

FINDING BY THE EDITORIAL STANDARDS COMMITTEE

Summary

FRONTLINE SCOTLAND

BBC One Scotland, 1 April 2003

The programme concerned the case of John Porteous, recently convicted of paedophile offences at a children's home in the 1960s and 1970s. The programme examined "whether some of the children he cared for made up false allegations against him in order to claim compensation and asks whether historical child abuse cases leave anyone who has ever worked with children open to accusations."

The complaint was from one of the children John Porteous was convicted of offences against. The complainant made a number of detailed complaints.

The Committee noted that the issue was a legitimate area of focus for a BBC investigative documentary. However, while it believed the programme makers had acted in good faith, there were serious errors of judgement in the following areas:

- **Right of reply.** The Committee upheld this component of the complaint. It concluded the programme had not made sufficient attempts to give the complainant a fair opportunity to respond; and concluded that the on air explanation of the complainant's non-participation in the programme was inadequate.
- **Due accuracy and impartiality.** The Committee upheld this component of complaint. It noted that a key premise of the programme was that it would present evidence that the jury did not hear, which would cast doubt on the conviction. The Committee concluded that this 'new' evidence was not adequately researched or tested. It also concluded that some interviews were not edited fairly.

It did not uphold the following components of the complaint:

- **Treatment of other interviewees.** The Committee concluded that other contributors were treated appropriately during interviews.
- **Anonymity.** The Committee accepted that people who knew the complainant from his time in the children's home would have been able to identify him – but that his involvement in the case would already have been known to them. The Committee did not accept that the wider general public would have been able to identify the complainant.
- **Conflicts of interest.** The Committee found no evidence of any improper relationship between the programme makers and the children's home.

The Committee also noted that the complaint had been badly handled, but that the BBC's overall procedures had been transformed since this complaint was instigated. However, the BBC had been too keen to defend the programme in this instance.

The Committee therefore upheld two of the five components of the complaint.

The ESC Chairman will request a report from the Executive looking in particular at whether there were systemic failures and what lessons can be learned from the way the complaint was handled.

FRONTLINE SCOTLAND, BBC One Scotland, 1 April 2003

1. The programme

Frontline Scotland is a current affairs series produced by BBC Scotland, for transmission in Scotland. Twenty-six half-hour programmes are produced each year. The edition in question, "Secrets or Lies", was broadcast in April 2003.

The edition was billed as follows on the Frontline Scotland section of www.bbc.co.uk:

"Frontline Scotland returns with an investigation into the case of John Porteous."

"At the age of 69 he was imprisoned for paedophile offences at a Quarrier's children's home in the 1960s and 1970s."

"But was he the victim of a conspiracy?"

"Sam Poling examines whether some of the children he cared for made up false allegations against him in order to claim compensation and asks whether historical child abuse cases leave anyone who has ever worked with children open to accusations."

John Porteous was convicted in November 2002 in relation to offences committed thirty years earlier against children in his care at Quarriers Village in Renfrewshire. Quarriers was a self contained community established in the late nineteenth century to house disadvantaged children in small homes under the supervision of house mothers and house fathers. John Porteous and his wife Helen were houseparents in one of the homes in the 1970s.

2. The complaint

The complainant first complained to the BBC in January 2004, writing to the then Controller of BBC Scotland, indicating that he wished to make a formal complaint. In May 2004 the new Controller of BBC Scotland wrote rejecting his complaints.

Following this, and in response to a question from the complainant's MP, in July 2004 the BBC provided details of the BBC's Programme Complaints Unit (PCU) and Ofcom. The complainant complained to PCU in July. The Editorial Complaints Unit (the successor body to Programme Complaints Unit) rejected the complaints in November 2005.

The complainant appealed to the then Governors Programme Complaints Committee (GPCC) in December 2005.

The GPCC commissioned an independent adviser to investigate the complaint. The complainant and the programme team were both involved in this process: they were given an opportunity to provide information to the adviser, and subsequently to provide the Chair of the Committee with further comments.

The complainant made a number of detailed complaints during correspondence with BBC Scotland, PCU/ECU, GPCC/Editorial Standards Committee since the original transmission in 2003.

The Committee agreed to break down the complaint into a number of separate complaints. These are summarised below. Each is set out in more detail later, together with the relevant Producers' Guidelines in force at the time, and followed by the Committee's conclusions.

