

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

January and March 2017, issued March 2017

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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://downloads.bbc.co.uk/bbctrust/assets/files/pdf/about/how_we_operate/committees/2015/cab_tor.pdf

All Trustees are members of the Board; Bill Matthews is Chairman. Sonita Alleyne is Deputy 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 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 Stage 1 or under Stage 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.

Summary of findings

TV Licensing complaint: debit card facilities, PayPoint (and complaints handling)

Summary of finding

The appeal consisted of three points relating to the substantive complaint (first considered in May 2016) and three points relating to the handling of the complaint.

The substantive complaint related to difficulties experienced by the complainant in trying to pay for his television licence by debit card at certain PayPoint outlets. None of the three elements of the substantive complaint were upheld. The Panel did not uphold two points relating to complaints handling. It judged a third point – regarding disclosure of correspondence – as resolved.

Overall finding: in part not upheld and in part resolved

Addendum 1 to previous related decision

Summary of finding

- The complainant's point about the non-disclosure of PayPoint correspondence was put before the first panel of Trustees (the point was contained in the letter sent to the complainant with the Trust Unit's decision not to proceed which was part of the paperwork given to that panel).
- However, as the Trust Unit should have invited that panel to give more detailed consideration to whether this point constituted "a matter of substance", and to either accept this aspect of the appeal or set out reasons for not doing so, the complainant's point about the non-disclosure of PayPoint correspondence was put before a second panel.
- The second panel concluded that the point about the non-disclosure of PayPoint correspondence should be returned to the BBC Executive for consideration and it should be treated as a request for information under the Freedom of Information Act.

Finding: Matter returned to the BBC Executive

Addendum 2 to previous related decision

Summary of finding

The complainant made a complaint about the Director of the Trust Unit.

- Trustees noted that the complainant felt that the practice of asking that complaint and appeal findings by Trust Committees be kept confidential until publication by the Trust ran counter to the Trust’s obligation to be open and transparent.
 - Trustees noted that findings are provided in confidence prior to publication and occasionally errors are identified or individuals ask for redacted publication or no publication to protect their privacy or that of others, for example, a vulnerable individual. This practice allows for any such matters to be resolved prior to publication. Findings are, in general, published and therefore Trustees’ reasoning is put into the public domain.
 - Trustees agreed that there was adequate justification (including in this case) to ask that complaint and appeal findings by Trust Committees be kept confidential until publication by the Trust.
 - Trustees noted that in general asking that decisions remain confidential until publication had not caused a problem in the past but Trustees were content to include a reference in the complaints procedures.

- Trustees noted that the complainant felt that the Trust Unit (through the Director) gave “contradictory justifications” to the complainant in this case
 - Trustees concluded that the Director’s responses were to two different questions and that contradictory justifications had not been given to the complainant. It had been made clear to the complainant, via correspondence from the Director, that factual errors in unpublished decisions shared in advance of publication with interested parties can be corrected prior to publication. It is not another chance for the parties to offer further submissions on the decision made because a substantive decision cannot be overturned if it is correctly taken.

Finding: Not upheld

It was agreed to recommend to the Trust that the complaints procedures be amended to aid transparency.

Appeal against the decision by Audience Services to apply the expedited procedure at Stage 1 with regard to “homosexual propaganda” and bias against US President Trump

Summary of finding

The complaint concerned the decision by BBC Audience Services to apply the Expedited Complaints Procedure at Stage 1.

The Panel decided that:

- several of the complaints had included gratuitously abusive or offensive language – category (c) of the expedited complaints procedure

- the complainant had made many claims that the BBC's correspondents were biased without citing specific evidence. The BBC's complaints process¹ states that editorial complaints should relate to a specific broadcast and should include the relevant time, date and channel, and name of the programme, or the URL of the relevant webpage - categories (a), (b) and (d) of the expedited complaints procedure
- the complainant made repetitious complaints. Despite receiving reasoned and reasonable responses from BBC Audience Services, the complainant had continued to repeat his points, without choosing to appeal them to the Trust.
- Trustees agreed that these complaints were repetitious, failed to raise an issue of a breach of any relevant guidelines and are were likely to have no reasonable prospect of success - categories (a), (b) and (d) of the expedited complaints procedure.

Not upheld

Appeal against the application of the Expedited Complaints Procedure at Stage 3

Summary of finding

The complaint concerned the BBC Trust's decision to apply the Expedited Complaints Procedure to complaints by the complainant at Stage 3.

The Panel concluded that:

- It agreed with the Head of Editorial Standards' assessment that the complainant was essentially attempting to re-litigate his original complaint.
- The complainant had met the requirements in sub-paragraphs 2(a), (b) and (d) of the Expedited Complaints Procedure as he had a history of persistently making complaints which were: trivial, misconceived, hypothetical and otherwise vexatious; failed to raise an issue of breach of any relevant Guideline or Policy; and were shown on investigation to have no reasonable prospect of success.
- The Panel therefore upheld the decision of the Head of Editorial Standards to apply the expedited complaints procedure and to decline to correspond further with the complainant on this matter

Finding: not upheld

¹

http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2017/complaints_for_work_ed_complaints.pdf

Appeal Findings

TV Licensing complaint: debit card facilities, PayPoint (and complaints handling)

Background

The complainant contacted TV Licensing [TVL] to complain about difficulties he had experienced in trying to pay for his television licence by debit card at certain PayPoint outlets. He was dissatisfied with TVL's response and requested an appeal to the Trust. In May 2016, the Complaints and Appeals Board of the Trust [CAB] rejected his request.

The complainant was shown a finding before publication and he complained to the Director of the Trust Unit that the CAB had applied the wrong test when rejecting his substantive complaint. The Director dismissed this point of complaint. The complainant also complained that the CAB had not addressed a specific part of his complaint: that the Executive had failed to disclose to him their correspondence with PayPoint. The Director upheld this second point². A second panel of the CAB concluded that this point should be returned to the BBC Executive for consideration and that it should be treated as a request for information under the Freedom of Information Act. The panel did not rule out that the CAB may need to look again at the decision in light of the further response from the BBC Executive.

The Executive responded to the complainant as follows:

- a letter from the BBC's Customer Experience Manager (12 December 2016)
- a letter from the BBC's Head of Revenue Management (13 January 2017)

The complaint

The complainant appealed to the CAB regarding the Executive's responses. The Trust Unit informed the complainant that this was the final opportunity for Trustees to consider any aspect of his complaint.

The appeal consisted of three points relating to the substantive complaint and three points relating to the handling of the complaint.

The Panel's decision

The appeal was considered by a panel of the Complaints and Appeals Board of the Trust ("the Panel"). In reaching its decision the Panel took full account of all of the available evidence, including (but not limited to) reports by an independent adviser and comments by the complainant and by the Executive.

² The complainant made a further complaint (about the Director of the Trust Unit) when he was asked not to communicate the superseded finding to others, as he considered this restriction an unreasonable restraint. This complaint was not upheld, though it was agreed to recommend to the Trust that the complaints procedures be amended (so that complainants were made aware that findings remained confidential until publication) to aid transparency.

The Panel noted that the substantive complaint related to difficulties experienced by the complainant in trying to pay for his television licence by debit card at certain PayPoint outlets.

In its original finding the Panel said:

“The Panel was sympathetic to the fact that the complainant had not been able to use his preferred payment method at a number of his local PayPoint terminals and that the situation had persisted for some time and, indeed, appeared to still be the case.

The Panel agreed that the BBC should generally take reasonable steps to:

- a. make compliance with the TV licensing requirement as convenient as possible;
- b. enforce the terms on which contractors provide services in support of the system;
- c. diligently record and pass on to its contractors reasonable complaints about service levels; and
- d. operate a complaints system that is prompt and consistent in its responses to complainants

The Panel also recognised that the Trust has a duty under the Charter to ensure that ‘arrangements for the collection of the licence fee are efficient, appropriate and proportionate’, and considered the substantive appeal in that light.

Nevertheless, the Panel agreed that if it took this matter on appeal it would be likely not to uphold this complaint given that:

- the Panel did not consider that the BBC was obliged to ensure that every potential individual payment facility was available in all circumstances, as that would be disproportionate and in all likelihood impracticable, although neither would it be enough if (as the complainant had suggested) only one method was available. Rather, a range of suitable means should be accessible to licence fee payers, and Trustees considered that this was the case here.
- the Panel recognised that the BBC should enforce obligations and service standards in its contracts with suppliers, but noted that the BBC could not enforce agreements to which it is not a party (i.e. between third party payment system providers and individual retailers) and that there was no clear case that PayPoint was in breach of its agreement with the BBC.
- on the contrary, Trustees had seen evidence that the BBC had taken reasonable steps to pursue the complaint with PayPoint, and PayPoint had taken positive steps to remedy the issue with its third party outlets in the complainant’s area.
- accordingly, the Panel did not agree that TV licence renewal facilities were unfit for purpose. In terms of its functions under article 24(2)(m) of the BBC’s Royal Charter, the Panel was satisfied that the range of payment methods available ensured that arrangements for the collection of the licence fee were efficient, appropriate and proportionate, and one or more suitable means were accessible to all licence fee payers. The complainant was in fact able to pay for his TV licence by adopting another method.
- although the complainant felt the Adviser was complacent in assuming there was not a widespread problem given his experience, there was no evidence in the form of complaints to TVL to indicate that the problem experienced by the complainant was a widespread issue across the UK. It

therefore did not raise a wider issue of general importance for the Trust to consider, and remained an operational matter for the BBC Executive and there was therefore no reasonable prospect of the appeal succeeding.

- the Panel noted that the BBC's Managing Director, Finance and Operations, had apologised for the complainant's unsatisfactory experience regards the handling of his complaint by the BBC Executive.

Trustees decided not to take the appeal, on the basis that it would not be appropriate, proportionate or cost-effective since there was no reasonable prospect of the appeal succeeding."

Point (A)

In its original decision, the CAB said:

"Trustees had seen evidence that the BBC had taken reasonable steps to pursue the complaint with PayPoint, and PayPoint had taken positive steps to remedy the issue with its third party outlets in the complainant's area."

The complainant said that the finding was based upon evidence that was incomplete and inaccurate.

In a letter of 14 September 2015 from the BBC's Head of Revenue Management, the complainant was informed that:

"PayPoint have escalated this to [the supermarket's] head office and the local store and they are assured that this issue has been rectified and that they are now processing card transactions."

The complainant was provided with a copy of an email which PayPoint had sent to the BBC on 7 September 2015. The email said:

"We haven't carried out a visit to the store but we have escalated this to the stores [*sic*] Head Office through our account manager.

They have advised that they do accept card payments for TVL transactions"

The complainant said that the BBC's assurance was inaccurate because PayPoint had not paid a visit to the store concerned, and PayPoint had not escalated the complaint to the local store.

The Panel noted that the BBC had raised the matter with PayPoint who had in turn raised the matter with the supermarket concerned. They agreed with the complainant that the letter from the BBC's Head of Revenue Management gave the impression that PayPoint had communicated with both the head office and the local store, whereas it appeared from the email of 7 September 2015 that PayPoint had contacted the head office.

Trustees did not consider this sufficiently significant information to cause them to revise their decision. The Panel remained satisfied that a range of payment facilities had been accessible to the complainant and that the BBC had taken reasonable steps to address the matter with PayPoint.

Point (A) finding: not upheld

Point (B)

The complainant said that the local supermarket concerned was still unable to process licence renewals by debit card.

Trustees were sorry to hear that the complainant had experienced further problems when he attempted to renew his licence by debit card on 20 October 2016.

They noted that the complainant has raised a further, separate complaint about this with the BBC and that, under the BBC's complaints process, they were unable to deal with this as a new point of complaint until the BBC had had the opportunity to respond to it. They decided, however, that the information did not materially affect their original decision (which noted that "the situation ... appeared to still be the case").

Point (B) finding: not upheld

Point (C)

The complainant said that, as there had been no change in the local supermarket's ability to process licence fee renewals by debit card, this revealed a failure by the BBC to take adequate steps to ensure that promised licence renewal facilities were "available and operating correctly", as the complainant was informed in a letter (dated 15 June 2015) from the BBC's Managing Director, Finance and Operations.

The Panel did not consider that the BBC was obliged to ensure that every potential means of payment was available in all circumstances. Trustees noted that the complainant was able to pay for his TV licence by another method and they decided that further problems at the local store did not cause them to revise their finding.

Point (C) finding: not upheld

Complaints handling

Point (D)

The complainant said that the BBC's Head of Revenue Management disregarded his request for disclosure of PayPoint's email dated 7 September 2015 and misrepresented its contents in a letter of 14 September 2015.

Trustees noted that:

- the BBC's Head of Revenue Management wrote to the complainant on 14 September 2015, stating that:

"PayPoint have escalated this to [the supermarket's] head office and the local store and they are assured that this issue has been rectified and that they are now processing card transactions."

- the complainant replied on 22 September 2015. He said:

"Given that the notice [at his local store saying that the PayPoint terminal could only process card transactions] to which I have referred is completely at odds with the assurance [the supermarket] is said to have given, please provide me with a copy of the document setting out the terms of that assurance."

- on 12 December 2016, the BBC's Customer Experience Manager wrote to the complainant, enclosing a letter from PayPoint to the BBC which was undated but which was received on 21 January 2016. This letter said:
 - PayPoint had been in contact with the three stores in question to advise and re-train staff on the procedure for the acceptance of debit cards for TVL payments
 - the supermarket's head office was contacted on 3 August 2015
 - after further correspondence from the complainant (received 29 September 2015), a "follow-up" was sent to the head office who "confirmed the matter would be discussed with store management once again"
 - following further correspondence from the complainant (received 19 October 2015) the head office confirmed all store management had been called and provided assurance that debit cards would be accepted.
- the complainant replied to the BBC on 19 December 2016. He noted that the letter referred to correspondence received on 19 October 2015, demonstrating that it had been written after this date. He said this could not be the document containing the assurance referred to in the BBC's letter of 14 September 2015. He complained that the BBC had therefore not supplied him with a copy of the document he had requested.
- the Head of Revenue Management replied to the complainant on 13 January 2017. She provided a copy of an email which PayPoint had sent to the BBC on 7 September 2015 (referred to under Point A, above).

Trustees decided that it was regrettable that the wrong letter had been provided in the first instance but also noted that when the complainant repeated his request for the earlier correspondence this was provided to him. This rectified the error.

Trustees agreed with the complainant that there was a difference between the email from PayPoint and the way it was represented in the Head of Revenue Management's letter – namely that the letter suggested the PayPoint had contacted the local store (as well as the head office), rather than simply contacting the head office. They disagreed with the complainant, however, that this difference was "substantial and significant in its misleading effect". Trustees decided they were satisfied with the approach taken by the Executive in the handling of this part of the complaint and they did not wish to revise their earlier decision.

Point (D) finding: not upheld

Point (E)

The complainant said that the BBC did not treat his request for disclosure of the PayPoint correspondence under the Freedom of Information Act, as directed by the CAB in its decision of 26 September 2016.

Trustees noted that the second panel decided to return the point about non-disclosure of PayPoint correspondence to the BBC Executive for consideration, and that it should be treated as a request for information under the Freedom of Information Act.

Trustees noted that the BBC's Customer Experience Manager said (in a letter to the

complainant on 12 December 2016) that:

- the Trust had asked the Executive to consider the complainant's request for documented assurances received from PayPoint as a Freedom of Information [FOI] request.
- applicants must make a formal request to the BBC in order to make FOI requests; no such formal request had been received from the complainant.
- as the information requested contained the complainant's personal data (as well as third party personal information), this would fall under the scope of a Subject Access Request [SAR].
- SAR applicants were required to formally request the SAR in writing, clearly stating what information they required, along with a payment of £10.
- in light of the ongoing nature of the complaint, the BBC had decided to waive the standard application process and £10 fee.

