear word. The apology was followed by an attack on the *Daily Mail* which Brand accused of having supported Adolf Hitler during the 1930s.

Later in the programme Russell Brand asked the production team to find and make ready the audio of the song of apology to Andrew Sachs which he and Jonathan Ross had contrived the previous week. Then, in conversation with the musician, Dizze Rascal, he played the song again to illustrate his ability as a rapper. The song repeated his claim to have slept with Mr Sachs's grand-daughter and his offer to marry her. In the ensuing discussion with Mr Rascal, the song prompted further intrusive and offensive references to Russell Brand's relationship with Georgina Baillie.

The way in which Vanity Projects referred to the *Daily Mail*, repeated the song and permitted further lewd references to Georgina Baillie, reflected a lack of direct control by Radio 2 over the independent production company. From the BBC's perspective, the Producer could and should have refused to provide the audio material from the previous week. However no representative of the BBC was present in the studio.

Shortly before the end of the programme the Producer received an online version of the story the *Mail on Sunday* was carrying. He said he was horrified and decided not to allow Russell Brand to see it because he was concerned about how the Presenter would react while on-air.

After the programme the Producer spoke to Radio 2's Head of Communications and briefly outlined what had happened in the previous week's programme.

That evening, at 23:00, the Controller sent a text message to the Director of Audio & Music alerting him to the *Mail on Sunday* story.

For info see [R2 Head of Comms'] e mail below - re tomorrow's Mail regarding last week's Russell Brand Show where he called Andrew Sachs and left a message on his voicemail. I am not around from tomorrow morning - for info the programme had language and content warnings at the front as did the online. The producer checked with Andrew Sachs that it could be used before it went out as the show was pre recorded. We have received no complaint from him or his management as far as we are aware and the show

itself received jsu 2 complaints with one being about russell sending up Jonathan ross who was co hosting with him (for info the Mail often do damning pieces about Russell or Jonathan)

From R2 Head of Comms [sent at approximately 22:30]:
Mail story not good. Saying bbc and russell and jonathan should be prosecuted for offensive phone calls (!) may be front page need to check. Also they have done comment piece quoting some tory mp.

That night the Mail on Sunday splashed the story.

NATIONAL TV AWARDS: There's still time to vote for your favourites: Page 51

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BBC OBSCENE PHONE CALLS TO ACTOR, 78

Russell Brand and Jonathan Ross could face prosecution

By Miles Goslett

Manuel in the classic sitcom, was left deeply upset by the crude calls - which were also broadcast to about two million listeners to Brand's Radio 2 show. And Georgina's distraught mother, Kate, said last night: "It's awful."

Astonishingly, senior BBC executives cleared the offensive

Mr Sachs's answerphone aiming, in shockingly explicit language, that Brand had had sex with his granddaughter, Georgina.

Mr Sachs, who played waiter

Turn to Page 7 >>>

What will Mrs Bono make of this? PAGE 3

PARTYING: U2 singer Bono in St Tropez with two 19-year-old students

5.8 Sunday 26 October

Initially the BBC Press Office maintained Radio 2's line that the BBC was unaware of any complaint and this was reflected in BBC News coverage of the story on the day. The 13:00 bulletin on Radio 4 reported:

The seventy-eight year old actor, Andrew Sachs, is said to have been "deeply offended" and "upset" by obscene messages left on his answering machine by the Radio 2 presenters Jonathan Ross and Russell Brand. The messages were broadcast on Russell Brand's radio show last week. His agent says she's complained to the BBC. The BBC press office said this morning that it was unaware of any complaint.

In the early evening, the Controller of Radio 2 went to her office in Western House to check her email for any complaint and found the message from Andrew Sachs's agent, Meg Poole.

The Controller of Radio 2 said she wanted to respond quickly to the complaint and drafted an apology. However, she said, the Corporate Press Office advised her not to issue it on the grounds that the complaint ought to be dealt with through the formal complaints procedure.

Just before 2100 the Controller wrote to the Director of Audio & Music and others enclosing the complaint from Meg Poole.

This is the e-mail which I found on Sunday when I came into the office. I have been advised not to send a reply but to deal with it through the official complaints procedure. I am not around this week but [R2 Head of Programmes] is back from leave on Monday morning and of course [R2 Head of Compliance] is across it

That evening the Radio 2 Head of Compliance telephoned Meg Poole and asked about her complaint. She explained that she had sent an email and that a letter was in the post which set out the complaint.

5.9 Monday 27 October

By Monday morning it was clear that serious mistakes had been made in the broadcast and on the morning of Monday 27 October the BBC issued the following statement:

"We have received a letter of a complaint from Mr Sachs's agent and would like to sincerely apologise to Mr Sachs for the offence caused. We recognise that some of the content broadcast was unacceptable and offensive. We are reviewing how this came about and have responded to Mr Sachs personally. We also apologise to listeners for any offence caused."

By this time the 18 October edition of the *Russell Brand* programme had been removed from the BBC iPlayer and replaced by the edition of 25 October 2008.

Meanwhile, the Controller of Radio 2, who was on holiday, had a copy of the programme of 18 October couriered to her so she could listen to it.

In the aftermath of the publicity, and now aware that Andrew Sachs had not consented to the broadcast, both presenters offered to apologise personally and publicly.

Jonathan Ross wrote to Andrew Sachs to express personal regret. He indicated his willingness to apologise publicly and on his television programme. The Controller of Entertainment Commissioning in BBC Vision confirmed that Jonathan Ross contacted her on Monday afternoon, following which plans were made for a public apology on the next edition of BBC One's *Friday Night with Jonathan Ross*. As matters turned out, those plans were overtaken by events.

Russell Brand also sent a private apology to Andrew Sachs and subsequently apologised publicly:

I have apologised to Andrew Sachs for the rude messages I left on October 18.....I got a bit caught up in the moment and forgot that at the core of the rude comments and silly songs were the real feelings of a beloved and brilliant comic actor and a very sweet and big hearted young woman. Apologies are also owed to the loyal listeners of the show...

5.10 Wednesday 29 October

On the morning of Wednesday 29 October the BBC's Director-General, Mark Thompson, issued a further statement. It included the following:

"I would like to add my own personal and unreserved apology to Andrew Sachs, his family and to licence fee payers for the completely unacceptable broadcast on BBC Radio 2.

