

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

April 2015 issued July 2015

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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; Bill Matthews 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

# 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.

## Digital Switchover Help Scheme, complaint handling, and comments by Information Policy and Compliance Advisor

### Background

Since Digital Switchover the complainant had been in frequent contact with the Digital Switchover Help Scheme ("DSHS"), the BBC Executive and the DSHS Appeals Adjudicator (who is also the Head of Editorial Standards at the Trust Unit) and the Trust. He had complained about ongoing technical problems with his TV,<sup>1</sup> the competence of DSHS engineers, the conduct of a BBC receptionist and the handling of his calls and complaints.

In an interim decision in November 2012, the Trust's Head of Editorial Standards, acting as DSHS Appeals Adjudicator, awarded the complainant £250 compensation (to be paid by the DSHS) for unsuccessful engineer visits, the mishandling of a telephone call and other complaint-handling issues. In a final decision in July 2013, she awarded the complainant a further £100 (also to be paid by the DSHS) for the delay in advising him how to ameliorate the technical problems, which (she decided) largely related to the complainant's TV as opposed to the set-top box ("STB") that the DSHS had provided. (Separately to the Adjudicator's decision the DSHS Complaints and Appeals Manager also later made a payment of £200 to the complainant in what the Complaints and Appeals Manager said was a "final settlement".)

Separately, the Head of Editorial Standards decided that the complaint about the conduct of the BBC receptionist did not qualify to proceed for consideration. The complainant asked the BBC Trust's Complaints and Appeals Board to review her decision. In September 2013, a Panel of the Board decided that this was a matter for the Executive, and that the appeal had no reasonable prospect of success. The complainant then made a Freedom of Information Act request ("FOI request") for the names of the BBC receptionist and her manager. In February 2014, the Advisor, Information Policy and Compliance, BBC Legal ("the IPC Advisor") informed him that the BBC did not hold that information. The complainant appealed to the Information Commissioner's Office ("ICO"), who decided that the BBC probably did not hold the information.

### The complaint

The complainant continued to have technical problems. He contacted Ofcom, who referred him to the Radio and Television Investigation Service ("RTIS"). This is run by the BBC, and (unbeknown to the complainant) first contact is with BBC Audience Services. Audience Services were unaware of the complainant's previous contacts with the BBC, and were also unaware of the complainant's physical condition and associated communication needs (which made it difficult for him to carry out instructions and to re-tune his STB).

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<sup>1</sup> This was an analogue, cathode-ray-tube model.

Following a telephone call and subsequent correspondence with Audience Services, which the complainant found unsatisfactory, the complainant contacted the Trust's Head of Editorial Standards, who referred him to the BBC's Head of Spectrum and Investigations. The Head of Spectrum and Investigations reviewed the handling of the complaint, and concluded that Audience Services had responded correctly and with the best intent, and would not have been expected to be aware that the complainant's condition prevented him from carrying out instructions. The Head of Spectrum and Investigations noted that the majority of technical problems were as set out in a previous engineer's report, which gave advice and offered solutions or explanations in respect of most problems.

The Head of Spectrum and Investigations and the Senior Spectrum Engineer subsequently visited the complainant's home. At that meeting, it was agreed that certain technical problems were caused by a fault with the complainant's TV.

## Appeal

The complainant appealed to the Trust. He made the following points.

### (1) Digital Switchover Help Scheme

- The technical problems were continuing: some were worsening, and new ones had arisen.
- Following the DSHS Appeals Adjudicator's decision of 5 July 2013 and subsequent correspondence with the DSHS Complaints and Appeals Manager, the complainant had reluctantly accepted £200 in what the Complaints and Appeals Manager claimed was "final settlement".
- The Complaints and Appeals Manager had acknowledged that problems remained with the equipment supplied under the DSHS, and that this was not of the required standard.
- The complainant requested a further £400 for the purchase of a "proper" STB at a cost of £700, which he could not otherwise afford.
- The total of £350 that the complainant had previously been awarded was compensation for poor treatment and associated "sufferings". The Appeals Adjudicator's suggestion to the complainant's MP that the complainant put this sum towards the purchase of a new television was unfair, as it conflated two separate issues. The complainant noted that, in her decision of 5 July 2013, the Appeals Adjudicator had stated, "My decision on your appeal, and the compensation I have decided to award you, is separate to this offer by [the Complaints and Appeals Manager] (and in no way dependent on your acceptance or refusal of that offer)".
  - The Appeals Adjudicator's suggestion amounted to tacit acceptance that the STB supplied under the DSHS was not up to standard.
  - The total amount awarded in compensation was considerably less than the cost of a new television.
- The Head of Spectrum and Investigations' report did not reflect everything that was said and agreed during his visit to the complainant's address:
  - Using a modern LED TV to test the STB's interaction with the complainant's cathode ray tube ("CRT") TV was "completely erroneous". The complainant's CRT TV should be made to work as it did before the digital switchover.
  - A lip-sync problem was not confined to ITV4, which was the only channel that was tested.
  - There had been insufficient time to check all the electronic programme guide data.
  - The TV should have been checked throughout the day, as its functioning depended on signal strength, which was apt to fluctuate.
  - The problem with the reminder function had not been rectified.

- The STB provided by the Head of Spectrum and Investigations had issues with set-up and functionality, and was not user-friendly.
- The Senior Spectrum Engineer had caused the complainant's TV to default to the analogue input whenever it was switched on.
- The sound quality of modern TVs did not meet the complainant's hearing needs, and he could not afford to purchase additional external speakers.
- The model of replacement TV suggested by the Head of Spectrum and Investigations was too small, its sound quality was poor, and it had a short life-span.
- The Senior Spectrum Engineer's view differed from that of the engineer on whose report the Appeals Adjudicator's decision was based.

## (2) Complaint handling

### *Cost of telephone calls*

- The complainant's telephone call of 16 April 2014 to the RTIS had lasted 31 minutes. The call-handler seemed unprepared, and (after taking a long time to ascertain the nature of the problem) had referred to her manager and then taken the complainant through a form.
- Believing he had called a Premium Rate number, the complainant variously estimated the cost of the call as 11 pence per minute (i.e. £3.41), and "approximately £4.40". Audience Services had refused to refund the cost of the call.
- The Head of Spectrum and Investigations had asked the complainant to phone him to arrange a home visit. Therefore, on 10 December 2014, the complainant called Audience Services, whose number was the only one that appeared on the Head of Spectrum and Investigations' letter. The call handler was unable to put the complainant through. Believing he had called a Premium Rate number, the complainant requested a refund of the cost of the call.

### *Delays in responding*

- Audience Services had taken six weeks to respond to the complainant's telephone call of 16 April 2014, and two-and-a-half months to respond to his letter of 27 June 2014.
- Audience Services had apologised for the latter delay, and had attributed it to a breakdown in communication.
- Audience Services had applied the complaints procedure strictly to the complainant, but was "casual and indifferent" with regard to its own procedural non-compliance.

### *Complainant's communication needs*

- Audience Services had made no attempt to ascertain the complainant's physical condition or associated communication needs, had given him instructions which he found difficult to carry out, and had used jargon which he could not understand.

### *Escalation of complaint*

- The complainant could not be expected to have prior knowledge of the complaints procedure, and two complaint handlers had failed to inform him what to do if he disagreed with Audience Services' decision.

## (3) Comments by IPC Advisor

- In his letter of 4 August 2014 to the ICO's Senior Case Officer, the IPC Advisor had given his reasons for non-disclosure of the names of the manager and receptionist (which, in any event, the BBC did not hold):

"... For example, I believe that disclosure could lead to these individuals being subject to harassment. This is based on the tone of the complainant's letters to the BBC, the language he has used to describe the receptionist, and what I consider to be a disproportionate level of effort which has been invested by [the complainant] in trying to find out the name of someone who was allegedly rude to him almost two and a half years ago." (complainant's emphases)

- This was an "irresponsible slur and accusation" by someone who had not witnessed the incident involving the receptionist.
- In considering the incident to have been of a "relatively low level nature", the Advisor had revealed his own standards in matters of etiquette and underestimated the complainant's.
- The Advisor was thus unable to appreciate that the complainant had been "verbally abused by a rogue woman".
- The Advisor had insulted the complainant's dignity, and had abused his power and authority.