Trustees noted that regardless as to whether the request was formal or informal or as to whether it was a request under the Freedom of Information Act or the Data Protection Act, the Executive had nevertheless, disclosed the correspondence that it held between TVL and PayPoint on the matter. The Panel decided that the BBC had met the complainant's request and there was therefore nothing to suggest it had not discharged its obligations under the Freedom of Information Act. The BBC's handling of the request – formally or informally – had no bearing on the outcome. Trustees therefore decided they were satisfied with the Executive's handling of this part of the complaint.

The Panel reminded the complainant that the CAB was not a court of law, nor was it the regulator in this area and it could not make a definitive ruling on whether the Executive had or had not complied with the Freedom of Information Act. The complainant had the right to address the Information Commissioner with his concerns in this regard.

Point (E) finding: resolved

Point (F)

The complainant said he was unhappy that he had been asked not to share the disclosed documents with third parties.

Trustees noted that:

- in her letter of 12 December 2016, the BBC's Customer Experience Manager said that the PayPoint correspondence (from which TVL had redacted third party personal data) should not be shared with any third parties.
- the BBC's Head of Revenue Management subsequently said:

“There is no law which states that this should not be shared with third parties however we requested for this information to not be shared as it had been provided informally.”

The Panel decided that the BBC was correct in stating that it did not have legal grounds for asking for the correspondence not to be shared with third parties, but it did not consider the request (not to share the material) to be unreasonable given that it had been obtained from a third party that was not covered by the FOI Act and pertained to its business generally rather than any TVL specific facility. Trustees decided they were satisfied with the approach taken by the Executive in the handling of this part of the complaint.

Point (F) finding: not upheld

Overall finding: in part not upheld and in part resolved

Previous May 2016 Decision

Television licensing complaint – debit card facilities and PayPoint

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

The complaint

The BBC has a contract with PayPoint for the provision of facilities for people to pay over-the-counter for their TV licence. The vast majority of transactions via PayPoint are in cash, the only exception being that TV licence fee payments can be made at PayPoint terminals by debit card.

This appeal concerned a long-standing complaint about the complainant's preferred method of TV licence fee payment. The complaint was triggered by events in 2014. The complainant was unhappy that he was unable to renew his TV licence by debit card (as opposed to cash) at three out of five local PayPoint agents. The complainant was also unhappy with the responses he had received from TV Licensing ("TVL") and the BBC, and with the handling of his complaint. He had made a similar complaint the previous year (2013) and then encountered a similar situation when he most recently attempted to renew his TV licence by debit card in 2015.

The complainant made the following points:

- Three out of the complainant's five local PayPoint agents did not accept TV licence fee payments by debit card. This situation had persisted for some time.
- Despite PayPoint's assertion that a local superstore ("X") was now processing card transactions, X was still not doing so; and X's PayPoint terminal still displayed a notice stating that it could process cash payments only.
- It was evident from the complainant's conversations with two other local PayPoint agents ("Y" and "Z") that those agents regarded processing debit card transactions as uneconomical:
 - Y and Z had both told the complainant that they did not process TV licence payments by debit card, because of the transaction fees.
 - Y had told the complainant that, if PayPoint were to refund the transaction fees, they would be willing to consider processing debit card payments.
 - According to Z, PayPoint had progressively reduced agents' commission, such that Z was minded not to renew its agency agreement on expiry, and was reluctant to process debit card payments.
- Contrary to PayPoint's assertion, Y asserted it had not recently received any training call from PayPoint concerning how to process debit card transactions.
- PayPoint was apparently turning a blind eye to its agents' failure to process debit card payments, lest those agents end their association with PayPoint.

- Given the criminal penalties for non-payment of the licence fee, the BBC was obliged to ensure that all promised payment facilities were available. However, in the complainant's locality, 60% of the outlets dealing with TV licence renewals had persistently failed to provide the promised payment facilities. Given the commercial disincentives the complainant had discussed with Y and Z, this situation was likely to continue. In this sense, TV licence renewal facilities were unfit for purpose.
- The BBC's handling of this complaint was unsatisfactory, as follows:
 - The complainant's email to the BBC Trust of September 2015 had clearly shown that PayPoint's assurance conveyed by the BBC's Head of Revenue Management, (that X was now processing card transactions), was untrue. The Head of Revenue Management had apparently taken no steps to verify PayPoint's subsequent repetition of this assurance.
 - The BBC Executive had disregarded the complainant's three requests (which he now repeated) for a copy of X's assurance that it was now processing card transactions.
 - The BBC had adopted X's recommendation that, if problems persisted, the complainant should contact the duty store manager. The complainant was angered by the suggestion that he assume the BBC's responsibility for ensuring the availability of the promised payment facilities. The complainant was not obliged to – and could not – enforce PayPoint's terms of service against its agents. On the contrary: once the BBC knew that the promised payment facilities were unavailable at certain PayPoint outlets, it owed licence fee payers a duty to ensure that this was rectified.
 - The BBC claimed to have put measures in place to ensure that the promised facilities for licence renewal were available. However, those measures had been utterly ineffective: 13 months after the complainant's initial complaint, there had been no change in the situation.
- Article 24(2)(m) of the BBC's Charter³ charges the Trust with the function of "ensuring that arrangements for the collection of the licence fee are efficient, appropriate and proportionate". The complainant's inability, for more than a year, to renew his licence by debit card payment at three out of five local PayPoint outlets, indicated that those standards were not being met.

The BBC's Managing Director, Finance and Operations, made the following points:

- PayPoint's response to complaints about its outlets was a matter for PayPoint.
- TVL informed PayPoint about complaints, and PayPoint provided TVL with feedback concerning the action that had been taken. PayPoint's responses were held by TVL and reviewed by the BBC. If further action was required, the BBC would discuss this with PayPoint.
- The BBC had contracted PayPoint to provide over-the-counter services to licence fee payers. While the BBC did not intervene directly with individual PayPoint outlets, it ensured best value for licence fee payers by having stringent service levels written into contracts and ensuring these were met.
- Although Z's PayPoint terminal was able to accept debit card payments, Z's staff members were unsure how to process them. PayPoint had sent Z staff-training materials.
- The Managing Director, Finance and Operations, was unable to provide the complainant with the requested copies of communications between TVL, PayPoint, the superstore and Z, as these were unavailable. The Managing Director, Finance and Operations, referred the complainant to PayPoint.
- The Managing Director, Finance and Operations, agreed that it was important to ensure that the facilities for licence fee payment were available and operating

³ See: http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/about/how_we_govern/charter.pdf

correctly. The Managing Director apologised for the complainant's unsatisfactory experience.

Between September and November 2015 the BBC's Head of Revenue Management made the following additional points:

- The problems the complainant had experienced were due to training issues, as the vast majority of payments via PayPoint terminals were in cash.
- PayPoint had confirmed that X had a broadband connection [which allowed X to process debit card payments].
- PayPoint had escalated the matter to X's head office and local store.
- Following the complainant's email to the Trust of September 2015, TVL had again reported the complainant's concerns about X to PayPoint. PayPoint had again confirmed with X that the complainant's local store was able to collect payments by debit card.
- X had recommended that, if problems persisted, the complainant should contact the duty store manager.
- All the complainant's local PayPoint outlets had been sent training bulletins, had received training calls with regard to debit card facilities, and had been asked to ensure that all staff were trained in this payment method.

Appeal

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

The Trust Unit requested a response from PayPoint via the BBC Executive. In January 2016 PayPoint stated that:

- It took complaints seriously.
- It had been in contact with the three named stores to advise and train staff on the procedure for the acceptance of debit cards for TVL payments.
- The superstore's Head Office was contacted to address the issue. Then, after further correspondence from the complainant in September 2015, the superstore's Head Office was contacted again and confirmed that the issue would be discussed with store management.
- Following correspondence from the complainant received in October 2015 the superstore's head office confirmed that all store management had been called and had provided assurance that debit cards would be accepted.
- Written confirmation had been sent to PayPoint that all the superstore's stores "are able to, and will, take debit card payments for TVL payments".
- It had spoken to and sent training material to the two named stores and to the ten nearest stores to the superstore in October 2015. It was aware that convenience retailers were under pressure from a number of different factors but its retailers received a fair contribution from PayPoint to process all transactions whilst benefiting from the additional footfall and spend that PayPoint's services bring to their stores.
- It would take appropriate action to rectify any further incident but was not aware of any.

Decision of the Trust Adviser

For the following reasons, the Trust Adviser (the Adviser) decided that the complainant's appeal did not have a reasonable prospect of success.

The Adviser noted that an arrangement was in place whereby PayPoint was informed about any TVL-related complaints, and provided TVL with feedback concerning the action

it had taken. The Adviser also noted that the BBC kept a watching brief and would pursue any issues of concern. The Adviser noted that this mechanism had been invoked in relation to this complaint, and that TVL and PayPoint had engaged in dialogue for the purpose of addressing the issues the complainant had raised albeit the complainant had raised the same issue more than once over a period of time.

The Adviser noted that PayPoint had taken the following steps to address the issues raised by the complainant as a result of engagement by the BBC: issuing staff-training materials to Z; escalating the matter to X's head office and local store; sending training bulletins to all the complainant's local agents; making training calls to local agents; and asking local agents to ensure that their staff were trained in processing debit card payments. The Adviser noted that, according to the complainant, Y had not recently received any training call from PayPoint. The Adviser noted that this allegation had not been raised in correspondence with the Executive, who had consequently had no opportunity to respond. However, in the Adviser's view, this did not invalidate the broader point that PayPoint had taken a range of appropriate remedial actions in response to this complaint.

The Adviser noted that, for the benefit of licence fee payers, the BBC had agreed "stringent" service levels with PayPoint. It was for the BBC to ensure that these were met. The Adviser noted that, according to article 38(1)(c) of the BBC's Royal Charter, the operational management of the BBC (which, in the Adviser's view, included the negotiation and enforcement of service-level agreements with third parties) was the responsibility of the Executive Board, not the BBC Trust.

The Adviser considered whether the matters raised by the complaint raised a significant issue of general importance such that the Trustees should consider the matter even though the operation of the PayPoint contract was properly a matter for the BBC Executive.

The Adviser noted that there were two local PayPoint outlets where the complainant could have renewed his licence by debit card payment. The Adviser also noted that, in addition to payment by debit card at PayPoint outlets in the complainant's locality and across the UK, the TV licence fee could be paid in a number of different ways:

- Direct Debit
- Online, by debit or credit card
- Over the phone, by debit or credit card
- TV Licensing payment card
- TV Licensing savings card
- Cheque
- Postal order
- BACS electronic transfer.⁴

In the Adviser's view, these methods provided licence fee payers with a broad and flexible range of payment options. The Adviser could not therefore agree that TV licence renewal facilities were unfit for purpose, or that any potential breach of article 24(2)(m) of the BBC's Royal Charter had arisen. The Adviser believed Trustees would likely be satisfied that the range of payment methods identified above ensured that arrangements for the collection of the licence fee were efficient, appropriate and proportionate, and one or more suitable means were accessible to all licence fee payers.

⁴ See: www.tvlicensing.co.uk/pay-for-your-tv-licence/payment-methods

The BBC Trust had asked the BBC whether TVL and/or the BBC Executive had received any complaints by anyone who had not been able to pay for a TV licence by debit card at any PayPoint facility in the UK between 1 January 2015 and 31 October 2015. TVL had received two complaints relating to this issue during the specified timeframe, which included this complaint. The two complaints were not necessarily exactly the same. Taking this into account the Adviser took the view that, whilst not everyone who encountered a problem with making a debit card payment would have lodged a complaint with the BBC, it appeared from the small number of complaints that the issues encountered by the complainant were not widespread.

The Adviser noted that, having paid by cheque, the complainant had been able to get a TV licence in 2014. With regard to the cost of postage of cheque payments (which the complainant had raised as an issue in the complaint correspondence), the Adviser did not consider it necessary or proportionate for the complainant to have incurred the extra cost of sending a crossed cheque by Royal Mail Special Delivery. The Adviser noted that, in any event, TVL had refunded the complainant the cost of postage. In the Adviser's view, Trustees would be likely to conclude that the complainant had not shown that he, or any other licence fee payer, had suffered any material disadvantage as a result of the matters he had raised.

Whilst the complainant objected that the BBC Executive had taken no steps to verify PayPoint's position it did not seem to the Adviser that it was incumbent upon the Executive to separately take steps to assess that what PayPoint had said was accurate. The Trust Unit's contact with PayPoint confirmed that the BBC had raised the issue with PayPoint and that PayPoint had taken steps to remedy the situation.

The Adviser considered X's recommendation (that, if problems persisted, the complainant should contact the duty store manager) to be a reasonable, pragmatic response, as the duty store manager was best placed to address the complainant's problem, and s/he could do so in the complainant's presence. The Adviser could not agree that, in reporting X's suggestion, TVL had sought to abdicate its responsibilities or foist them onto the complainant.

The Adviser noted that the BBC's Managing Director, Finance and Operations, had apologised for the complainant's unsatisfactory experience. The Adviser noted that, where the Executive had acknowledged a fault and apologised, Trustees normally considered the matter resolved (unless the fault was so serious that further action might be necessary). The Adviser also noted that, at an early stage in the complaints process, TVL had sent a goodwill payment of £25 to the complainant for costs incurred and for poor service. The complainant had returned £15 of the payment, advising that £10 was expected to cover any costs incurred. The Adviser did not believe Trustees would take the view that this matter raised such serious issues that further action would be required.

The Adviser noted that the complainant said that the BBC had disregarded the complainant's three requests for a copy of X's assurance that it was now processing card transactions. The BBC Trust asked the BBC whether they had responded to this point. The BBC advised the BBC Trust that it had supplied all the relevant information about the correspondence, escalation and actions and that there was very little further information to add. The BBC did not feel it was appropriate to provide written correspondence between the Licence Fee Unit, TVL, PayPoint and X. The Adviser thought that Trustees might consider that it would have been helpful for the BBC to have explicitly responded to the complainant's request by explaining that it did not consider it was appropriate to provide the written correspondence between the Licence Fee Unit, TVL, PayPoint and the Head Office of the complainant's local superstore. However, the essential fact that an assurance had been given was conveyed and in the Adviser's view the Trustees would not

consider that further action would be required. The Adviser noted that in April 2016 a further request was made to see the assurance from PayPoint to the BBC. The Adviser was of the view that the same considerations applied; this was a commercial communication between the BBC and PayPoint and it was not appropriate to provide it to the complainant. However, the assurance had been conveyed.

The Trust Adviser noted that the commercial disincentives point made by the complainant at a later stage of the complaints process had been referred back to the BBC Executive who had responded to the complainant and advised that:

“With regard to the new point [...] raised about commission, [the BBC Executive is] not in a position (and nor would it be appropriate) to discuss the individual retailer’s circumstances.

However, in very general terms PayPoint have advised of the following:

‘We are fully aware that some retailers in the UK are under pressure from a number of different factors, including excessive banking charges, the introduction of the living wage and increased competition from larger grocers. We are fully engaged with our retailers and relevant trade associations on these issues and that our retailers receive a fair contribution from us to process all transactions’.

If individual retailers have specific concerns they should address these with PayPoint and there is nothing further the BBC or TV Licensing can add to this point.”