"BBC audiences accept that, in comedy, performers attempt to push the line of taste. However, this is not a marginal case. It is clear from the views expressed by the public that this broadcast has caused severe offence and I share that view.

[...]

"I have decided that it is not appropriate for either Russell Brand or Jonathan Ross to continue broadcasting on the BBC until I have seen the full report of the actions of all concerned.

"This gross lapse of taste by the performers and the production team has angered licence payers. I am determined that we satisfy them that any lessons will be learnt and appropriate action taken. [...]"

5.11 Thursday 30 October

On Thursday 30 October, following a special meeting of the BBC Trust's Editorial Standards Committee that morning, the BBC Trust issued a full statement including the following sections:

"[...] The BBC Trust represents licence fee payers and on their behalf has a responsibility to safeguard high standards of BBC broadcasts. The Trust is dismayed both that the offensive comments broadcast on the Russell Brand Show on 18 October fell so far short of audiences' legitimate expectations, and by the deplorable intrusion in to the privacy of Mr Sachs and his granddaughter. The transmission of these comments via a BBC Radio programme represents an abuse of the privilege given to the BBC to broadcast to its audiences. On behalf of the BBC, the Trust offers a full and unreserved apology to Andrew Sachs, Georgina Baillie and the rest of his family. The Trust extends this apology to licence fee payers as a whole.

[...]

"Editorial control and compliance procedures in non-news areas of the BBC's Audio and Music department are inadequate and need to be strengthened. We have asked the Director-General to present formal recommendations to strengthen editorial controls and compliance for the Trust's consideration at our December meeting. Once approved, the Trust will independently validate the effectiveness of these measures after they are implemented. Furthermore, we have requested the Executive to strengthen immediately the editorial controls around any programme which represents high levels of editorial risk. Also in this area, we have asked the Executive to assess immediately the editorial controls and compliance procedures in place for all programmes – across television and radio – where the production company is owned and/or managed by the featured performer.

"This episode has underlined the importance of editorial boundaries for high-risk broadcast material. We will therefore make this a central plank of our scheduled review in 2009 of the BBC's Editorial Guidelines. Key to this must be a common understanding within the BBC of what is acceptable and this must reflect widespread public opinion. We have asked the Director-General to engage his most senior editorial team on this topic. There should be a shared understanding amongst the most senior staff of the BBC of how this failing arose and what is expected of them to ensure that the BBC's values are understood and the standards for quality are met. Separately the Trust will take account of the views of all audiences before we consider whether the BBC's Editorial Guidelines need to change.

"[...] The BBC has fallen way short of the public's overall expectations in this case, and it is essential that lessons are learned to avoid further lapses in the future."

The statement from the BBC Management which then followed stated:

"[...] The Director-General made it clear that there had been a serious breach of editorial compliance that allowed grossly offensive material to be broadcast, which should never have happened. He also reiterated his regret that any suffering had been caused to Andrew Sachs, his grand-daughter and family as a result and expressed regret that the broadcast had caused serious public offence. [...]"

5.12 Saturday 8 November

On Saturday 8 November the BBC broadcast an apology on BBC Radio 2 at 10:03 (where the Jonathan Ross show previously had been) and at 21:13 (where the Russell Brand show previously had been):

At 10:03 it broadcast the following statement:

"On 18 October, the BBC broadcast an exchange between Russell Brand and Jonathan Ross on the Russell Brand show on Radio 2. This concerned the actor Andrew Sachs and his grand-daughter, Georgina Baillie. Some of this exchange was left on the voicemail of Mr Sachs. The conversation was grossly offensive and an unacceptable intrusion into the private lives of both Mr Sachs and Ms Baillie. It was a serious breach of editorial standards, and should never have been recorded or broadcast. The BBC would like to apologise unreservedly to Mr Sachs, Ms Baillie and to our audiences as licence fee payers."

This was subsequently updated for the 21:13 statement, following a telephone call from Andrew Sachs, such that the later apology also made reference to his wife and family.

"On 18 October, the BBC broadcast an exchange between Russell Brand and Jonathan Ross on the Russell Brand show on Radio 2. This concerned the actor Andrew Sachs and his grand-daughter, Georgina Baillie. Some of this exchange was left on the voicemail of Mr Sachs. The conversation was grossly offensive and an unacceptable intrusion into the private lives of both Mr Sachs and Ms Baillie. It was a serious breach of editorial standards, and should never have been recorded or broadcast. The BBC would like to apologise unreservedly to Mr and Mrs Sachs, Ms Baillie and their family, and to our audiences as licence fee payers."

* * *

Russell Brand resigned from his BBC programme, the *Russell Brand* show, on Wednesday 29 October 2008.

The Controller of BBC Radio 2 resigned from the BBC on Thursday 30 October 2008 .

On the same day, Jonathan Ross was suspended from all broadcasting activity for the BBC for a twelve-week period ending in January 2009.

The Head of Compliance for BBC Radio 2 resigned from the BBC on Monday 10 November 2008.

Management Response

Neither the broadcast nor the recording on voicemail of this material should ever have happened. Both were unacceptable and demonstrably failed to meet the BBC's editorial standards. The failure of the senior managers at BBC Radio 2 to exercise the right editorial judgement was a very serious one compounded by the failure within BBC Radio 2 to adhere to its compliance procedures. It has damaged the BBC and its reputation for quality and high editorial standards.

The BBC Trust rightly expressed its dismay stating that it fell way short of audiences' legitimate expectations and was a "deplorable intrusion" into the privacy of Mr Sachs, his grand-daughter Ms Baillie, and their wider family.

In response, we have issued an unreserved public apology on a number of occasions since the original broadcast was made and written separately to Mr Sachs and Ms Baillie.

This management failure is all the more serious because of the clear assurances given to the BBC Trust last year about the need for significant improvement in compliance in the Audio & Music division, and also the representations made to Ofcom last year by BBC Radio 2 / 6 Music senior management that there would be a stricter adherence in future to compliance as a result of the fact that there was not 100% adherence within BBC 6 Music to filling out compliance forms. This was in the context of the problems faced with the running of competitions and fake participants on some programmes, which included the *Russell Brand* programme on BBC 6 Music.

