

# Complaints and Appeals Board Findings Appeals to the Trust considered by the Complaints and Appeals Board

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# Remit of the Complaints and Appeals Board

The Complaints and Appeals Board (CAB) is responsible for hearing appeals on complaints made under all complaints procedures, as set out in the BBC Complaints Framework, other than editorial complaints and complaints about the Digital Switchover Help Scheme. Its responsibilities are set out in its Terms of Reference at:

[http://www.bbc.co.uk/bbctrust/assets/files/pdf/about/how\\_we\\_operate/committees/2011/cab\\_tor.pdf](http://www.bbc.co.uk/bbctrust/assets/files/pdf/about/how_we_operate/committees/2011/cab_tor.pdf)

All Trustees are members of the Board; Richard Ayre is Chairman. The duties of the CAB are conducted by Panels of the Board consisting of at least two Trustees, including the Chairman of the CAB and other Trustees as required. The Board is advised and supported by the Trust Unit.

The Board considers appeals against the decisions and actions of the BBC Executive in relation to general complaints, fair trading, TV licensing and other matters including commissioning and procurement but not including editorial complaints and Digital Switchover Help Scheme complaints, as defined by the BBC Complaints Framework and Procedures. The Board will also consider complaints about the BBC Trust.

The Board will consider appeals concerning complaints which fall within the BBC's complaints process as set out in the BBC Complaints Framework and which:

- raise a matter of substance – in particular, that there is sufficient evidence to suggest that the complaint has a reasonable prospect of success and there is a case for the BBC Executive to answer
- have already been considered by the BBC Executive under stages 1 and 2 of the BBC's general complaints procedures and which are now being referred to the Trust on appeal as the final arbiter on complaints (unless it is a complaint about the BBC Trust)

The Board will aim to reach a final decision on an appeal within the timescale specified in the relevant Procedures. An extended timescale will apply during holiday periods when the Board does not sit. The complainant and BBC management will be informed of the outcome after the minutes of the relevant meeting have been agreed.

The findings for all appeals considered by the Board are reported in this bulletin, Complaints and Appeals Board: Appeals to the Trust.

As set out in the Complaints Framework and Procedures, the Board can decline to consider an appeal which in its opinion:

- is vexatious or trivial;
- does not raise a matter of substance;
- is a complaint where the complainant has recourse to the law;
- is a complaint where the complainant has recourse to other external authorities, for example the Information Commissioner or the Office of Fair Trading; and
- is a Human Resources complaint as defined by the Complaints Framework and Procedures.

The Board also reserves the right to decline to hear an appeal whilst it relates to matters which are the subject of or likely to be the subject of, or relevant to, legal proceedings. The Board will not generally reconsider any aspects of complaints that have already been adjudicated upon or considered by a Court.

Any appeals that the Board has declined to consider under the above criteria are reported in the bulletin.

The bulletin also includes any remedial action/s directed by the Board.

It is published at [bbc.co.uk/bbctrust](http://bbc.co.uk/bbctrust) or is available from:

The Secretary, Complaints and Appeals Board  
BBC Trust Unit  
180 Great Portland Street  
London W1W 5QZ

# Summary of finding

## Development of iPlayer and its availability on different platforms

The complaint concerned the basis on which iPlayer development was prioritised and new features and upgrades made available to competing devices and platforms. The core allegation was that the BBC had favoured iOS (Apple) over other mobile platforms with greater market share, and was failing to meet its commitments to deliver iPlayer independently across all major platforms. Such conduct could therefore constitute a breach of the on-demand syndication policy.

The Committee concluded that:

- there was no evidence that the BBC had unfairly favoured the iOS platform when making development decisions and allocating resources
- developing for Android brought greater complexity and expense, and that the case put forward by the Executive was persuasive
- where development was prioritised, it was done on an objective basis, taking account of requirements under the on-demand syndication policy

The complaint was not upheld.

For the finding in full see pages 4 to 6.

# Appeal Finding

## Development of iPlayer and its availability on different platforms

### The Complaint

- Stage 1: the complainant contacted BBC audience services on 27 April 2011 alleging that assurances given to the Trust on platform neutrality for iPlayer had not been fulfilled on the Android platform
- Stage 2: Audience Services confirmed it had nothing further to add to the earlier response and offered escalation to the Trust on 28 August 2012. The Trust received an appeal on 7 October

### Appeal to the Trust

This appeal arose out of prolonged correspondence between the BBC and the complainant concerning the basis on which development of the iPlayer was prioritised and new features made available to competing mobile devices and platforms. The core allegation was that the BBC Executive (hereafter, the Executive) had favoured iOS over other platforms and was therefore not:

- Upholding its commitment to deliver iPlayer across all major platforms or;
- Meeting an obligation to provide content to all licence fee payers regardless of operating platform or device

The complainant alleged that development was prioritised for iOS, despite the fact that Android is one of the most common operating systems in the UK and worldwide. The Executive was therefore in breach of a commitment to platform neutrality following the 2007 on-demand PVT. The Trust decided that while the appellant did not make specific reference to the 2012 on-demand syndication policy (hereafter, the Policy) in his complaint, it was the appropriate reference for considering the appeal.)