The Adviser believed that Trustees would be likely to consider that this was properly a matter for PayPoint.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with the appeal. The complainant made the following points:

- The arrangement in place whereby PayPoint was informed about any TVL related complaints and provided TVL with feedback concerning the action it had taken, though invoked, had produced no change to the non-availability of promised facilities for licence renewal. The mechanism was completely ineffective.
- He objected to what he perceived to be criticism of him that the BBC Executive had not had an opportunity to respond to an allegation over a training call. He had raised this with the Trust on the day he had been told there had been no training call. Various matters were referred back to the Executive with the complainant’s permission. The Executive had not replied to his point.
- He suggested that the implication of the Adviser’s letter was that the Trust is not entitled to enquire into the enforcement of service levels on the basis that this is an operational matter that is exclusively the responsibility of the Executive. He said that any conclusion that the Trust had no basis to enquire into such matters after being put on notice that the Executive were failing to enforce such service level agreements would amount to an abrogation by the Trust of its duty under Para. 24(2)(m) under the BBC Charter to ensure that licence fee collection arrangements are efficient. In addition, ensuring that the Executive properly enforces such levels of service forms part of the Trust’s functions under paragraph 24(1) of the Charter.
- He wished to obtain instant renewal of his TV licence at a local PayPoint by debit card payment. At three of the five local PayPoint outlets this is not possible. How many promised methods for licence renewal must be denied before the facilities become unfit for purpose, particularly if a facility was persistently unavailable? The implication was that it suffices for a licence fee payer to be left with only one. If a facility was promised it should be available. If it is persistently unavailable the Trust’s duty to take corrective action if the Executive failed to do so is engaged.
- He was not aware that the BBC Trust had asked the BBC Executive whether TVL and/or the BBC Executive had received any complaints by anyone who had not been

able to pay for a TV licence by debit card in the UK for a period in 2015. He had not had the opportunity to comment on the BBC Executive's response. The failure of so high a proportion of his local outlets to provide the renewal facility promised ought to put the BBC on enquiry as to whether this is a widespread problem. He said that the Adviser's complacent assumption that this was not a widespread problem was unjustified.

- He first made a complaint about PayPoint on 28 October 2013 and in the same letter sent a cheque for the licence fee to TV Licensing. By 12 November 2013 he had not received a licence but had received a letter from TV licensing indicating that he was potentially in breach of the law for non-renewal of his licence. He was fully justified in sending his 2014 renewal cheque by tracked delivery letter. He said that the Adviser's accusation that he incurred unnecessary and disproportionate expense was unjustified and prejudicial, and should be viewed in the context of his refund to the BBC of £15 of the £25 compensation payment it made.
- He had repeatedly asserted that outlet X cannot be processing any debit card TV licence renewals because it is displaying a notice adjacent to its PayPoint terminal that it will only process cash transactions with PayPoint, thereby directly contradicting PayPoint's assertion that the outlet is processing such transactions. He had put the Executive on notice of a conflict between his own observations and the assurances issued by PayPoint. With full knowledge of that conflict the Executive had chosen not to enquire further into the matter and to continue to rely upon the assurance it had received from PayPoint. The Adviser's observations were tantamount to a proposition that the BBC was entitled to rely upon anything it was told by PayPoint, regardless of whether it was true. Such observations must be wrong, since they cannot be reconciled either with the acceptance by the BBC's Managing Director, Finance and Operations that "it is important to ensure that the facilities for licence fee payment were available and operating correctly" or with her assurance that the BBC ensures that the stringent service levels written into its contract with PayPoint are met.
- As regards the recommendation that the complainant could contact the duty store manager if the problems persisted, he said he was in no position to enforce the terms of service that PayPoint had applied to its outlets. If, with notice of such a breach, the BBC had declined to satisfy itself that such a breach has occurred and, having done so, to ensure that it was remedied by enforcement of the service levels contained in its contract with PayPoint, it was difficult to see how this could be regarded as anything other than an abdication of its responsibilities.
- The Adviser was inviting Trustees to accept that acknowledgment of a fault and issue of an apology disposes of a complaint even if the fault remains. Whilst an apology and, if appropriate, a goodwill payment may adequately compensate a legitimate complainant for the inconvenience to which he had been put, it was hard to see why BBC Trustees would not also wish to ensure that action was taken so the fault identified did not recur. The complainant said he would prefer not to have to raise a further complaint with the BBC if, when he next attempts to renew his licence by debit card payment at a PayPoint outlet, he again finds himself unable to do so.
- This was the first occasion on which the BBC had claimed that it would not be appropriate to disclose the assurance it had received from PayPoint. In his view the Adviser was seeking to shelter the BBC behind this claim after the BBC has chosen to rely upon the contents of the assurance in its own defence, thereby revealing a complete absence of transparency. Paragraph 23(f) of the Charter requires the Trust, in the exercise of all its functions, to "ensure that the BBC observes high standards of openness and transparency". The BBC Executive's reliance on the untrue statement that outlet X was, by a certain date in September 2015, processing licence renewals by card transaction and its subsequent failure to address the issue that such a statement might be untrue by disregarding his requests for the communication containing it were entirely at odds with those standards. The complainant would expect the Trustees to share his view that the way in which the BBC had dealt with

the false assurance was thoroughly discreditable and by itself warranted further investigation of the complaint.

- The terms of PayPoint's agreements with its agents were a matter for them, but that did not preclude the BBC from taking account of the effect of those terms. If investigation indicates that such terms have the effect of denying to licence fee payers the debit card renewal facilities to which they are entitled at a significant proportion of outlets then it must be right for the BBC to reflect upon whether the arrangements it has made with PayPoint were providing the service that company had promised and, if they did not, to take appropriate corrective action, whether by holding PayPoint to what are said to be the stringent service levels incorporated into its agreement with the BBC or otherwise. He would expect the BBC Trust to treat this as a matter of substance warranting further investigation.
- His complaints did raise matters of real substance and met the test of having a real prospect of success.

The Panel's decision

A panel of the Complaints and Appeals Board noted the points made by the complainant, TVL, the BBC and the Adviser.

The Panel was sympathetic to the fact that the complainant had not been able to use his preferred payment method at a number of his local PayPoint terminals and that the situation had persisted for some time and, indeed, appeared to still be the case.

The Panel agreed that the BBC should generally take reasonable steps to:

- (a) make compliance with the TV licensing requirement as convenient as possible;
- (b) enforce the terms on which contractors provide services in support of the system;
- (c) diligently record and pass on to its contractors reasonable complaints about service levels; and
- (d) operate a complaints system that is prompt and consistent in its responses to complainants.

The Panel also recognised that the Trust has a duty under the Charter to ensure that "arrangements for the collection of the licence fee are efficient, appropriate and proportionate", and considered the substantive appeal in that light. Nevertheless, the Panel agreed that if it took this matter on appeal it would be likely not to uphold this complaint given that:

- The Panel did not consider that the BBC was obliged to ensure that every potential individual payment facility was available in all circumstances, as that would be disproportionate and in all likelihood impracticable, although neither would it be enough if (as the complainant had suggested) only one method was available. Rather, a range of suitable means should be accessible to licence fee payers, and Trustees considered that this was the case here.
- The Panel recognised that the BBC should enforce obligations and service standards in its contracts with suppliers, but noted that the BBC could not enforce agreements to which it is not a party (i.e. between third party payment system providers and individual retailers) and that there was no clear case that PayPoint was in breach of its agreement with the BBC.
- On the contrary, Trustees had seen evidence that the BBC had taken reasonable steps to pursue the complaint with PayPoint, and PayPoint had taken positive steps to remedy the issue with its third party outlets in the complainant's area.

- Accordingly, the Panel did not agree that TV licence renewal facilities were unfit for purpose. In terms of its functions under article 24(2)(m) of the BBC's Royal Charter, the Panel was satisfied that the range of payment methods available ensured that arrangements for the collection of the licence fee were efficient, appropriate and proportionate, and one or more suitable means were accessible to all licence fee payers. The complainant was in fact able to pay for his TV licence by adopting another method.
- Although the complainant felt the Adviser was complacent in assuming there was not a widespread problem given his experience, there was no evidence in the form of complaints to TVL to indicate that the problem experienced by the complainant was a widespread issue across the UK. It therefore did not raise a wider issue of general importance for the Trust to consider, and remained an operational matter for the BBC Executive and there was therefore no reasonable prospect of the appeal succeeding.
- The Panel noted that the BBC's Managing Director, Finance and Operations, had apologised for the complainant's unsatisfactory experience regards the handling of his complaint by the BBC Executive.

Trustees decided not to take the appeal, on the basis that it would not be appropriate, proportionate or cost-effective since there was no reasonable prospect of the appeal succeeding.

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

Addendum 1 to the May 2016 decision

In response to the Panel's decision the complainant made a complaint to the Director of the Trust Unit on two grounds—

- (a) that the CAB failed to determine part of his substantive complaint, which was that the Executive failed to disclose to him their correspondence with PayPoint which he said was central to his substantive complaint; and
- (b) that the CAB applied the wrong test when rejecting his substantive complaint.

The Director rejected part (b) of the complaint. However, in relation to part (a) of the complaint, the Director took the view that, while a subsidiary point, and although the point was covered by the letter to the complainant with the decision of the Trust Unit Adviser, the Trust Unit should have invited the Panel to consider this evidential or procedural aspect in more depth, especially considering the emphasis the complainant put on this in his challenge to the Trust Unit's decision not to proceed with the appeal. The Director wrote to the complainant to that effect and apologised for this oversight.

The complainant asked for copies of correspondence between TV Licensing, PayPoint and certain PayPoint outlets in a letter of April 2015. In a letter of September 2015, the complainant asked for copies of correspondence with PayPoint concerning facilities at a particular supermarket in which PayPoint stated that the supermarket had assured PayPoint that card payment facilities were available at the complainant's local branch. He repeated that request in his letter of October, where he said that he had been told that PayPoint had received an assurance from [the supermarket chain] that the issue had been rectified and that [the supermarket] was processing card transactions. However, in the light of his experiences at [the supermarket] there could only be three possibilities which were that:

- (c) The BBC has never received such information from PayPoint;

- (d) PayPoint reported to the BBC an assurance it had not received; or
 - (e) [The supermarket] has given an untrue assurance that its PayPoint terminals ... are now processing card transactions.
2. The response of the BBC was that—
- (a) details of the PayPoint response were given in a letter of June 2015 from the BBC Executive's Board Member responsible for licence fee collection, and in subsequent correspondence to the Trust Unit (e-mail of December 2015) the Executive informed the Trust that—
3. "We did not supply the written correspondence between the Licence Fee unit, TVL, PayPoint and [the supermarket] as we didn't feel it was appropriate, however we did supply all the relevant information about the correspondence, escalation and actions. There is very little additional information on record other than the names of employees"

and

- (a) they were "unable" to supply the other correspondence asked for, between PayPoint and PayPoint outlets, as copies of correspondence between the other organisations was not available to her, although she invited the complainant to request it from PayPoint directly.

The complainant's point about the non-disclosure of PayPoint correspondence was put before the first panel of Trustees; this was because the point was contained in the letter sent to the complainant with the Trust Unit's decision not to proceed which was part of the paperwork given to that panel. However, as the Trust Unit should have invited that panel to give more detailed consideration to whether this point constituted "a matter of substance", and either accept this aspect of the appeal or set out reasons for not doing so the complainant's point about the non-disclosure of PayPoint correspondence was put before a second panel.

The second panel concluded that the point about the non-disclosure of PayPoint correspondence should be returned to the BBC Executive for consideration and it should be treated as a request for information under the Freedom of Information Act.

The second panel also concluded that the CAB would make a decision regards publication once the BBC Executive had further responded to the complainant as outlined in the paragraph above. The panel did not rule out that the CAB may need to look again at the decision in light of the further response from the BBC Executive.

Addendum (2) to the May 2016 decision

The complainant then made a complaint about the Director of the Trust Unit and complained that he had been asked to keep his original finding confidential until published by the Trust. In essence, the complaint was that the restriction was an unreasonable restraint on the complainant's ability to take his complaint further, e.g. to his MP; that the embargo was not made clear to complainants at the outset, e.g. by being set out in the complaints protocol; and that the Director had given inconsistent justifications for the restriction. Subsequently the complainant raised further related issues. The complaint had five main components. Trustees considered them in turn and reached the following decisions:

a. Did Trustees consider that there was adequate justification for asking that complaint and appeal findings by Trust Committees be kept confidential until publication by the Trust?

Trustees noted that the complainant felt that this practice ran counter to the Trust's obligation to be open and transparent. In his view on ratification the obligation of confidentiality should end – particularly as there was no express request to identify errors in findings where it had been concluded that there was no reasonable prospect of success. He wished to show the finding to his Member of Parliament.

Trustees noted that findings are provided in confidence prior to publication and occasionally errors are identified or individuals ask for redacted publication or no publication to protect their privacy or that of others, for example, a vulnerable individual. This practice allows for any such matters to be resolved prior to publication. Findings are, in general, published and therefore Trustees' reasoning is put into the public domain.

Trustees fully accepted that a complainant might wish to talk to his or her MP for advice about a finding. The aim of keeping the finding confidential was to prevent its public dissemination whilst it was still unpublished and might change. It would be far preferable for complainants to wait until they had a final published finding before sharing it with MPs as findings can change.

Trustees agreed that there was adequate justification to ask that complaint and appeal findings by Trust Committees be kept confidential until publication by the Trust.

b. Did Trustees consider that the Trust should do more to make complainants aware of its practice, for example, by making reference to it in the complaints procedures?

Trustees noted that in general asking that decisions remain confidential until publication had not caused a problem in the past but Trustees were content to include a reference in the complaints procedures.

c. Did Trustees consider that there was adequate justification for asking the complainant to keep the finding confidential in this case?

Trustees did consider that there was adequate justification for asking that the finding in this case should remain confidential until publication. The complainant had pointed out a matter which warranted a further decision by the CAB (which would be reflected in the published finding) and follow-up action by the BBC Executive which might mean that the CAB may need to look at the decision again.

d. Did Trustees consider that confidentiality was unjustifiably prolonged in this case?

Trustees regretted that the finding had not been made public for a number of months. This was a consequence of the Director's decision to uphold in part the complainant's objection to the original finding, which led to a reconsideration of one aspect of the complaint by the second panel of the CAB. This in turn led to the CAB requiring the Executive to consider and respond to the complainant's request for underlying documentation.

Trustees did not consider that confidentiality was unjustifiably prolonged in this case since there were matters that needed to be concluded before the CAB's final decision could be published. Indeed, the second panel concluded that the CAB would make a decision regarding publication once the BBC Executive had further responded to the complainant with regards to disclosure of the PayPoint letter. Trustees did not rule out that the CAB may need to look again at the decision in light of the further response from the BBC Executive.

e. Did Trustees consider that the Trust Unit (through the Director) gave "contradictory justifications" to the complainant in this case?

Trustees concluded that the Director's responses were to two different questions and that contradictory justifications had not been given to the complainant. It had been made clear to the complainant, via correspondence from the Director, that factual errors in unpublished decisions shared in advance of publication with interested parties can be corrected prior to publication. It is not another chance for the parties to offer further submissions on the decision made because a substantive decision cannot be overturned if it is correctly taken.

In this instance the complainant raised a matter that warranted more in-depth consideration by a panel of the CAB. The Director had advised the complainant that it seemed sensible, since an omission had been identified, for that to be addressed and incorporated in a revised finding, rather than issue a new and separate finding.

The complaint about the Director was not upheld. It was agreed to recommend to the Trust that the complaints procedures be amended to aid transparency.

Appeal against the decision of BBC Audience Services to apply the Expedited Complaints Procedure

The Expedited Complaints Procedure may be used at any stage of the BBC's Complaints Procedures.

The BBC Executive and the Trust may use this Procedure only where a complainant has a history of persistently or repeatedly making content or handling complaints which:

- (a) are trivial, misconceived, hypothetical, repetitious or otherwise vexatious;
- (b) fail to raise an issue of breach of any relevant Guidelines or Policies (eg in the case of an editorial complaint, the Editorial Guidelines; in the case of a fair trading complaint, the Fair Trading Policies and Framework);
- (c) use gratuitously abusive or offensive language;
- (d) are shown on investigation to have no reasonable prospect of success; or
- (e) after rejection of the complaint at an earlier stage (eg Stage 1), are persistently and repeatedly appealed unsuccessfully to the next stage (eg Stage 2).

