

- **Today, BBC Radio 4, 29 July 2011; “‘Torrent of abuse’ hindering ME research”, BBC News Online**

The complainant appealed to the Editorial Standards Committee following the decision of the Head of Editorial Standards that the complainant’s appeal did not qualify to proceed for consideration by the Committee.

## **The complaint**

### **Stage 1**

The complainant wrote to BBC Audience Services to complain about the *Today* programme broadcast on 29 July 2011. She stated that during the programme “claims of malicious harassment were made against the ME community and its supporters”.

She said that the programme had wrongly juxtaposed alleged criminal acts with legitimate, non-criminal actions of advocates, such as (but not limited to), writing to ethics committees, or making formal complaints to official bodies, or making public objections to controversial claims. She said that the effect was that innocent and responsible activities were claimed as harassment and insinuated as criminal.

The complainant noted that she was a known critic of some of those working in the medical research field connected with ME/Chronic Fatigue Syndrome and said that she felt that the programme had put her at risk of being deemed a criminal.

The complainant also criticised the accompanying online article, which she said also exhibited prejudice towards the ME community.

The BBC’s reply included a response from the *Today* programme’s editor, who said that the piece made it clear that none of the complaints made against the scientist in question was upheld – by the scientist’s university, the GMC or the Medical Ethics Committee. The point being made therefore was that such complaints could be seen as part of a campaign of harassment which at one extreme involved threats to kill but at the other also included attempts to undermine the credibility of the researchers involved. At no stage did the piece state or even suggest that there was anything wrong with pursuing legitimate complaints against scientists or stating a view contrary to the medical establishment.

The complainant was not content with this response and received another reply from a *Today* programme output editor, who said that the report made it clear that it was alluding to a series of official complaints about personal and professional misconduct which formed part of a campaign of vilification against the scientist in question. The fact that none of them was upheld suggested they were vexatious complaints. The output editor said the report was referring to this kind of complaint and not to complaints raising issues of genuine concern – whether upheld or otherwise.

### **Stage 2**

The complainant wrote to the Editorial Complaints Unit, setting out the grounds for her complaint and summarising the responses that she had received from BBC Audience Services.

The complainant said that the *Today* programme had formed part of a sustained media campaign by the professor who was featured, and others mentioned in BBC programmes, in which the allegations they made had been taken at face value, and no right of reply given to those people accused of “malicious” or “criminal” harassment.

The complainant said that the BBC responses had not addressed her complaint about the accompanying website article.

A Complaints Director at the ECU replied, outlining the nature of the complaint and stating that the complainant’s concerns would be investigated against the relevant sections of the Editorial Guidelines on Accuracy and Impartiality. The Complaints Director said that he had passed on the element of the complaint regarding the article to BBC News Online for their urgent attention.

The Complaints Director noted that the complaint referred to, but did not identify “other radio programmes” which had caused the complainant similar concerns. He said that without further detail on these programmes (and until a ‘stage 1’ response in regard to them had been issued) it was not open to him to investigate.

The Complaints Director did not uphold the complaint and wrote to the complainant with the results of his investigation. He acknowledged that the complainant had responded with information about other programmes which might have included similar material, but said that without more detail it was not possible to investigate this part of the complainant’s concerns. He also noted that having contacted BBC News Online, they had confirmed that they had nothing further to add to the response that the complainant had already received from the BBC regarding her concerns about the radio piece, and therefore he had considered it as part of his investigation.

The Complaints Director said the subject of the effect of campaigns against scientists working in the ME/CFS field was explored throughout the *Today* programme, with “two-way” interviews with the reporter, brief references in news bulletins, reports featuring interviews with the scientists affected, and a live interview with Dr Shepherd of the ME Association. He had considered the impression given by these pieces individually and judged as a whole.

The Complaints Director said, in his view “...nothing within the material seemed to ... have the effect of suggesting that the act of complaining to medical bodies was not legitimate, or equivalent to making death threats”. He went on to note that certain references within the programme would have had the effect of guarding against such an impression. In his contribution to the programme, Professor Wessely drew a distinction between direct intimidation – which he described as “letters, emails, occasional phone calls and threats” and “indirect intimidation through my employer or the GMC” which he said was “intended to denigrate, and try and make you into a leper”.