The complainant raised a number of specific issues, in particular that:

- Basic areas of iPlayer functionality, such as download, are not available on the Android platform
- A recent announcement that downloads would be available for smartphone and tablet users related only to Apple devices
- The promised upgrade to Android was confined to replacing Adobe Flash (officially obsolete)
- Technical issues, such as DRM were blamed, despite the existence of DRM-enabled services, such as Spotify and Netflix, on Android

The appeal was dealt with by reference to the Policy, which sets out a commitment to platform neutrality and provides third parties, the Executive and licence fee payers with clarity as to:

- The terms on which BBC on-demand public service content and associated data are syndicated

- The process by which the Trust will assess new arrangements

While the complainant did not make specific reference to the Policy in his complaint, it was the appropriate reference for considering this appeal.

## **Governance**

Syndication is the process by which the BBC makes available its content to third party platforms and devices. Activity in this area is governed by provisions of the Charter and Agreement as well as by the Policy.

The Charter provides that one of the objects of the BBC is to help deliver to the public the benefit of emerging communication technologies and services. In support of this purpose, as set out in its remit, the BBC has a duty to 'make engaging digital content and services available on a wide range of digital platforms and devices'. Clause 12 of the Agreement places specific obligations upon the BBC in this respect: it must do all that is 'reasonably practicable to ensure that audiences are able to access its services in a range of convenient and cost-effective ways'.

The Policy considers that there is generally public value in syndication and encourages the Executive to make content available as widely as possible. Paragraphs 11-17 and 19 are particularly relevant to this appeal and can be found at:

[http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/our\\_work/on\\_demand/2012/on\\_demand\\_syndication.pdf](http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/our_work/on_demand/2012/on_demand_syndication.pdf)

## **The Panel's Decision**

The Panel considered the complaint against the relevant standards, as set out in both the Charter and the Policy. In reaching its decision it took full account of all the available evidence, including (but not limited to) a paper provided by a senior strategy adviser at the Trust Unit and the submission from the Executive.

The grounds of the appeal fell under the following principal heading:

The way in which iPlayer development is prioritised favours the iOS platform and is in breach of the requirements of the Policy

In order to determine this ground CAB was asked to consider the following questions:

- a. Did the Executive favour the iOS platform when making development decisions and allocating resources and;
- b. In making these decisions did the Executive comply with the requirements under the Policy, in particular, the need to:
  - I. Enable convenient access to the full range of recently transmitted BBC linear content, [regardless of] platform or device (clause 12)
  - II. Ensure that audiences have a high-quality experience (clause 16(f))
  - III. Demonstrate value for money for licence fee payers (clause 17)
  - IV. Operate on FRND terms (clause 19)

In considering the complaint, CAB took account of the external environment, noting that both Android and Apple are established mobile platforms with significant reach. They

acknowledged that while Android has a larger global base, there is closer competition between the platforms at a regional level. They also discussed the differences between the two platforms and in particular the fact that overall engagement levels on Android devices are lower than on iOS.

In terms of the Executive's approach, CAB noted that iPlayer launched on both iOS and Android simultaneously in February 2011 and that expenditure to-date has been more or less evenly distributed between the two platforms. It noted that the Executive planned to treat the iOS and Android platforms equally and launch downloads simultaneously, but that owing to various complicating factors had reached a decision in early 2012 to prioritise iOS.

CAB considered whether the decision had been made on an objective basis. It noted that developing for Android was different from developing for iOS; while iOS provides a relatively homogenous environment, Android is fragmented with almost 4000 devices from around 600 manufacturers. It discussed the ways in which patterns of usage are changing and agreed that the engagement gap between iOS and Android was likely to close over time. But it also accepted that with fewer form factors,<sup>1</sup> a larger install base and a demographic that was more likely, both in percentage terms and absolute numbers, to use BBC on-demand services, it was reasonable, on the basis of both reach and value for money, to direct resources to the iOS platform at that time.

It agreed that developing for Android brought greater complexity and expense and that the case put forward by the Executive was persuasive. It noted that there were clear reasons why, at that time, iOS was prioritised and agreed that this approach was entirely consistent with the Policy.

The Panel found no evidence that the Executive had unfairly favoured the IOS platform when making development decisions and allocating resources. Where development was prioritised, it was done on an objective basis, taking account of the requirements under the Policy and in particular the need to maximise reach, secure value for money, and operate on FRND terms.