If one of the conditions in paragraph 2 above is met, the BBC Executive or the Trust may determine that the complainant should, for a specified period of time, be subject to the following Procedure:

- (a) The complainant should be notified in writing that the Expedited Complaints Procedure will be applied to their future complaints. This notice must include the following information:
 - a copy of this Procedure (via a web link or in hard copy);
 - the reasons why this Procedure is being applied;
 - for how long this Procedure will be imposed (the maximum limit is two years); and
 - that the complainant may request an appeal - over the decision to apply this Procedure - to the BBC Trust within 20 working days of being informed of that decision.
- (b) After the complainant is notified that this Procedure will apply, his/her future complaints must continue to be read and treated in the following way:
 - If a future complaint meets any of the conditions in paragraph 2 above, the complaint does not require acknowledgement and it may be rejected without notifying the complainant or providing any reasons; or
 - If a future complaint does not meet any of the conditions in paragraph 2 above, and in fact raises an issue of breach of any relevant Guidelines or Policies, that complaint should be investigated in accordance with the usual Complaints Procedure that applies.

Appeal against the decision by Audience Services to apply the expedited procedure at Stage 1 with regard to “homosexual propaganda” and bias against US President Trump

The complaint concerned the decision by BBC Audience Services to apply the Expedited Complaints Procedure at Stage 1.

Background

A BBC News Website complaints adviser wrote to the complainant on 20 March 2017, stating that he had decided to apply the Expedited Complaints Procedure. He explained that this was because the complainant had a history of persistently or repeatedly making complaints which fell into one or more of the following categories:

- (a) are trivial, misconceived, hypothetical, repetitious or otherwise vexatious;
- (b) fail to raise an issue of breach of any relevant Guidelines or Policies (eg in the case of an editorial complaint, the Editorial Guidelines; in the case of a fair trading complaint, the Fair Trading Policies and Framework);
- (c) use gratuitously abusive or offensive language;
- (d) are shown on investigation to have no reasonable prospect of success; or
- (e) after rejection of the complaint at an earlier stage (eg Stage 1), are persistently and repeatedly appealed unsuccessfully to the next stage (eg Stage 2).

The Head of Communications and Complaints, BBC Audience Services, explained that he considered that the complaints fell into categories (a), (b), (c) and (d) and that he had decided to apply the expedited procedure because of the volume of complaints, the demands they made on the time of complaints advisers, and the number of complaints subsequently found to be without merit. He said that Audience Services’ records showed that:

- the complainant had made 47 complaints about the BBC since 24 August 2016, including 33 about the BBC News website
- the complaints had raised similar issues such as alleging a BBC News website bias against Donald Trump, suggesting that “the BBC is riddled with homosexuals and therefore loves and promotes all things LGBT” and complaining about individual BBC journalists when the complainant disagreed with their analysis in by-lined pieces, in some cases without referring directly to what they had written
- the complaints cited numerous selectively-chosen examples of output, or suggested angles which the complainant felt the BBC had missed in certain articles (or in its wider coverage) to which the BBC had replied many times advising why it believed the wider charges of bias were without foundation
- the complaints had never been escalated to Stage 2 and, where the BBC had discontinued correspondence and offered a right of appeal to the Trust they had never been appealed

The Head of Communications and Complaints, BBC Audience Services, said he considered this to be a misuse of the service and to be repetitious and possibly vexatious and he intended to apply the procedure to future complaints for the next two years from 20 March 2017 until 20 March 2019.

He explained that if a future complaint fell into any of the categories (a), (b), (c) or (d), the complaint would not be acknowledged and so might be rejected without response. However, if a future complaint did not fall into any of these categories, and in fact raised an issue of breach of any relevant Guidelines or Policies, the complaint would be investigated in accordance with the usual Complaints Procedure that applied.

Appeal

The complainant appealed to the BBC Trust against the application of the expedited procedure and made the following points:

- he considered the decision to be arbitrary and subjective
- he disagreed that his complaints were trivial, misconceived, hypothetical, repetitious or otherwise vexatious
- the BBC had failed to give examples of the complainant's use of gratuitously abusive or offensive language
- he believed that the BBC's view that his complaints had been shown on investigation to have no reasonable prospect of success, was subjective
- he was not aware that there was a limit on the number of complaints that could be made
- if BBC News continued to persist in a partial news policy, then he had the same right to continue to complain
- it was also his right to choose not to escalate any complaints and he had done so because he considered it a waste of time, given the responses he had received at Stage 1.

The Panel's decision

A panel of the Complaints and Appeals Board considered the points made by the complainant and the BBC.

Trustees were provided with correspondence relating to appeals from the complainant from 24 August 2016 to 20 March 2017.

Trustees noted that the issue in front of them was whether the decision by Audience Services to apply the Expedited Procedure at Stage 1 was correct. They agreed that:

- several of the complaints (such as those on 24 August 2016, 14 September 2016, 9 November 2016 and 16 November 2016) had included gratuitously abusive or offensive language – category (c) of the expedited complaints procedure
- the complainant had made many claims that the BBC's correspondents were biased (in particular the BBC's North America reporter Anthony Zurcher and the BBC World News presenter Katty Kay) without citing specific evidence. The BBC's complaints process⁵ states that editorial complaints should relate to a specific

⁵

http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2017/complaints_fr_work_ed_complaints.pdf

broadcast and should include the relevant time, date and channel, and name of the programme, or the URL of the relevant webpage - categories (a), (b) and (d) of the expedited complaints procedure

- the complainant made repetitious complaints including six complaints about the BBC's coverage of Hilary Clinton's health (including the complainant's view that Mrs Clinton had Parkinson's Disease), and several complaints about the BBC's "homosexuality propaganda", including the complainant's view that "there was no such word as homophobia." Despite receiving reasoned and reasonable responses from BBC Audience Services, the complainant had continued to repeat his points, without choosing to appeal them to the Trust. Trustees agreed that these complaints were repetitious, failed to raise an issue of a breach of any relevant guidelines and are were likely to have no reasonable prospect of success - categories (a), (b) and (d) of the expedited complaints procedure.

Not upheld

Appeal against the application of the Expedited Complaints Procedure at Stage 3

The appeal concerned the BBC Trust Unit's decision to apply the expedited complaints procedure to complaints by the complainant at Stage 3.

Informing the complainant of this decision, the Trust's Head of Editorial Standards made the following points:

- He had made a complaint under procedure 7. However the correct way to deal with the issues he had identified as arising from his finding was to refer them to the Chairman of the Complaints and Appeals Board.
- The Trust had no further comment to make on this matter and would not reply to further emails about it.
- The Trust would not be taking forward the two points he had characterised as
- further complaints. They merely sought to extend his attempt to make a complaint via procedure 7 when questioning the Trustee's finding.
- Conditions (a) and (b) of paragraph 2 of Annex B to the BBC's Complaints Framework had been met:
 - (a) The complainant had a history persistently and repeatedly making content and handling complaints that are trivial, misconceived, repetitious and otherwise vexatious
 - (b) The complaints failed to raise an issue of breach of any relevant guidelines or policies.
- Any future complaints/appeals to the Trust up to 2 April would be read but if they fell within a and b there would be no response.
- The Trust would reply if it raised an issue of breach of any relevant Guidelines or Policies.
- The Trust ends on 2 April. The application of the expedited procedure would end on 14 April 2017

Appeal to the BBC Trust

The complainant appealed against this decision. He made the following points:

- Under Paragraph 3 in Annex 2 to Procedure 3, the notification of the determination to apply the expedited procedure to a complainant must set out the reasons why the procedure is being applied. But the notification merely repeats extracts from Paragraph 2 of Annex 2.
- It was left to him to infer reasons from the circumstances in which the notification was issued. This was unfair, as he should have been told about the case he had to meet.
- He had never made any complaint about the content of a BBC broadcast though the letter from the Head of Editorial Standards suggested that he had.
- He assumed he had been sent this decision because of the preceding email exchange and so it was those two emails had sent that were relevant.
- He set out his justification for his previous complaints in those two emails saying that there was nothing in procedure 3 that prevented him using procedure 7 or vice versa.
- He was entitled to make his complaint under procedure 7 to the Director and the Trust Unit should have written to explain what had been done. There was nothing

to indicate the Director had considered his complaint so he was justified in making two supplementary complaints (one of which was about the Chairman of the Complaints and Appeals Board).

- Each of his complaints related to specific BBC procedures or policies so the Head of Editorial Standards' decision or apply (b) on the basis that he had raised an issue of a breach of any relevant policies or guidelines was untrue.
- So the complaints could not have been made repeatedly, nor were they repetitious.
- He had clearly identified the matters of fact on which each of my complaints has been based.
- There was no basis for saying that any of his complaints were misconceived.
- His objection to the BBC's failure to respect his choice of making a complaint under Paragraph 4.1 of Procedure 7 rather than under Paragraph 3.23 of Procedure 3 was far from trivial.
- He observed the requirements of BBC Complaints Procedure 7 only to find the BBC then treating itself as being free to disregard that procedure.
- It was a serious breach of the Fairness principle in Protocol E3 for the BBC to require complainants to observe its complaints procedures but to disregard those procedures itself, because the parties are then no longer on an equal footing. Any such disregard by the BBC was, therefore, necessarily non-trivial.
- His complaint about the CAB's failure to explain its decision and its Chairman's lack of openness in responding to that complaint was no trivial matter.
- The complaints he had made about an absence of openness easily satisfy that test because they pertain to a specific finding made by the CAB for which it failed to provide any explanation.
- The accusation that my complaints are 'otherwise vexatious' involves an imputation that he must have made complaints purely for the purpose of harassing the BBC or causing it annoyance because such complaints had no reasonable prospect of success.
- It was obvious that the supplementary complaints contained in that email were the trigger for the Head of Editorial Standards' decision.
- According to her email the Head of Editorial Standards believed that the only 'correct' way for him to make a complaint about the content of the Trust decision was under Paragraph 3.23 of Procedure 3, and that he was not permitted to make such a complaint by invoking Procedure 7.
- She accused him of seeking to extend his 'attempt to make a complaint via procedure 7 when questioning the Trustee's finding' by means of the supplementary complaints.
- In order for the supplementary complaints to be found to be 'vexatious', it must be shown that he was not permitted to make a complaint under Procedure 7, since only then could it be said that his supplementary complaint that Procedure 7 had not been followed stood no prospect of success.
- For this to be the case, the BBC's complaints procedures would need to contain a stipulation that, where a complainant has been given an opportunity to comment upon errors of fact or process under Paragraph 3.23 of Procedure 3, that complainant is precluded from making a complaint under Paragraph 4 of Procedure 7. The BBC's procedures contain no such stipulation.
- If he was entitled to make a complaint under Procedure 7 then the Fairness principle in Protocol E3 also entitled him to expect that the BBC would observe Procedure 7's requirements, and a complaint that it had failed to do must have stood at least some prospect of success. This means that there was no basis for saying that his supplementary complaint that Procedure 7 had not been followed was vexatious.
- There was no reason for assuming that his complaint about the want of openness on the part of the Chairman of the CAB was bound to fail, so there was no basis

for treating it as vexatious. Any different conclusion would involve improper pre-judgment of this complaint's merits.

- For the reasons set out above, none of the specified grounds exist on which the BBC was entitled to apply its Expedited Complaints Procedure to his complaints, and the decision to do so should be reversed.
- He referred to Paragraph 3 in Annex 2 of BBC Complaints Framework Procedure No.3 which states that the BBC Executive or the Trust may determine that a complainant should be subject to the expedited procedure. He said that Footnote 1 says:

“This footnote explains references to the BBC Trust and the BBC Executive. The BBC Trust is part of the BBC and is its governing body. The BBC Trust sets the overall strategic direction of the BBC and has general oversight of its work. The BBC Executive is responsible for delivering the BBC’s services in accordance with the priorities set by the Trust and is responsible for all aspects of operational management except that of the Trust’s resources.”

- He said this footnote was the only explanation as to who was entitled to issue a determination that the expedited procedure is to be applied to a particular individual's complaints, and the wording of the footnote shows that any such determination is to be made either by the Trustees or by the BBC's Executive Board. The Head of Editorial Standards had no apparent authority to issue such a determination. So the application of the Expedited Complaints Procedure was invalid for want of authority.
- It was a draconian measure and it was highly inappropriate, without additional controls, for a person whose conduct has been made the subject of complaint to be allowed to issue a determination that the expedited procedure is to apply to that complaint. The obvious suspicion that arises in such a case is that the person who applied the expedited procedure was motivated to do so either by exasperation that a complaint had been made about his or her own conduct or by a desire to facilitate stifling of the complaint. A properly designed complaints handling process would have precluded the possibility of such a suspicion arising.
- His original complaint (in the two emails) was addressed to the Director of the BBC Trust Unit. The Head of Editorial Standards' reply dated 17th March states that it had been seen and approved by the Chairman of the Complaints and Appeals Board.
- This is a clear indication that the Head of Editorial Standards had taken the initiative of intervening in his complaint without reference to the office holder to whom that complaint had been addressed. When he had objected to her intervention and criticised the part played by the Chairman of the CAB, the Head of Editorial Standards responded by applying the expedited procedure to his complaints. She had no business involving herself in a complaint addressed to the Director and not to her, and her assumption of the right to apply the expedited procedure to my complaints after I had complained about her intervention was completely inappropriate, because it was bound to prompt precisely the suspicions as to her motives for doing so that he had identified in the preceding paragraph.
- The Head of Editorial Standards should never have intervened in his complaint to the Director in the first place, having done so, it was completely improper for her to apply the expedited procedure to his complaints when those complaints included a complaint about her own conduct.
- On that basis the expedited procedure should never have been applied.
- The application of the Expedited Complaints Procedure ended his efforts to obtain an explanation of a sentence in the Complaints and Appeals Board's finding. It was impossible to understand that conclusion without knowing what the Trustees meant.

- The absence of any explanation amounts to a failure by the Trustees to provide adequate reasons for their findings as required by Clause 90(6) of the 2006 Framework Agreement, and so he was justified for pressing for an adequate explanation
- He could not understand why the Chairman of the Complaints and Appeals Board was apparently not prepared to provide that further explanation, nor why his attempts to obtain it have led to the Expedited Complaints Procedure being applied to him.
- The BBC has responded to his quest for an adequate explanation by stifling my complaints. He could not see how that can be reconciled with its obligation to resolve complaints in accordance with the principles of clarity, fairness and openness enshrined in Complaints Protocol E3.
- In all the circumstances, application to my complaints of the Expedited Complaints Procedure is unwarranted and unjustifiable. It should be reversed.

The Panel's decision

The Panel noted the points made by the Trust Unit and the complainant.

The Chairman of the CAB noted that the complainant had objected to the Chairman of the CAB considering his appeal given that he had made a complaint about the Chairman and that the Chairman had a personal interest in the outcome, (although the Chairman had been unaware of the complaint against him until he had read this appeal).

The other two panel members noted that the complainant had a history of making complaints and also of raising issues about individuals involved in hearing or handling his complaints. A complaint without substance could not be a bar to participating in a Trust decision otherwise complainants would by the expedient of making a complaint against a Trustee force the Trustee to relinquish their role and responsibilities. A reasonable person would not conclude that the Chairman should recuse himself.

It was agreed that a conflict had not been established and the Chairman would participate in considering the appeal.

The Panel then considered the points made by the Trust Unit and the complainant.

For the following reasons, the Trustees decided that the Trust Unit had correctly applied the expedited complaints procedure at Stage 3:

The Panel agreed with the Head of Editorial Standards' assessment that the complainant was essentially attempting to re-litigate his original complaint. The Panel concluded that the complainant had met the requirements in sub-paragraphs 2(a), (b) and (d) of the Expedited Complaints Procedure as he had a history of persistently making complaints which were: trivial, misconceived, hypothetical and otherwise vexatious; failed to raise an issue of breach of any relevant Guideline or Policy; and were shown on investigation to have no reasonable prospect of success.