The Director, BBC Audio & Music and his Board will make the strengthening of editorial compliance across the Group the top objective for the coming year in order to address the shortcomings revealed by this incident.

6 Key issues

1. Failure of editorial judgment

There were serious failings in relation to both the recording and broadcasting of offensive and intrusive material.

- The programme should never have made repeated telephone calls to Andrew Sachs's voicemail in which messages were left about Russell Brand's relationship with Georgina Baillie.
- The Producer for Vanity Projects provided an account of the programme which should have alerted BBC management at Radio 2 to the issues of harm and offence and intrusion. The programme should have been listened to by a BBC executive at Radio 2 in its entirety and a proper judgement formed as to which material should be left in and which excluded. This would have included a considered examination of the potential harm or offence and the respective positions of Mr Sachs and Ms Baillie in relation to the material.

- No sufficient, robust consent was sought from Mr Sachs or Ms Baillie before the broadcast.
- The reliance on assurances from the Independent’s producer led to an editorial “tunnel vision” that meant that BBC managers at Radio 2 mistakenly focused – through the mandatory referral system – only on language around the use of the word “f***”.

2. Conflict of interest

A BBC producer was loaned out to the independent production company – such that he was under the direction of Vanity Projects whilst still an employee of the BBC. This led to a conflict of interest in that BBC managers at Radio 2 appear to have placed undue reliance on the Producer to carry out the BBC’s editorial function whilst at the same time his contract required him to comply with the instructions of Vanity Projects.

3. Failures of compliance systems

There were a number of compliance failures. BBC Radio 2 editorial management failed to listen to the broadcast in its entirety before approving transmission. Additionally, the compliance form was not delivered along with the programme in advance of transmission as required by the compliance process.

4. Compounding the Initial Errors

On the next *Russell Brand* show, on 25 October 2008, Mr Brand apologised for the telephone calls to Mr Sachs and the use of bad language but then compounded the original insult by replaying a joke apology which repeated the intrusive and offensive material. This meant that the serious offence caused by the original broadcast was not addressed properly but in fact made worse by content in the following week’s programme.

7 **Future Action**

We are reviewing as a matter of priority:

- The robustness and fail-safe design of our editorial compliance systems across the BBC and especially in BBC Audio & Music.
- The attitude of our people to compliance and their adherence to editorial compliance processes – how we strengthen that culture now and on an on-going basis.

- The calibre and training of our editorial executives and their ability to ask the right questions.
- The supervision of independent productions by the BBC.

The management of editorial risk at the BBC must be such that an ambitious, confident programme-making organisation can encourage creative risk whilst at the same time knowing it does so with robust compliance systems and strong editorial values and understanding in place to support the organisation in those endeavours.

In future, all Directors and Channel Controllers must formally assess and review regularly the risks associated with all programme output, both pre-recorded and live, in their Divisions and ensure appropriate editorial supervision is put in place for the level of risk identified. Continuing strands and series and all other programme output must be included in this process. In particular, high risk programming must be clearly identified and prioritised.

To prevent a similar conflict of interest occurring again, in future no member of staff will be contracted to both the BBC and an independent production company at the same time when making output for the BBC.

8 Immediate Actions in Audio and Music

Actions have already been taken to strengthen editorial compliance in BBC Audio & Music.

1. New High-Risk Programmes Register

A new more detailed register has been compiled of all programmes designated as "high risk" by each station Controller. This register sets out the mitigating steps being taken to contain the risk and identifies the BBC executive responsible. It will be kept up-to-date and discussed on a weekly basis at a meeting between the Director and the station Controllers.

2. Strengthened Rules on Compliance for Pre-recorded Programmes

A new framework has been designed which emphasises the essential requirement for compliance forms for pre-recorded programmes to be completed, signed-off and submitted prior to transmission. This is being disseminated to the networks and production staff following consideration at the BBC Audio & Music Group Board on 12 November 2008.

It is not merely about form-filling but promoting a culture across all programming areas and staff of the fundamental need to adhere to compliance processes as part of the basic programme production responsibilities.

The guidance states that:

- a. All pre-recorded programmes **MUST** have a compliance form signed off by the producer of the programme and a named BBC Audio & Music executive. This form must be submitted before broadcast.
- b. All pre-recorded programmes from both BBC productions and independent production companies **MUST** be listened to in full by a BBC editorial figure prior to broadcast. That person must then sign the compliance form.

The only exceptions to meeting (a) and (b) above would be very special circumstances which must be agreed in advance with the Controller. For example, a recording of a live outside broadcast transmitted almost instantaneously after the event from a remote location, or, say, in the event of a systems failure in the compliance management system (Proteus).

In these exceptional cases, the full compliance form must be completed as soon as access to the Proteus system becomes available with a file note lodged beforehand to Director BBC Audio & Music, the Network Controller and the relevant Head of Compliance.

If the exceptional circumstance has not been cleared at Controller level beforehand, and no compliance form has been submitted, the programme must not be transmitted.

The BBC Audio & Music compliance management system (Proteus) should be available electronically to all independent producers working for the BBC.

3. Recruitment

The recruitment process has begun for a full-time, Board level Head of Editorial Standards for BBC Audio & Music who will ensure effective oversight and communication of editorial policy issues and compliance procedures across the Group.

9 Actions to Reinforce BBC Compliance Systems and Culture

As we review our editorial compliance procedures across the BBC it is clear that the big issue is the fundamental requirement for strict adherence to the compliance processes already in place.

In that context, we will re-emphasise throughout the organisation two cardinal rules:

- **No pre-recorded programme can be transmitted without a compliance form being completed, signed-off and submitted.**
- **No pre-recorded programme can be complied without being viewed or listened to in its entirety before sign-off.**

Failure to adhere to these rules in future will be treated as a serious disciplinary offence. Spot audits will take place on a regular basis across the organisation to ensure 100% adherence to this policy is being achieved.

In order to support these rules:

- No programme which has not had a compliance form completed should be capable of being broadcast within our transmissions systems. There should be a fail-safe mechanism that prevents this from happening within the process.
- All compliance forms should be amended so that it is only possible to certify a programme is compliant after it has been viewed or listened to in its entirety.

When a programme is broadcast live, inevitably it cannot have a pre-transmission compliance sign-off.