The Panel's decision therefore was not to uphold the complaint.

In reaching its decision, the Panel noted that while the BBC must do all that is reasonably practicable to ensure that viewers can access its on-demand content in a range of convenient and cost-effective ways, this did not necessarily mean that it would always be expected to launch new features on different platforms simultaneously.

It was mindful however of the need to ensure the Executive discharged its commitment to deliver downloads on the Android platform in 2013. It acknowledged efforts by the Executive to bring about parity (via an improved playback experience, download functionality and support for a variety of screen sizes) but underlined the need to do so in a timely manner.

CAB will therefore ask the Strategic Approvals Committee of the Trust to monitor progress in this area as part of its oversight of the regular syndication reports it receives from the Executive.

### **Finding: not upheld**

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<sup>1</sup> The general look, size or shape of a mobile device



# Rejected Appeals

Appeals rejected by the CAB as being out of remit or because the complaints had not raised a matter of substance and there was no reasonable prospect of success.

## **BBC coverage of rugby matches**

The complainant appealed to the Complaints and Appeals Board following the decision of the BBC Trust's Senior Editorial Strategy Adviser that the complainant's appeal did not qualify to proceed for consideration by the CAB.

### **The complaint**

The complainant contacted the BBC to complain that he frequently missed parts of live rugby games because the coverage was showing replays of previous events while the live game continued. The BBC's responses said that while they recognise that missing any element of a game may be frustrating, replays are an essential part of sporting coverage across the broadcasting media, and that the approach is the same in each sport.

### **Appeal to the Trust**

The complainant escalated his complaint to the BBC Trust, saying that he was not satisfied with the response received at Stage 2. The complainant felt that as the BBC obtained the rights to show games in real time, it was the responsibility of the BBC to show rugby matches in their entirety. He considered it was unacceptable to show replays or use multiple camera shots in such a way that the viewer was distracted from the game or denied key sections of live action during a game with no opportunity to view the sections which had been missed.

### **Decision of the Senior Editorial Strategy Adviser**

The relevant correspondence was reviewed by the Trust Unit and the Senior Editorial Strategy Adviser decided that the complainant's appeal did not have a reasonable prospect of success.

The Royal Charter and the accompanying Agreement between the Secretary of State and the BBC draw a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General.

"The direction of the BBC's editorial and creative output" is specifically defined in the Charter (paragraph 38, (1) (b)) as a duty that is the responsibility of the Executive Board, and one in which the Trust does not get involved unless, for example, it relates to a breach of the BBC's editorial standards."

Decisions about the manner in which replays were shown, and whether the use of multiple cameras, close-up shots or other televisual techniques were to be deployed fell within the category of editorial and creative output and were the responsibility of the BBC Executive.

While the Senior Editorial Strategy Adviser noted the strength of the complainant's feelings, she considered his appeal had no realistic prospect and that it was not appropriate for it to be put before Trustees for their consideration.

### **The Panel's decision**

The Panel was given the complainant's appeal to the Trust, the reply from the Senior Editorial Strategy Adviser.

The Panel noted that the complainant was unhappy that some action could be missed by the use of replays. However, the Panel agreed that decisions on the presentation and editing of sports coverage clearly fell within the direction of the editorial and creative output of the BBC which is specifically defined in the Charter (paragraph 38(1)(b)) as a duty of the Executive Board, and is one in which the Trust does not get involved. The Panel agreed that the decision was therefore outside the remit of the Trust.

For this reason, the Panel concluded that the appeal did not have a reasonable prospect of success.

**The Panel therefore agreed that the appeal did not qualify to proceed for consideration.**

## **Today, BBC Radio 4, 27 September 2012**

The complainant appealed to the Complaints and Appeals Board following the decision of the BBC Trust's Senior Editorial Strategy Adviser that the complainant's appeal did not qualify to proceed for consideration by the CAB.

### **The complaint**

The complainant contacted the BBC to complain that an interview with an MP about a published review into safeguarding children in Rochdale focussed on questions about the role of local agencies and did not sufficiently probe the MP about the political and cultural climate within which the police, social workers and other agencies worked. The BBC replied to say that as the publication being discussed was specifically about the failings of various agencies and not the shortcomings of politicians, that is what the interview focussed on.

### **Appeal to the Trust**

The complainant escalated his complaint to the BBC Trust, as he was not satisfied with the response received at Stage 2 which he felt had not addressed his initial complaint. The complainant reiterated his view that the interviewer should have addressed the political and cultural environment in which abuse took place, rather than the agencies referred to in the publication being discussed.