The Complaints Director also quoted from what the reporter had said in the programme and on the website:

Reporter: Well this is a pretty alarming campaign of harassment targeting a pretty small group of academics, mostly in psychiatry, working on Chronic Fatigue Syndrome, and has included abuse and intimidation, death threats as you said, vilification on internet websites – but also a series of official complaints alleging both personal and professional misconduct to universities, ethics oversight boards, and the General Medical Council.

The Complaints Director said that this seemed to fall some way short of suggesting that formal complaints are criminal acts on a par with death threats. He said, however, that it does suggest that formal complaints have been used as part of a campaign of harassment. The Complaints Director said that it does not follow that all who make such complaints are themselves part of such a campaign, or that all such complaints are groundless or without merit. He did not believe that this was the conclusion which the audience would have reached.

The Complaints Director said that it is a fact that some of the actions referred to (including lodging formal complaints) while legal, may be considered by those who are targeted by them as a form of harassment, or as vexatious by the bodies complained to. He said that, given the comments of the scientists included on what they had experienced, it seemed fair to conclude that they considered such actions to be a form of abuse or intimidation. Similarly, criticism (or “vilification”) on websites may seem a reasonable action to some, but may be considered by the subjects of the criticism to constitute harassment. In the context of reports which considered the effect that such acts of protest had on medical research into ME/CFS, and specifically the reaction of the scientists affected, the Complaints Director said it was reasonable to reflect their concerns, and their perspective on the actions that they considered to have contributed to a reticence to undertake more research – including perfectly legal acts such as formal complaints to medical bodies.

The Complaints Director referred to the contribution made to the programme and the online article by Dr Shepherd from the ME Association. He noted that Dr Shepherd’s contribution made clear that the actions of a few in the ME/CFS community were not representative of the vast majority and that this sort of personal intimidation was unacceptable and counterproductive. He noted that Dr Shepherd had expressed the view that many had justifiable concerns about, for instance the funding of research into ME/CFS and the way in which the medical world has categorised the condition. The Complaints Director concluded that this would have guarded against the conclusion that all such complaints were vexatious or groundless, while demonstrating that not all who have protested have taken extreme measures to get their point across. He went on to note that balance was achieved by the inclusion of Dr Shepherd, who spoke of the legitimate frustration of some with, or affected by, the illness.

### **Appeal to the Trust**

The complainant appealed to the BBC Trust. With reference to the response from the ECU the complainant raised the following points in her letter of appeal:

#### Point 1

While Dr Shepherd's comments claimed there were only "a minority" involved in "harassing" behaviour, this supported the incorrect claim that taking part in legitimate activities to express concern or objection constitutes "harassment". The complainant said that it did not in any way guard against the incorrect and prejudicial claims that legitimate activities constituted harassment.

#### Point 2

The use of Professor Wessely's distinction between "direct" and "indirect" "intimidation" denoted an assumption that legitimate activities such as writing to employers or the GMC constituted "intimidation".

#### Point 3

The programme makers were asserting that legitimate activities such as making official complaints or expressions of concern, and FOI requests, constitute "harassment" and "vilification".

#### Point 4

Assertions made by the ECU were clearly prejudicial to the amount of importance attached to the actual substance of the complaint.

#### Point 5

The ECU's defence of the BBC by supporting the right of some people to deem legitimate activities as "harassment" breaches the BBC's editorial policy in respect of fairness and accuracy.

The BBC Trust's Head of Editorial Standards replied to the complainant explaining that the Trust does not adjudicate on every appeal that is brought to it, and part of her role is to check that appeals qualify for consideration by the Trust (or one of its complaints committees) under the Complaints Framework. The Head of Editorial Standards said that she had read the relevant correspondence and considered that the appeal did not have a reasonable prospect of success and should not proceed to the Trust's Editorial Standards Committee.

She considered the complaint with reference to the Editorial Guidelines on accuracy and impartiality.

With regard to the complainant's appeal points 1 and 3, the Head of Editorial Standards noted that the complainant felt that using Dr Shepherd's comments to negate her concerns was incorrect.