However the BBC already has published strong and detailed guidance on how to minimise the risks of “going live.” This documentation will be re-issued to all staff across the BBC this week and will be re-emphasised by Directors through their editorial management teams.

We also recognise we must embed everywhere a strengthened culture on compliance such that:

- Production staff at all levels feel the confidence to say “no” to content they feel is unacceptable.
- On-air talent always recognise the BBC is the publisher and the BBC’s producers and executives must have the final say in publication and exercise it with confidence. We must strengthen the BBC’s editorial supervision of all programmes made by talent- or agent-owned independent productions to avoid any conflict of interest between the producer function and compliance function. A named BBC executive producer must be identified and in place to sign-off final compliance for the BBC.
- All programme-makers across the organisation must understand fully the Editorial Policy Guidelines and guidance on contributors’ consent and privacy issues. These will be re-communicated across the organisation this month.

A special session of the BBC's top 150 Leadership Group will be held next Monday, 24 November 2008, to communicate in person to them the seriousness of the incident and the lessons learnt. The dissemination of the learning to all BBC staff will take place over the following week.

This will be followed by a special Editorial Policy meeting on 17 December 2008, open to all staff, which will be devoted to an analysis and discussion of the issues raised by the Brand/Ross affair and the measures being taken to ensure that there will be no repetition.

A special Editorial Policy newsletter will summarise and disseminate the learning more widely to all in-house production staff and to all independent production companies.

10 Additional Actions

Alan Yentob (Creative Director, BBC) together with Roly Keating (Director of Archive Content) and Claire Powell (Chief Adviser, Editorial Policy) will lead a group examining where the appropriate boundaries of taste and generally accepted standards should lie across all BBC output. The group will involve members of the on-air talent community and outside perspectives, together with original audience research. It will report to the BBC's Editorial Standards Board in February 2009 and its conclusions will be reported to the BBC Trust. It will inform the revision of the BBC's Editorial Guidelines which is currently underway and scheduled to be completed in 2009.

The Management is also reviewing the editorial controls and compliance procedures in place for all programmes – across television and radio – where the production company is owned and/or managed by the featured performer. Recommendations for strengthening these procedures will be put to the BBC Trust in December 2008.

The BBC's Editorial Standards Board, chaired by the Deputy Director-General, will drive forward and monitor progress against all these action points in the coming weeks.

Friday Night with Jonathan Ross, 2 May 2008

Summary of findings

The Committee considered two appeals against this particular edition of the Friday Night with Jonathan Ross show.

Complaint 1

The first complaint to be heard on appeal concerning this particular edition of Friday Night with Jonathan Ross. The complainant whose objection was not for the use of the f-word per se considered the context in which it was used in Jonathan Ross's discussion with Gwyneth Paltrow to be appalling and a transgression of decency.

The Committee upheld the complaint with regard to the use of the most offensive language. The Committee concluded that its use on this occasion had been gratuitous, unnecessary and offensive. It was not editorially justified. The decision of the two guests involved to agree to its use was immaterial as the Committee's responsibility at this point was to the audience and to ensure that acceptable standards of broadcasting was maintained across BBC content.

The Committee wished to make it clear all BBC staff and independents with editorial responsibility for BBC output must carefully consider the editorial justification for the most offensive language in content. This particularly applies in entertainment/factual entertainment programmes. The casual gratuitous use of the most offensive language is not acceptable on the BBC in accordance with the BBC's existing guidelines and practices.

Complaint 2

The second complaint heard by the Committee concerned the use of the most offensive language ("F*****" and "f****") by the presenter Jonathan Ross when talking to two of his guests (Michael Aspel and Gwyneth Paltrow). The complainant contended that Jonathan Ross's language was foul and abusive. He requested that as a result of Mr Ross's choice of language he should be taken off air. The complainant also raised concerns about the lack of response to his complaint at stage 1 of the complaints process as well as objecting to the quality of the BBC response provided at stage 2 of the complaints procedure.

The Committee upheld the complaint with regard to the use of the most offensive language. The Committee concluded that its use on this occasion had been gratuitous, unnecessary and offensive. It was not editorially justified. The decision of the two guests involved to agree to its use was immaterial as the Committee's responsibility at this point was to the audience and to ensure that acceptable standards of broadcasting was maintained across BBC content. With regard to

complaints handling the Committee was satisfied that the complainant had been provided with courteous and timely replies and that no further action was required.

The Committee wished to make it clear all BBC staff and independents with editorial responsibility for BBC output must carefully consider the editorial justification for the most offensive language in content. This particularly applies in entertainment/factual entertainment programmes. The casual gratuitous use of the most offensive language is not acceptable on the BBC in accordance with the BBC's existing guidelines and practices.

Finding

Friday Night with Jonathan Ross, 2 May 2008

Complaint I

I The Programme

Friday Night with Jonathan Ross is a late night chat show on which Jonathan Ross gives viewers his own irreverent perspective on current topics and news stories in between featuring guest interviews and music.

Prior to the broadcast of this particular edition of the show the continuity announcer stated:

“Ray Liotta is a psychopathic cop with a disturbing agenda for Kurt Russell and Madeleine Stowe in our late movie here on BBC One – Unlawful Entry – in an hour, **after some strong language on Friday Night with Jonathan Ross.**” (Our emphasis)

2. The Transcript

Michael Aspel was the second guest on the programme in question. During the interview the topic of conversation turned to Michael Aspel’s role presenting the Miss World competition in the 1970’s. The interview included the following exchange:

Jonathan Ross (JR):
Did you ever get involved with any of the ladies?

Michael Aspel (MA):
Yes, I had a brief fling with Miss Uruguay... There was a girl from Sierra Leone who was very friendly.

JR:
I bet she was.

MA:
She said “How old are you?” and I said “Thirty four”, and she said, “You are still a lion who roars.”

JR:
Please tell me you f***** her? Please? Please tell me you didn’t let the lioness from Leone get away?

During the interview with Gwyneth Paltrow, Mr Ross's third and final guest of the evening, he asked her about the names and ages of her two children. This led to the following exchange:

JR:

Have you got plans maybe to have sex again soon?

Gwyneth Paltrow:

With you?