### **Decision of the Senior Editorial Strategy Adviser**

The relevant correspondence was reviewed by the Trust Unit and the Senior Editorial Strategy Adviser decided that the complainant's appeal did not have a reasonable prospect of success for the following reasons:

The Royal Charter and the accompanying Agreement between the Secretary of State and the BBC draw a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General.

"The direction of the BBC's editorial and creative output" is specifically defined in the Charter (paragraph 38, (1) (b)) as a duty that is the responsibility of the Executive Board, and one in which the Trust does not get involved unless, for example, it relates to a breach of the BBC's editorial standards.

Decisions about the way in which news items are covered, which guests should be invited on to a programme and what questions they should be asked all fall within the category of editorial and creative output; they are therefore the responsibility of the BBC Executive.

The Senior Editorial Strategy Adviser noted that the Head of Accountability and Editorial Compliance, BBC News, stated in her letter to the complainant of 27 December:

*"Editors are well aware that not all in their audiences will always agree with a programme's decisions; editorial judgments are made on the basis of experience and knowledge. In this case, when a major report was to be published with a specific remit, it was not editorially necessary to stray away from the main issue.....Later that day and in the ensuing days and weeks there were other opportunities to look at the role of politicians and government."*

The BBC Editorial Guidelines also stated that programme-makers had the freedom to produce content about any subject, at any point on the spectrum of debate, as long as

there are good editorial reasons for doing so. The Senior Editorial Strategy Adviser therefore determined that there was no reasonable prospect of success for the complainant's appeal and it would not be appropriate for it to proceed to the Trust for consideration.

### **The Panel's decision**

The Panel was given the complainant's appeal to the Trust, the reply from the Senior Editorial Strategy Adviser.

The Panel noted that the complainant was unhappy with the line of questioning in the interview. However, the Panel agreed that editorial decisions with regard to contributors to programmes and the questions asked of them clearly fell within the direction of the editorial and creative output of the BBC which is specifically defined in the Charter (paragraph 38(1)(b)) as a duty of the Executive Board, and is one in which the Trust does not get involved. The Panel agreed that the line of questioning featured in the programme was therefore outside the remit of the Trust.

For this reason, the Panel concluded that the appeal did not have a reasonable prospect of success.

**The Panel therefore agreed that the appeal did not qualify to proceed for consideration.**

## **Scheduling of *Sunday Half Hour*, BBC Radio 2**

The complainant appealed to the Complaints and Appeals Board following the decision of the BBC Trust's Senior Editorial Strategy Adviser that the complainant's appeal did not qualify to proceed for consideration by the CAB.

### **The complaint**

The complainant contacted the BBC to complain about the decision to move Sunday Half Hour from its evening slot to one in the morning.

The BBC responded to say that over the past decade the number of people listening to the programme had declined and that the BBC had decided to refresh its Sunday evening music offer. The BBC explained that they hoped the new slot would reach a greater number of listeners and that there was a range of other Christian programming available across the BBC's output.

### **Appeal to the Trust**

The complainant escalated her complaint to the BBC Trust. She said that the change in scheduling had every appearance of side-lining the programme with the ultimate aim of ending it altogether. She also considered that specific points which she and others had made had not been answered by the BBC.

### **Decision of the Senior Editorial Strategy Adviser**

The relevant correspondence was reviewed by the Trust Unit.

The Senior Editorial Strategy Adviser considered that the complainant's appeal did not have a reasonable prospect of success. While she fully understood that a change of scheduling of this nature, particularly for a programme which had been in place and enjoyed for a considerable length of time, could be very upsetting, she noted that under the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC a distinction was drawn between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General.

"The direction of the BBC's editorial and creative output" was specifically defined in the Charter (paragraph 38, (1) (b)) as a duty that was the responsibility of the Executive Board, and one in which the Trust did not get involved unless, for example, it related to a breach of the Service Licence.

Radio 2's Service Licence was reissued by the BBC Trust in November 2012. A link to the licence followed:

[http://www.bbc.co.uk/bbctrust/our\\_work/services/radio/service\\_licences/bbc\\_radio\\_2.htm](http://www.bbc.co.uk/bbctrust/our_work/services/radio/service_licences/bbc_radio_2.htm)  
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In terms of religious output, it stated:

The remit of Radio 2 is to be a distinctive mixed music and speech service, targeted at a broad audience, appealing to all age groups over 35. It should offer entertaining popular music programmes and speech-based content including news, current affairs, documentaries, religion, arts, comedy, readings and social action output.

... The schedule should also include accurate, impartial and independent news and current affairs, arts programmes, social action output and religious broadcasting

reflecting different faiths and beliefs and marking key events in the religious calendar.

... Radio 2 should: broad range of faiths

The Senior Editorial Strategy Adviser considered there was no evidence that Radio 2's Service Licence had been breached by the Executive's decision to reschedule Sunday Half Hour. Therefore, she considered the decision was part of the editorial and creative process that was the responsibility of the BBC Executive.