The Head of Editorial Standards referred to the ECU response, which quoted what Dr Shepherd had said on the *Today* programme with regard to the "tiny minority" of people with ME indulging in intimidating behaviour.

The Head of Editorial Standards noted that Dr Shepherd's views were also made clear in the web page which supported the radio report, in which he was again quoted as saying that personal intimidation was unacceptable and counter-productive. The Head of Editorial Standards said it was clear that Dr Shepherd was expressing the view that a small amount of people are involved in behaviour which could be seen as personal intimidation. The Head of Editorial Standards noted the ECU's comment that:

“...Dr Shepherd effectively put the case in his contribution that many with legitimate concerns consider extreme actions unacceptable. He referred to how the issues might properly be debated...”

The Head of Editorial Standards said it was clear that Dr Shepherd was making a distinction between legitimate protest and those involving “personal intimidation”.

The Head of Editorial Standards therefore did not agree with the complainant’s claim that Dr Shepherd’s comments suggested that taking part in legitimate activities constitutes harassment, and she did not believe that such a claim was made in the programme.

The Head of Editorial Standards said that the appeal would not have a reasonable prospect of success on this point.

The Head of Editorial Standards noted that the complainant had also said that the programme makers were asserting that that “legitimate activities such as making official complaints or expressions of concern, and FOI requests, constitute ‘harassment’ and ‘vilification’.”

The Head of Editorial Standards noted what the programme had said in this regard:

Reporter: Well this is a pretty alarming campaign of harassment targeting a pretty small group of academics, mostly in psychiatry, working on Chronic Fatigue Syndrome, and has included abuse and intimidation, death threats as you said, vilification on internet websites – but also a series of official complaints alleging both personal and professional misconduct to universities, ethics oversight boards, and the General Medical Council.

She also noted what the online article said:

“Scientists working on Chronic Fatigue Syndrome (CFS), or ME, say they are being subjected to a campaign of vicious abuse and intimidation that is hampering research into the causes of the condition. The harassment has included death threats, vilification on internet websites, and a series of official complaints alleging both personal and professional misconduct to universities, ethical oversight committees and the General Medical Council (GMC)”.

The Head of Editorial Standards noted the comments made by the ECU Complaints Director, namely that the comments made by the reporter seemed “to fall some way short of suggesting that formal complaints are criminal acts on a par with death threats ... Importantly however it does not follow that all who make such complaints are themselves part of such a campaign, or that all such complaints are groundless or without merit ...”

The Head of Editorial Standards noted that the reporter did include official complaints as examples of harassment. However, she also noted that he did not suggest that all who make official complaints are therefore guilty of harassing behaviour. FOI is not mentioned. Nor are expressions of concern. “Vilification on internet websites” was described as just that. It was not suggested that “official complaints or expressions of concern, and FOI requests” add up to vilification.

The Head of Editorial Standards therefore did not believe that the appeal had a reasonable prospect of success on this point.

With regard to the complainant's appeal point 2, the Head of Editorial Standards noted the comments made by the ECU Complaints Director in explaining the personal views of some of the scientists that were featured in the interviews. She noted in particular his statement that, "It is a fact that some of the actions referred to (including lodging formal complaints) while legal, may be considered by those who are targeted by them as a form of harassment, or as vexatious by the bodies complained to".

The Head of Editorial Standards agreed with the ECU Complaints Director that, given the comments from the scientists included in the programme on what they had experienced it seemed fair to conclude that they considered such actions can be a form of abuse or intimidation. The Head of Editorial Standards repeated her statement that this did not carry the meaning that all who contact the GMC or employers are acting in a way that is harassing or vexatious. The Head of Editorial Standards was satisfied that Professor Wessely was expressing his point of view and that the audience could make up their own mind on the matter.

The Head of Editorial Standards therefore did not believe that the appeal had a reasonable prospect of success on this point.