### **The Trust Unit's decision**

For the following reasons, the Head of Editorial Standards decided that the complainant's appeal did not have a reasonable prospect of success and that it was not appropriate, proportionate or cost effective to take this further.

#### (1) Digital Switchover Help Scheme

The Head of Editorial Standards noted that her decision of 5 July 2013 in her capacity as DSHS Appeals Adjudicator was final, and that there were no further avenues of appeal.<sup>2</sup> The Head of Editorial Standards had nothing to add to that decision.

The Head of Editorial Standards noted that, in his report, the Head of Spectrum and Investigations had concluded:

"... we discussed our findings with [the complainant] and believe we all were in agreement that the white lines and image curvature was being caused by a fault with his television."

The Head of Editorial Standards considered that this conclusion accorded with her decision of 5 July 2013 that:

"... you were provided with a functioning box which was correctly installed and that there is sufficient signal from your indoor aerial. The issues you have been experiencing largely relate to interference from your television."

The Head of Editorial Standards considered that Trustees would be likely to take the view that, in providing the complainant with a home visit from the Head of Spectrum and Investigations and the Senior Spectrum Engineer, the BBC had done its utmost to give the complainant the best possible technical advice. The Head of Editorial Standards therefore concluded that this point of appeal did not raise "a matter of substance", as in her view there was no reasonable prospect that it would be upheld.

Furthermore, as she believed that the BBC had already done its best to help the complainant, the Head of Editorial Standards decided that it would not be appropriate,

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<sup>2</sup> See paragraph 3.5 of the DSHS complaints and appeals procedures:

[http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory\\_framework/protocols/2012/dshs.pdf](http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2012/dshs.pdf)



proportionate or cost-effective for Trustees to consider this point of appeal.

## (2) Complaint handling

### *Cost of telephone calls*

The Head of Editorial Standards noted that, according to Ofcom:

“Calls to 03 numbers cost no more than a national rate call to an 01 or 02 number and must count towards any inclusive minutes in the same way as 01 and 02 calls. These rules apply to calls from any type of line including mobile, BT, other fixed line or payphone.”<sup>3</sup>

The Head of Editorial Standards concluded that calls to RTIS’s number (03709 016 789) and BBC Audience Services’ number (03700 100 222) were charged at the national rate.

The Head of Editorial Standards noted that, in any event, the BBC was not responsible for complainants’ communication costs, including the cost of telephone calls. The Trust would not therefore be asking the BBC to reimburse the complainant for his calls. The Head of Editorial Standards also noted that financial recompense is not available from the Trust.

The Head of Editorial Standards therefore decided that this point of appeal did not have a reasonable prospect of success.

### *Delays in responding*

With regard to the complainant’s telephone call of 16 April 2014, the Head of Editorial Standards noted that Audience Services had sent the complainant a “holding” response on 24 April 2014 (i.e., four working days later).<sup>4</sup> This response stated:

“We aim to post our replies to complaints within 10 working days of receiving them (around 2 weeks) and do so for most of them but cannot for all. ... This is to let you know that we have referred your complaint to the relevant staff but that it may take longer than 10 working days before we can post our reply.”

The Head of Editorial Standards noted that Audience Services’ substantive response of 20 May 2014 stated:

“Firstly we’d like to apologise for the delay in our reply. We appreciate that our correspondents expect a quick response and we’re sorry that you’ve had to wait on this occasion.”

With regard to the complainant’s letter of 27 June 2014, the Head of Editorial Standards noted that Audience Services had sent the complainant a “holding” response on 14 July 2014 (i.e., 11 working days later). This was expressed in terms similar to Audience Services’ “holding” response of 24 April 2014.

The Head of Editorial Standards noted that Audience Services’ substantive response of 11 September 2014 stated:

“Please let me apologise for the delay in responding to your letter. With your case we required input from a number of different departments but unfortunately a breakdown in communication led to your case remaining unanswered for longer

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<sup>3</sup> See: <http://consumers.ofcom.org.uk/phone/numbering/what-are-03-numbers/>

<sup>4</sup> NB the Easter Bank Holidays had fallen on 18 and 21 April 2014.

than it should have. We're sorry for the delay and for any frustration or annoyance caused."

The Head of Editorial Standards noted that, where Audience Services notified a complainant that there would be a delay in its response, explained the reasons for that delay and apologised, Trustees normally considered the matter resolved (unless the delay was so serious that further action might be necessary). The Head of Editorial Standards did not believe that this matter raised such serious issues that further action would be required. She therefore decided that this point of appeal did not have a reasonable prospect of success.

#### *Complainant's needs*

The Head of Editorial Standards noted that the complainant had health issues which made manipulation of a remote control especially challenging (thereby making it difficult for him to carry out call handlers' instructions). The Head of Editorial Standards also noted that the complainant had not understood some of the terminology used by the call handler on 16 April 2014.

The Head of Editorial Standards noted that, after setting out a detailed précis of the complainant's call of 16 April 2014, Audience Services' response of 11 September 2014 stated:

"We appreciate that your situation may make it difficult for you to get online easily and so I am happy to call you and go through the diagnostic process that [the call handler] attempted to complete on your last call ... [W]e believe the way in which your call was handled was done to the best of [the call handler's] ability and she did as much as she could to help you find a resolution to your reception problems. We appreciate that our reply could have been more considerate of your situation ..."

The Head of Editorial Standards considered that Trustees would regard this as an appropriate acknowledgement of fault on Audience Services' part, and as a reasonable offer to remedy that fault, although she noted that the offer of a further call would not be acceptable to the complainant, given his difficulties.

The Head of Editorial Standards noted that, in such circumstances, Trustees normally considered the matter resolved (unless there were features to the breach which suggest it was so serious that further action might be necessary). The Head of Editorial Standards did not believe that this matter raised such serious issues that further action would be required. She therefore decided that this point of appeal did not have a reasonable prospect of success.

#### *Escalation of complaint*

The Head of Editorial Standards noted that Audience Services' response of 11 September 2014 stated:

"Moving on to your interactions with the Digital Switchover Help Scheme – I am aware that the Help Scheme provided you with a final settlement of £200 in December 2013 to aid the resolution of your reception issues and resolve your complaint. As such they consider the matter settled."

The Head of Editorial Standards considered that Trustees would be likely to decide that – given that the complainant's substantive complaint had previously been adjudicated – Audience Services were under no obligation to treat the DSHS complaint as if it were still

extant.

With regard to the complainant's complaint-handling complaint, the Head of Editorial Standards regretted that the complainant had not been told where to escalate his complaint but given he had since received a reply from the Head of Spectrum and Investigations did not consider it proportionate to take this issue, which was relatively trivial, on appeal.

The Head of Editorial Standards therefore decided that this point of appeal did not have a reasonable prospect of success.

### (3) Comments by Adviser, BBC Information Policy and Compliance

The Head of Editorial Standards had discussed this point of complaint with the Head of Legal, BBC Workplace and Information Rights, who confirmed that the Executive had finished responding to the complainant on this point.

The Head of Editorial Standards noted that the Executive regretted that the complainant was offended, but that it considered that the Advisor was exercising his professional judgement in a formal response to the regulator.

The Head of Editorial Standards took the view that Trustees would be likely to regard the Advisor's comments as a reasonable expression of his professional judgement. It did not raise a significant issue of general importance. She therefore decided that this point of appeal did not have a reasonable prospect of success.

