

UK LAWYERS FOR ISRAEL



RESPONSE TO BBC CHARTER REVIEW CONSULTATION

14 Old Square, Lincoln's Inn, London WC2A 3UE

Tel: 020 7831 4445 Fax: 020 7841 5825 DX: LDE 52 Email: info@uklfi.com

Patrons: Lord Carlile CBE QC, Sir Anthony Colman, Lady Cosgrove CBE QC, Baroness Deech DBE QC,
Professor Sir Elihu Lauterpacht CBE QC, Sir Ivan Lawrence QC, Sir Gavin Lightman,
Lord Pannick QC, Professor Richard Susskind OBE, Lord Trimble PC, Rosalind Wright CB QC

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Introduction

1. UK Lawyers for Israel is a voluntary association of lawyers who seek to ensure the proper application of laws and regulation in matters relating to Israel.
2. We are deeply concerned that the BBC's coverage of Israel does not comply with its obligations of accuracy, impartiality and quality. In addition, a number of our members and supporters have experience of using the BBC's complaints procedures and found them to be thoroughly unsatisfactory. This has allowed the continuation of biased and misleading coverage of Israel with very damaging consequences, including the promotion of antisemitism, antisemitic attacks and radicalisation; the undermining of the sense of security of Britain's Jewish population; and the misinforming of the public generally about Israel and the Middle East. We regard this as a serious regulatory failure, which we hope will be addressed by this Review.
3. In brief, we consider that complaints of non-compliance with the BBC's obligations of accuracy and impartiality should be determined by a wholly independent body. In principle, it would make sense to transfer this function from the BBC Trust to OFCOM, which is already responsible for determining similar complaints in relation to other national broadcasters. However, we have also found OFCOM's handling of complaints of inaccuracy and bias in coverage of Israel to be unsatisfactory. A transfer of this function to OFCOM should therefore be accompanied by a substantial reform and strengthening of OFCOM's capabilities for handling such complaints. An alternative possibility would be to establish an independent ombudsman to investigate and determine complaints regarding accuracy and impartiality of BBC content.
4. We are grateful for the opportunity to bring our concerns and proposals to your attention. We will explain them by reference to some of the questions set out in your helpful consultation document. We will be happy to provide further information and to give oral evidence if this will assist.

Q7. How well is the BBC serving its national and international audiences?

5. We consider that the BBC is not serving its national and international audiences well in its coverage of Israel.
6. An overwhelming majority of British Jews regard the BBC's coverage as biased against Israel. A survey of over 4000 British Jews in 2010 found that 79% considered that the BBC's news coverage was biased against Israel, 14% considered that it was generally balanced, 4% did not know and 3% considered that it was biased in favour of Israel:

<http://www.jpr.org.uk/publication?id=1652#.Vg5Nj9iFOWA> (pages 9-10)

This was part of a larger survey on the attitudes of British Jews towards Israel, other aspects of which are set out in the main report:

<http://www.jpr.org.uk/publication?id=94#.Vg91zdiFOWA>

7. The main report showed that the sample was generally representative of British Jews, but with a degree of over-representation of the politically more liberal. The figures relating to the BBC were not corrected for this and thus are likely to understate the proportion of Britain's Jews who consider that the BBC's coverage is biased against Israel.
8. Apart from this, the survey was relatively large (4081); the 95% confidence limits for the 79% that considered the BBC's news coverage as biased against Israel would be under $\pm 1.3\%$.
9. This is a remarkable finding, particularly given the diversity of Britain's Jews and their outlooks. It is also corroborated by other evidence. The All-Party Parliamentary Inquiry into Antisemitism, addressing "the causes and consequences of the highest-ever recorded number of anti-Semitic incidents during that period [July/August 2014]", reported in February 2015:

"there was an overwhelming consensus amongst those that submitted evidence or gave personal testimony at the regional meetings we held, that the media, and in particular the BBC, had a role to play in whipping up anger through emotive content in the news and analysis that was broadcast."

<http://www.antisemitism.org.uk/wp-content/themes/PCAA/images/Report-of-the-All-Party-Parliamentary-Inquiry-into%20Antisemitism-1.pdf>
10. Our members have spoken at or attended a number of meetings organised by Jewish communities around the UK on the subject of the BBC's coverage of Israel. While the audiences were self-selecting, those who asked questions or made comments were evidently intelligent, well-informed, middle-class people. It is clear from these meetings that there is enormous concern regarding bias and inaccuracy in the BBC's coverage of Israel, and frustration that there appears to be no practical way of remedying it.
11. It also seems to us that the position has deteriorated rather than improved since the 2010 survey: we suspect that today an even higher majority of Britain's Jews would regard the BBC's coverage as biased against Israel.