The key issues were:

- Was the complainant given the opportunity of a fair right of reply?
- Was the complainant's anonymity inappropriately infringed?
- Were other key contributors who did participate in the programme treated fairly?
- Did the programme team have any conflicts of interest?
- Did the programme meet the required standards of due accuracy and impartiality?

In addition, the Committee considered whether the complaint was handled appropriately. The Committee acknowledged that in reaching its written conclusions, the Committee would inevitably not comment on every point of detail that the complainant or programme team might want it to. Nevertheless the Committee had considered all the material relating to the case against the relevant standards in the Producers' Guidelines.

3. Introductory remarks

The Committee noted that it was not within its remit to take a view on whether the complainant had told the truth about what happened in the Quarriers Home, or whether the conviction of John Porteous was safe. The role of the Committee was to decide whether the programme had met the standards required by the Producers' Guidelines.

The Committee also noted that the BBC has a strong track record in investigative journalism, and has every right to make programmes looking at difficult issues such as those raised by Frontline Scotland. The issue for the Committee was not therefore whether the programme should have been made at all, but again whether the programme complied with relevant editorial standards.

4. Right of reply

(a) The issue in more detail

The complainant argued that he had not declined to participate in the programme. He had made clear his willingness to participate, but had asked all contact to be handled through his lawyer. The programme team argued it had made a number of contacts with the complainant and his lawyer, and had made clear the need for a rapid response. It argued that the timescales given for response were reasonable and typical. It also argued that the programme's intention was not to make allegations against the complainant, but to make a programme about possible miscarriage of justice in historical child abuse cases.

(b) Relevant Producers' Guidelines

Chapter 2 Impartiality and Accuracy

Section 2: Factual Programmes

2.7 Right of reply:

“Where a programme reveals evidence of iniquity or incompetence, or where strong, damaging critique of an individual or institution is laid out, there is a presumption that those criticised be given a fair opportunity to respond. There may be occasions when this is inappropriate (usually for legal or overriding ethical reasons) in which case the Head of Department should be consulted. It may then be appropriate to consider whether an alternative opportunity should be offered for reply at a subsequent date.”

Chapter 3 Fairness and Straight Dealing

Section 5: Refusal to take part:

“The refusal of an organisation or an individual to take part in a programme should not be allowed to act as a veto.

Anyone has a right to refuse, but when the audience might otherwise wonder why a contributor or organisation is missing the reasons for their absence should be explained. This should be done in terms that are fair to the absentee. The programme editor should consider whether it is possible to give a good idea of the views of the missing contributor based on what is already known. It is rarely acceptable to exclude the missing view altogether.”

Chapter 12 Reporting Suffering and Distress

Section 6: Revisiting past events

“Programmes intending to examine past events involving trauma to individuals (including, but not limited to, crime) must think through ways of minimising the distress that might be caused to surviving victims or to surviving relatives in re-telling the story. So far as is reasonably practicable, surviving victims or the immediate families of the dead people who are to feature in the programme should be informed of the BBC's plans. Failure to do this may be deemed a breach of privacy, even if the events or material to be used were once in the public domain. The programme should proceed against the objections of those concerned only if there is a clear public interest.”

(c) The Committee's conclusions

The Committee noted that the guidelines set out that where a *“strong, damaging critique of an individual is laid out, there is a presumption that those criticised be given a fair opportunity to respond”*. The programme team had said that it was not making allegations against the complainant and so the Committee first considered whether the programme was making a *“strong, damaging critique”*. Note that the pseudonym of the complainant in the programme was *“James”*; and that *“Robert”* was co-accuser in the trial of John Porteous.

The Committee accepted that the programme had not directly accused the complainant of lying or perjury. But it concluded that most reasonable viewers would feel that the programme had implied a *‘strong and damaging critique’* of the complainant. For example:

- First, a key premise of the programme was that it would be presenting new evidence. The presenter stated: *“Yet since the trial, we’ve uncovered evidence which the jury never heard. Testimony from witnesses which now cast doubt on John Porteous’ conviction”*. In this context, the programme looked in detail at some aspects of the case such as whether an incident involving a knife did or didn’t happen; whether it was plausible that the abuse could have happened in the church bell

tower; and whether the complainant was confusing an incident of abuse involving a Boys Brigade belt with another incident. The Committee's view was that such examples were used to raise doubt about the complainant's version of events. These were considered further by the Committee against the issue of due accuracy and impartiality, but were cited here by the Committee as clear evidence that the programme implied a strong and damaging critique of the complainant.