JR:

Christ yes. If you want to have sex, I'll phone my wife. If she gave me permission, I would f*** you, yes Gwyneth. Because you know what, you asked so nicely and clearly you're gagging for it.

The language to which the complainant objects was fully audible and was not disguised by bleeping or any other means.

3 The complaint

The complainant wrote to BBC Information on 3 May 2008 stating that he wished to complain about the unacceptable standards of Jonathan Ross's interview with his female guest (Gwyneth Paltrow) on the previous evening's Friday Night with Jonathan Ross.

On 13 May BBC Information replied to the complainant pointing out that the "irreverent nature of the show was a large part of what makes it so popular" and that many sensitive subjects are referred to in a comedic context. BBC Information acknowledged that this kind of language may upset some viewers and noted that that was why a clear warning was given at the top of the programme. It also explained the comments had been left in the transmitted programme due to the positive reaction from both the studio audience and the guests.

The complainant replied on 17 May 2008 stating that he had no problem with the use of vulgar language, but that he found that the context in which the f-word was used on this occasion was appalling and a transgression of decency which should not be repeated.

BBC Information replied on 23 May 2008 noting that in the seven years the programme had been on air guests and viewers were fully aware of the tone and content of the programme, and the reputation of the host. The reply also noted that the programme was post-watershed and aimed at an adult audience who were generally not offended by the programme's content. The reply also advised the complainant of his right to escalate his complaint to stage 2 of the BBC complaints process. BBC Information also provided a further reply to the complainant on 17 June 2008, following a request by BBC management's Editorial Complaints Unit (ECU), who provide an independent investigation of a complaint at stage 2 of the BBC's complaints process, who had received a letter of complaint from the

complainant on 1 June 2008. BBC Information's further response set out in more detail the background to Jonathan Ross's humour and that Gwyneth Paltrow had not been offended by the remark and had enjoyed the interview.

The complaint was then investigated at stage 2 of the process. The ECU noted that in the complainant's letter of 1 June 2006, he reiterated his point that he had no problem with the use of the f-word as an adverb such as "[she is] a f-ing good actress". The issue which caused him concern was the fact that the presenter had told her that he wanted to "f- her"

The ECU replied on 19 August 2008, it did not uphold the complaint. The ECU reply noted that material that may cause offence should be editorially justified and clearly signposted and that programme makers should consider the suitability of content in terms of likely audience expectation in relation to the slot and programme. The reply pointed out that the programme was no stranger to controversy and had an established reputation which was known to guests and audience alike. The ECU also noted that Ms Paltrow clearly played along with the line of questioning when she responded "with you?" prior to the offending remark being made. The ECU response also noted the audience's reaction to the comment and that of Ms Paltrow, finding that in its view the use of robust language had not challenged the pre-existing expectations of the audience or guests. The ECU finding went on to point out the programme team would only include material that was editorially justified and, as such, given that Jonathan Ross was playing the situation for laughs, and that "much of the comedy was derived from the ridiculous juxtaposition of his crude language with the suggestion that he would seek his wife's permission." As such, the ECU was satisfied that this context provided sufficient editorial justification for use of the exchange in the transmitted programme.

The ECU also explained that in its view the programme's adherence to the guidelines had been reinforced by the late scheduling, the preceding content advice and that the exchanges alluded to occurred towards the end of the programme.

The complainant then appealed to the Trusts Editorial Standards Committee (ESC) on 26 August 2008.

4 Applicable Programme Standards

Section 8 - Harm and Offence

Introduction

The BBC aims to reflect the world as it is, including all aspects of the human experience and the realities of the natural world. In doing so, we balance our right to broadcast and publish innovative and challenging content appropriate to each of our services with our responsibility to protect the vulnerable.

When we broadcast or publish challenging material which risks offending some of our audience we must always be able to demonstrate a clear editorial purpose. Such

material may include, but is not limited to, offensive language, humiliation, sexual violence and discriminatory treatment. We must be sensitive to audience expectations, particularly in relation to the protection of children, as well as clearly signposting the material.

Harm and offence editorial principles

- We signpost and label challenging material to ensure our audiences have enough information on which to judge whether content is suitable for themselves or their children.
- We keep in touch with the expectations of our audiences for all of our services.

Audience expectations

We should judge the suitability of content for our audiences, including children, in relation to the expectations of the likely audience at a particular time on a particular day, and in relation to the nature of the service as well as the nature of the content.

We should ask ourselves the following questions:

- what is the likely composition of the audience, including the likely number and age range of children in the audience taking into account school time, weekends and holidays?
- does the talent, slot, genre or service carry pre-existing expectations which may be challenged by the content?
- is harm or offence likely to be caused by misleading the audience or in the inclusion of difficult or challenging material?
- has any difficult or challenging content been clearly signposted?
- what is the likely "pull-through audience" i.e. what is the nature of the preceding content and what kind of audience is it likely to attract?

Sign posts and content information

To ensure that our audiences are not taken by surprise, we must clearly sign post difficult content on all of our services using a combination of appropriate scheduling and content information which is simple, consistent, and factual. Whenever possible, this information should appear in press releases and other publicity, billings, Ceefax, trails, on air and online announcements, and electronic programme guides.

Language

Offensive language is one of the most frequent causes of complaint. It can be a particular source of offence in sub-titles or online.

Judgements about its use are difficult because they depend on tone and context. There is no consensus about words that are acceptable, when, and by whom. Different words cause different degrees of offence in different parts of the world. So

a person's age, sex, education, employment, belief, nationality, and where they live, all impact on whether or not they might be offended.

We must make careful judgements about the use of the most offensive language post-Watershed and ensure it is clearly signposted.

Any proposal to use the most offensive language (cunt, motherfucker and fuck) must be referred to and approved by a senior editorial figure or for Independents by the commissioning editor and the relevant output controller for television, radio, online and any other service. Chief Adviser Editorial Policy may also be consulted.

Language that causes most offence includes:

- sexual swearwords
- terms of racist abuse
- terms of sexual and sexist abuse or abuse referring to sexuality
- pejorative terms relating to illness or disabilities
- casual or derogatory use of holy names or religious words and especially in combination with other offensive language.

5 The Committee's decision

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

In reaching its decision the Committee took full account of all the available evidence, including (but not limited to) the Editorial Adviser's Report and the subsequent submissions from the complainant, the programme team and ECU.