The Panel therefore upheld the decision of the Head of Editorial Standards to apply the expedited complaints procedure and to decline to correspond further with the complainant on this matter

Finding: Not upheld

Requests to review the Trust Unit's decisions on appeals

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

The Panel was provided with the complainant's appeal/s to the Trust, the response or responses from the Trust Unit and the complainant's request/s to review that decision.

Television reception problems relating to high atmospheric pressure in Kent

The complaint

The complaint concerned poor television reception in the complainant's home. The complainant said the problem occurred during periods of high atmospheric pressure and resulted in a loss of pictures.

BBC Audience Services and BBC Reception Advice gave the following advice at Stages 1 and 2:

Stage 1

- they explained that high pressure atmospheric weather conditions caused problems to the links between transmitters, resulting in poor reception
- Freeview viewers were advised not to auto-tune their sets as this could cause other issues; they were advised to re-tune manually
- they said there was no solution to this natural interference and broadcasters could not prevent it, but reception would return to normal once the weather changed
- they advised checking the aerial and cable connections and explained that any checks should not be done while a high-pressure weather front remained, as that could lead to inaccurate readings and, ultimately, a wrong assessment
- they advised using a professional aerial installer to take measurements and assess where changes could be made to improve the signal level
- they thought the complainant should be able to get good coverage from Faversham, which was 1km away from his home. They believed he was trying to pick up a signal from the more distant transmitter Bluebell Hill (26km away) or Crystal Palace (68km away). The further a signal had to travel, the more affected it would be by high pressure
- they had looked at the complainant's property on satellite maps and it appeared that his aerial was horizontally polarised which was also an indicator that he was on a more distant transmitter. The Faversham transmitter required a vertically polarised aerial
- it was possible to tell which transmitter a property was on by the local news. Bluebell Hill was BBC One (South), whereas Crystal Palace was BBC One (London). If the complainant changed to the Faversham transmitter, he would receive BBC One South East news
- Faversham had three mux's: BBC A, D3&4, BBC B HD
- the following links gave further channel information and available channels:
www.digitaluk.co.uk/coveragechecker/main/display/detailed/ME13+8DZ/34/0/iks7camiq2dv0tshmc3s3sgs67
www.digitaluk.co.uk/coveragechecker/main/trade/ME13+8DZ/34/0/iks7camiq2dv0tshmc3s3s
- the TV Licence paid for the public service muxes while the other commercial channels were funded by advertising and they had chosen not to have their services on Faversham
- the complainant might want to consider having two aerials: one pointed at Faversham and the other pointed at one of the other available transmitters offering reliable reception
- they advised the complainant to talk to a qualified aerial installer to obtain some advice on the best type of installation for his requirements.

Stage 2

- as part of the BBC Charter Agreement, the BBC was required to provide its Digital (Freeview) TV services to a coverage area substantially similar to that of the original analogue television network; this equated to 98.5% of the UK population. However, the BBC was confined to a limited set of frequencies in the spectrum available for television. By working closely with Ofcom and the other public service and commercial broadcasters, the BBC had designed and built a network of over 1100 television transmitters
- as part of the agreed methodology of predicting the 98.5% coverage figure, a location was covered if a service was predicted to be available at that location for 99% of the time. The mathematics behind that prediction took into account known interference from other television transmitters in the UK and continental Europe and Ireland. As these were known interferences, the BBC had designed the network to be robust and overcame them for the majority (99%) of the time. The remaining 1% was to allow abnormalities that caused interference to be higher than normal
- this method of predicting coverage was the norm and was used across the world
- the BBC was in the process of re-planning the whole network over the next four years at the request of government, as they were planning to auction part of the television spectrum for use by mobile phone operators
- the licence fee funded the creation and distribution of the BBC's public service television services, which were carried within two Freeview multiplexes. A third public service multiplex carried the commercial public service services, such as ITV1, and Channel 4 and had the same coverage obligation of 98.5%. All three of the public service multiplexes were broadcast on all of the 1100 plus transmitters
- the remaining three national Freeview multiplexes were commercially operated, and were not funded by or linked to the licence fee, and were only required by government licence to meet a 90% coverage obligation. As such they only needed to broadcast from approximately 80 transmitters to achieve this figure
- from the complainant's correspondence, they understood that he was not using the Faversham transmitter. The choice of transmitter was the complainant's own decision. However, the Faversham transmitter, which was approximately 1km from his location, would give him the most robust television signal and should minimise any impacts of interference due to high pressure
- the BBC was unable to modify the power or antenna pattern of any of the transmitters as they were already operating at their maximum licensed power and using the agreed antenna patterns
- the advice given over the course of the BBC's correspondence with the complainant had explained that Faversham would give the most robust signal. The responses were therefore considered appropriate and the BBC had met its obligation to provide a robust television service to the complainant's location and he had the option to use that transmitter if he wished.

Appeal to the BBC Trust

The complainant appealed to the Trust on 3 January 2017 on the substance of his complaint. He noted that he could re-tune his aerial to the Faversham transmitter but he did not wish to do so as this only transmitted six channels. He asked the BBC to compensate him for the lack of service over the past 16 years during which he had paid for a TV Licence and to exempt him from future payments until he received a full and uninterrupted service.

Decision of the Senior Editorial Adviser:

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

The Adviser noted that the complainant believed that it was the BBC's responsibility to ensure he received a standard of television reception that was acceptable to him. She noted that the BBC should investigate complaints of reception problems with domestic radio and television and she considered there was evidence that a detailed investigation had been carried out. She appreciated that the complainant did not consider the BBC's advice to switch to the more local Faversham transmitter to be an acceptable solution because he would receive a reduced number of channels from that transmitter, but she believed that the complainant had received detailed and helpful advice together with a full explanation of why, under certain atmospheric weather conditions, TV reception could be adversely affected.

The Adviser concluded that the complaint appeared to have been investigated thoroughly by the BBC Executive and the complainant had been given reasonable advice on how to minimise the problems he was experiencing. She also noted that the problem was an operational one which was outside the scope of the BBC Trust to resolve. The Royal Charter [2007] 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 (paragraph 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 which was not the case here.

Having considered the correspondence between the complainant and the BBC, the Adviser believed that the BBC had addressed the complainant's concerns appropriately. She also noted that holding a valid TV licence was a legal requirement for viewing or recording television programmes shown on any channel or broadcast platform. The BBC was bound to comply with the law in collecting and enforcing the licence fee. Taking this into account the Adviser decided that the appeal did not have a reasonable prospect of success. She therefore did not consider it was appropriate, proportionate or cost-effective to proceed with the appeal.

Request for Review by Trustees

The complainant asked Trustees to review the decision not to proceed with his appeal.

The Committee's decision

A panel of the Complaints and Appeals Board considered the points made by the complainant and the BBC. The Panel noted that:

- the reception problems experienced by the complainant were caused by natural interference to which there was no solution
- the problems appeared to be exacerbated when an aerial was tuned to a distant transmitter, which appeared to be the case here
- the complaint had been fully investigated by the BBC, including examination of satellite photographs of the complainant's TV aerial to ascertain which transmitter it was tuned to
- the complainant had been advised to re-tune to the Faversham transmitter but did not wish to do so as it broadcast fewer channels
- the complainant had also been advised that it was possible to install a second aerial: one pointed at Faversham (which would provide a smaller range of programmes but a more robust television signal) and the second at a more distant transmitter which offered a wider range of programmes but which would provide a less robust signal

- the complainant had been given reasonable and helpful advice on how to minimise the problems he was experiencing, including details of where to seek further advice on coverage and installation.

Trustees concluded that it was not appropriate, proportionate or cost-effective to proceed with the appeal as it did not have a reasonable prospect of success.

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

Appeal against the decision of BBC Audience Services to apply the Expedited Complaints Procedure at Stage 1 with regard to the accuracy of Met Office weather forecasts

The complaint concerned the decision by BBC Audience Services to apply the Expedited Complaints Procedure at Stage 1.

Background

The Head of Communications and Complaints, BBC Audience Services, wrote to the complainant on 15 March 2017, stating that he had decided to apply the Expedited Complaints Procedure⁶. This means complaints will be read but will not be responded to unless they raise a matter of substance. In this case the procedure would be applied for the next two years. He explained that this was because the complainant had a history of persistently or repeatedly making complaints which fell into one or more of the following categories:

- (a) are trivial, misconceived, hypothetical, repetitious or otherwise vexatious;
- (b) fail to raise an issue of breach of any relevant Guidelines or Policies (eg in the case of an editorial complaint, the Editorial Guidelines; in the case of a fair trading complaint, the Fair Trading Policies and Framework);
- (c) use gratuitously abusive or offensive language;
- (d) are shown on investigation to have no reasonable prospect of success; or
- (e) after rejection of the complaint at an earlier stage (eg Stage 1), are persistently and repeatedly appealed unsuccessfully to the next stage (eg Stage 2).

The Head of Communications and Complaints explained that he had decided to apply the expedited procedure because the complaints fell into categories (a), (b), (c) and (e). He had also decided to apply the procedure because of the volume of complaints, the demands they made on complaints advisers' time, and the number of complaints subsequently found to be without merit. Audience Services' records showed that:

- the complainant had made repeated complaints from three different email addresses about the Met Office's accuracy in forecasting weather for very specific areas and times of day;
- the complaints had all raised the same underlying issue, and the complainant had been advised how to contact the Met Office directly;
- these issues had been escalated to Stage 1b without success.

The Head of Communications and Complaints considered this to be vexatious behaviour.

Appeal

⁶ Annex B at this link:

http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2016/e3_complaints_framework.pdf.

The complainant appealed to the BBC Trust against the application of the expedited procedure. He made the following points:

- The Head of Communications and Complaints had not addressed the facts, or the evidence that the BBC's online weather forecast system was not fit for purpose.
- The BBC's trivialisation of this matter was costing the complainant money, as his commercial activities were weather-dependent.
- The online weather forecast for London on 16 March 2017 showed total cloud, whereas the weather in central London on that day was sunny with blue sky.
- The complainant asked why the BBC regularly got the weather wrong, even at short notice, and why no-one was considering his evidence.
- The complainant challenged the BBC to show where he was not telling the truth, or where he had used gratuitously abusive or offensive language.

The Panel's decision

A panel of the Complaints and Appeals Board ('CAB') considered the points made by the complainant and the BBC.

Trustees were provided with the Head of Communications and Complaints' letter to the complainant, the complainant's appeal, and the CAB's decisions of July 2015 and May 2016 in the complainant's previous appeals.

Trustees noted that the issue in front of them was whether the decision by Audience Services to apply the expedited procedure at Stage 1 was correct. They agreed not to uphold the appeal given that:

- This appeal, and the appeals the CAB had previously considered, all concerned allegations that the Met Office's weather forecast was inaccurate and/or otherwise unsatisfactory. Trustees were therefore satisfied that the complainant had a history of persistently or repeatedly making complaints about this subject.
- The CAB had decided that neither of the complainant's previous appeals should proceed for consideration. The forecasts did not breach Editorial Guidelines or any other BBC policy.
- The complainant had been advised how to raise his concerns with the provider of the weather forecasts – the Met Office – directly.
- The conditions of categories (a), (b) and (e) were therefore met, and Audience Services had correctly applied the expedited procedure on that basis.
- The Panel had not seen any evidence that the complainant had used gratuitously abusive or offensive language, and so could not conclude that the conditions of category (c) were met.

Not Upheld

Appeals against the decision of BBC Audience Services not to correspond further with the complainant

The BBC's General Complaints and Appeals Procedure has three stages: the first two stages with the BBC; the third and final stage an appeal to the Trust.

Complaints are answered at Stage 1 by the BBC – usually by BBC Audience Services but sometimes directly by a content area. Where complainants remain dissatisfied after a Stage 1 response, they can request a further response at Stage 1. If they are still dissatisfied they may escalate their complaint to Stage 2. Complaints at Stage 2 are considered by a senior manager in the BBC Division responsible for the matter being complained about.

However, under the Complaints Framework, it is open to the BBC to close down correspondence – this means the BBC notifies the complainant that it does not wish to respond further. The complainant can appeal to the Trust if they consider the BBC is wrong to close down the correspondence. This is the procedure the BBC followed in the following cases. Where a complainant appeals to the Trust in these circumstances, if Trustees uphold the appeal, the complaint is sent back to the BBC for a further response.

The General Complaints and Appeals Procedure explains that, at all stages of this procedure, a complaint may not be investigated if it "is trivial, misconceived, hypothetical, repetitious or otherwise vexatious".

In the following cases the correspondence was reviewed by a senior member of the Trust Unit who advises Trustees on Editorial Standards. The complainants had appealed on the substance of their complaints but as the BBC had ceased handling the complaints at Stage 1 the point the Adviser considered was whether an appeal against the decision of the BBC not to correspond further with the complainants had a reasonable prospect of success.

Decision of BBC Audience Services not to respond further to a complaint about the ethnicity of BBC presenters and reporters

Complaint

The complainant asked the Complaints and Appeals Board to review the decision of the BBC not to respond further to his complaint at Stage 1b.

The complaint

The complainant did not consider that the population of the United Kingdom was appropriately represented in terms of the ethnicity of BBC presenters and reporters featured on BBC programmes.

The complainant made the following points:

- The BBC claimed that it must represent the United Kingdom population with regard to the people it employed.
- Around 11% of the population was of "ethnic origin", but the figures that the complainant stated the BBC had supplied to him under the FOI Act showed that 47 out of 142 presenters and reporters were of "ethnic origin", i.e. 33.6%. The complainant felt this indicated bias.

BBC Audience Services made the following points:

- The range of tastes and opinions held by the audience was so diverse that it was inevitable some viewers would dislike or disapprove of certain presenters. It was a very rare TV personality who met with everyone's approval, and it was clear that opinions on individual presenters could vary considerably.
- Presenters and other programme contributors were appointed on the basis of their experience and talent.
- The BBC was tasked by its new Royal Charter to ensure that output reflected the diverse communities of the whole of the UK, accurately and authentically – with specific emphasis on reflecting under-represented communities, cultures and languages, and all socio-economic backgrounds.
- Director-General Tony Hall has explained:

"The BBC has a breadth and scale that is unique in the UK's media, and that means what we do has real impact. So I want us to make sure we are leading by example, working with and learning from others in the industry, and using our influence to bring about real change."

- Some people questioned why some of the BBC's diversity targets were higher than the national average. With regard to the BAME target of 15%, this was higher than the 12.9% national average because the BBC had major hubs in large metropolitan areas such as London, Birmingham and Glasgow, for example. It also reflected the estimated population of the UK by 2020.
- The BBC did not engage any producer, presenter, interviewer or reporter unless the Corporation believed they were competent and could meet the specific demands required of them.
- They hoped this helped explain the BBC's policy; however, Audience Services said they realised the complainant might continue to hold a different view.

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 and handling of his complaint. He made the following points:

- The figures he quoted demonstrated bias in the choice of presenters and reporters.
- Audience Services' reply did not address the complaint.
- The response made no reference to the figures he had supplied and Audience Services had refused to discuss this omission further.

Decision of the Senior Adviser

The Senior Adviser (the Adviser) decided that the point she should consider was whether the complainant's appeal against the decision of Audience Services not to correspond further had a reasonable prospect of success. She decided that it did not.

The Adviser noted that the complainant felt that the ethnicity of BBC presenters and reporters was not representative of the UK population as a whole. She noted his view that his concerns had not been properly addressed, in part because Audience Services had not specifically referred to the figures he had quoted.

The Adviser noted that Audience Services had explained that BBC presenters and other programme contributors were not appointed on the basis of their ethnicity but on the basis of their experience and talent; the BBC catered for a diverse audience and accepted that not everyone would approve of every presenter and contributor.