12. We are aware that a report on the impartiality of the BBC's coverage of the Israeli-Palestinian conflict was commissioned and published by the BBC's Board of Governors in 2005-6. As well as being some time ago now, this report was fundamentally flawed, inter alia in that the coverage was monitored primarily after the inquiry was announced, and hence in a period when reporters and editors were taking particular care to comply with the criteria by which the coverage would be assessed. Rather than demonstrating the BBC's impartiality, this report illustrates the deficiency of regulation by a body that is not properly independent.
13. There is a clear correlation between the frequency of antisemitic attacks and heightened media coverage of Israel, as can be seen by comparing the data on antisemitic incidents recorded by the Community Security Trust <https://cst.org.uk/publications/cst-publications> and data on media coverage. In the light of this data it is evident that inaccuracy and bias against Israel in the BBC's coverage is liable to promote antisemitism and accompanying radicalisation.
14. This is borne out by examples of misleading media coverage that have been prominent in public displays of hostility towards Israel and Jews. These have included, for example, the allegation that the overwhelming majority of Palestinians killed by Israeli fire in the "Protective Edge" operation in Gaza in 2014 were civilians, with the implication that Israel was deliberately or recklessly murdering Palestinian civilians – women and children.
15. The BBC repeatedly emphasised this allegation as if it were an undisputed fact. In reality, it was based on figures provided by the Palestinian Health Ministry in Gaza controlled by Hamas and was not true. The proportion of terrorists was probably closer to half of the total fatalities from Israeli fire. As well as being inaccurate, it was biased of the BBC not to make it clear that the ratio of civilian to terrorist casualties was disputed.
16. It was also biased and misleading to repeat this allegation so often and so prominently when the BBC never, or hardly ever, reported on the ratio of terrorist to civilian casualties in other conflicts. In fact, by comparison with many anti-terrorist operations carried out by other armies, the ratio of civilians to terrorists killed in the "Protective Edge" operation was relatively low. The lack of comparison and context created a wholly misleading impression.
17. The BBC has also failed to make any adequate correction subsequently, even though it has become even clearer since the operation that the information originally broadcast with such prominence was misleading.

18. This is just one example of misleading coverage by the BBC in this area; we could mention many others, and will be happy to provide further evidence if this will assist.
19. Reporting such as this naturally promotes hatred of Israel, Jews and others who have friendly or commercial relations with them. This in turns leads to radicalisation and potentially terrorism. As the Prime Minister said in his speech at Ninestiles School on 20 July 2015,

“you don’t have to believe in barbaric violence to be drawn to the ideology. No-one becomes a terrorist from a standing start. It starts with a process of radicalisation. When you look in detail at the backgrounds of those convicted of terrorist offences, it is clear that many of them were first influenced by what some would call non-violent extremists. It may begin with hearing about the so-called Jewish conspiracy and then develop into hostility to the West and fundamental liberal values, before finally becoming a cultish attachment to death. Put another way, the extremist world view is the gateway, and violence is the ultimate destination.”

<https://www.gov.uk/government/speeches/extremism-pm-speech>

20. In short, biased and misleading coverage of Israel by the BBC is liable to undermine the security not only of Britain’s Jews but of British society generally. This makes it all the more important to provide truly independent, objective and fit-for-purpose systems to address concerns regarding the BBC’s coverage in this area.

Q9. Is the BBC’s content sufficiently high quality and distinctive from that of other broadcasters? What reforms could improve it?

21. In our view the BBC’s coverage of Israel is not of sufficiently high quality and is not distinctive from that of other British broadcasters, whose coverage of Israel is also lacking in accuracy and impartiality. We repeat our response to Q7 above.
22. In our view, a satisfactory system for handling complaints would make a valuable contribution to improving the quality of the BBC’s content in this and other areas. The current BBC Charter states in its Art. 52(3):

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

23. Unfortunately, as discussed further below, the existing system for handling complaints of bias or inaccuracy is not fit-for-purpose. A fundamental change is required to enable it to make a meaningful contribution to securing the BBC's compliance with its obligations of accuracy and impartiality.

Q.15 How should the current model of governance and regulation for the BBC be reformed?