### **Request for review by Trustees**

On 25 March 2015, the complainant requested that the Trustees review the Head of Editorial Standards' decision not to proceed with his appeal. He made the following points:

- He had made two complaints, sent under separate cover, about two separate issues: namely the STB and the IPC Advisor's comments. He did not understand why they had been merged.
- The Trust had treated these complaints as "follow-up issues" rather than fresh complaints.
- The Trust had previously stated that the DSHS had ended, but was now considering his complaint-handling complaint as an appeal under the DSHS complaints and appeals procedures. This was confusing.
- The complainant had expected the Head of Editorial Standards, who had previously referred this case to the Head of Spectrum and Investigations, to investigate.
- Although it sprang from a previous complaint about the BBC receptionist, the complaint about the IPC Advisor's comments was a new complaint about a different member of BBC staff. The Head of Editorial Standards' decision that it was "not worth the money and time to be put in front of the Trustees" was unjustified.
- The Trust Unit's policy was not to acknowledge receipt of communications, because it provided a substantive response in 10 working days. In the event, the Trust Unit had not responded to his appeal until well beyond the 10-working day response-time.
- The Trust would only consider points that had been raised at Stage 2 of the complaints process. These complaints had not yet reached that stage.
- The Head of Editorial Standards had not considered his complaint-handling complaints, nor had she addressed his complaint that the Senior Spectrum Engineer had caused the complainant's TV to default to the analogue input.

- The Head of Editorial Standards' silence on the IPC Advisor's "abhorrent" comments implied that she endorsed his distasteful use of language.
- The Head of Editorial Standards had sent a *pro forma* response, changing a few points to fit the case, but not addressing many of the points the complainant had raised.
- By merging two completely separate issues, the Head of Editorial Standards had applied the vague title of "appeal" to both, in order to use the same rule to deal with them swiftly.
- The latest technical problem was with the STB's malfunctioning handset. The complainant speculated that this might be associated with the Senior Spectrum Engineer's having reverted the settings to analogue.

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

The Panel was provided with the Head of Editorial Standards' decision not to proceed with the appeals, the complainant's request to review that decision, the complainant's appeal correspondence with the Trust Unit, and the complainant's correspondence with Audience Services (regarding complaints handling) and the Head of Spectrum and Investigations (regarding the RTIS and STB complaints) and the response from BBC Information Policy and Compliance to the Information Commissioner's Office.

The Panel noted that the complainant had mentioned typographical errors in a communication from the Trust Unit. The Head of Editorial Standards, Trust Unit apologised to the Panel and through the Panel, wished to apologise to the complainant for the errors but also for failing to acknowledge his two letters of 3 January 2015 until her decision was sent on the admissibility of his complaints and appeals. The two letters had been dealt with directly by the Head of Editorial Standards because of her knowledge of the case and, in error, no acknowledgement had been sent because this was a change to the normal handling by the Trust Unit of an incoming complaint. This was not the fault of the Complaints Adviser.

#### **(1) Digital Switchover Help Scheme**

The Panel noted that paragraph 3.5 of the DSHS complaints and appeals procedures states:

"On completion of Stage 2, you have the right of final appeal to the BBC Trust Appeals Adjudicator who considers the complaint as final arbiter."<sup>5</sup>

The Panel noted that, in her decision not to proceed with this appeal, the Head of Editorial Standards had stated that her decision of 5 July 2013 in her capacity as DSHS Appeals Adjudicator was final and there were no further avenues of appeal, and that she had nothing to add to that decision.

The Panel concluded that it could not consider any appeal against a final decision made by the Head of Editorial Standards in her capacity as DSHS Appeals Adjudicator.

The Panel therefore decided that this point of complaint did not qualify for consideration.

#### **(2) Complaint handling**

##### *Cost of telephone calls*

The Panel noted that:

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<sup>5</sup> See paragraph 3.5 of the DSHS complaints and appeals procedures:

[http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory\\_framework/protocols/2012/dshs.pdf](http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2012/dshs.pdf)

- telephone calls to RTIS and Audience Services were charged at the national rate, not a premium rate
- the BBC was not responsible for complainants' communication costs
- the Trust had no power to compensate complainants.

The Panel therefore decided that this point of complaint had no reasonable prospect of success and did not qualify for consideration.

#### *Delays in responding*

The Panel noted that Audience Services had sent the complainant "holding" responses within four and 11 working days respectively, and that both its substantive responses had contained apologies for the delay in replying.

The Panel noted that, where the Executive had notified a complainant that its response would be delayed, had explained the reasons for that delay and had apologised, the Panel usually considered the matter resolved, unless the delay was so serious that further action might be necessary.

The Panel noted that Audience Services' substantive responses were, respectively, sent within 21 and 53 working days of the complainant's communications. Complex issues are normally responded to within 30 working days. The Panel agreed the second delay was regrettable but in light of the apologies for both delays did not consider that it was appropriate or proportionate to take this on appeal.

The Panel therefore decided that this point of complaint had no reasonable prospect of success and did not qualify for consideration.

#### *Complainant's needs*

The Panel noted the complainant's health issues, their impact on his capacity to manually re-tune the STB and carry out instructions, and the complainant's inability to understand some of the terminology used by Audience Services' call handler on 16 April 2014.

The Panel considered that, in the circumstances, Audience Services could not reasonably have been expected to infer the complainant's particular needs. The Panel felt that it was reasonable to expect the complainant to inform Audience Services of any relevant needs that he might have, and to explain that he had not understood what the call handler was saying.

The Panel noted that Audience Services had stated that the call handler had helped the complainant to the best of her ability. The Panel also noted that, in their letter of 11 September 2014, Audience Services had expressly acknowledged that their previous response could have been more considerate of the complainant's situation. The Panel also noted that Audience Services had offered to call the complainant, in order to complete the diagnostic process. The Panel noted that this offer was impracticable for this complainant who had specific needs, which made the manipulation of a remote whilst taking a phone call very difficult, but considered that it was nevertheless well-intentioned.

The Panel noted that, where the Executive had acknowledged its fault, apologised and, in this case, made an offer of amends, the Panel normally considered the matter resolved (unless there were features to the breach which suggest it was so serious that further action might be necessary). The Panel did not believe that this matter raised such serious issues that further action would be required.

The Panel therefore decided that this point of complaint had no reasonable prospect of success and did not qualify for consideration.

### *Escalation of complaint*

The Panel noted that Audience Services' response of 11 September 2014 stated that, in December 2013, the DSHS had paid the complainant the sum of £200 in final settlement, and that the DSHS considered the matter closed.

The Panel noted the complainant's argument that he had reluctantly accepted the £200 in what the Complaints and Appeals Manager claimed was "final settlement". The Panel noted the complainant said he was reluctant and that he had not intended to agree this was final settlement but noted that he had accepted the £200.

The Panel concluded that the complainant's substantive complaint, having received a final adjudication was closed. The Panel therefore concluded that no issue of escalation of the complainant's substantive complaint had arisen.

With regard to the complainant's complaint-handling complaint, the Panel noted that the complainant should have been told to whom he could escalate his complaint, but was not. The Panel considered this regrettable. However, as the complainant had in the event been referred to, and had received a written response from the Head of Spectrum and Investigations the Panel considered this matter resolved.

The Panel therefore decided that this point of complaint had no reasonable prospect of success and did not qualify for consideration.

### (3) Comments by Advisor, BBC Information Policy and Compliance

Having read the letter from the BBC Information Policy and Compliance to the Information Commissioner's Office concerning the complainant's FOI request, the Panel agreed with the Head of Editorial Standards that the IPC Advisor was exercising his professional judgement in a formal response to the ICO. The Panel also agreed that the Advisor's comments were a reasonable expression of his professional judgement, and that this point of complaint did not raise a significant issue of general importance.

The Panel therefore decided that this point of complaint had no reasonable prospect of success and did not qualify for consideration.

### (4) Handling of appeal by the Trust Unit

The Panel noted the complainant's arguments that his technical complaint and his complaint about the IPC Advisor's comments should have been treated as "fresh" complaints.

The Panel noted that the BBC had responded to his technical complaint and that that the Head of Legal, BBC Workplace and Information Rights, had confirmed that the Executive had finished responding to the complainant. Both matters had therefore correctly been considered by the Trust Unit as appeals against BBC decisions. Both had been assessed and responded to according to the published procedure which had been sent to the complainant. In both cases the Head of Editorial Standards had concluded they had no reasonable prospect of success as she was entitled to do.