On the point that it was disingenuous of the BBC to emphasise its continuing commitment to Christian programming while moving this particular programme, the Senior Editorial Strategy Adviser noted the response from the Controller of Radio 2 of 10 January which stated that it was:

"...a good time to move 'Sunday Half Hour' alongside our other weekly faith programme 'Good Morning Sunday'. The move will enable us to expand the airtime to an hour and broadcast it at a time when there are both more people listening and an expectation to hear faith-related output."

The Senior Editorial Strategy Adviser also noted the information provided by BBC Audience Services about the audience figures for the new transmission time:

"We believe that The Sunday Hour will reach a greater number of listeners in its new - and longer - slot. 521,000 listeners currently tune in to Radio 2 every week, between 6-7am. Sunday Half Hour, on the other hand, reaches only 246,000 listeners in its 8.30pm slot - half the number that were tuning in ten years ago."

The Senior Editorial Strategy Adviser noted that the Complaints Framework allowed complaints about the same issue to be consolidated. The Framework stated that if the Trust received a number of complaints about the same issue, it could:

- Compile a summary of the range of issues identified
- Consider them together across the full range of issues identified
- Send the same response to everyone

The Senior Editorial Strategy Adviser noted that the complainant was concerned that not all her points had been answered. She noted that the complainant had been provided with a reply which was consolidated – that is, that the same reply was sent to a number of complainants. The Senior Editorial Strategy Adviser regretted that the use of a consolidated reply had caused the complainant concern. The consolidated procedure had been agreed by Trustees. It was intended to allow more efficient use of Licence Fee payers' money so that Audience Services delivered value for money and resources were not diverted towards answering correspondence which could more properly be directed towards programme making. In such cases not every point made could be answered.

The Senior Editorial Strategy Adviser noted the questions raised by the complainant indicating that she felt the change had been made with undue haste, without proper consultation or research and with insufficient regard to the needs of old, sick and housebound listeners (who were unlikely to have access to the iPlayer). The Senior Editorial Strategy Adviser also noted her comment that the new format was much inferior to the old one. However, she considered that these were all matters that related to the creative and editorial output of the BBC and to operational matters and were therefore areas that the Trust would not become involved in.

She considered that the BBC had responded reasonably in explaining why it was moving the programme and had also drawn the complainant's attention to other Christian religious output which was transmitted later in the day which she and other listeners might enjoy.

While the Senior Editorial Strategy Adviser regretted the dismay felt by the complainant and acknowledged her view that the removal of the programme from the Sunday evening Radio 2 schedule represented a significant loss for many listeners, she considered that the decision was not one the BBC Trust would intervene in and it was therefore not appropriate to place the appeal before the Trustees.

### **The Panel's decision**

The Panel was given the complainant's appeal to the Trust, the reply from the Senior Editorial Strategy Adviser and also the complainant's previous correspondence with the BBC.

The Panel noted that the complainant was unhappy with the decision to reschedule the programme. The Panel understood the concerns of loyal listeners when a programme moved to a different part of the schedule – in this case to the early morning when not all audience members would be able to listen. However, the Panel agreed that decisions on scheduling clearly fell within the direction of the editorial and creative output of the BBC which is specifically defined in the Charter (paragraph 38(1)(b)) as a duty of the Executive Board, and is one in which the Trust does not get involved. The Panel was mindful of the Service Licence requirement that Radio 2 should broadcast at least 170 hours of religious output each year. The Panel noted that the Service Licence did not specify when in the schedule this output should be broadcast. Noting that the schedule change in question would result in the programme being extended to a full hour, the Panel was satisfied that there was no issue raised in respect of a breach of the conditions of the Service Licence. The Trust agreed that the decision was therefore outside the remit of the Trust.

For this reason, the Panel concluded that the appeal did not have a reasonable prospect of success.

**The Panel therefore agreed that the appeal did not qualify to proceed for consideration.**

## **BBC One South West & Complaint Handling**

The complainant appealed the decision at stage 1b of the BBC's complaints process that the BBC would not engage in any further correspondence on the same issue.

### **The complaint**

The original complaint concerned the decision by programme-makers on BBC One South West's Spotlight that they did not wish to cover the story he had suggested about the dispute he and his wife had had with their GP and local NHS.

In the complainant's exchanges with the BBC, he stated that his MP supported his complaint against the NHS and the complainant felt it was a matter of public concern which should have been featured by BBC South West. He said he had been trying to get his story aired for a number of years and had not received a satisfactory reply. He considered that previous responses from the BBC had been short and dismissive and had experienced delays waiting for responses.