- Second, the programme had implied that the complainant (along with others) had been motivated through the possibility of compensation. For example, directly following a statement "Robert's brother said that he would lie for £5", the programme immediately went on to say that "we understand that "James" is now suing Quarriers for compensation, although how much for we don't know. Ray Wyre believes it's a flawed system, one which is open to abuse itself". Ray Wyre was included as an expert on sexual crime and abuse, and then was quoted as saying "We have to be now very very careful how we deal with allegations of abuse of a historical nature. The moment you have compensation you give reasons as to why a person might lie about abuse." (see further under 'due accuracy and impartiality', below)

The Committee therefore concluded that under the guidelines it was appropriate for the complainant to have been given a fair opportunity to respond and the question was whether he had been. On the basis of the information provided to it by the programme team, the Committee concluded that he had not.

The Committee accepted that the programme itself must have believed that the complainant had declined to participate. It was not clear, because of a lack of documentary evidence, whether they concluded this directly from what the complainant had said, or because neither the complainant or his solicitor gave a definitive response in writing. However, the Committee concluded that the programme did not make adequate attempts to involve the complainant and that he had not been given a fair opportunity to respond. The programme team initially wrote to the complainant on 14 March 2003. The programme was being broadcast less than three weeks later, but this was not indicated to the complainant. The letter was sent first class to what proved to be an old address for the complainant. The programme team did then obtain his mobile telephone number and contacted him on 19 March. There were a number of exchanges, including with the complainant's solicitor, which are the subject of some dispute about what exactly happened, and are not set out in detail here, but the Committee noted its concern with the following points:

- The programme indicated in correspondence that the production schedule was tight but did not make clear in writing just how soon the programme would be.
- The time frames given to respond were too short given the seriousness of the implied criticisms. The first letter said an interview would need to take place in the next 7 days; and a subsequent letter to the complainant's lawyer asked for a response within 24 hours.
- The programme should have considered that the Court had decided that the complainant had suffered abuse, and hence the programme team should have minimised the potential distress that it might cause to the complainant. This meant that there was even more reason for the

programme team to ensure that the complainant was given a proper time to respond and to set out his position in relation to the possible effect of these issues being reconsidered.

- The Committee was concerned that there was no written record of a crucial telephone call on or around the 21 March which was the last contact with the complainant. If he had clearly declined this should have been recorded. Certainly, there is no written record of the complainant or his solicitor declining to take part.
- Taking into account the factors above, the Committee concluded that the on air explanation, that the programme had contacted “James” and the others and “asked them for an interview or even for a statement. They refused to comment. But we understand they’re sticking by their allegations...” was unfair to the complainant and inadequate.

FINDING: UPHELD

5. Identification of the complainant

(a) The issue in more detail

The complainant felt his identity was compromised by the programme. While his name was not used, his arguments included:

- The voice of his sister was not disguised, and while she was not shown directly, her distinctive voice would have identified her, and hence the complainant
- The programme identified his best friend Billy, which in turn would have identified him.

The complainant also complained about a further aspect of the programme but details cannot be given in this published finding in order to maintain confidentiality.

(b) Relevant Producers’ Guidelines

Chapter 37 Matters of Law

Section 4: Identification of crime victims and witnesses

“In legal cases where the law or editorial policy requires the protection of the identity of individuals, producers should note that anonymity plainly means no name, no address and no photograph. It also means no strong clues.

When contributors ask for anonymity it is important to establish the degree of anonymity sought. It may be sufficient simply to ensure that contributors are not readily recognisable to the general public, or it may be necessary to ensure that they cannot be identified even by friends or family.

Such situations require careful judgement. Err on the side of caution where anonymity is concerned, but do not suppress valid journalism unnecessarily.

There is a range of cases where the identity of one or more of those involved, including witnesses, may not be reported. A breach of such a ruling would be contempt of court.”

4.4 “Jigsaw” Identification

“It is not enough that we do not name the victims of sexual crime. We need to take special precautions to avoid what is known as the “jigsaw effect”. This happens when different news organisations give different facts about the victim, which can then be pieced together.

In other cases where there is a danger of the jigsaw effect, we should avoid any detail that might, with corroborating facts, lead to identification. Take care not to give an address, any link with another person in the story, or any link between the victim and the scene of the assault.