There was no onus on the Trust Unit to initiate an investigation if it concluded a complaint on appeal stood no reasonable prospect of success. The Head of Editorial Standards had



concluded that the complaint which concerned his technical problems was closed because it was another attempt to raise issues with his STB which she had previously concluded was not, in fact, faulty. The Panel therefore agreed that it was appropriate for the Head of Editorial Standards not to have considered the technical complaint further.

The Panel noted the complainant's arguments that his technical complaint and his complaint about the IPC Advisor's comments should have been considered separately. In the Panel's view, the complaint about the IPC Advisor's comments had arisen in the context of the complainant's long-standing grievances against the DSHS and the BBC. The Panel concluded that, in the circumstances, it was appropriate and cost-effective for the Head of Editorial Standards to have addressed both complaints within the same response. The Panel noted that, in her response, the Head of Editorial Standards had treated the technical complaint and the complaint about the IPC Advisor's comments as discrete matters, and had not conflated the two.

With regard to the technical complaint, the complaint-handling complaint, and the complaint about the IPC Advisor's comments, the Panel noted that the Head of Editorial Standards had issued her decision on 2 March 2015, which was 40 working days after the complainant's letters of 3 January 2015. This was within the time-limit prescribed by paragraph 5.11 of the BBC's General Complaints and Appeals Procedures.<sup>6</sup>

With regard to the complainant's argument that the Trust Unit was subject to a 10-working-day response target, the Panel noted that, in her letter to the complainant of 10 November 2014, the Head of Editorial Standards stated:

"... we aim to send replies to letters within ten working days of receipt. They are not separately acknowledged."

The Panel noted that the Head of Editorial Standards had treated his letter of November as correspondence and his January letter as an appeal. The Unit aims to reply to letters in ten working days but to decide on the admissibility of an appeal (a more complex issue) in 40 working days. The Panel regretted any confusion that had arisen as a result but the actual time frame to reply to an appeal was as set out in the general complaints and appeals procedure which he had been sent and this had been met.

#### (5) Other issue

The Panel noted the complainant's argument that the Head of Editorial Standards' decision had not addressed his allegation that the Senior Spectrum Engineer had caused his TV to default to the analogue input.

The Panel noted that the complainant was able to handle this issue by pressing another button. He could also ask for advice on how to ensure his TV defaulted to digital input. The Panel concluded that it would not be appropriate, proportionate or cost-effective to consider this issue on appeal.

The Panel therefore decided that this point of complaint had no reasonable prospect of success and did not qualify for consideration.

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<sup>6</sup> Para 5.11 of the BBC's General Complaints and Appeals Procedures states: "The Trust Unit will write to you within 40 working days of the receipt of your appeal if its conclusion is that your appeal does not qualify, and explain the reasons for that ..." See: [http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory\\_framework/protocols/2014/complaints\\_fr\\_wor\\_k\\_general.pdf](http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2014/complaints_fr_wor_k_general.pdf)

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



## Call handling process for managing broadcast reception enquiries

The complainant requested that the Complaints and Appeals Board (CAB) review the decision of the BBC Trust's Senior Complaints Adviser that the complainant's appeal did not qualify to proceed for consideration on appeal.

### Complaint

The complainant contacted the BBC on 5 August 2014 to complain about transmitter problems in his area. He said that a "popping" sound on 31 July 2014 had interfered with the transmission of the Elgar Symphony Number 2 Prom in his area. He submitted three complaints on the same issue which were allocated separate case numbers.

BBC Audience Services responded on 7 and 13 August 2014, giving details for the complainant to submit further required details of the problem online at <http://www.radioandtvhelp.co.uk/interference>.

They said he could, alternatively, ring the BBC's telephone helpline.

The complainant remained dissatisfied and renewed his complaint. He considered the complaints procedure was inadequate, that he was faced with irrelevant questions, and people on the phone were rude. He said that he wanted to bring the issue of poor reception from his local FM transmitter to the attention of an engineer.

A senior reception analyst sent a detailed response to the complainant on 4 September 2014. In summary, the points made were:

- An apology that the complainant had found the process for reporting a problem with reception unsatisfactory.
- An acknowledgement that, although the editorial complaints page was not the official route to report a technical problem, it was not unusual for audience members to contact the BBC in that way. This was a process under review and in the meantime there was a process in place to handle technical enquiries received via that route. Unfortunately, using the editorial complaints route meant using the editorial complaints webform which did not collect sufficient information for the technical team to investigate the problem.
- A review of the complainant's telephone calls had established that the BBC did request further information from the complainant, as per the normal process. Evidence from the recorded calls suggested that the complainant was expecting to speak directly with an engineer, as had happened on a previous occasion. Although that facility may have been available to the public previously, that was no longer the case. Telephone agents did not have direct access to the transmitter provider, Arqiva, but logged enquiries and passed them through to the BBC Reception Advice team for further investigation, which is what should have happened on this occasion.
- He believed the telephone agents did their best to help, but acknowledged that they may have appeared obstructive to the complainant. He said the complainant's feedback would be used to assist with ongoing training.

- He had checked the fault reported by the complainant which affected the Radio 3 Proms broadcasts on 31 July and 6 August 2014 and had been unable to find evidence of a transmitter fault affecting Tacolneston.

The complainant was not satisfied with this response and made a further complaint on 13 October 2014. He said the phone number given in the response was no help and he was unable to speak to anyone with engineering understanding. He noted that the response said no faults had been logged, but he knew that several years ago when he experienced a problem with the transmitter, there had been technical problems which had not been logged. He believed that the problem he originally experienced needed to be fully explained to him by a transmitter engineer.

Audience Services responded on 4 November 2014 explaining that the BBC had sold off its terrestrial broadcast networks in 1998 and now had a contract with a transmission provider, Arqiva, who provided more monitoring than under the old system. As a consequence of the improved automated monitoring systems, the transmitter sites were no longer physically manned, so it was not possible for the complainant to speak to a transmitter engineer. Regarding the problem experienced by the complainant, the monitoring systems had not detected any problems. Audience Services considered there may have been a problem which corrected itself, or there may have been a problem source local to the immediate area; but as it appeared to have cleared, there was no possibility of checking it at this stage.

The complainant remained dissatisfied and wrote to the Director of BBC Radio, saying that he wanted the problem to be further investigated. He received no response and complained to the Director-General on 21 December. The complaint was passed to the Head of Spectrum and Investigations team, BBC Distribution, who responded on 22 January 2015. He reviewed the correspondence and noted there had been two detailed responses at Stage 2 of the complaints process; he considered the BBC had responded as fully as it could do and did not believe there was a significant issue of general importance that might justify further investigation.

## **Appeal**

The complainant appealed to the BBC Trust on 24 January 2015 requesting a review of his complaint. He felt he should have been given polite, constructive replies but had instead been side-lined with rudeness and had been ignored. He said he wanted to get to the bottom of a small engineering problem but had been fobbed off by people who did not understand the issue.

## **Decision of the Senior Complaints Adviser**

The Senior Complaints Adviser (the Adviser) carefully read the correspondence that had passed between the complainant and the BBC. She decided that the appeal did not have a reasonable prospect of success.

The Adviser acknowledged that the complainant was unhappy that he had been unable to communicate directly with a transmitter engineer. However, she noted that he had received a courteous and very detailed response at Stage 2, in particular from a senior reception analyst who had reported the results of an investigation into the fault reported by the complainant. These had not been able to explain the problem reported by the complainant, but the Adviser noted that in the response from Audience Services of 4 November 2014, it was acknowledged that the problem could have either corrected itself without showing up on the automated monitoring system, or there could have been a problem with a source local to the complainant. Audience Services explained that as the

problem appeared to have cleared, there was no possibility of checking it further. Audience Services had also explained why it was not possible, since the introduction of the Arqiva automated transmitter monitoring systems, for the complainant to speak to an on-site transmitter engineer.

The Adviser noted that the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew 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 (Article 38, (1) (c)) as a duty that is the responsibility of the Executive Board, and one in which the Trust does not usually get involved unless, for example, it raised broader issues such as a breach of a station's Service Licence.