The Appeal raised issues requiring consideration of the editorial guidelines relating to harm and offence.

Harm and Offence

The editorial guidelines state that the BBC must always be able to demonstrate a clear editorial purpose when broadcasting challenging material which risks offending some of the audience. Such material may include, but is not limited to, offensive language, humiliation, sexual violence and discriminatory treatment.

The Committee first noted what was said by Jonathan Ross in the two interviews in question paying specific attention to the context in which the language was used. It first noted the language used in the interview with Michael Aspel where it was stated:

Jonathan Ross (JR):
Did you ever get involved with any of the ladies?

Michael Aspel (MA):

Yes, I had a brief fling with Miss Uruguay... There was a girl from Sierra Leone who was very friendly.

JR:

I bet she was.

MA:

She said "How old are you?" and I said "Thirty four", and she said, "You are still a lion who roars."

JR:

Please tell me you f***ed her? Please? Please tell me you didn't let the lioness from Leone get away?

The Committee then noted the exchange between Mr Ross and Gwyneth Paltrow:

JR:

Have you got plans maybe to have sex again soon?

Gwyneth Paltrow:

With you?

JR:

Christ yes. If you want to have sex, I'll phone my wife. If she gave me permission, I would f*** you, yes Gwyneth. Because you know what, you asked so nicely and clearly you're gagging for it.

The Committee then considered the suitability of the content in relation to the expectations of the audience; the composition of the audience; the channel it was broadcast on; whether the audience was misled as to the inclusion of challenging or difficult material and whether the content was signposted.

The Committee recognised that the general style and format for Friday Night with Jonathan Ross, which has been running on BBC One since 2001, would have been well known to the majority of the audience tuning in to watch the show on this particular evening. The Committee was aware that many of those tuning in would be doing so because of the well established irreverence of the presenter whose comedy style could be described at times as being outrageous and provocative.

The Committee also recognised that the programme broadcast on the BBC's most popular channel BBC One, was broadcast well after the watershed to a predominantly adult audience and had, on this particular occasion, been preceded with a continuity announcement that had clearly warned of the inclusion of strong language within the content of the show. The Committee noted what was said in the announcement:

“[...] our late movie here on BBC One – Unlawful Entry – in an hour, **after some strong language on Friday Night with Jonathan Ross.**” (Our emphasis)

The Committee also noted its previous findings on language contained in the Friday Night with Jonathan Ross show, where it had stated on both occasions:

“The Committee, whilst recognising there is no consensus on the use of offensive language, acknowledged that the most offensive language should not be used gratuitously.”⁵

The Committee concluded that whilst there was a general expectation as to the content of Friday Night with Jonathan Ross, there had to be a clear editorial purpose for the use of the most offensive language even when a programme was broadcast after the watershed to a predominantly adult audience.

The Committee found therefore that whilst a warning had signposted strong language, the use of the f word as a verb in casual chat with celebrity guests had been unusual and unexpected. It also agreed that the larger than normal number of complaints (231 on this occasion compared with on average less than 20 complaints) had indicated that it had been outside normal audience expectations for the show. The Committee also considered whether the intended humour in using the f word in a celebrity chat show amounted to a clear editorial reason for its use but concluded that its use on this occasion had been gratuitous, unnecessary and offensive. It was not editorially justified. The decision of the two guests involved to agree to its use was immaterial as the Committee’s responsibility at this point was to the audience and to ensure that acceptable standards of broadcasting was maintained across BBC content. On this occasion the Committee agreed that acceptable standards had not been met and upheld the complaint.

The Committee wished to make it clear all BBC staff and independents with editorial responsibility for BBC output must carefully consider the editorial justification for the most offensive language in content. This particularly applies in entertainment/factual entertainment programmes. The casual gratuitous use of the most offensive language is not acceptable on the BBC in accordance with the BBC’s existing guidelines and practices.

Conclusion

In conclusion, the Committee upheld the complaint as to the use of the most offensive language finding its use to be gratuitous and not editorially justified.

⁵ ESC report May 2007:

http://www.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc_bulletins/may07.pdf

ESC report of June 2007 :

http://www.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc_bulletins/jun07.pdf

Finding: The Committee upheld the complaint with regard to the use of the most offensive language.

Friday Night with Jonathan Ross, 2 May 2008

Complaint 2

I The Programme

Friday Night with Jonathan Ross is a late night chat show on which Jonathan Ross gives viewers his own irreverent perspective on current topics and news stories in between featuring guest interviews and music.

Prior to the broadcast of this particular edition of the show the continuity announcer stated:

“Ray Liotta is a psychopathic cop with a disturbing agenda for Kurt Russell and Madeleine Stowe in our late movie here on BBC One – Unlawful Entry – in an hour, **after some strong language on Friday Night with Jonathan Ross.**” (Our emphasis)

2 The Transcript

Michael Aspel was the second guest on the programme in question. During the interview the topic of conversation turned to Michael Aspel’s role presenting the Miss World competition in the 1970’s. The interview included the following exchange:

Jonathan Ross (JR):
Did you ever get involved with any of the ladies?

Michael Aspel (MA):
Yes, I had a brief fling with Miss Uruguay... There was a girl from Sierra Leone who was very friendly.

JR:
I bet she was.

MA:
She said “How old are you?” and I said “Thirty four”, and she said, “You are still a lion who roars.”

JR:
Please tell me you f***** her? Please? Please tell me you didn’t let the lioness from Leone get away?

During the interview with Gwyneth Paltrow, Mr Ross's third and final guest of the evening, he asked her about the names and ages of her two children. This led to the following exchange:

JR:
Have you got plans maybe to have sex again soon?

Gwyneth Paltrow:
With you?

JR:
Christ yes. If you want to have sex, I'll phone my wife. If she gave me permission, I would f*** you, yes Gwyneth. Because you know what, you asked so nicely and clearly you're gagging for it.

The language to which the complainant objects was fully audible and was not disguised by bleeping or any other means.