These restrictions may make it difficult or impossible to convey in our reporting the incidence of certain sexual crimes by reference to individual cases. Programmes should still address these issues but without referring to identifiable instances.”

(c) The Committee’s conclusions

The Committee confirmed that the programme had a duty to protect the anonymity of the complainant. It noted that the Guidelines stated that where anonymity is necessary, producers must make it effective.

The Committee acknowledged that although the complainant’s name was not given, his identity would have been clear to some people. The Committee accepted that people who knew him from his time at Quarriers would have been able to identify him. However, the Committee concluded that the case itself would have been well known to many people associated with the home, and as such, the complainant’s identity would already have been known to these people.

The Committee also considered the fact that the complainant and his sister had not been in regular contact, so his sister’s voice would not have increased the risk of identification.

The Committee did not accept that the wider general public would have been able to identify the complainant. It also concluded that people that knew the complainant but did not know his history would not have been able to identify him. The Committee did not accept that the further confidential matter raised by the complainant would have aided identification.

FINDING: NOT UPHELD

6. Treatment of interviewees

(a) The issue in more detail

The interview with the complainant’s sister was particularly central to the programme. The complainant complained that she had been pressurised to appear in the programme. The complainant also said that another contributor was encouraged to lie in the interview.

(b) Relevant Producers’ Guidelines

Chapter 3 Fairness and Straight Dealing

Section 2: Dealing with contributors

“Contributors should be treated honestly, and with respect. From the start, programme makers should be as clear as they can be about the nature of the programme and its purpose. Unless there are special and legitimate considerations of confidentiality they should be open about their plans and honest with anyone taking part in a programme.

Contributors may be unfamiliar with broadcasting. Processes and assumptions that a professional may regard as obvious may not be shared by a lay person.

Whether they are public figures or ordinary citizens contributors ought to be able to assume that they will be dealt with in a fair way. They should not feel misled, deceived or misrepresented before, during or after the programme, unless there is a clear public interest, when dealing with criminal or anti-social activity. Contributors have a right to know:

- *What a programme is about*
- *What kind of contribution they are expected to make – an interview or a part in a discussion, for example.*
- *Whether their contribution will be live or recorded and whether it will be edited. They should not be given a guarantee that their contribution will be broadcast, but nor should we normally record a substantial contribution unless we expect to use it*

In factual programmes, there may be some occasions when it is necessary for programme makers not to reveal the true purposes of the programme to a contributor. This should happen only when there is a clear public interest, and when dealing with serious illegal or anti-social activity.

Contributors should feel they have been treated decently by the BBC in all our dealings with them, throughout the production process. IN programmes dealing with personal trauma or distress continuing contact with contributors may be appropriate to offer them help and reassurance up to the point of transmission and beyond.”

Chapter 13 Interviewing

Section 1: General

“Interviews are a vital tool of journalism and programme making.

Where interviewees are to be questioned or tested on matters of controversy it is important for editors, researchers and interviewers to think through the editorial issues and structure the interview accordingly.

BBC interviews should be well mannered and courteous. They may be searching, sharp, sceptical, informed and to the point - but not partial, discourteous or emotionally attached to one side of an argument. Interviewees should be given a fair chance to set out their full response to the questions.

Recorded interviews should be well focused. Where possible they should be of a length appropriate to the likely amount of material to be included in the finished programme. Using only brief extracts from long and unfocused interviews can cause justified ill-feeling.”

Section 5: Tone and tactics

“Interviews should be searching and to the point, well-mannered and courteous. They may be challenging but not aggressive, hectoring or rude, whatever the provocation.. In a well-conducted interview, listeners and viewers regard the interviewer as working on their behalf

When interviewing ordinary people, the tone and approach has to be appropriate. They are not likely to be experienced in broadcasting. We need to make sure they are not talked down to, nor intimidated by brusque questioning.”

(c) The Committee’s conclusions

The Committee first considered whether it should consider complaints about the treatment of these contributors because it had not received complaints from the contributors themselves. It decided they were in scope for two reasons. First, this issue had been considered by the Editorial Complaints Unit, and it made sense to follow this through. Second, the treatment of the contributors was an integral part of the complainant's wider complaint.

Having considered the full transcript of the interview with the complainant's sister, the Committee concluded she had not been under any pressure. Her answers were carefully considered, and the interviewer did not put her under pressure.