With regard to the complainant's appeal point 4, the Head of Editorial Standards noted that she did not feel the ECU attached the correct importance to her complaint. She noted that the complainant felt that the Complaints Director and the programme team were implying that "...any complaint through official channels constitutes 'harassment'". The Head of Editorial Standards said she did not believe that this was the conclusion being drawn by the Complaints Director or programme team, or that this conclusion was implied in the programme. In terms of BBC consideration of complaints, the Head of Editorial Standards said that each complaint is considered on its merits. She said the published or broadcast content is judged against the relevant editorial standards, and she was satisfied that this was the case in respect of this complaint. The Head of Editorial Standards said that the ECU had acted within their remit and the complainant had not made a case that their reasoning was prejudiced.

The Head of Editorial Standards did not believe that the appeal had a reasonable prospect of success on this point.

Turning to the complainant's appeal point 5, the Head of Editorial Standards said that she was satisfied that there had been no "prejudicial conflation" of legitimate activities with allegations of death threats. She noted that the ECU had considered the complaint against the guidelines concerning accuracy and impartiality, and she agreed with their findings that the programme and online article did not breach these Guidelines for the reasons outlined above. The Head of Editorial Standards explained that the Fairness guidelines would only apply if the complainant was a directly affected party (making a first party complaint), and she did not believe that the complainant fell into this category as the programme was not about her.

The Head of Editorial Standards concluded by saying that she appreciated this was a matter about which the complainant felt strongly. However, she was satisfied that

the appeal had no reasonable prospect of success and should not therefore proceed to the ESC.

The complainant requested that the Committee review the decision of the Head of Editorial Standards not to proceed with the appeal. She criticised the reliance on semantics in the responses to her complaint and said that her complaint had been as much about the effect of the use of insinuation, the logical conclusion of comments and paraphrasing in the programme as what was actually said.

### **The Committee's decision**

The Committee was provided with the complainant's appeal to the Trust, the response from the Head of Editorial Standards, and the complainant's letter asking the Committee to review the Head of Editorial Standards' decision. The Committee was also provided with the final response from the ECU, the relevant excerpts from the *Today* programme and the accompanying website article.

The Committee noted that the complainant alleged the *Today* programme and accompanying article had breached the BBC's Editorial Guidelines by including comments which she believed implied that those pursuing legitimate means to challenge the work of certain ME researchers were guilty of harassment, intimidation, and vilification. The Committee noted that the complainant believed the programme had been prejudiced in the assumptions it made.

The Committee also noted that the complainant believed the responses from the programme team and ECU had demonstrated prejudice which affected the handling of her complaint.

The Committee agreed that the programme did not make claims of "malicious harassment" against the ME community and its supporters.

The Committee noted that the Head of Editorial Standards had agreed with the ECU that Dr Shepherd had made a clear distinction in the programme between legitimate protest and those involving "personal intimidation". The Committee agreed that the comments made by Dr Shepherd did not suggest that taking part in legitimate activities constitutes harassment.

The Committee also noted what the reporter had said in the programme and the article and agreed with the Head of Editorial Standards that, although he did include official complaints as examples of action taken by those accused of harassment, he did not suggest that all who make official complaints are therefore guilty of harassing behaviour. The Committee noted that the programme and the article had not specifically mentioned use of the Freedom of Information Act or expressions of concern and it agreed that it was not suggested that these add up to vilification.

The Committee agreed that it would be fair to conclude, from the comments made by the scientists included in the programme and the article, that some scientists considered some actions which are legal (including lodging formal complaints) to be a form of abuse or intimidation. The Committee agreed that it did not necessarily follow from this that the programme or the accompanying article was saying that all who contact the GMC or employers are acting in a way which is harassing or vexatious. The Committee agreed that Professor Wessely was expressing his point of view and that the audience could make up its own mind on the matter.

The Committee did not agree with the complainant that it was the logical conclusion from what the programme team and the ECU had said that any complaint through official channels constitutes harassment. The Committee agreed that this was not implied in the programme or in the correspondence about the complaint. The Committee agreed that the ECU had acted within its remit and that it had not seen any evidence to suggest that the ECU's reasoning was prejudiced.

The Committee also agreed that as the complaint was not from a first party directly connected with the programme, it was not appropriate to consider the complaint against the Fairness guidelines.

**The Committee therefore decided this appeal did not qualify to proceed for consideration.**