24. In our view, the handling of editorial complaints by the BBC is deeply unsatisfactory and should be transferred to a wholly independent body.
25. In principle, it would make sense to transfer this function to OFCOM, so that it can be combined with the handling of complaints in respect of other national broadcasters. However, OFCOM's handling of complaints of anti-Israel bias has also been unsatisfactory. Therefore any transfer of this function from the BBC to OFCOM should be accompanied by a substantial reform and strengthening of OFCOM's capabilities in this area. Cost savings from the elimination of duplication and of the BBC's bureaucratic complaints procedures might enable funding to be directed to a strengthened capability for handling complaints at OFCOM.
26. An alternative would be to establish an independent ombudsman to investigate and determine complaints regarding accuracy and impartiality in the BBC's content.
27. Complaints to the BBC are currently referred to a separate department within the BBC Executive. Its staff seem to regard their role as to provide reasons for rejecting complaints; rather than considering whether they are justified, what correction should be made, and what steps might be taken to improve coverage in the future.
28. The procedure is set up and operated so as to defeat all but the most determined and organised complainant regardless of the merits of the complaint. A first response is issued in a standard form which generally does not address the complaint (stage 1a). The complainant is required to write again to progress the complaint (stage 1b). In our experience, complaints are almost invariably rejected at stage 1. According to a response to a freedom of information request, the BBC does not keep a record of how many complaints are accepted at stage 1, although it does record the total number of complaints, which amounted to 1,195,514 in the five year period to the end of financial year 2012/2013.
29. The complainant can appeal to the Editorial Complaints Unit (ECU) of the BBC Executive (stage 2). In our experience the staff of this unit likewise seem to regard

their role as to provide reasons for rejecting complaints if at all possible, rather than genuinely considering whether they are justified. According to a response to a freedom of information request, a total of 166 complaints were upheld at this stage in the five-year period mentioned above, representing 0.014% of complaints originally received.

30. The complainant can then appeal to the Editorial Standards Committee (ESC) of the BBC Trust. However, the staff of the Editorial Standards Committee regularly refuse to admit appeals regarding inaccuracy or bias against Israel on the ground that they do not raise an issue of substance. The complainant can ask the ESC to review the refusal, but again we find that complaints of anti-Israel bias or inaccuracy are generally rejected as inadmissible. Even if an appeal is considered, it is rarely upheld. In the five-year period mentioned above, a total of 30 complaints were upheld by the ESC, representing 0.0025% of complaints originally received.
31. If, as we believe, the proportion of complaints accepted at stage 1 is negligible, only 0.016% of complaints are accepted in the process overall. We do not believe that this results from near-perfection in the BBC's services. We consider that it reflects an almost total failure of the BBC complaints handling system.
32. Every trick in the book is used to prevent complaints succeeding. Examples include:
 - (a) At each stage strict time limits are imposed on complainants. If the complainant does not respond or appeal in time, the complaint cannot be further pursued. By contrast, time limits are not imposed on the BBC, and because of the BBC's delays and the multiplicity of steps in the procedure, the process often takes years. During this period the biased and misleading coverage goes uncorrected and lodges in the minds of those who saw, heard or read it.
 - (b) If the response of the journalist or editor to a complaint is so inadequate that even the complaints handling staff do not feel able to use it, they ask the journalist or editor to try again. No such effort is expended towards assisting complainants.
 - (c) The BBC is regularly permitted to rely on further material on which the complainant is not afforded any or any fair opportunity to comment.
 - (d) The ESC generally instructs an adviser (for example, a former BBC journalist) to prepare a report about a complaint. When an adviser suggested that a complaint of anti-Israel bias and inaccuracy should be upheld she was

asked to rewrite her report. She has probably not been invited to advise the ESC again.

- (e) A complainant was informed by a person who had been interviewed for the programme in issue:

“I can tell you that her piece was an absolute hatchet job. She cut all of my solid answers out. The only way to do justice here is to get access to the original raw footage and review it. This is what I would try and go after.”

The footage disappeared after the complainant drew this to the attention of the BBC and asked to see the footage. The ESC made no criticism of the BBC Executive for the disappearance of the evidence.

- (f) The ECU referred to various documents when rejecting a complaint. On appealing to the ESC, the complainant asked for copies of these documents. This was refused on the grounds that the ESC would not rely on them. But when the ESC circulated its draft decision, it did rely on them. The complainant protested. The report was then amended to remove the references to the documents in question, but it was clear that the ESC had in fact relied on them.
- (g) A complainant who has made a number of successful complaints of anti-Israel bias and/or inaccuracy has been barred from having further complaints considered on the ground that he has made too many unsuccessful complaints – even though his success rate is far higher than the average mentioned above.

33. A further problem is that the BBC Trust has not satisfactorily carried out its obligation, now in clause 44(5) of the Agreement between the BBC and the Secretary of State (“the BBC Agreement”), to draw up and review a code giving guidance as to the rules to be observed by the BBC in doing “all it can to ensure that controversial subjects are treated with due accuracy and impartiality in all relevant output”, as required by clause 44(1) of the Agreement. The BBC Trust have treated this code as constituted by chapters 3 and 4 of the BBC’s Editorial Guidelines. However, our understanding is that these were drafted by the BBC Executive, and they do not constitute a coherent code. Rather, they consist of a diffuse mixture of conflicting guidelines, from which one or more can generally be selected to support any view. They do not provide satisfactory criteria for an objective assessment of accuracy and impartiality.