The Adviser considered Trustees would be likely to conclude that decisions about the transmission of BBC output were day to day operational matters which rested with the BBC Executive rather than the Trust. She did not believe that the appeal raised a significant issue of general importance which was the threshold at which the Trust would become involved in considering an operational complaint.

She also believed that Trustees would be of the view that the complainant had received polite, reasoned and reasonable written responses to his concerns and that it was appropriate for the BBC to say it could not investigate the complaint any further. For these reasons she did not believe the appeal had a reasonable prospect of success and she decided that it should not proceed further.

### **Request for review by Trustees**

The complainant asked that Trustees review the decision of the Senior Complaints Adviser that the appeal should not proceed. The complainant reiterated that he felt "stonewalled" by Audience Services, and that staff were rude and did not fully understand the problem.

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

The Panel noted the complainant's appeal to the Trust, the reply from the Senior Complaints Adviser and the request to the Trustees to review the Senior Complaints Adviser's decision.

Trustees appreciated that the complainant had raised these issues because he enjoyed the Proms coverage until the transmission issues affected his ability to listen.

However, the Panel agreed with the Adviser that the complainant's concerns had received a reasoned and reasonable written response at Stage 2 from BBC Audience Services. Trustees noted that they believed the telephone agents did their best to help, but accepted that they may have appeared obstructive to the complainant and that the complainant's feedback would be used to assist with training. Trustees felt this was a reasonable position to take.

The Panel also noted that the matter of production quality is for the Executive alone. As the Royal Charter (article 38, (1) (b) and article 38, (1) (c)) sets out, "the direction of the BBC's editorial and creative output" and its "operational management" are specifically defined as duties of the Executive Board and ones in which the Trust does not get involved.

The Panel therefore concluded that, were the complaint to come to it on appeal, there was no reasonable prospect of it upholding the complaint.

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

## Complaints handling

The complainant asked the Complaints and Appeals Board to review the Trust Unit's decision that the complainant's appeal did not qualify to proceed for consideration.

### Background

The complainant (a former BBC employee) had been in long-standing dispute with the BBC regarding his entitlement to a BBC pension.

Being a BBC employee did not in itself confer membership of the BBC Pension Scheme ("the Scheme"). In order to be eligible for Scheme membership, a BBC employee had to be, or to have been:

1. employed on a "continuing contract";<sup>7</sup> and
2. an "established" staff member.<sup>8</sup>

An enquiry by the Secretary of State found that the complainant was a BBC employee from 1969-1981. According to the complainant, a BBC personnel officer ("the Personnel Officer") had subsequently refused to recognise or implement the Secretary of State's finding, had failed to amend his employment contract to reflect that he was "a member of the BBC in the fullest sense", and had thereby prevented him from becoming an "established" staff member.

In the early 1980s, in unfair dismissal proceedings brought by the complainant against the BBC, an Industrial Tribunal found that the complainant "did not enjoy the full status of being an established staff member".

The Solicitor of the Department for Work and Pensions subsequently confirmed in a letter to the complainant that the Secretary of State and the Industrial Tribunal would have considered different questions (respectively, National Insurance contributions and employment issues) and applied different legislation, and that the latter had no power to overrule the former.

### The complaint

The complainant had been in correspondence with the BBC for a number of years, with regard to his claim to a BBC pension and his complaint about the Personnel Officer's conduct. In this correspondence, the complainant's former and current MPs both interceded on the complainant's behalf.

In response to the BBC Pensions Centre's request for copies of his contract(s) of employment with the BBC, the complainant submitted details of his PAYE payslips, Class 1 National Insurance contributions and staff number. These did not show whether the complainant had been employed on a continuing contract. The complainant argued that, because of the Personnel Officer's wrongful conduct, he was unable to submit a contract that demonstrated his entitlement to Scheme membership.

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<sup>7</sup> A "continuing contract" (also known as a "permanent contract") is an open-ended contract with no specified expiry date. Persons engaged on other types of contract (e.g., short-term, temporary or freelance contracts) were not eligible to join the Scheme.

<sup>8</sup> Staff on a continuing contract who successfully completed a period of probation were offered what was referred to at the relevant time as 'establishment'.

On 8 February 2006, the BBC's then Director-General wrote to the complainant's then MP, setting out the BBC's position, which was that the complainant was not entitled to a pension.

On 17 February 2009, a then BBC Trustee wrote to inform the complainant that the Trust had nothing to add, and that the matter was closed.

On 12 September 2011, the then Director-General informed the complainant's current MP that BBC Human Resources were unable to find any records for the Personnel Officer, and that, without further information, the BBC could not comment. The complainant regarded this statement as a "lie", and he subsequently pursued this as a separate point of complaint. The complainant submitted an extract from what appeared to be a confidential list of BBC pensioners, which he claimed showed that the Personnel Officer had been employed by the BBC.

On 15 November 2011, the then Director-General informed the complainant's current MP that he was unable to provide any further information concerning the Personnel Officer, and that any dispute between the complainant and the Personnel Officer (if it related to the complainant's time at the BBC) would have been during or before the early 1980s, making it extremely difficult to address the matter.

On 26 November 2012, the then Chairman of the BBC Trust wrote to the complainant's current MP. The Chairman stated that the former Director-General's letter of 8 February 2006 had explained the BBC's position, that he considered the matter closed, and that in the absence of new information it was disproportionate to look into it again.

On 8 July 2014, the current Director-General responded to further correspondence from the complainant's current MP. The Director-General explained that he had asked BBC Human Resources to look again at the complainant's case, and that, after careful consideration, the BBC's position remained unchanged. The Director-General enclosed a letter from the HR Business Partner for the region in which the complainant had worked, which explained the BBC's position in detail. The HR Business Partner's letter concluded that, without documentary evidence of the complainant's eligibility, there was nothing to add, and that further correspondence would be counterproductive.

## **Appeal**

The complainant wrote to the Chairman, BBC Trust, on 27 November 2014, setting out his case.

The Trust's Correspondence Coordinator responded on 5 January 2015. She acknowledged that the complainant had been trying to achieve a resolution of his complaint for a long period of time. With regard to the complaint about the Personnel Officer's conduct, the Correspondence Coordinator stated that, under the BBC's Royal Charter, the Trust had no say in day-to-day operational matters such as staff-management and disciplinary issues. The Correspondence Coordinator noted that the Executive regarded the matter as concluded and that (in the absence of documentary evidence of the complainant's pension eligibility) they had nothing to add. The Correspondence Coordinator advised the complainant to submit any documentary evidence of eligibility to the HR Business Partner, or an explanation of why he could not do so.

The complainant wrote to a number of Trustees on 10 February 2015. The key points of his letter were as follows:

- The complainant had proof of the BBC “lying at DG level” to two of his MPs.
- The complainant regarded his complaint as dating from the BBC’s admission “only ... four years ago at DG level” of lying. He therefore believed the Correspondence Coordinator was wrong to refer to his efforts to resolve his complaint as having taken place over “a long period of time”.
- The complainant complained that the Correspondence Coordinator had “seen fit to collectively speak on [Trustees’] behalf” and had closed down his complaint. He believed she had “no right to do so”, especially as it involved the “integrity of the BBC to tell the truth – above all to MPs”.
- The complainant wished to know who was on the Executive Board, and how he could contact it regarding his complaint about staff behaviour.
- The complainant described the request that he provide documentary evidence of his entitlement as “add[ing] hypocrisy to lying”.<sup>9</sup>
- The complainant asked if these matters were of concern to Trustees and, if not, to let him know so he could act accordingly.

### **The Trust Unit’s decision**

The relevant correspondence was reviewed by the Trust Unit. For the following reasons, the Trust Unit’s Head of Editorial Standards decided on 18 February 2015 that the appeal did not have a reasonable prospect of success.

After summarising the key points of the complainant’s letter of 10 February 2015 and the BBC’s responses to the complainant’s case, the Head of Editorial Standards stated that there was nothing in the correspondence to indicate that a Director-General had lied to the complainant’s MP.

Noting that the paperwork showed that the complaint dated back to at least 2006, the Head of Editorial Standards did not consider that the Correspondence Coordinator was in error in stating that the complainant had been trying to reach a resolution of his complaint for a long period of time.