The Adviser also noted that Audience Services had acknowledged that some people had questioned why some of the BBC's diversity targets were higher than the national average. They had explained that with regard to the BAME target of 15%, this was higher than the 12.9% national average because the BBC had major hubs in large metropolitan areas such as London, Birmingham and Glasgow, for example. It also reflected the estimated population of the UK by 2020. As explained by Audience Services, the BBC aimed to ensure that output reflected the diverse communities of the whole of the UK, accurately and authentically – with specific emphasis on reflecting under-represented communities, cultures and languages, and all socio-economic backgrounds. The Adviser noted the figures quoted by the complainant and she also noted that Director-General, Tony Hall, had said that the BBC wanted to lead by example.

The Adviser considered that the choice of presenters and reporters was the responsibility of the BBC's Executive Board rather than the BBC Trust. The Adviser noted that the Trust did not have a role in making decisions about BBC output unless a possible breach of standards was identified, and the Adviser had not seen evidence of that being the case here. 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 Article 38, (1)(b) and (1)(c) of the Royal Charter. The Adviser believed Trustees would be likely to conclude that the responsibility for the selection of presenters and reporters rested with the BBC Executive and was not a matter for the Trust.

She appreciated that the complainant thought the responses he had received were poor and should have specifically addressed his point about the figures he supplied. However, she believed Trustees would be of the view that the complainant had received replies that appropriately addressed his concerns.

Taking this into account the Adviser considered that BBC 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 it was appropriate, proportionate or cost-effective to proceed with the appeal as it did not have a reasonable prospect of success.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with his appeal. He said that the Trust's response to his appeal displayed further bias and disregard of licence fee payers' opinions.

The Panel's decision

A panel of the Complaints and Appeals Board noted the points made by the complainant, the BBC and the Adviser.

Trustees noted that the issue in front of them was whether the decision by Audience Services to decline to enter into further correspondence was correct.

Trustees agreed that if they took this matter on appeal they would be likely not to uphold the complaint given that:

- The Royal Charter 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 Article 38, (1)(b) and (1)(c). The Royal Charter also explained that the Trust must not exercise or seek to exercise the functions of the Executive Board, (Article 9, (3)).
- The responsibility for operational and editorial and creative decisions such as the appointment of presenters rested with programme makers who reported to the Executive Board and not with the Trust.
- Audience Services had explained that BBC presenters and other programme contributors were not appointed on the basis of their ethnicity but on the basis of their experience and talent.
- The BBC was entitled to select presenters and programme contributors who, in their opinion, were the best people for each role. Trustees had not seen evidence to show that the BBC had breached any employment regulations.
- The complainant had received reasoned and reasonable replies on this occasion in accordance with the general complaints procedure. An assurance that racism and bias did not play a part in the BBC's decisions had been given.

Trustees decided not to take the appeal, on the basis that it would not be appropriate, proportionate or cost-effective since there was no reasonable prospect of the appeal succeeding.

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

Decision by BBC Audience Services not to respond further to a complaint about BBC Radio 1Xtra

The complainant asked the Complaints and Appeals Board to review the decision of the BBC not to respond further to his complaint at stage 1b.

The Complaint

The complaint concerned Radio 1Xtra's music policy.

The complainant made the following points:

- She believed that Radio 1Xtra gave preference to certain types of artist and London artists, or those who held particular viewpoints or cultural backgrounds, were over-represented in the playlist.
- She said the DJs had strong connections with record companies, and gave preference and promotion to music associated with those companies.
- She knew how difficult it was to build musical connections with record companies, and without the type of influence the BBC had she felt that artists like herself were sidelined.
- She said that in the past, schemes on Radio 1Xtra, such as 'Free Mixtape of the Week', encouraged artists to play their music without financial rewards. Established artists were continuously put on the playlist and reaped financial rewards from the exposure; the money from the industry was unfairly distributed.
- She pointed out that music was not a hobby for artists and she felt that unsigned or independent artists were manipulated and exploited.
- She said that if Radio 1Xtra was a commercial station she would be less concerned but as the BBC was a public broadcaster, she felt it was not an acceptable situation.
- She believed that if someone at the BBC picked up on her music online, and it was getting a positive response, the BBC would not go out of its way to suggest it was played on Radio 1Xtra. Instead, she believed the station would suggest one of its promoted artists for the playlist. She said that set a very negative tone when there was enough room for a lot of artists to thrive and do well.
- She responded to the request from Audience Services to provide some examples of the artists she had expressed concern about by saying that she had requested some information from a record label whose artists had received a level of exposure resulting in the kind of financial success she felt she could have achieved if she had been given similar opportunities to them.
- She believed there was a racial context to her complaint about artists, with particular views being represented on Radio 1Xtra to the exclusion of artists like herself. She was of the view that it was generally black, London artists whose music was played on Radio 1Xtra. She said they all sounded similar and one way or another they had associations with labels and networks in London. She gave some examples.
- She was unhappy with the response from Audience Services and Radio 1Xtra. She said the BBC could not define what black music and culture was. She said she had grown up with R'n'b, hip-hop and rap, and regarded it simply as music, not black music. She felt the BBC needed to change how they dealt with music and understand that they were not representing the people they thought they were representing. She did not consider her own music to be 'black' music, she considered it to be r'n'b music.

Audience Services and Radio 1Xtra made the following points:

- They asked the complainant to provide some specific examples to illustrate her concern about preference being given to certain types of artist.
- Regarding the complainant's initial point that 1Xtra gave preference to certain types of artists and tracks, they said that 1Xtra had a remit, laid down by the BBC Trust, to "play the best in contemporary black music". It was also required to appeal to a young (15-24 year old) audience, "particularly - although not exclusively - those from ethnic minorities".
- Full details of what the BBC Trust required of 1Xtra could be found online at: http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/service_licences/radio/2016/1xtra_apr16.pdf
- This naturally meant the station focused on certain genres of music, and also artists the station felt resonated strongly with young people. Having said that, the colour of an artist's skin was irrelevant; indeed, while the music team aimed to ensure the weekly playlist was balanced as far as possible in terms of genres, UK or non-UK artists and gender, a performer's ethnic background was never taken into consideration.
- Regarding the allegation that 1Xtra gave preference to London artists, the station thought it was fair to say that a British artist was more likely to come from London than elsewhere in the UK, but this was primarily due to demographics – 53% of 15-24 year old BME (black or minority ethnic) people in the UK lived in London. Furthermore, a large part of the UK record industry was based in London, something which had always resulted in aspiring artists moving to the capital in a bid to get recognition.
- That said, 1Xtra was very conscious that, as a national station, it should represent tastes across the UK – and there were numerous examples of artists the station had supported who were not London based, such as Buggzy Malone, Emeli Sande or recent MOBO winner, Lady Leshurr. The BBC Introducing scheme in particular helped connect unsigned artists with producers on the station who might be interested in their music. The playlist also included an unsigned, BBC Introducing Artist of the Week.
- In response to the complainant's assertion that DJs were giving preference to "close personal friends" – they did not believe, with the exception of one example given by the complainant, any evidence had been presented to support this claim. They noted that a number of 1Xtra's DJs worked for the station in a freelance capacity, while also working in the record industry. Many had also developed close contacts with artists and management companies, built up over years of work in the media industry. Neither of those factors prohibited them from working for 1Xtra – indeed, they expected Radio 1Xtra DJs to be relative experts in their fields. However, they noted that strict rules were in place regarding potential conflicts of interests. For example, if a DJ had a consultancy capacity in A&R with a certain label, they were required to highlight any tracks from that label they were thinking of playing on a show in advance. The decision on whether those tracks were suitable for play was then made by someone else, who had no connection to the artists concerned.
- They said they could not advise on the situations mentioned by the complainant regarding VIP access to the US music industry or contacting Atlantic records.

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 her complaint.

Decision of the Trust Adviser

The Trust Adviser (the Adviser) reviewed the correspondence that had passed between the complainant and the BBC. She decided that the point she should consider was whether the complainant's appeal against the BBC's decision not to correspond further had a reasonable prospect of success. She decided it did not.

The Adviser was sorry to hear that the complainant felt side-lined as an artist because of BBC 1Xtra's music policy. She acknowledged that the complainant felt there was a lack of opportunity for artists like herself because she believed Radio 1Xtra DJs gave preference to artists they knew and who might be connected with record companies with whom DJs had personal links. She also noted the complainant's comments about cultural background and particular difficulties for musicians based outside London.

The Adviser noted that, following an initial response from Audience Services with which the complainant was unhappy, the complaint had been passed to Radio 1Xtra who had issued a response which gave a web link to the BBC Radio 1Xtra Service Licence which would be found at :

http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/service_licences/radio/2016/1xtra_apr16.pdf

The Service Licence states that the remit of 1Xtra is to play "the best in contemporary black music with a strong emphasis on live music and supporting new UK artists."

The Adviser noted the complainant's concerns about being excluded by 1Xtra because of her ethnic background. She noted that although the station remit was to play "the best in contemporary black music", Radio 1Xtra had pointed out that artists performing within this genre of music (as defined by the station) did not have to be black themselves. They had stated that "the colour of an artist's skin is irrelevant" and that "a performer's ethnic background is never taken into consideration." The Adviser appreciated that the complainant felt otherwise, but did not believe Trustees would conclude any evidence had been presented that contradicted the response of Radio 1Xtra.

The Adviser also noted that the complainant felt Radio 1Xtra was not carrying out its remit sufficiently in terms of supporting new artists, particularly those from outside London. She noted that Radio 1Xtra had addressed this point in the stage 1b response:

"You also allege that 1Xtra gives preference to London artists. I think it is fair to say a British artist is more likely to come from London than elsewhere in the UK, but this is primarily due to demographics....Further, a large part of the UK record industry is based in London, something which has always resulted in aspiring artists moving to the capital in a bid to get recognition.

That said, 1Xtra is very conscious that, as a national station, it should represent tastes across the UK – and there are numerous examples of artists it has supported who aren't London based, for example, Buggzy Malone, Emeli Sande or recent MOBO winner Lady Leshurr. The BBC Introducing scheme in particular helps connect unsigned artists with producers on the station who may be interested in their music. The playlist also includes an unsigned, BBC Introducing Artist of the Week."

The Adviser considered Trustees would be likely to conclude that Radio 1Xtra had addressed the complainant's points in a reasoned and reasonable way and had not seen evidence that 1Xtra was failing to comply with the terms of the 1Xtra Service Licence.

With regard to the complainant's concern that DJs were giving preference to personal friends and contacts within the record industry with whom they had professional connections, the Adviser noted that 1Xtra did not consider that sufficient evidence had been supplied to support this claim.

The Adviser noted that the Editorial Guidelines on Impartiality address potential conflicts of interest and state that audiences need to be confident that the BBC's editorial decisions are not influenced by the outside activities or personal or commercial interests of programme makers or those who appear on air.

She noted that 1Xtra had addressed the complainant's concern about potential conflicts of interest amongst DJs in their response:

"A number of 1Xtra's DJs work for the station in a freelance capacity, while also working in the record industry. Many have also developed close contacts with artists and management companies, built up over years of work in the media industry. Neither of these prohibits them from working for 1Xtra – indeed, we expect our DJs to be relative experts in their fields; I can assure you however that strict rules are in place regarding potential conflicts of interests. For example, if a DJ has a consultancy capacity in A&R at a certain label, they are required to highlight any tracks from that label they are thinking of playing in a show, in advance. The decision on whether those tracks are suitable for play is then made by someone else with no connection to the artists concerned."

The Adviser considered Trustees would be likely to conclude that Radio 1Xtra had given a comprehensive response on this point and she had not seen evidence of a potential breach of the Editorial Guidelines.

The Adviser noted that the Trust did not have a role in making decisions about BBC output unless a possible breach of standards was identified, and the Adviser had not seen evidence of that being the case here, either in terms of the Editorial Guidelines or Radio 1Xtra's Service Licence. 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 "editorial and creative direction" of the BBC and the operational management of the BBC were defined as duties that were the responsibility of the Executive Board under Article 38, (1)(b) and (c). More information about this is given in Annex 2. The Adviser believed that the responsibility for decisions about the operation of Radio 1Xtra's music policy rested with the BBC Executive, not the Trust.

Taking this into account the Adviser considered that the BBC 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 it was appropriate, proportionate or cost-effective to proceed with the appeal as it did not have a reasonable prospect of success.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with her appeal. She said that:

- She had not read the adviser's decision
- There were many positive aspects of the BBC.
- She was concerned about the treatment of mixed race individuals.
- There was discrimination in favour of London

The Panel's decision

A panel of the Complaints and Appeals Board noted the points made by the complainant, the BBC and the Adviser.

Trustees noted that the issue in front of them was whether the decision by the BBC to decline to enter into further correspondence was correct.

Trustees agreed that if they took this matter on appeal they would be likely not to uphold the complaint given that:

- The Royal Charter 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 Article 38, (1) (b) as a duty which was the responsibility of the Executive Board. The Royal Charter also explained that the Trust must not exercise or seek to exercise the functions of the Executive Board. (Article 9, (3)).
- The responsibility for choice of artists to feature on a radio service rested with programme makers who reported to the Executive Board. It was not a matter for the Trust.
- Trustees had not seen evidence that contradicted the response of Radio 1Xtra regarding the creative direction of the station and their statement that "the colour of an artist's skin is irrelevant" and that "a performer's ethnic background is never taken into consideration."
- Radio 1Xtra had given a comprehensive response regarding the complainant's concern about potential conflicts of interest amongst DJs. Trustees had not seen evidence of a potential breach of the Editorial Guidelines.
- The BBC had issued reasoned and reasonable responses in accordance with the general complaints procedure.

Trustees decided not to take the appeal, on the basis that it would not be appropriate, proportionate or cost-effective since there was no reasonable prospect of the appeal succeeding.

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

Decision by BBC Audience Services not to respond further to a complaint about BBC Weather reporting

The complainant asked the Complaints and Appeals Board to review the decision of the BBC not to respond further to his complaint at stage 1b.

The Complaint

The complainant said that the BBC's weather reporting for the London area was inaccurate. He made the following points:

- The BBC's weather forecasting was not sufficiently accurate and meant that he could not effectively plan activities which required good weather.
- He felt the BBC's online weather forecasting had become worse since the BBC had introduced new technology.
- He felt that the BBC continued to make the same mistakes, despite the evidence he had presented.
- The BBC was issuing forecasts that were overly negative and biased towards forecasting cloudy weather when the outlook was uncertain.

Audience Services made the following points:

- The nature of weather forecasting meant that there were times when the weather did not behave in the way forecast.
- The BBC purchased forecast data from the Met Office and did feed back to them concerns about forecast accuracy.
- They gave the complainant contact details for the Met Office in case he wished to contact them directly.

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 Head of Editorial Standards, BBC Trust

The Head of Editorial Standards, BBC Trust, decided that the point she should consider was whether the complainant's appeal against the BBC's decision not to correspond further had a reasonable prospect of success. She decided it did not.

She noted that the complainant had previously taken a similar appeal to the Trustees and they had decided it had no reasonable prospect of success. They said that the matter was not admissible, having concluded that:

- The Royal Charter set out a division of responsibility between the BBC Executive and the BBC Trust and 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 specifically defined in Article 38, (1) (b) and (c) as duties which were the responsibility of the Executive Board. The Royal Charter also explained that

the Trust must not exercise or seek to exercise the functions of the Executive Board. (Article 9, (3)).

- Trustees considered that decisions about what to include in the BBC's weather forecasts were part of the editorial and operational responsibilities of the BBC Weather team.

The Head of Editorial Standards, BBC Trust believed the current appeal had no reasonable prospect of success for the same reasons. It was repetitive of an appeal the complainant had already made to the Trustees. She considered it would be disproportionate and would not represent value for money to take this matter on appeal.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with his appeal.