BBC Complaints had taken up the matter with the Editor of Spotlight and, on 4 January 2012, reported his response to the complainant. The letter stated that: "...after careful consideration [the Editor, Spotlight] did not think the dispute between yourself and the doctor met the criteria for a BBC 'Spotlight' news item. [The Editor, Spotlight] is sorry this is disappointing news for you, but 'Spotlight' has limited air time and they have to make many difficult decisions about which stories they include in their bulletins."

The complainant was not satisfied with that response. He considered he had seen "similar issues handled by Breakfast and Spotlight and yet for some reason the BBC has decided to ignore what has happened to me and my wife". He also complained about the delays he experienced in receiving responses to his complaints from BBC staff.

The complainant appealed to the Trust after BBC Audience Services notified him on 6 February 2013 that they could not engage in any further correspondence as they had nothing further to say. The complainant appealed against this decision.

### **Decision of the Senior Editorial Strategy Adviser**

The relevant correspondence was reviewed by the Trust Unit and the Senior Editorial Strategy Adviser decided that the complainant's appeal did not have a reasonable prospect of success for the following reasons:

The Royal Charter and the accompanying Agreement between the Secretary of State and the BBC draw a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General.

"The direction of the BBC's editorial and creative output" is specifically defined in the Charter (paragraph 38, (1) (b) as a duty that is the responsibility of the Executive Board, and one in which the Trust does not get involved unless, for example, it relates to a breach of the BBC's editorial standards.

Decisions about which stories to feature in news programmes fall within the category of editorial and creative output and are the responsibility of the BBC Executive.

In this case the Editor of Spotlight had explained that after careful consideration he did not think the dispute between the complainant and his wife and their GP and local NHS met the criteria for a BBC Spotlight news item.



As this related to the editorial and creative output of the BBC the Senior Editorial Strategy Adviser considered it would not be appropriate to put the appeal before Trustees. It had no reasonable prospect of success.

### **Complaints handling**

The Senior Editorial Strategy Adviser noted the points made by the complainant in correspondence stretching back to December 2009. She noted that the first response from BBC Audience Services, of 16 December 2009, addressed the issues raised. It stated:

"I was sorry to learn of your disappointment that the programme did not take up your kind offer of the story of your three year ordeal with your wife's health and the problems you faced.

"Choosing the stories to include in our news bulletins; the order in which they appear and the length of time devoted to them is a subjective matter and one which we know not every viewer and listener will feel we get right every time.

"...Essentially this is a judgement call rather than an exact science and no matter how carefully such decisions are made, news editors are always aware that some people may disagree with them."

She noted that subsequent responses suggested other BBC outlets which might have been interested in the story but considered that, ultimately, individual programme teams were responsible for deciding what items they would cover. She noted the response from BBC Complaints of 24 March 2010 which stated:

"I note you're disappointed that none of our news and consumer programmes appear to be interested in a potential story you have.... due to the large amount of correspondence received by 'Watchdog' and 'You and Yours' each day, we simply can't guarantee a response from the programmes. Their priority has to be the making of the broadcast you watch or listen to. I'm sorry if this is disappointing news."

The Senior Editorial Strategy Adviser noted that the complainant had several times sought an explanation as to why his story had not been deemed suitable by the different programmes he had approached. She considered that there was no requirement for the BBC to give reasons for its decision not to run a story; the complainant had received an explanation that this was a matter of editorial judgment and the Senior Editorial Strategy Adviser considered that was sufficient explanation.

She noted too that the complainant had received two earlier responses from the BBC, on 2 April 2012 and 11 December 2012, in which BBC Audience Services stated they had nothing further to add to earlier correspondence.

The Senior Editorial Strategy Adviser noted that the correspondence between the BBC and the complainant stretched over several years and included times when there had been delays in replying to the complainant's concerns. She noted that BBC Complaints had apologised for this on 6 February 2013 and was sure that Trustees would wish her to add her apologies on their behalf for the delays the complainant had experienced. She noted that the complainant had expressed, in earlier correspondence, his view that the responses he had received from the BBC had been "short and dismissive." However, she considered that BBC Audience Services had responded to the complaint in a reasonable and courteous manner. While she noted that the responses became shorter after the BBC had advised the complainant that it had nothing further to add, she did not consider the responses were dismissive.

The Senior Editorial Strategy Adviser hoped that the complainant's concerns would be addressed in some measure by the fact that complaints handling is a matter that the Trust is currently keeping under close review. The Complaints Framework was revised last year and there will be a "mystery shopping" exercise looking at how the new framework is working in 2013.

The Senior Editorial Strategy Adviser considered that this element of the appeal too did not stand a realistic prospect of success and should not be put before Trustees.

### **The Panel's decision**

The Panel was given the complainant's appeal to the Trust, the reply from the Senior Editorial Strategy Adviser and also the complainant's previous correspondence with the BBC.