34. Even if a complaint is upheld, no effective remedial action is taken to undo the effects of the original misleading or biased coverage. The finding on the complaint is reported on a page of the BBC's website which viewers do not normally access. Sometimes objectionable content on the BBC's website is changed very slightly, but since this is often years after the original news, the article in question is not promoted on a main page and is hardly viewed.
35. We regret to say that in our experience the members and staff of the ESC have not dealt honestly and fairly with complaints in this area. We have some sympathy for the members of the BBC Trust: consisting of 11 part time members and one slightly over half-time chairman, they are hopelessly underpowered to supervise a massive corporation, with numerous senior executives on more than ten times the salaries of the ordinary trustees. However, in relation to complaints, the trustees have made a difficult job well-nigh impossible by failing to exercise any discipline over the BBC Executive.
36. Had the trustees made it clear that unsatisfactory investigation of complaints by the Executive would not be tolerated, they might have been able to carry out adequate supervision in this area, addressing what might have become only occasional failings in complaints handling on the part of the Executive. As it is, they have allowed and encouraged thorough obfuscation of complaints by the Executive, not to mention the disappearance of inconvenient evidence, with the result that the handling of complaints by the Executive is out of all control.
37. In our view, the existing system for handling editorial complaints regarding content broadcast by the BBC is not fit-for-purpose. A robust and fully independent mechanism is required. Combining this function with that for other national broadcasters at OFCOM would have obvious advantages in terms of cost-effectiveness and accumulating relevant expertise and information. However, we are concerned that OFCOM's handling of complaints of anti-Israel bias has also been unsatisfactory.
38. We note, for example, the rejection by OFCOM of complaints regarding a biased and tendentious documentary entitled "Inside Britain's Israel Lobby". This programme played to a classic antisemitic trope of Jewish conspiracy that has led to genocide in the past and is still widely believed in parts of the British population today. OFCOM was oblivious to the impact of the programme in this context, failed to recognise clearly biased content, and bizarrely supposed that there could be no objection to biased and misleading statements regarding Israel in the programme on the ground that it was about Britain's Israel lobby.
39. In these circumstances we would support the transfer of complaints handling from the BBC to OFCOM, provided that this is accompanied by a significant reform

and strengthening of OFCOM's capability in this area. This strengthened capability should include the engagement of independent adjudicators who are not encumbered by a mind-set developed in their previous experience. Cost savings from the elimination of duplication and of the BBC's bureaucratic procedures could facilitate the funding of this strengthened capability.

40. An alternative possibility would be to provide a separate ombudsman for the BBC. If this alternative is adopted, the ombudsman should have full power to investigate and determine complaints regarding accuracy and impartiality; not just procedural issues or limited reviews of the BBC's handling of complaints. The ombudsman must also have power to recommend remedial action, with the possibility of an enforcement mechanism if the recommendation is not carried out properly or at all. Again, it is essential that the ombudsman and his staff should be wholly independent and approach the issues without preconceptions. The ombudsman should be a robust individual with the determination to examine issues of accuracy and impartiality with the required rigour.
41. Coherent guidelines on the implementation of the BBC's obligations of accuracy and impartiality should be drawn up, maintained and published by the independent regulator. These should cover both accuracy and impartiality within the subject-matter covered and impartiality in the choice of subject-matter, which is equally important.
42. Finally, we would emphasise that we are not suggesting prior restraint on broadcasting content or penalisation of inadvertent non-compliance with the requirements of accuracy and impartiality. We understand that journalists working under pressure of time will make mistakes. Upholding complaints in respect of inadvertent mistakes should not be seen as a recrimination, but as an opportunity for correction and improvement.

Q.17 How could the BBC improve engagement with licence fee payers and the industry, including through research, transparency and complaints handling

43. As we have explained in answer to Q.7, the BBC has lost the confidence of the overwhelming majority of British Jews regarding its coverage of Israel. The lack of a satisfactory system of handling complaints, as discussed in answer to Q.15 above, has contributed to this loss of confidence, both through the frustration felt by those who have tried to complain and by the continuation of the bias and inaccuracy that would have been curbed if complaints had been properly addressed.
44. We would propose that the BBC be expected to address complaints properly in its first response. If the complainant is not satisfied with this response, he should be

entitled to refer the complaint to a robust, independent body, whether this be a strengthened OFCOM or some other regulator such as a BBC ombudsman.



Jonathan D. C. Turner
Chair, UK Lawyers for Israel

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