With regard to the second interview, the Committee noted that at the beginning of the unedited interview, the interviewer asked the contributor to give her age and then said "lie if you like". The Committee felt that this was clearly intended simply to put the interviewee at her ease. With hindsight, the comments were ill advised, because it could look inappropriate to the complainant, but they were clearly not intended to encourage the complaint to lie about serious matters.

FINDING: NOT UPHELD

7. Conflicts of interest

(a) The issue in more detail

The complainant claimed that there was a conflict of interest in the making of the programme. He said that there was a link between BBC Scotland and individuals with connections to Quarriers, that there was collusion between them, with the aim of pre-determining the outcome to the programme. The complainant was also concerned that reconstructions filmed during the programme were made using children who attended a drama group run by a close relative of Helen Porteous.

(b) The relevant Producers' Guidelines

Chapter 10 Conflicts of Interest

Section 1: General

"The BBC's reputation for impartiality and objectivity is crucial. The public must be able to trust the integrity of BBC programmes and services. Our audiences need to be confident that the outside activities of our programme makers or presenters do not undermine the BBC's impartiality and that editorial decisions are not influenced by any commercial or personal interests.

Conflicts of interest can arise for anyone who appears on air or has responsibility for the content of a programme or service or associated activity. Presenters, reporters, producers, editors and researchers are all affected. There may be particular sensitivities concerning on-air talent. For editorial staff the greater the level of responsibility the greater the need to avoid any possible conflict of interest. Each programme department or team will need to identify its area of vulnerability.

The BBC should be satisfied that everyone involved in editorial decisions and programme making is free from inappropriate outside commitments. The principles apply equally to freelances or staff. It is also important that independent producers should not have any interests which could undermine the integrity and impartiality of the programmes or websites which they produce for the BBC.

It may also be appropriate to consider whether the position of families and close personal contacts presents a likely conflict of interest."

(c) The Committee's conclusions

The investigator could find no link between the individuals making the programme and Quarriers. Some people with connection to Quarriers also had links to the BBC – but they were not involved in the making of the programme. The Committee accepted this.

The Committee felt it was ill advised to use the particular drama group. It would inevitably increase the complainant's perceptions of the programme team being too close to one 'side'. However, it noted the guidelines were tightly drawn, and focused in particular on conflicts of commercial or personal interest. Furthermore, ordinary viewers would not have known that the drama group was run by a close relative of Helen Porteous. And while ill advised, the use of the children did not actually have any bearing on the programme itself. On balance, the Committee concluded that while it was unwise, the use of the drama group did not amount to a breach of the guidelines.

FINDING: NOT UPHELD

8. Due Accuracy and impartiality

(a) The issues in more detail

The Committee decided there were a number of inter-related issues on impartiality and accuracy. As noted earlier, a key premise of the programme was that it would be presenting new evidence. The presenter stated: *"Yet since the trial, we've uncovered evidence which the jury never heard. Testimony from witnesses which now cast doubt on John Porteous' conviction"*. One of the issues for the Committee therefore was whether this new 'evidence' was properly researched and sufficiently tested, particularly in the context of a potential miscarriage of justice. The programme considered a number of areas where the programme had interviewed people who had lived in the home as children, which suggested that the complainant's account in Court was doubtful. These included:

- **The "knife incident"**. The programme claimed that in court, "James" recalled how he had held a knife to Helen's throat, at a time when John had started to abuse him, yet Helen had claimed this never happened to her. In the programme, Pearl (another child who had been a resident of Quarriers at the time) and Helen Porteous stated that this incident had in fact happened to a previous house parent.
- **The "boys brigade belt incident"**. The programme said that in Court, "James" alleged that John Porteous had beaten him with a Boys Brigade belt, but that "James's" sister's recollection was that an individual unconnected with Quarriers beat "James" (and her) with a Boys Brigade belt. An expert (Ray Wyre) was included in the programme saying that it is not uncommon for distant childhood memories to become confused.
- Interviewees who gave various reasons for why the abuse could not have taken place. For example, Billy – who the programme described as "James's" best friend - claimed there would not have been time because he was with "James" most of the time. Pearl said she would have recognised the signs because she was abused herself as a child. "James'" sister said "Ninety per cent I would think that John is innocent".

The Committee also considered whether interviews with key contributors had been fairly edited: the interview with the complainant's sister, and the interviews with the two experts: John McCormick (a solicitor advocate who has represented both abused children and those accused of abuse), and Ray Wyre (an expert in sexual crime and abuse).