In the Head of Editorial Standards’ view, the Correspondence Coordinator had correctly stated that this was a matter for the Executive Board and not the Trust. The Head of Editorial Standards considered that Article 38(1)(c) of the BBC’s Royal Charter made it clear that the operational management of the BBC (which included pensions) was the responsibility of the Executive Board.

The Head of Editorial Standards noted that the Correspondence Coordinator had referred to the HR Business Partner’s letter, and had told the complainant that the matter had been concluded by the Executive. The Head of Editorial Standards explained that the Director-General was Chairman of the Executive Board, and noted that he had told the complainant’s MP that the position explained by the HR Business Partner was the BBC’s position.

In the Head of Editorial Standards’ view, the Correspondence Coordinator was correct in stating that the matter was closed, both because it was the responsibility of the Executive Board and because the Director-General had been clear to the complainant’s MP that the matter was now closed (and also because the Trust, in the person of the former Chairman, had previously closed the matter). The Head of Editorial Standards was sorry

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<sup>9</sup> In making her decision, the Head of Editorial Standards took it that this was because the complainant accepted that he was not “established”, as he had said a BBC personnel officer at the time had “prevented” this.



that the Correspondence Coordinator's suggestion that he provide the BBC with any new paperwork had caused offence, but that seemed to her to be the only way forward.

The Head of Editorial Standards stated that, unless the complainant had a fresh issue to raise, his complaints to the Executive had been concluded. If he did wish to raise a complaint about a fresh matter, the Head of Editorial Standards invited him to write directly to her, explaining what the complaint was, and she would route it correctly within the BBC. She explained that, if it was not a fresh complaint, it would not be investigated.

The Head of Editorial Standards clarified that, other than the two matters where she had invited the complainant to write to her, the Trust Unit would no longer respond to letters on this issue, as there was nothing it could usefully add.

The Head of Editorial Standards concluded by listing the names of Executive Board members.

In a follow-up response of 19 March 2015, the Head of Editorial Standards confirmed that she did not regard the then Director-General's letters of 12 September and 15 November 2011 as evidence of lying.

### **Request for review by Trustees**

On 12 March 2015, the complainant wrote to the Trustees and Chairman, BBC Trust. He made the following points:

- With regard to the allegation of lying at Director-General level, the Head of Editorial Standards had "ignored this cardinal matter of public concern [and] instead subsumed [and] buried it with another separate matter" (i.e., the complainant's pension claim and his complaint about the Personnel Officer's conduct).
- The Head of Editorial Standards had wrongly implied that only the complainant had proof of "lying at DG level".

On 21 March 2015, the complainant wrote again to the Trustees and Chairman, BBC Trust. He made the following points:

- The Head of Editorial Standards did not regard the then Director-General's letters of 12 September and 15 November 2011 (plus a letter from the complainant's former colleague) as evidence of lying, which they clearly were.
- The complainant requested that the Complaints and Appeals Board be provided with a copy of his letter 27 November 2014 to the Chairman, which would show that practically the whole of his complaint concerned the allegation of lying.
- The Head of Editorial Standards had "written extensively ... on the personal [and] comparatively small matter of disputed pension rights while ignoring entirely the massive matter of the BBC's integrity in lying to two of my MPs..."

On 28 March 2015, the complainant wrote to the Head of Editorial Standards. He made the following points:

- The complainant requested that Trustees consider the Head of Editorial Standards' decision.
- The Head of Editorial Standards had dismissed his complaint on the ground that she did not regard the then Director-General's letters of 12 September and 15 November 2011 as evidence of lying. The Head of Editorial Standards had not confirmed this "spurious reason" until a month after her decision of 18 February 2015. But for the



complainant's efforts in eliciting this "admission", the Head of Editorial Standards' decision would have been "done and dusted".

- The complainant had informed the House of Commons Public Accounts Committee of the matter.

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

The Panel was provided with:

- the complainant's appeal to the Trust, dated 27 November 2014
- the Trust Unit's response, dated 5 January 2015
- the complainant's response, dated 10 February 2015
- the Head of Editorial Standards' decision not to proceed, dated 18 February 2015
- the Head of Editorial Standards' follow-up letter to the complainant, dated 19 March 2015
- the complainant's appeal against the decision not to proceed, dated 12, 21 and 28 March 2015
- correspondence between the complainant and those acting on his behalf and the Executive and Trust, dating back to 2006 including the then Director-General's letters of 12 September 2011 and 15 November 2011 and the complainant's MP's letter of 3 November 2011.

The Panel noted the complainant's arguments in support of his allegation that a former Director-General had lied to the complainant's MPs. The Panel also noted the content of what appeared to be an extract from a confidential list of BBC pensioners, which the complainant claimed showed that the Personnel Officer had been employed by the BBC.

The Panel noted the contents of then Director-General's letters of 12 September and 15 November 2011 to the complainant's current MP. The Panel noted that, in the first of these two letters, the then Director-General stated:

"With regard to a dispute [the complainant] states that he had with a BBC employee by the name of [the Personnel Officer], our human resources department advise me that they have been unable to find a record of anyone by that name who has been employed by the BBC. Without further information from [the complainant], it is not possible for the BBC to comment on the matter."

In the Panel's view, the Director-General was clearly reporting what he had been told by BBC Human Resources. Furthermore, Human Resources' statement did not amount to a claim that the Personnel Officer had not worked for the BBC, but was a factual statement that they had been unable to find a record of his having done so. Moreover, the letter invited the complainant to provide further information, and in the Panel's view could not reasonably be interpreted as a denial that the Personnel Officer had worked for the BBC.

The Panel noted that, in his second letter to the complainant's current MP, the then Director-General stated:

"I am sorry that I was unable to confirm whether [the Personnel Officer] ever worked for the BBC. However, I hope you will appreciate that personal details such as those which [the complainant] provided ... are highly confidential. It is not clear how they came into [the complainant's] possession. I am therefore unable to provide further information regarding [the Personnel Officer], other than to say that any dispute, if it relates to [the complainant's] time at the BBC, would have happened during or before the early 1980s. I hope you will therefore appreciate that it is extremely difficult for the BBC to address the matter now."

In the Panel's view, this was a reasoned and reasonable response, and did not raise any issue of the then Director-General's integrity, or the BBC's. The Director-General was stating his position with regard to personal data.

The Panel concluded that the then Director-General's letters, whether considered separately or together, did not amount to evidence that he had lied to the complainant's MP.

With regard to the complaint about the Personnel Officer's conduct, and the related claim that the complainant was entitled to a BBC pension, the Panel noted that:

- Article 38(1)(c) of the BBC's Royal Charter<sup>10</sup> states that the operational management of the BBC is the responsibility of the Executive Board; and
- Article 9(3) prohibits the Trust from exercising or seeking to exercise the Executive Board's functions.

In the Panel's view, decisions relating to staff-management and discipline, and BBC employees' pension entitlements, were matters concerning the operational management of the BBC. They were therefore the responsibility of the Executive Board, not the Trust.

The Panel noted that the alleged events from which the complainant's complaint and claim arose had occurred over 30 years earlier, and that a contemporaneous Industrial Tribunal had found that the complainant "did not enjoy the full status of being an established staff member". In the Panel's view, it was reasonable in the circumstances for the Executive to regard these matters as closed. The Panel concluded that, in the absence of fresh evidence, it would not be appropriate, proportionate or cost-effective to re-open them. It agreed with the decision of the Head of Editorial Standards, Trust Unit that this matter had been closed and that it was a matter for the Executive and not the Trust. It was not proportionate to continue to correspond on these issues.

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

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<sup>10</sup> [http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/about/how\\_we\\_govern/charter.pdf](http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/about/how_we_govern/charter.pdf)

## Decision of BBC Audience Services not to respond further to a complaint about the theory of evolution

The complainant requested that the Complaints and Appeals Board (CAB) review the decision of the BBC Trust's Senior Complaints Adviser that the complainant's appeal did not qualify to proceed for consideration on appeal.