3 The complaint

The complainant wrote an email to the Director-General on 6 May 2008 via the BBC Complaints website. In the email he outlined his complaint against the previous Friday evening's Friday Night with Jonathan Ross show requesting that he wanted an "absolute assurance" that Jonathan Ross would be taken off air after his "foul mouth outbursts" to two of his guests. The complainant believed the use of such language was a result of "a BBC run by trendy left wing liberals" of which, he said, Mr Ross was one. He closed his email by stating:

"You have disgusted me and I suspect just about every English person."

On 9 May 2008 BBC Information replied to the complainant pointing out that the "irreverent nature of the show was a large part of what makes it so popular" and that many sensitive subjects are referred to in a comedic context. BBC Information acknowledged that this kind of language may upset some viewers and noted that that was why a clear warning was given at the top of the programme. It also explained the comments had been left in the transmitted programme due to the positive reaction from both the studio audience and the guests.

The complainant responded with a further email via the BBC Complaints website on 22 June 2008 addressed to the Chairman of the BBC where he stated that he had not received a written or emailed response to his initial complaint, the only acknowledgement being "a curt and crass general response on your website". The complainant also stated that he found the website response "arrogant in the extreme and highly dismissive".

The BBC Trust on 9 July 2008 replied explaining that the complainant's email to the Chairman had been passed to BBC Information as it concerned an editorial

complaint which under the BBC's complaints process should be responded to in the first instance by BBC management⁶.

The complainant sent a further email to the BBC Trust on 11 July 2008 stating that he had also sent a hard copy of his complaint to the Director-General to which he had not received an answer. He also stated that he had tried to call Mark Thompson, Director-General, but had been told that Mr Thompson was unable to take his call as it was not considered necessary to involve the Director-General personally in the management of his complaint.

BBC Information provided a second response to the complainant on 15 July pointing out that they had replied to him on 9 May 2008. Their reply also reiterated the points made in their response of 9 May. The email also offered the complainant information as to how he could take the complaint further if he wished.

On 15 July 2008 the complainant wrote to the Editorial Complaints Unit (ECU) raising issues about the BBC's response to date as well as repeating his complaint that he had not received a response to his initial complaint or to the letter he sent to the Director-General.

The ECU replied on 12 August 2008. It did not uphold the complaint stating that whilst Jonathan Ross's exchange, particularly with Ms Paltrow, was "bawdy even by his [Jonathan Ross] standards", given the "very well established reputation of both the programme and presenter for robust humour and language", it did not think that the exchanges mis-led the audience or challenged their pre-existing expectations." The ECU response also noted that "the overt vulgarity is not to everyone's taste", but "his style and sense of humour hold widespread appeal."

The ECU also explained that in its view the programme's adherence to the guidelines had been reinforced by the late scheduling, the preceding content advice and that the exchanges alluded to occurred more than half an hour into the programme following various irreverent references to sex.

On the 19 August 2008 the complainant appealed to the Trust's Editorial Standards Committee (ESC) reiterating his complaint as well as stating his dissatisfaction with the ECU response.

4 Applicable Programme Standards

Section 8 - Harm and Offence

⁶ As required by the BBC Charter

http://www.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/charter_agreement/royalchartersealed_sept06.pdf

and Agreement

http://www.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/charter_agreement/bbcagreement_july06.pdf

Introduction

The BBC aims to reflect the world as it is, including all aspects of the human experience and the realities of the natural world. In doing so, we balance our right to broadcast and publish innovative and challenging content appropriate to each of our services with our responsibility to protect the vulnerable.

When we broadcast or publish challenging material which risks offending some of our audience we must always be able to demonstrate a clear editorial purpose. Such material may include, but is not limited to, offensive language, humiliation, sexual violence and discriminatory treatment. We must be sensitive to audience expectations, particularly in relation to the protection of children, as well as clearly signposting the material.

Harm and offence editorial principles

- We signpost and label challenging material to ensure our audiences have enough information on which to judge whether content is suitable for themselves or their children.
- We keep in touch with the expectations of our audiences for all of our services.

Audience expectations

We should judge the suitability of content for our audiences, including children, in relation to the expectations of the likely audience at a particular time on a particular day, and in relation to the nature of the service as well as the nature of the content. We should ask ourselves the following questions:

- what is the likely composition of the audience, including the likely number and age range of children in the audience taking into account school time, weekends and holidays?
- does the talent, slot, genre or service carry pre-existing expectations which may be challenged by the content?
- is harm or offence likely to be caused by misleading the audience or in the inclusion of difficult or challenging material?
- has any difficult or challenging content been clearly signposted?
- what is the likely "pull-through audience" i.e. what is the nature of the preceding content and what kind of audience is it likely to attract?

Sign posts and content information

To ensure that our audiences are not taken by surprise, we must clearly sign post difficult content on all of our services using a combination of appropriate scheduling and content information which is simple, consistent, and factual. Whenever possible,

this information should appear in press releases and other publicity, billings, Ceefax, trails, on air and online announcements, and electronic programme guides.

Language

Offensive language is one of the most frequent causes of complaint. It can be a particular source of offence in sub-titles or online.

Judgements about its use are difficult because they depend on tone and context. There is no consensus about words that are acceptable, when, and by whom. Different words cause different degrees of offence in different parts of the world. So a person's age, sex, education, employment, belief, nationality, and where they live, all impact on whether or not they might be offended.

We must make careful judgements about the use of the most offensive language post-Watershed and ensure it is clearly signposted.

Any proposal to use the most offensive language (cunt, motherfucker and fuck) must be referred to and approved by a senior editorial figure or for Independents by the commissioning editor and the relevant output controller for television, radio, online and any other service. Chief Adviser Editorial Policy may also be consulted.

Language that causes most offence includes:

- sexual swearwords
- terms of racist abuse
- terms of sexual and sexist abuse or abuse referring to sexuality
- pejorative terms relating to illness or disabilities
- casual or derogatory use of holy names or religious words and especially in combination with other offensive language.

Section 17 - Accountability

Feedback and complaints

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

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

5 The Committee's decision

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

In reaching its decision the Committee took full account of all the available evidence, including (but not limited to) the Editorial Adviser's Report and the subsequent submissions from the complainant, the programme team and ECU.

The Appeal raised issues requiring consideration of the editorial guidelines relating to harm and offence and accountability.

Harm and Offence

The editorial guidelines state that the BBC must always be able to demonstrate a clear editorial purpose when broadcasting challenging material which risks offending some of the audience. Such material may include, but is not limited to, offensive language, humiliation, sexual violence and discriminatory treatment.