(b) The relevant Producers' guidelines

Chapter 2 Impartiality and Accuracy

Impartiality

Section 1: General

"Due impartiality lies at the heart of the BBC. It is a core value and no area of programming is exempt from it. All BBC programmes and services should show open-mindedness, fairness and a respect for truth.

The BBC is committed to providing programmes of great diversity which reflect the full range of audiences' interests, beliefs and perspectives. Representing the whole spectrum is a requirement on all programme genres from arts to news & current affairs, from sport to drama, from comedy to documentaries, from entertainment to education and religion. No significant strand of thought should go unreflected or under represented on the BBC.

In order to achieve that range, the BBC is free to make programmes about any subject it chooses, and to make programmes which explore, or are presented from, a particular point of view.

The BBC applies due impartiality to all its broadcasting and services, both to domestic and international audiences.

In achieving due impartiality the term "due" is to be interpreted as meaning adequate or appropriate to the nature of the subject and the type of programme. There are generally more than two sides to any issue and impartiality in factual programmes may not be achieved simply by mathematical balance in which each view is complemented by an equal and opposing one.

The Agreement accompanying the BBC's Charter specifies that the Corporation should treat controversial subjects with due accuracy and impartiality both in news programmes and other programmes that deal with matters of public policy or of political or industrial controversy. It states that due impartiality does not require absolute neutrality on every issue or detachment from fundamental democratic principles. The BBC is explicitly forbidden from broadcasting its own opinions on current affairs or matters of public policy, except broadcasting issues."

Section 2.1: Due impartiality within a programme

"A factual programme dealing with controversial public policy or matters of political or industrial controversy will meet its commitment to due impartiality if it is fair, accurate and maintains a proper respect for truth. A programme may choose to explore any subject, at any point on the spectrum of debate, as long as there are good editorial reasons for doing so. It may choose to test or report one side of a particular argument. However, it must do so with fairness and integrity. It should ensure that opposing views are not misrepresented.

There will be times where a wide range of views is appropriate, and times when a narrow range is acceptable. The key is for programme makers to be fair to their subject matter, and to ensure that right of reply obligations are met (see below).

Sometimes it will be necessary to ensure that all main viewpoints are reflected in a programme or in linked programmes, for example, when the issues involved are highly controversial and a defining or decisive moment in the controversy is imminent."

Section 2.9: Factual Programmes not dealing with matters of political or industrial controversy

"Documentaries, magazine and feature programmes of various kinds often properly concentrate on a narrow area or give an opportunity, for example in an interview, for a single view to be expressed.

Overall, such output seeks to represent reality. There remains an obligation to ensure that a proper range of views and perspectives is aired over a reasonable time. This calls for systematic review and continuing discussion so that the output builds into a complete mosaic."

Accuracy

Section 1: General

“The BBC must be accurate. Research for all programmes must be thorough. We must be prepared to check, cross-check and seek advice, to ensure this. Wherever possible we should gather information first-hand by being there ourselves or, where that is not possible, by talking to those who were.”

Section 2: Achieving accuracy

“Accuracy can be difficult to achieve. It is important to distinguish between first and second-hand sources. An error in one report is often recycled in another. Material already broadcast and newspaper cuttings can get out-of-date quickly or simply be wrong. Programmes should be reluctant to rely on only one source. Simple matters like dates titles may well need to be checked and checked again. It is helpful if clear, contemporaneous notes are made of all significant conversations and other details.

Accuracy is often more than a question to getting the facts right. All relevant facts and information should be weighed to get at the truth of what is reported or described. If an issue is controversial, relevant options as well as facts may need to be considered. If any item may be legally contentious, its accuracy must be capable of withstanding scrutiny in a court of law.”

Section 4: Accurate language

It is not sufficient that we get our facts right. We must use language fairly. That means avoiding exaggeration. We must not use language inadvertently so as to suggest value judgements, commitment or lack of objectivity.

Chapter 3 Fairness and Straight Dealing

Section 3: Research

“Research for all programmes must be thorough and accurate. Facts must be checked and crosschecked. Particularly when dealing with members of the public, contributors’ credentials may need to be checked and corroborated several times. Documentary evidence may be needed to validate both stories and contributors’ identities. It will usually be appropriate to seek corroboration from sources other than those suggested by the contributor.