The Panel's decision

A panel of the Complaints and Appeals Board noted the points made by the complainant, the BBC and the Head of Editorial Standards, BBC Trust.

Trustees agreed that if they took this matter on appeal they would be likely not to uphold the complaint given that:

- the Royal Charter set out a division of responsibility between the BBC Executive and the BBC Trust and 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 specifically defined in Article 38, (1) (b) and (c) as duties which were the responsibility of the Executive Board. The Royal Charter also explained that the Trust must not exercise or seek to exercise the functions of the Executive Board. (Article 9, (3));
- they considered that decisions about what to include in the BBC's weather forecasts were part of the editorial and operational responsibilities of the BBC Weather team.
- the BBC had issued reasoned and reasonable responses in accordance with the general complaints procedure.

Trustees decided not to take the appeal, on the basis that it would not be appropriate, proportionate or cost-effective since there was no reasonable prospect of the appeal succeeding.

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

Decision of BBC Audience Services not to respond further to a complaint about *QI*, BBC Two, 11 November 2016

The complaint

The complaint concerned the guest appearance of Jeremy Clarkson as a panellist on *QI*.

The complainant made the following points:

- she said that Jeremy Clarkson was an inappropriate guest because of his historical assault on – and abuse of – a BBC employee during the making of *Top Gear*
- she considered it inappropriate to invite Mr Clarkson to appear on any BBC programmes in light of his conduct towards the employee
- she asked whether the BBC considered abuse of Irish staff not to be 'real' racism or 'real' physical abuse.

BBC Audience Services made the following points:

- although Mr Clarkson's contract to appear on *Top Gear* had not been renewed, he was not banned from appearing on the BBC altogether
- a summary of the findings of the BBC into the allegations against Mr Clarkson had been published, and the Director-General had also issued a statement explaining the BBC's decision. Both of these statements could be found on the BBC website: <http://www.bbc.co.uk/mediacentre/statements/jeremy-clarkson-dg-statement>

BBC Audience Services said that they had nothing to add to the previous response and they did not consider the complaints to have raised a significant issue of general importance that might justify further investigation.

Appeals

The complainant appealed to the BBC Trust on the substance of her complaint. She made the following points:

- inviting Jeremy Clarkson to appear on *QI* not only rewarded him for his abuse and physical attack on the BBC employee, but also broadcast the message that attacks on Irish people were acceptable
- under "The Public Purposes of the BBC", the Charter drew attention to the need "to reflect, represent and serve the diverse communities of all of the United Kingdom's nations". She believed that inviting Mr Clarkson to appear in BBC output did not serve or represent the Irish community; nor did it raise "awareness of the different cultures". Instead, it broadcast a distorted picture of the large Irish ethnic minority community and was a public statement that attacks on the Irish community were of no importance or seriousness. The complainant believed this was a breach of BBC guidelines which stated that "the public must be able to trust the integrity of BBC programmes and services"
- BBC guidelines state that "material that condones or glamorises violence, dangerous or seriously anti-social behaviour, or material that is likely to encourage others to copy such behaviour," should be avoided. The complainant asked why similar standards were not applied in this case. She believed that inviting Mr Clarkson to appear on *QI* gave a stamp of approval to racist and violent behaviour
- 'The Guardian' had reported that the Director-General of the BBC said Clarkson had subjected an "innocent party [to] a physical altercation accompanied by

sustained and prolonged verbal abuse of an extreme nature". She wondered if *QI* staff and BBC management considered the verbal and physical attack on the employee a minor offence.

Decision of the Senior Editorial Adviser

The Senior Editorial Adviser (the Adviser) understood that BBC Audience Services had decided not to correspond further with the complainant after Stage 1. She decided that the point she should consider was whether the complainant's appeal against the decision of Audience Services not to correspond further had a reasonable prospect of success. She decided that it did not.

The Adviser noted the complainant's strong view that Mr Clarkson should not be involved in any BBC output and that by inviting Mr Clarkson to appear as a guest panellist on *QI*, the BBC was giving a stamp of approval to his previous behaviour.

The Adviser noted that Audience Services had drawn the complainant's attention to the findings of the BBC's investigation into the attack on the employee and the Director-General's statement of 25 March 2015. The full content of these can be found at: <http://www.bbc.co.uk/mediacentre/statements/jeremy-clarkson-dg-statement>. The Director General's statement announced the BBC's decision not to renew Mr Clarkson's contract with *Top Gear*. This decision ended Mr Clarkson's involvement in any future *Top Gear* programmes as part of BBC output but, as explained by Audience Services, Mr Clarkson was not banned from appearing in other BBC output in the future.

The Adviser noted that the complainant believed that Mr Clarkson's appearance as a guest on *QI* breached Editorial Guidelines on Harm and Offence which address the impact of violence in BBC output. Paragraph 5.4.28 states:

"We should take care to ensure that individual programmes, or programmes taken together across the schedule, avoid including material that condones or glamorises violence, dangerous or seriously anti-social behaviour, or material that is likely to encourage others to copy such behaviour, unless clearly editorially justified."

The Adviser did not consider that the complaint engaged the Editorial Guidelines. She noted the complainant's view that Mr Clarkson's appearance breached the quoted guideline but she noted that the wording related to programme content rather than the off-screen behaviour of individuals involved in the making of programme content.

The Adviser also noted that the complainant had referred to the Royal Charter requirement for the BBC "to reflect, represent and serve the diverse communities of all of the United Kingdom's nations". She noted that this requirement related to the provision of BBC content which reflected, represented and served the diverse communities of all the United Kingdom's nations. She had not seen evidence that would be likely to lead Trustees to conclude that this clause was pertinent to the complaint about Mr Clarkson's off-screen behaviour towards a BBC employee.

The Adviser noted that the BBC had widely acknowledged Mr Clarkson's physical and verbal attack on the BBC employee as totally reprehensible and it had led to his contract with the BBC to present *Top Gear* not being renewed. The Director-General had acknowledged in 2015 that a line had been crossed.

The Adviser considered that the decision to invite Mr Clarkson to appear on *QI* was an operational one and this decision was the responsibility of the BBC's Executive Board rather than the BBC Trust. The Adviser noted that the Trust did not have a role in making

decisions about BBC output unless a possible breach of standards was identified, and the Adviser had not seen evidence of that being the case here. 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 “editorial and creative direction” of the BBC was defined as a duty that was the responsibility of the Executive Board under Article 38, (1)(b). The Adviser believed that the responsibility for decisions about the selection of guests on panel shows rested with the BBC Executive, not the Trust.

The Adviser acknowledged the complainant’s view that the BBC should sever all links with Mr Clarkson; however, she noted that the BBC Trust only became involved in operational decisions if there was a possibility that there was a breach of operational requirements such as those associated with the BBC’s service licences, which the Adviser did not consider to be the case in this instance.

Taking this into account the Adviser considered that BBC 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 it was appropriate, proportionate or cost-effective to proceed with the appeal as it did not have a reasonable prospect of success.

Request for Review by Trustees

The complainant asked Trustees to review the decision not to proceed with her appeal. She said:

- the BBC needed to progress the complaint to ensure that staff did not take lightly a racist attack on any ethnic minority community
- she had attempted to progress the complaint based upon rules, regulations and guidelines but it appeared that current BBC rules, regulations and guidelines did not cover the caes.

The Panel’s decision

A panel of the Complaints and Appeals Board considered the points made by the complainant and the BBC.

The Trustees noted that the issue in front of them was whether the decision by the BBC to decline to enter into further correspondence was correct.

The Trustees agreed that if they took the matter on appeal they would not uphold it given that:

- the Director-General’s statement had acknowledged that Mr Clarkson had crossed a line in being involved in a physical altercation with the employee (which was accompanied by a sustained verbal attack). This had resulted in Mr Clarkson’s contract to present *Top Gear* not being renewed. Mr Clarkson was not, however, banned from appearing in other BBC output in the future
- the Royal Charter (2007) 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” of the BBC was specifically defined in Article 38, (1) (b) as a duty which was the responsibility of the Executive Board. The Royal Charter also explained that the Trust must not exercise or seek to exercise the functions of the Executive Board, (Article 9, (3))
- the decision of which guests should appear in programmes was an editorial matter, and responsibility for this rested with the programme makers who reported to the BBC’s Executive Board rather than the BBC Trust, unless there was

a breach of editorial standards. Trustees agreed that they had seen no possible breach of editorial standards in inviting Mr Clarkson to appear on *QI* and they therefore did not have a role in making decisions about his selection as a contributor.

Trustees concluded that it was not appropriate, proportionate or cost-effective to admit the appeal as it did not have a reasonable prospect of success.

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

Admissibility decisions

In each of the instances below, appeals to the BBC Trust were provided directly to Trustees for a decision on admissibility. The complainants did not receive a decision from the Trust Unit.

The Panel was provided with the complainant's correspondence with the BBC, and the complaint's appeal/s to the Trust.

Decision of BBC Audience Services not to respond further to a complaint about the award for BBC African Footballer of the Year 2016

The complainant contacted the BBC to comment on the award for BBC African Footballer of the Year 2016.

The complainant said:

- He believed there should be Awards for all the countries of the UK who pay the Television Licence.
- He was dissatisfied that the BBC had had not "answered any of my questions".

BBC Audience Services that:

- they appreciated the complainant's concerns and they had placed his comments in the daily Audience Feedback Report, which would be seen by senior management and the BBC Sport team. This would help inform their decisions about current and future programmes.
- the complainant had not set out any questions in his original complaint and they had nothing to add to the previous response.

BBC Audience Services did not consider the complaint to have raised a significant issue of general importance that might justify further investigation.

Appeal

The complainant appealed to the BBC Trust. He said that the BBC had awards for African players in the Premiership but should instead concentrate on awards for players from the 'home nations' as they had paid their television licences.

The Panel's decision

A panel of the Complaints and Appeals Board considered the points made by the complainant and the BBC.

The Trustees noted that the issue in front of them was whether the decision by the BBC to decline to enter into further correspondence was correct.

Trustees agreed that the matter was not admissible having concluded that:

- the Royal Charter 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” of the BBC was specifically defined in Article 38, (1) (b) as a duty which was the responsibility of the Executive Board. The Royal Charter also explained that the Trust must not exercise or seek to exercise the functions of the Executive Board, (Article 9, (3))

- the decision to create an award for the African Footballer of the Year was an editorial and creative decision which rested with BBC Sport, who reported to the Executive Board
- the complainant had received reasoned and reasonable responses.

Trustees concluded that it was not appropriate, proportionate or cost-effective to admit the appeal as it did not have a reasonable prospect of success.

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

Decision of BBC Audience Services not to respond further to a complaint about the cancellation of *The Good Old Days*, BBC Four, 27 January 2017.

The complainant contacted the BBC to ask why an edition of *The Good Old Days Days* (which was first broadcast on 31 December 1977) had not been shown as advertised on 27 January 2017. He asked whether the programme would be aired at a later date.

BBC Audience Services said in reply that they had consulted BBC Four's schedulers, who stated:

"Because there were animal acts in it, some of which we felt could be seen as animal cruelty by today's standards, we felt it appropriate to drop the episode from its scheduled transmission".

Unfortunately, the programme would not therefore be repeated.

The complainant was disappointed that the BBC had deprived him of the opportunity to see the programme. He believed that previous episodes had been edited for matters of taste and he did not understand why this approach could not have been taken with this episode.

BBC Audience Services said that they had nothing to add to the previous response and they did not consider the complaint to have raised a significant issue of general importance that might justify further investigation.

Appeals

The complainant appealed to the BBC Trust. He said he would like to understand why the BBC had felt it was unable to edit this particular episode. The programme featured Millicent Martin and Julia McKenzie and he was disappointed that the last-minute schedule change resulted in him missing the opportunity to see these actors in their prime.

The Panel's decision

A panel of the Complaints and Appeals Board considered the points made by the complainant and the BBC.

The Trustees noted that the issue in front of them was whether the decision by the BBC to decline to enter into further correspondence was correct.

Trustees agreed that the matter was not admissible having concluded that:

- the Royal Charter 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" of the BBC was specifically defined in Article 38, (1) (b) as a duty which was the responsibility of the Executive Board. The Royal Charter also explained that the Trust must not exercise or seek to exercise the functions of the Executive Board, (Article 9, (3))
- responsibility for scheduling decisions rested with the BBC's channel management teams who reported to the Executive Board

- the complainant had received reasoned and reasonable responses which explained that the BBC Four schedulers had decided the programme should be dropped as it featured acts which could be seen as animal cruelty by today's standards.

Trustees were sorry that the complainant was disappointed but they concluded that it was not appropriate, proportionate or cost-effective to admit the appeal as it did not have a reasonable prospect of success.

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

Decision of BBC Audience Services not to respond further to a complaint about the BBC's *100 Women* season.

The complainant contacted the BBC Director-General to complain that the BBC was running a *100 Women* series but not a *100 Men* series. He considered this to be sex discrimination as it sent out a message that the BBC considered men to be less important than women. He wanted those behind it to be right wing bigots who should be sacked.

BBC Audience Services said in reply that

- the complainant's letter had been read by the Director-General's staff and forwarded to BBC Audience Services for reply on behalf of the BBC's management
- the award-winning annual *100 Women* season was based upon a list of 100 inspirational global women and their extraordinary lives, achievements and experiences
- the season was originally launched in 2013 to better represent women in the BBC's international news output
- the list aimed to recognise women who were world leaders in politics, science and entertainment, as well as less well-known but inspirational women from all over the world
- the complainant's concerns had been recorded on the BBC's Audience Feedback Report. This was seen by the BBC's news editors and senior managers.

The complainant was dissatisfied with this response, stating that the decision to commission the season without an accompanying high-profile series about men ran counter to the BBC Charter.

BBC Audience Services said the fact that the event discussed issues affecting women did not mean that men were excluded. The complainant was more than welcome to take part in the debate through the website or to listen to output on the day.

BBC Audience Services said that they had nothing to add to the previous response and they did not consider the complaint to have raised a significant issue of general importance that might justify further investigation.

Appeals

The complainant appealed to the BBC Trust. He said that the *100 Women* season contravened the BBC's Charter commitments to contribute to the social cohesion of the UK and to provide coverage that was impartial and fair. It was institutionalised sexism.

The Panel's decision

A panel of the Complaints and Appeals Board considered the points made by the complainant and the BBC.

The Trustees noted that the issue in front of them was whether the decision by the BBC to decline to enter into further correspondence was correct.

Trustees agreed that the matter was not admissible having concluded that:

- the Royal Charter 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” of the BBC was specifically defined in Article 38, (1) (b) as a duty which was the responsibility of the Executive Board. The Royal Charter also explained that the Trust must not exercise or seek to exercise the functions of the Executive Board, (Article 9, (3))
- the decision to commission a season which celebrated the lives and achievements of women across the world did not engage the BBC’s editorial guidelines but was instead an editorial matter which was the responsibility of the Executive Board
- Trustees had seen no evidence that this constituted sexism.
- The complainant had received reasoned and reasonable responses which set out the BBC’s intentions in commissioning the season and which explained that men were not excluded from participating in the debate.

Trustees concluded that it was not appropriate, proportionate or cost-effective to admit the appeal as it did not have a reasonable prospect of success.

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

Decision of BBC Audience Services not to respond further to three complaints about the closure of the BBC Travel website.

Three complainants contacted the BBC to complain about the decision to close the BBC Travel website. Among the points made were:

- the decision should be reconsidered as the travel site provided an excellent service by covering the whole of the UK. It also allowed users to plan ahead to avoid traffic jams
- it offered excellent coverage of national motorway traffic news
- it was an essential service and many thousands of people would be adversely affected if it were to close.
- it was a popular service which was not replicated elsewhere
- the BBC had provided no real explanation for the decision.
- despite a high number of complaints on the BBC's blog⁷ the response of the BBC's Executive Product Manager had been inadequate, simply stating that "she reads all the comments."