With regard to the original complaint the Panel noted that editorial decisions as to what events or news items to include within programmes clearly fell within the direction of the editorial and creative output of the BBC which is specifically defined in the Charter (paragraph 38(1)(b)) as a duty of the Executive Board, and is one in which the Trust does not get involved. The Panel noted that the decision of whether or not to include the complainant's concerns in any particular programme was therefore outside the remit of the Trust had that matter come to the Trust as an appeal.

The Panel noted that the BBC considered they were unable to add anything further to the points they had made and so had closed the correspondence. The Panel noted that where there had been instances of delay, the Executive had apologised and it agreed that the Executive had responded in a reasonable and courteous manner. The Panel agreed that there was no reasonable prospect of success for the appeal against the ending of the correspondence by the BBC.

**The Panel therefore decided that the appeal did not qualify to proceed for consideration.**

## **Behaviour of the audience during *Strictly Come Dancing*, BBC One, 2 December 2012**

The complainant appealed the decision at stage 1b of the BBC's complaints process that the BBC would not engage in any further correspondence on the same issue.

### **The complaint**

The complainant contacted the BBC to complain that the audience was allowed to scream, whistle and clap during Alfie Boe's performance on *Strictly Come Dancing*, in the same way they had done during Andrea Bocelli's performance the previous month. He described this as off-putting and unnecessary, and he found it hard to believe that singers enjoyed having their performances disrupted in this way. The BBC responded to say that *Strictly Come Dancing* is filmed in a live studio environment and that audience reaction is included as an integral part of the programme. The BBC explained that all music acts that appear on *Strictly Come Dancing* are given the option to have professional dancers perform with them and that musical performers are delighted to have the professional couples dancing and appreciate the audience reaction they receive.

### **Appeal to the Trust**

The complainant appealed to the Trust after BBC Audience Services notified him that they could not engage in any further correspondence as they had nothing further to say. The complainant appealed against this decision.

### **Decision of the Senior Editorial Strategy Adviser**

The relevant correspondence was reviewed by the Trust Unit.

The Senior Editorial Strategy Adviser decided that the complainant's appeal did not have a reasonable prospect of success. While she fully understood that the audience's behaviour could spoil the enjoyment of those who wanted to concentrate on a singer's performance, she noted that under the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC a distinction was drawn between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General.

"The direction of the BBC's editorial and creative output" was specifically defined in the Charter (paragraph 38, (1) (b)) as a duty that was the responsibility of the Executive Board, and one in which the Trust did not get involved unless, for example, it related to a breach of the Editorial Guidelines.

The Senior Editorial Strategy Adviser considered that the level of noise and audience involvement came within the "editorial and creative" decision-making around the show and it would not, therefore, be appropriate for the Trust to intervene on this point. It followed from that that on the underlying issue, the appeal did not have a reasonable prospect of success and should not therefore be put before Trustees.

On the question of how the BBC had responded to the complaint, the Senior Editorial Strategy Adviser noted that the BBC had explained that *Strictly Come Dancing* was filmed in a live studio environment and the audience was inevitably excited to be there. Its reaction was included as an integral part of the programme. She noted that the BBC felt that the audience as a whole gave a respectful show of its appreciation which did not detract from Mr Boe's performance but acknowledged that the approach taken did not suit everyone.

She noted that the complainant was also unhappy that his final response from the BBC was not addressed personally to him and had not come from a named member of the

Audience Services team. The Senior Editorial Strategy Adviser considered that the BBC had given a full response to the substantive complaint on 11 December. That letter had been addressed personally to the complainant and had come from a named member of staff. It had explained the thinking behind the use of live performers in front of the live audience. The writer had acknowledged that this had not been to everyone's taste and expressed regret for that. The Senior Editorial Strategy Adviser noted that the final letter from the BBC was a standardised letter which explained why the BBC would not enter into further correspondence on the subject. She considered that the letter was used, in accordance with the complaints process, to set out the procedure to close complainants and that it was an efficient use of licence fee resources for that to be a standard response and that it was not necessary to include a name. She concluded that the BBC had acted reasonably in closing down the correspondence and therefore the appeal did not have a reasonable prospect of success on the substantive point and should not, therefore, be put before Trustees.

### **The Panel's decision**

The Panel was given the complainant's appeal to the Trust, the reply from the Senior Editorial Strategy Adviser and also the complainant's previous correspondence with the BBC.

With regard to the original complaint the Panel noted that editorial decisions about whether or not to include audience reaction clearly fell within the direction of the editorial and creative output of the BBC which is specifically defined in the Charter (paragraph 38(1)(b)) as a duty of the Executive Board, and is one in which the Trust does not get involved. The Panel noted that the decision of whether or not to include the complainant's concerns in any particular programme was therefore outside the remit of the Trust had that matter come to the Trust as an appeal.