It is helpful if clear and contemporaneous notes are made of all conversations and other relevant details. Members of the public who make significant contribution should be usually be spoken to, and checked, by more than one member of the programme team before their participation.

Researchers should not rely on outside bodies to do programme research about contributors. When finding contributors news agencies and other specialist agencies can sometimes be a useful source. But any information or contact supplies must be carefully crosschecked and verified.”

Chapter 13 Interviewing

Section 8: Editing a recorded interview

“When an interview is recorded for later editing, interviewees should be dealt with fairly. This includes telling them that their contribution will be edited.

An interviewee who is being asked to reply to detailed criticism, should be given an opportunity to respond to each of the main points aired in the programme. Care should be taken to reflect in the edited programme the points of substance made by the interviewee in the full recording. Choosing only the weaker responses of an interviewee in preference to effective rebuttal is unfair. Overall, a reasonable person, seeing or hearing an interview both in full and in edited form, should conclude that it has been edited fairly.

Chapter 38 Defamation

Section I: General

"If we broadcast anything that injures the reputation of an individual, group or an organisation we may be libelling them. The risks exists whether the defamatory statement is scripted or spoken off-the-cuff, and the BBC is liable no matter who speaks the words in its programmes – and no matter whether the programme is a factual programme or a drama, made 'in house' or by an independent, or wherever in the world it is broadcast.

The tests normally applied by the courts to determine if a statement is defamatory include:

- *does it reduce a person in the eyes of right-thinking people?*
- *does it cause a person to be shunned or avoided?*
- *does it expose the person to hatred, ridicule or contempt?*
- *does it injure them in their office, profession or trade?*

The principal defences to libel are:

- **Justification** ("veritas" in Scotland): proving that the statement is true.
- **Fair comment on a matter of public interest:** showing that the statement was an honest opinion based on provable fact, was not prompted by malice, and was on a matter of public interest."

(c) The Committee's conclusions

Research and Accuracy

The Committee first considered whether the new 'evidence' presented by the programme satisfied the required standards for programme research and accuracy.

Scrutiny of Facts

The Committee noted that the interviews with the programme contributors had raised legitimate questions on a number of issues. They certainly generated areas of uncertainty, but the Committee's view was that these had not been scrutinised, researched and tested to the extent necessary to justify the claim that it was evidence of a possible miscarriage of justice. For example, while the complainant confirms that Billy was a close friend, he says that Billy did not live in the same house. He may therefore not have known what was happening. The Committee noted that the programme team did not appear to have checked this point, which went to the heart of whether Billy was able to provide a first hand account of events. Similar issues arose with the sister, who had not lived with the complainant for much of the relevant period. This was particularly relevant given that the other peer interviewed, Pearl, was also not living with the complainant (as was mentioned in the programme).

In terms of the Boys Brigade belt incident, the Committee noted that even if another party had beaten the complainant with a Boys Brigade belt, which the complainant denied, the Committee felt that it did not mean that John Porteous did not also do the same. Similarly, more than one knife incident could have happened. The evidence on these points was not, therefore, necessarily as significant as the programme had suggested.

Other matters

The Committee also looked at the general standards of research used by the programme team in order to ensure the accuracy of the programme.

The Committee noted that the contributors from Quarriers were all from one side of the story. Most of the contributors were suggested by Helen Porteous who was organising a campaign in support of her husband's appeal against his conviction. The Committee felt that the programme should have contacted a wider range of people rather than relying predominately on the views of those who did not believe that the complainant had been abused by John Porteous.

The Committee felt that the premise that the programme had uncovered new evidence not heard by the Court was undermined by the fact that the programme team had not obtained the trial transcript and so did not actually know for sure what evidence had been presented. It had relied instead on press reports and the verbal recollection from some of those involved. Thus it could not be sure what had been said in Court, and what the court made of the evidence. While the guidelines do not require a transcript to be obtained, given the way the programme was challenging the Court verdict, and suggesting that it had evidence which might have led to a different outcome, the Committee felt that given the claims that were being made the programme team should have made a greater effort to obtain one in order to check how the new material would have affected the case.

Editing

The Committee also considered the editing of the interviews, which again was relevant to issues of both due accuracy and impartiality.