### Complaint

The complainant originally contacted the BBC on 19 March 2014 to express his concern at the BBC's general coverage of the theory of evolution. He said that the BBC ignored its own policy on editorial impartiality by ignoring creation scientists who held equally valid views to those of scientists favouring evolution.

BBC Audience Services responded on 22 March 2014 stating:

"The BBC is clear that evolution is a scientific theory. Scientific theories are not claimed to be 100 per cent fact, but are established by being tested against factual evidence. That is how science works and progresses. Evolution by natural selection is a theory that has been repeatedly tested, and remains the best and most robust explanation for all the known factual evidence about life on Earth. The details of evolution have been refined as new evidence has emerged, as happens with all scientific theories. However, no evidence or data has yet emerged that the fundamental principles of evolution are unable to accommodate."

The complainant was unhappy with this response and made a follow-up complaint on 31 March 2014, stating that there was plenty of room for doubt about evolution as a tested theory and the BBC could explore alternative explanations "outside of the evolutionary box". He offered some examples of supposedly tested evolution that he said had been discredited.

Audience Services responded again on 3 April 2014 and referred to the BBC Trust's ruling on evolutionary theory in 2010. They explained that the ruling could be found on page 59 of the Trust's "Editorial Standards Findings: Appeals to the Trust and other editorial issues considered by the Editorial Standards Committee July 2010 issued September 2010" document which can be found at [http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc\\_bulletins/2010/july.pdf](http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc_bulletins/2010/july.pdf)

Audience Services also referred to the BBC's policy on due impartiality and explained that giving an appropriate proportion of airtime to different viewpoints did not necessarily equate to giving them an equal amount of time because, as explained in the Trust's ruling on a previous complaint about this issue, there was

"...an overwhelming weight of evidence from so many areas of science that supports the theory of evolution by natural selection it is perfectly appropriate for the BBC to consider it as overwhelmingly the best explanation available."

The complainant re-stated his concerns in a new Stage 1 complaint four months later on 21 August 2014, referring to the latest news from *Nature* which he said showed "how evolutionary fairy stories about man's history is based on completely false dating assumptions". He said that the BBC was out of date and continued to be biased.

Audience Services responded on 25 August 2014 reiterating the Stage 1 response they had given to his previous complaint on this issue.

The complainant made a further complaint on 7 October 2014 reiterating his concerns and making specific reference to *Cat Watch 2014*. He asked why the BBC provided no comment from those scientists who saw the complexity of the cat as very good evidence for creation.

Audience Services responded again on 13 October 2014 acknowledging his concerns and explaining that the BBC's factual programmes identified significant views and tested them rigorously and fairly on behalf of the audience.

The complainant made a further complaint on 13 October 2014 enclosing an article from *Nature* concerning a creationist who sued the American university which dismissed him, and asking the BBC to comment on this with reference to the academic concerned who had found a triceratops horn and dated it back to the time of the biblical flood approximately 4,000 years ago because of the preserved soft tissue attached to it.

Audience Services responded on 13 November 2014 stating that if the complainant provided a "clearly worded complaint relating to specific aspects of a named and transmitted BBC programme we will endeavour to answer your complaint". They explained that it would not be a sensible use of licence fee payers' money to engage in a more general discussion or to discuss events outside the BBC's programming.

The complainant made a further complaint on 26 November 2014 reiterating his general allegation that the BBC was biased in favour of evolutionary theory and provided no equivalent time and opportunities for opposing views.

Audience Services responded again at Stage 1b on 18 December 2014 closing down the complaint on the grounds that it did not raise a significant issue of general importance that might justify further investigation. They also reiterated points made in previous responses on this issue to the complainant about the BBC's policy on due impartiality as stated in the Editorial Guidelines.

## **Appeal**

The complainant appealed to the BBC Trust in a letter received in the Trust Unit on 21 January 2015. He requested a review of his complaint and made the following points:

- The BBC's repetition of "the mantra 'millions of years of evolution' does not make evolutionism a valid scientific theory any more than believing that the moon is made of cheese".
- Unlike most other areas of public debate the BBC refused to consider alternative scientific explanations and testable evidence in favour of creation and intelligent design. He stated the BBC programme *Winter Watch* was proof of his views: he said that millions of years of natural random chance processes would never have produced a programme of such quality, and this was only a fraction of the complexity observed in the natural world.
- The BBC Complaints Department could not, or refused to, answer his criticism or to consider honest questions. He appealed to the Trust to uphold the BBC's declared editorial standard of impartiality in science programmes.

- There had been no attempt by the BBC to provide a programme offering alternative explanations to the theory of evolution, even though the Complaints Department acknowledged that evolution was a theory not a fact.
- The BBC had allowed Sir David Attenborough to declare that the book of Genesis was the enemy of science when, historically, it was quite the opposite.
- The BBC had also allowed Sir David Attenborough to present a documentary called *The Link* without any questions being asked, or alternative explanation, on the Ida monkey fossil.

### **Decision of the Senior Complaints Adviser**

The Senior Complaints Adviser (the Adviser) decided that the appeal did not have a reasonable prospect of success.

She noted that the complainant had appealed on the substance of his complaint, that the BBC lacked impartiality in its output concerning the origins of mankind. The Adviser noted, however, that BBC Audience Services had ceased handling this complaint at Stage 1 and that the complaint had not gone to Stage 2. She therefore decided that the point she should consider was whether an appeal against the decision of BBC Audience Services not to correspond further with the complainant had a reasonable prospect of success.

The Adviser noted that the complainant had suggested that the output was not impartial. She noted that the BBC Editorial Guidelines on Impartiality stated that all BBC output was required to meet the standard of “due” impartiality, which was defined as follows:

“The term ‘due’ means that the impartiality must be adequate and appropriate to the output, taking account of the subject and nature of the content, the likely audience expectation and any signposting that may influence that expectation.

“Due impartiality is often more than a simple matter of ‘balance’ between opposing viewpoints. Equally, it does not require absolute neutrality on every issue or detachment from fundamental democratic principles.”

The Adviser noted that the complainant had made a number of general complaints alleging a lack of impartiality by the BBC in its approach to the subject of mankind’s origins. She noted that he had received similar answers to his general concerns from Audience Services on each occasion, and that they had referred to the Trust’s 2010 ruling on this issue.

The Adviser noted that Audience Services had quoted from this ruling which stated that as there is “an overwhelming weight of evidence from so many areas of science that supports the theory of evolution by natural selection it is perfectly appropriate for the BBC to consider it as overwhelmingly the best explanation available”.

The Adviser acknowledged that the complainant felt that equal weight should be given to alternative views. However, the BBC was not required to give equal weight to all views, but was required to act with “due” impartiality depending on the context and the available evidence. On this issue, the Trust had previously judged that there was an overwhelming weight of evidence supporting the theory of evolution and that it was appropriate for the BBC to consider that its output did meet the requirement for due impartiality.

The Adviser noted that the complainant had included comments about particular issues he would like the BBC to cover in its output and which he felt had been ignored. She noted that the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew 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" was specifically defined in the Charter (Article 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 BBC's editorial standards which did not apply in this case. Decisions relating to which topics should be covered in BBC factual output, and the way they were presented, fell within the "editorial and creative output" of the BBC and were the responsibility of the BBC Executive.

The Adviser believed Trustees would be of the view that the complainant had received a number of reasoned and reasonable responses from Audience Services in response to his general concerns and that it was appropriate for them to say they would not engage in further correspondence on the matter. It followed from this that she did not consider the appeal had a reasonable prospect of success and it should not therefore be put before Trustees.

### **Request for review by Trustees**

The complainant asked that Trustees review the decision of the Adviser that his appeal should not proceed for consideration.

The complainant said that there had been a lack of a proper response to his criticism of the BBC's "biased coverage of the theory of evolution". This showed the BBC's inability to consider other scientific evidence properly.

He argued that the Trust, which acts in the interests of all licence fee payers, should explain why that proportion of the licence fee paying population who did not believe in the theory of evolution should be ignored. This was about freedom of speech and impartiality.