The Panel noted that the BBC considered they were unable to add anything further to the points they had made and so had closed the correspondence. The Panel agreed that the BBC had responded appropriately to the complaint and acted reasonably in closing down the correspondence. The Panel agreed that there was no reasonable prospect of success for the appeal against the ending of the correspondence by the BBC.

**The Panel therefore decided that the appeal did not qualify to proceed for consideration.**

## ***Antiques Road Trip staffing levels***

The complainant appealed the decision at stage 1b of the BBC's complaints process that the BBC would not engage in any further correspondence on the same issue.

### **The complaint**

The complainant contacted the BBC to raise his concerns at the number of production staff involved in making Antiques Road Trip. The complainant asked for job descriptions of all staff involved. BBC replied to say that while they could not provide a job description for every member of the production crew it did require appropriate staffing to ensure it is produced effectively, within budget, on schedule and in line with the BBC's editorial guidelines.

### **Appeal to the Trust**

The complainant appealed to the BBC Trust as he was not satisfied with the response received at Stage 1b from BBC Audience Services who stated that they could not engage in any further correspondence about his complaint as they did not consider the points he raised suggested a possible breach of standards and there was nothing further they could add.

The complainant felt that other programmes, such as Pointless, also had excessive numbers of people working on them. He suggested that a review should be urgently undertaken to look at the staffing levels on programmes.

### **Decision of the Senior Editorial Strategy Adviser**

The relevant correspondence was reviewed by the Trust Unit and the Senior Editorial Strategy Adviser decided that the complainant's appeal did not have a reasonable prospect of success.

The Senior Editorial Strategy Adviser noted that the complainant had first contacted the BBC on 18 January 2013. After receiving a holding response on 26 January, a substantive response was sent on 8 February. This stated that:

"Your comments were brought to the attention of the BBC Executive Producer who explained that whilst we cannot give you a job description for each member of the production crew, for a programme like this, it requires a lot of planning and organisation to ensure it is produced effectively, within budget, on schedule and in line with the BBC's Editorial Guidelines. The production is very compact with several teams out on the road at any one time."

The Senior Editorial Strategy Adviser considered this was a reasonable response that explained the demands on the production team. The Senior Editorial Strategy Adviser noted that the complainant had sought job descriptions for those involved in the programme's production and had not received them. She considered that Audience Services did not need to respond to each element of a complaint and that the Complaints Framework stated that complaints would be assessed in terms of their proportionality, in this instance, where the complainant was not raising an issue that was a potential breach of the Guidelines, it was reasonable for BBC Audience Services not to provide the information.

### **Operational matter**

The Royal Charter and the accompanying Agreement between the Secretary of State and the BBC draw a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General.

The “operational management of the BBC” is specifically defined in the Charter (paragraph 38, (1) as a duty that is the responsibility of the Executive Board, and one in which the Trust does not usually get involved.

The staffing levels on a programme are operational decisions which are the responsibility of the BBC Executive and, as such, are not issues which the Trust would generally get involved in.

The Senior Editorial Strategy Adviser therefore determined that there was no reasonable prospect of success for the complainant’s appeal because she considered the BBC had provided a reasonable explanation to the central complaint and was justified, in the interests of efficient use of the licence fee, to not continue correspondence. As the issue that was the subject of the initial complaint was not one Trustees would generally be involved in, she considered it was not appropriate for it to proceed to the Trust for consideration on the underlying point.

The Senior Editorial Strategy Adviser noted that the appeal included a similar complaint about a different programme. The Complaints Framework made clear that all complaints must be addressed by the BBC in the first instance, therefore it would not be appropriate for Trustees to address this point – notwithstanding that it too was an operational matter and therefore not one they would be involved with.

### **The Panel’s decision**

The Panel was given the complainant’s appeal to the Trust, the reply from the Senior Editorial Strategy Adviser and also the complainant’s previous correspondence with the BBC.

The Panel noted that operational decisions about the number of production staff involved in any particular programme fell within the operational management of BBC which is specifically defined in the Charter (paragraph 38(1)) as a duty of the Executive Board, and is one in which the Trust does not get involved. The Panel noted that decisions about the number of production staff involved in the making of any particular programme was therefore outside the remit of the Trust had that matter come to the Trust as an appeal.

The Panel noted that the BBC considered they were unable to add anything further to the points they had made and so had closed the correspondence. The Panel agreed that the BBC had responded reasonably in closing down the correspondence and that it was proportionate for them not to provide job descriptions for all staff involved. The Panel agreed that there was no reasonable prospect of success for the appeal against the ending of the correspondence by the BBC.

**The Panel therefore decided that the appeal did not qualify to proceed for consideration.**