The Committee considered that the interview with the sister was important, particularly since the sister had said "Ninety per cent I would think that John is innocent". It had already noted that the sister had not been pressurised into giving an interview. But it was concerned that some relevant material which would have given a more balanced view was either not probed or left out:

- The sister describes an incident where John Porteous hit her over the head and her face hit the sink. The programme team argued that this was a one off incident and the sister did not pursue it at the time. The Committee felt that at the very least, this should have been probed further.
- Secondly, the sister made it clear that she did not believe that compensation would be a motive for the complainant to lie as he had money of his own. The programme team said they did not know whether this was true so did not include it. The Committee felt this comment should have been included in the programme, particularly as there did not appear to be justification for suggesting that the complainant had been motivated by money.

The Committee concluded that the two experts had expertise such that they were relevant and appropriate contributors to the programme. But it concluded that the interview with Ray Wyre had been unfairly edited, because important aspects were left out, and in the main, the material used only supported the premise that (a) memories from long ago are unreliable and (b) people may be encouraged to accuse for financial gain.

The unedited footage of the interviews gave a more rounded view. The Committee noted in particular that Ray Wyre said that it is not unusual for someone who was abused 30 years ago to make accusations 30 years later. He also said that it is possible for a person to abuse one child, while many other children think that person is a terrific carer.

The Committee felt that the programme was right to include the various contributors' testimonies, since they did raise uncertainties. But the programme did not choose to explore alternative points of view, or share counter evidence with the audience. This was particularly important in a programme

about a potential miscarriage of justice which was raising serious doubts about the complainant's evidence in court.

The Committee concluded that the programme had not satisfied the standards of due accuracy and impartiality. This was because some of the factual points made in the programme had not been researched to the standards required in the Guidelines; there were issues over the editing of material; the evidence that had been obtained did not appear to justify the significance attached to it in the programme; and there had been a failure to explore alternative points of view properly.

FINDING: UPHELD

9. Complaints Handling

(a) The issue

The complainant expressed dissatisfaction with the BBC's complaint handling, in terms of the time taken to deal with his complaints, his attempts to get the BBC to deal with the complaint, and the extent of disclosures of material.

The complainant first formally complained to the BBC in January 2004, writing to the then Controller of BBC Scotland, indicating that he wished to make a formal complaint. In May 2004 the new Controller of BBC Scotland responded to his complaint, rejecting them.

In response to a question from the complainant's MP, the BBC then provided details of the BBC's Programme Complaints Unit (PCU) and Ofcom, in July 2004. The complainant complained to PCU in July, and the Editorial Complaints Unit (the PCU's successor body) rejected the complaints in November 2005.

The complainant appealed to the then Governors' Programme Complaints Committee (GPCC) in December 2005.

The GPCC commissioned an independent investigator to consider its complaint.

(b) The Committee's conclusions

The Committee noted that the complainant had not been told about the BBC's own Programme Complaints Unit or Ofcom until prompted by his MP. This had been wrong, but the BBC's complaints procedures have since been radically overhauled, and they would not expect this to happen now. The Committee was concerned that BBC management involved in the complaint had appeared defensive throughout the process – including as part of the Editorial Standards Committee's investigations. It had appeared too keen to defend the programme rather than seriously consider whether the complainant might have a case.

10. Overall conclusions:

To conclude, the Committee reiterated that the issue was a legitimate area of focus for a BBC investigative documentary. It believed the programme makers themselves had acted in good faith but had made errors of judgement. It was not the role of the Committee to decide whether the complainant was telling the truth about what had happened in the past, or whether the conviction of John Porteous was safe. It was for the Committee to decide whether the programme had met the

standards of the Producers' Guidelines, and in this respect, it concluded that the programme had not met the required standards in a number of areas. It upheld the complaints in the following areas:

- Right of reply
- Due accuracy and Impartiality

It did not uphold the complaints relating to:

- Anonymity
- Conflicts of interest
- Treatment of contributors

It also agreed with the complainant that the complaint had not been well handled, but noted that the procedures have been transformed since this complaint started. Nevertheless, it felt the BBC had been too keen to defend the programme and had not given the complainant's case sufficient attention.

COMMITTEE FINDING: The Committee therefore upheld two of the five components of the complaint.

II. Actions

The Committee expressed concern that the particular failures may be the result of systemic failures. The Committee Chairman will write to the Deputy Director General asking for a report on issues including:

- Did the failures arise because of undue pressures on time or budget?
- To what extent was the long run of the programme and the need to meet deadlines a contributory factor?
- Was there sufficient editorial oversight?
- What are the lessons for complaints handling in the future?