The Committee first noted what was said by Jonathan Ross in the two interviews in question paying specific attention to the context in which the language was used. It first noted the language used in the interview with Michael Aspel where it was stated:

Jonathan Ross (JR):
Did you ever get involved with any of the ladies?

Michael Aspel (MA):
Yes, I had a brief fling with Miss Uruguay... There was a girl from Sierra Leone who was very friendly.

JR:
I bet she was.

MA:
She said "How old are you?" and I said "Thirty four", and she said, "You are still a lion who roars."

JR:
Please tell me you f***** her? Please? Please tell me you didn't let the lioness from Leone get away?

The Committee then noted the exchange between Mr Ross and Gwyneth Paltrow:

JR:
Have you got plans maybe to have sex again soon?

Gwyneth Paltrow:
With you?

JR:

Christ yes. If you want to have sex, I'll phone my wife. If she gave me permission, I would f*** you, yes Gwyneth. Because you know what, you asked so nicely and clearly you're gagging for it.

The Committee then considered the suitability of the content in relation to the expectations of the audience; the composition of the audience; the channel it was broadcast on; whether the audience was misled as to the inclusion of challenging or difficult material and whether the content was signposted.

The Committee recognised that the general style and format for Friday Night with Jonathan Ross, which has been running on BBC One since 2001, would have been well known to the majority of the audience tuning in to watch the show on this particular evening. The Committee was aware that many of those tuning in would be doing so because of the well established irreverence of the presenter whose comedy style could be described at times as being outrageous and provocative.

The Committee also recognised that the programme broadcast on the BBC's most popular channel BBC One, was broadcast well after the watershed to a predominantly adult audience and had, on this particular occasion, been preceded with a continuity announcement that had clearly warned of the inclusion of strong language within the content of the show. The Committee noted what was said in the announcement:

“[...] our late movie here on BBC One – Unlawful Entry – in an hour, **after some strong language on Friday Night with Jonathan Ross.**” (Our emphasis)

The Committee also noted its previous findings on language contained in the Friday Night with Jonathan Ross show, where it had stated on both occasions:

“The Committee, whilst recognising there is no consensus on the use of offensive language, acknowledged that the most offensive language should not be used gratuitously.”⁷

The Committee concluded that whilst there was a general expectation as to the content of Friday Night with Jonathan Ross, there had to be a clear editorial purpose for the use of the most offensive language even when a programme was broadcast after the watershed to a predominantly adult audience.

The Committee found therefore that whilst a warning had signposted strong language, the use of the f word as a verb in casual chat with celebrity guests had been unusual and unexpected. It also agreed that the larger than normal number of

⁷ ESC report May 2007:

http://www.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc_bulletins/may07.pdf

ESC report of June 2007 :

http://www.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc_bulletins/jun07.pdf

complaints (231 on this occasion compared with on average less than 20 complaints) had indicated that it had been outside normal audience expectations for the show. The Committee also considered whether the intended humour in using the f word in a celebrity chat show amounted to a clear editorial reason for its use but concluded that its use on this occasion had been gratuitous, unnecessary and offensive. It was not editorially justified. The decision of the two guests involved to agree to its use was immaterial as the Committee's responsibility at this point was to the audience and to ensure that acceptable standards of broadcasting was maintained across BBC content. On this occasion the Committee agreed that acceptable standards had not been met and upheld the complaint.

The Committee wished to make it clear all BBC staff and independents with editorial responsibility for BBC output must carefully consider the editorial justification for the most offensive language in content. This particularly applies in entertainment/factual entertainment programmes. The casual gratuitous use of the most offensive language is not acceptable on the BBC in accordance with the BBC's existing guidelines and practices.

Accountability

The Committee noted that the BBC's guideline on accountability to its audiences it requires that all complaints and enquiries to be dealt with quickly, courteously and with respect.

The Committee noted that the complainant had raised concerns that his initial email of complaint and subsequent hard copy to the Director-General had not been responded to. The Committee also noted the complainant's concern as to the quality of the subsequent response from stage 1 (including the website response to complaints about the programme) and the response of the ECU at stage 2.

The Committee concluded that it was satisfied that BBC Information had sent out its reply to the complainant on 9 May 2008, three days after the complainant first contacted the BBC on 6 May 2008, with a timely and courteous response. The fact that the complainant had not received the reply was, sadly, something which could not be explained and was outside the control of the BBC. As to the issue of the replies from the Director-General the Committee recognised that whilst the Director-General's office will where appropriate respond to letters and emails, it is the responsibility of BBC Information to reply to the vast majority of the Director-General's mail as part of the BBC's published three stage complaints procedure. The Committee noted that the complainant wished for his complaint to be acknowledged by the Director-General's office, but was satisfied that BBC Information had effectively acknowledged the complaint with its reply of the 9 May 2008 although, the Committee considered that it would have aided the understanding of the complainant if BBC Information had indicated that it was replying on behalf of the Director-General.

As to the content of the response from both BBC Information and the ECU, whilst the Committee had taken a different view on the appropriateness of Mr Ross's remarks, the Committee did not agree with the complainant that the responses were crass, dismissive or insulting. The Committee having considered the replies was satisfied that the responses at stages 1 and 2 were timely and courteous. The Committee therefore agreed that no further action need be taken with regard to complaints handling.

Conclusion

In conclusion, the Committee upheld the complaint as to the use of the most offensive language finding its use to be gratuitous and not editorially justified. With regard to complaints handling the Committee was satisfied that the complainant had been provided with courteous and timely replies and that no further action was required.

Finding: The Committee upheld the complaint with regard to the use of the most offensive language.

Action:

Note: The Committee had raised its concern about the gratuitous use of the most offensive language on BBC One post watershed with the Executive in the Committee's discussion with the Executive of the bi-annual complaints and compliance report in May 2008 and again in discussion at subsequent Committee meetings. This is an area the Committee expect to see included in the Director-General's report to the Trust in spring 2009 on how the BBC should deal with issues at the boundaries of generally accepted standards in its output.

The Committee will ask the Executive to provide it with a report as to how it would ensure the most offensive language is not used gratuitously in Friday Night with Jonathan Ross.