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

The Panel noted the complainant's appeal to the Trust, the reply from the Trust's Senior Complaints Adviser and the challenge to the Senior Complaints Adviser's decision.

The Panel noted that the choice of subject would be for the Executive to decide. As the Royal Charter (article 38, (1) (b)) sets out, "the direction of the BBC's editorial and creative output" is specifically defined as a duty 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 standards.

The Panel noted that the BBC had previously said in 2010:

"[The BBC] ... does ... feature the views of those sceptical of the notion of ... evolution through natural selection ... Those alternative beliefs will be broadcast appropriately but ... not feature automatically. That proposition reflects the reality of what peer-reviewed research tells us about the natural world."

The Panel considered that it was appropriate that the BBC said it would feature the views of those sceptical of the notion of evolution through natural selection appropriately.. It was not necessary to do so every time evolution was mentioned in

order to achieve due impartiality. The weight given to theories of evolution is necessarily greater than other theories given the peer reviewed work on the subject. The freedom of speech of individuals was not affected as they were free to espouse their opinions.

The Panel therefore concluded that, were the complaint to come to it on appeal, there was no reasonable prospect of it upholding the complaint.

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



## Decision of BBC Audience Services not to respond further to a complaint about the frequency of Helen Fospero's appearances in output

The complainant requested that the Complaints and Appeals Board (CAB) review the decision of the BBC Trust's Senior Complaints Adviser that the complainant's appeal did not qualify to proceed for consideration on appeal.

### Complaint

The complainant contacted the BBC on 2 February 2015. He considered the BBC gave Helen Fospero too little airtime and made the following points:

- she should be a regular BBC presenter, for example on *The One Show*
- he threatened to boycott the programme unless she became a presenter
- he considered she should be given presenting work on the BBC News Channel
- he requested a response from the Head of Programming.

Audience Services responded and made the following points:

- they could not comment on her future appearances on any BBC output
- they valued his feedback and circulated it to BBC managers
- they had nothing to add to their correspondence on the subject

### Appeal

The complainant appealed to the BBC Trust on 6 February 2015. He wished to place on record how helpful and impressed he had been with the BBC complaints process. Whilst he accepted that senior staff were busy, he would be disappointed if his concerns were not answered and would contact Ofcom. He reiterated his wish to know why the BBC did not regularly use Helen Fospero as a presenter.

### Decision of the Senior Editorial Complaints Adviser

The Senior Complaints Adviser (the Adviser) decided that the appeal did not have a reasonable prospect of success.

The Adviser noted that the complainant had appealed on the substance of his complaint, about the BBC's use of Helen Fospero. She noted, however, that BBC Audience Services had ceased handling this complaint at Stage 1 and that the complaint had not gone to Stage 2. She therefore decided that the point she should consider was whether an appeal against the decision of BBC Audience Services not to correspond further with the complainant had a reasonable prospect of success.

The Adviser noted that the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew 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" was specifically defined in the Charter (Article 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 BBC's editorial standards which did not apply in this case. The Adviser believed that Trustees would be of



the view that decisions relating to the choice of programme presenters fell within the “editorial and creative output” of the BBC and were the responsibility of the BBC Executive.

The Adviser noted that Audience Services had explained to the complainant that the BBC did listen to audience feedback, but that did not mean that every audience member could have their individual feedback acted upon. While she appreciated that the complainant would have preferred to have a response from a senior BBC figure, she considered that the BBC had to respond to complaints and correspondence in a way that was efficient, in the interests of all licence fee payers.

She believed Trustees would conclude that the complainant had received a reasonable response and that Audience Services had acted appropriately in closing down the correspondence. She therefore did not consider the appeal had a reasonable prospect of success and decided that it should not proceed further.

### **Request for review by Trustees**

The complainant asked that Trustees review the decision of the Senior Complaints Adviser that his appeal should not proceed for consideration.

In his request to Trustees to review the Senior Complaints Adviser’s decision, the complainant stated that he would like his details to be passed to the Head of Programming or senior executive to comment on the issues he was raising. He suggested a variety of programmes which Helen Fospero could present and urged the Trust Unit to consider his views.

### **The Panel’s decision**

The Panel noted the complainant’s appeal to the Trust, the reply from the Trust’s Senior Complaints Adviser and the challenge to the Senior Complaints Adviser’s decision.

The Panel noted that decisions regarding the employment of staff, including on-air presenters, are operational matters which are a responsibility of the Executive Board (Royal Charter, article 38, (1) (c)).

Trustees agreed with the Adviser that BBC Audience Services had provided a reasoned and reasonable response to the complainant’s concerns.

The Panel concluded for the above reasons that there was no reasonable prospect of success for an appeal.

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

## Decision of BBC Audience Services not to respond further to a complaint about a contributor on Eggheads

The complainant requested that the Complaints and Appeals Board (CAB) review the decision of the BBC Trust's Senior Complaints Adviser that the complainant's appeal did not qualify to proceed for consideration on appeal.

### Complaint

The complainant first contacted the BBC on 20 June 2013. He believed one of the *Eggheads* team was an inappropriate contributor and made the following points:

- the contributor was not clever enough to be on the show.
- the contributor did not fit any criteria for being on the show.
- the BBC and the licence fee payer should not be paying the contributor to appear.
- the contributor did not appear to care about winning.
- the BBC should conduct an examination of the contributor's "win/lose ratio", which would quantify these points.

BBC Audience Services replied to the complainant and made a number of points including:

- the BBC's audience was diverse and it was inevitable that some viewers would disapprove of certain contributors.
- no one TV personality would meet with everyone's approval.
- the BBC did not engage any panellist unless it believed they were competent and could meet the demands required of them.
- the contestant had been an integral part of the programme since its launch in 2003.
- BBC Audiences Services could not supply statistics on win/lose ratios.

Audience Services said they had nothing further to add and that they did not believe the complaint had raised an issue that justified further investigation.

### Appeal

The complainant appealed to the BBC Trust on the substance of his complaint.

### Decision of the Senior Complaints Adviser

The Senior Complaints Adviser (the Adviser) noted that BBC Audience Services had ceased handling this complaint at Stage 1 and that it had not gone to Stage 2. She decided that the point she should consider was whether an appeal against the decision of Audience Services not to correspond further had a reasonable prospect of success.

The Adviser decided that the complainant's appeal did not have a reasonable prospect of success.

The Adviser noted that the Royal Charter and accompanying Agreement between the Secretary of State and the BBC drew 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" and "The operational management of the BBC" were defined as duties that were the responsibility of the Executive Board under paragraph 38, (1)(b) and (1)(c) respectively.

The Adviser considered that choices about contributors were a matter of editorial and creative decision making for the BBC. She noted the reply from BBC Audience Services, which pointed out that the BBC's audience was so diverse that opinions on contributors would vary, and the BBC would not expect all of its viewers to agree with every choice they made.

Audience Services had given a reasoned and reasonable response to the complaint and had acted appropriately in declining to enter into further correspondence. She therefore did not consider the appeal had a reasonable prospect of success and did not propose to put it before Trustees.

### **Request for review by Trustees**

The complainant asked that Trustees review the decision of the Senior Complaints Adviser that his appeal should not proceed for consideration.

The complainant objected to the time it had taken to go through the complaints process. He expressed the feeling that the BBC repeated the same "excuses". He felt that the contributor's past history was no reason to employ the contestant on *Eggheads*. He also objected to the BBC's point that no one person will meet everyone's approval, stating that the eggheads' main quality should be their strength of general knowledge. He thought that the format is wrong, and suggested "some kind of relegation for the eggheads if they are always losing".

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

The Panel noted the complainant's appeal to the Trust, the reply from the Trust's Senior Complaints Adviser and the challenge to the Senior Complaints Adviser's decision.

The Panel noted that decisions regarding the employment of staff, including on-air experts, are operational matters which are a responsibility of the Executive Board (Royal Charter, article 38, (1) (c)).

Trustees agreed with the Adviser that BBC Audience Services had provided a reasoned and reasonable response to the complainant's concerns.

The Panel concluded for the above reasons that there was no reasonable prospect of success for an appeal.

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