BBC Audience Services said in reply:

- the BBC appreciated that the complainants were disappointed
- senior staff who were responsible for the site's closure said the decision had not been made lightly and formed part of the BBC's review of its online services
- more details about the review could be found here: www.bbc.co.uk/aboutthebbc/insidethebbc/howwework/reports/bbc_ocr_2016
- though there would not be a specific Travel site in future, travel information would be provided on the BBC's local 'live' news pages.

The complainants were dissatisfied with this response:

- one complainant said that the reply was inadequate as it did not address clearly why the site was closing
- a second said that it failed to address the importance of the issue and the consequences for those who relied upon the service
- the third complainant said that the review did not offer a 'justifiable' reason for the site's closure beyond saving money. This complainant believed the site was a good use of the licence fee and was unique and distinctive. His local BBC news site was www.bbc.co.uk/news/england/surrey and it did not provide a local 'live' page.

BBC Audience Services said:

- the decision to close the site was a difficult one, and it followed a very careful review of the BBC's online services
- the BBC needed to make savings of £800 million by 2021/22
- closing the website and halting development of a travel app was part of a plan to save £15 million
- the BBC had decided to focus on its most distinctive online services and the review concluded that the BBC's travel website wasn't sufficiently different from what was available from other providers, nor was it as well used as many of those services

⁷ <http://www.bbc.co.uk/blogs/internet/entries/68182816-070d-4600-9835-e83a4fadcl3d>

- the BBC remained committed to providing comprehensive and high quality travel information. It was changing the way online news pages were published in order to display travel updates more clearly, and BBC regional television and local radio services would continue to provide a travel news service.

BBC Audience Services said that they had nothing to add to the previous response and they did not consider the complaints to have raised a significant issue of general importance that might justify further investigation.

Appeals

The complainants appealed to the BBC Trust. They made various points so appeal including :

- The decision to close the travel website was taken without full consultation with its users. He had only become aware of the imminent closure when it was announced on the site, with very limited time to respond.
- Despite over 2,000 comments on the BBC's blog, the only response were two posts briefly thanking users for their support.
- This was an essential daily service which was used by many thousands of people. Alternative sources of travel information were not comparable and were inadequate.
- the BBC had failed to carry out a genuine consultation with the site's users.
- The site was unique because no other site warned of roadworks irrespective of whether the works were causing hold-ups.
- £15 million was a relatively small amount. It was unacceptable that there was no 'live' webpage for Surrey.
- The site provides an essential service – it is not an optional extra
- It is something that people rely on every day
- it is an illogical decision
- BBC Audience Services advised that other local sites would continue to provide the service, but they are not an adequate replacement.
- There is not a decent alternative that provides all the information.

The Panel's decision

A panel of the Complaints and Appeals Board considered the points made by the complainant and the BBC.

The Trustees noted that the issue in front of them was whether the decision by the BBC to decline to enter into further correspondence was correct.

Trustees understood that this was a much valued and trusted service by its users and that the complainants objected strongly to its closure.

However Trustees agreed that the matter was not admissible having concluded that:

- the Royal Charter (2007) 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" of the BBC was specifically defined in Article 38, (1) (b) as a duty which was the responsibility of the Executive Board. The Royal Charter also explained that the Trust must not exercise or seek to exercise the functions of the Executive Board, (Article 9, (3))
- the BBC was entitled to make operational decisions

- on 17 May 2016, the BBC had announced its plans to close the website; this was followed eight months later by the announcement that the site would close in February 2017
- the complainants had received reasoned and reasonable responses which set out the criteria used when assessing existing services; they explained that the existing service was neither sufficiently distinctive, nor popular; the BBC had also described its plans to improve the clarity of travel news on its online pages and its hopes to feed travel updates into its future personalised news services. The online blog had guided people to the BBC's Online Creative Review

Trustees concluded that it was not appropriate, proportionate or cost-effective to admit the appeal as it did not have a reasonable prospect of success.

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

Decision of BBC Audience Services not to respond further to a complaint about 'social engineering' in the BBC's selection of sports commentators and news reporters

The complainant contacted the BBC to complain that the England v Fiji Rugby Union match broadcast on 19 November 2016 featured a female commentator. He said this was inappropriate because the men's game was an expression of strength, speed and masculinity. Looking across a range of sports, he believed the BBC featured a "disproportionate" number of women as sports commentators. Turning to news programmes, the complainant also believed that a "disproportionate" number of reporters were from a "recent foreign generation background". He believed the BBC was engaging in social engineering and this was fuelling electoral disquiet and intolerance.

BBC Audience Services said in reply that

- as a publicly-funded broadcaster, the BBC served the whole of the United Kingdom, providing programming to a hugely diverse audience
- programme-makers had an obligation to reflect the whole of UK society
- in selecting contributors for its programmes, the BBC aimed to employ those with the most suitable talents for the role, irrespective of ethnic or national origins or gender
- while the BBC takes positive action to promote equality of opportunity, it did not undertake "positive discrimination" because this was illegal
- the BBC's Rugby Union team included a line-up of ex-players and experts. The aim of the commentators and studio team was to give the audience as much context and insight to the coverage as possible, but the BBC did not expect everyone to agree with every choice it made
- the complainant's concerns had been recorded on the BBC's Audience Feedback Report. This was seen by the BBC's senior managers and programme makers and helped inform their decisions about future programmes.

The complainant was dissatisfied with this response.

BBC Audience Services said that they had nothing to add to the previous response and they did not consider the complaint to have raised a significant issue of general importance that might justify further investigation.

Appeal

The complainant appealed to the BBC Trust. He said that the BBC's selection of presenters constituted bias in favour of feminism and multi-culturalism. It was racist. Such an approach resulted in resentment by viewers and led to misogyny and racial discrimination.

The Panel's decision

A panel of the Complaints and Appeals Board considered the points made by the complainant and the BBC.

The Trustees noted that the issue in front of them was whether the decision by the BBC to decline to enter into further correspondence was correct.

Trustees agreed that the matter was not admissible having concluded that:

- the Royal Charter 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” of the BBC was specifically defined in Article 38, (1) (b) as a duty which was the responsibility of the Executive Board. The Royal Charter also explained that the Trust must not exercise or seek to exercise the functions of the Executive Board, (Article 9, (3))
- the selection of commentators, reporters and contributors was a matter of editorial judgement for the BBC Executive
- the complainant had received reasoned and reasonable responses which explained that the BBC had an obligation to reflect the whole of UK society and said, in selecting contributors, that the BBC aimed to employ those with the most suitable talents for the role irrespective of race or gender.

Trustees concluded that it was not appropriate, proportionate or cost-effective to admit the appeal as it did not have a reasonable prospect of success.

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

Decision of BBC Audience Services not to respond further to a complaint about BBC Radio Manchester

On 11 January 2017, the complainant contacted a number of public organisations, including the Cabinet Office, the Parliamentary Commissioner for Standards and the BBC Trust to complain that the BBC complaints process used a web form rather than providing email addresses of decision-makers so that people could hold them to account for nepotism and cronyism. He wished to complain in particular that a local radio station was giving too much work and money to its mid-morning presenter and, until recently, to his daughter.

The Trust Unit replied on 20 January 2017, explaining that the Trust was not in a position to comment on the complaint until the BBC Executive had first had an opportunity to do so. The Trust sent the complaint to BBC Audience Services who consulted the local Radio Station's Editor. In a reply to the complainant sent on 7 February 2017, BBC Audience Services apologised for the delay in replying and said:

"The Editor [BBC local Radio station] clarifies that the station hasn't used [CHILD'S NAME] for some 16 months on [NAME'S] show - primary school children from different schools are used now for the segments in question."

The letter also explained the BBC's Complaints Process, which all complainants must follow, and enclosed a web-link to the full details.

The complainant sent replies to the BBC's outgoing email account and to a number of other parties including the Culture Secretary and the BBC Director-General. He asked a number of questions eg :

- what qualifications were required to be a BBC complaints adviser?
- how was it possible to complain about the adviser's incompetence?
- why was the reply to his complaint delayed?

BBC Audience Services said in reply:

"Whilst I note you pose a number of questions, you will have noted from our explanatory webpage at www.bbc.co.uk/complaints/handle-complaint/ which my colleague pointed you towards previously, we explain that "We investigate possible breaches of standards, but may not respond in detail to comments, questions or matters of opinion in order to use your licence fee more efficiently". As your email consists of a series of questions, I must advise that we are not able to entertain them within our published complaints process."

BBC Audience Services also said:

- the complaints process explained that the BBC did not investigate gratuitously abusive or offensive complaints, and the Complaints Adviser asked the complainant to moderate his language in any future correspondence
- it was possible to register a formal complaint about a member of BBC Audience Services staff by following the published complaints process
- regarding the delay in replying: the complainant had incorrectly contacted the BBC Trust, which resulted in a delay in the email being passed from the Trust to Audience Services. The email was received by Audience Services on 20 January

- 2017 and a reply was sent on 7 February 2017. This was two days outside the BBC's target response of ten working days from receipt of the complaint
- the BBC had nothing further to add to its previous comments about the presenter's daughter, other than to note the complainant's opinions.

BBC Audience Services did not consider the complaint to have raised a significant issue of general importance that might justify further investigation.

Appeal

The complainant appealed to the BBC Trust. He said he was dissatisfied with the reply he had received from BBC Audience Services.

The Panel's decision

A panel of the Complaints and Appeals Board considered the points made by the complainant and the BBC.

The Trustees noted that the issue in front of them was whether the decision by the BBC to decline to enter into further correspondence was correct.

Trustees agreed that the matter was not admissible having concluded that:

- the Royal Charter 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" of the BBC was specifically defined in Article 38, (1) (b) as a duty which was the responsibility of the Executive Board. The Royal Charter also explained that the Trust must not exercise or seek to exercise the functions of the Executive Board, (Article 9, (3))
- the responsibility for editorial decisions about the selection of contributors for BBC local radio programmes rested with BBC Editors who reported to the Executive Board
- the complainant had received reasoned and reasonable responses which explained that the point at the heart of the complaint (the on-air appearances of a presenter's daughter) was not a current issue, and that for the last 16 months, primary school children from different schools had appeared on the programme.

Trustees concluded that it was not appropriate, proportionate or cost-effective to admit the appeal as it did not have a reasonable prospect of success.

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

Decision of BBC Audience Services not to respond further to a complaint about broadcasting news programmes simultaneously on BBC One and the BBC News Channel

The complainant contacted the BBC to complain that US President Donald Trump's inauguration was being shown simultaneously on BBC One and the BBC News Channel. He said that news programmes should be shown on the News Channel and duplication should be avoided so that other channels could provide choice in showing other forms of entertainment.

BBC Audience Services said in reply that:

- the BBC had a duty to report on major current events throughout the world
- a great deal of research informed the commissioning and scheduling of programmes
- when formulating the schedules, the BBC tried to take into account audience expectations related to both the channel and the time of broadcast, and the variety of content provided
- these were subjective decisions and the BBC accepted that not everyone would agree with its choices about scheduling programmes
- the complainant's concerns had been recorded on the BBC's Audience Feedback Report. This was seen by the BBC's senior managers and programme makers and helped inform their decisions about future programmes.

The complainant was dissatisfied with this response. He believed the licence payer was being cheated by a reduced choice of content, caused by a "doubling up" of news programmes on multiple channels.

BBC Audience Services said that they had nothing to add to the previous response and they did not consider the complaint to have raised a significant issue of general importance that might justify further investigation.

Appeal

The complainant appealed to the BBC Trust. He objected to the transmission of identical programmes on the BBC News Channel and BBC One, Two and Four, and he believed the licence fee should be reduced as a consequence.

The Panel's decision

A panel of the Complaints and Appeals Board considered the points made by the complainant and the BBC.

The Trustees noted that the issue in front of them was whether the decision by the BBC to decline to enter into further correspondence was correct.

Trustees agreed that the matter was not admissible having concluded that:

- the Royal Charter 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" of the BBC was specifically defined in Article 38, (1) (b) as a duty which was the responsibility of the Executive

Board. The Royal Charter also explained that the Trust must not exercise or seek to exercise the functions of the Executive Board, (Article 9, (3))

- the scheduling of programmes was an operational matter, involving editorial decision-making; this was the responsibility of the BBC Executive
- the complainant had received reasoned and reasonable responses which explained that the BBC had a duty to report on major current events, but tried to take into account the variety of content it provided on different channels, as well as audience expectations, when making scheduling decisions of these kinds.

Trustees concluded that it was not appropriate, proportionate or cost-effective to admit the appeal as it did not have a reasonable prospect of success.

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

Decision of BBC Audience Services not to respond further to a complaint about the omission of Manchester from the BBC's national weather map

The complainant contacted the BBC to ask why Manchester was not shown on the BBC's national weather map.

The BBC Weather department said in reply:

- place names were used to help give viewers their bearings
- adding too many names obscured underlying weather data
- in general, place names were used along the coast so they did not cover land
- Birmingham was an exception to this policy because if it were omitted, there would be nothing in the centre of the UK to aid with bearings
- if Manchester were added with text to the left, it would obscure the land around Liverpool and North Wales. If it were added with text to the right it would obscure the area around Sheffield and necessitate the removal from the map both of Norwich and the temperature disc for East Anglia
- when the forecast included a tour around the UK, the map would then include a range of different towns and cities including, on some occasions, Manchester
- weather data specifically for Manchester could be found here: www.bbc.co.uk/weather/2643123

The complainant was not satisfied with this response. He did not accept the rationale given regarding the inclusion of Birmingham, when Manchester was excluded.

BBC Audience Services said in reply:

- the BBC tried very hard to produce a high-quality forecast
- with little time available in each broadcast, the challenge for forecasters was not only to try and balance the report so that everywhere within the UK was included, but also to focus on any key weather conditions
- the complainant's concerns had been recorded on the BBC's Audience Feedback Report. This was seen by the BBC's senior managers and programme makers and helped inform their decisions about future programmes.

BBC Audience Services said that they had nothing to add to the previous response and they did not consider the complaint to have raised a significant issue of general importance that might justify further investigation.

Appeals

The complainant appealed to the BBC Trust. He said he did not accept the BBC's explanation as to why Manchester had been removed from the map, when it was the most important city outside London. He would like to see Manchester back where it belonged.

The Panel's decision

A panel of the Complaints and Appeals Board considered the points made by the complainant and the BBC.

The Trustees noted that the issue in front of them was whether the decision by the BBC to decline to enter into further correspondence was correct.

Trustees agreed that the matter was not admissible having concluded that:

- the Royal Charter 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” of the BBC was specifically defined in Article 38, (1) (b) as a duty which was the responsibility of the Executive Board. The Royal Charter also explained that the Trust must not exercise or seek to exercise the functions of the Executive Board, (Article 9, (3))
- the choice of which towns and cities to include on the BBC’s national weather map was an editorial matter, responsibility for which rested with the Executive Board
- the complainant had received reasoned and reasonable responses from both Audience Services and BBC Weather which explained that the inclusion of Manchester’s name would obscure important geographical and temperature information, but that Manchester did feature in ‘tours’ within forecasts, and full forecast information for the city could be found online and on the BBC Weather app.

Trustees concluded that it was not appropriate, proportionate or cost-effective to admit the appeal as it did not have a reasonable prospect of success.

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

Decision of BBC Audience Services not to respond further to a complaint about changes to BBC Radio 2's overnight schedule

The complainant contacted the BBC to complain about changes to Radio 2's weekday overnight schedule, which involved the replacement of live presentation with a pre-recorded service. He said:

- loneliness was a problem for the elderly, and presenters Janice Long and Alex Lester had become virtual friends in recent years
- Radio 2 was a vital connection to the outside world.

BBC Audience Services consulted the Head of BBC Radio 2, who said in reply:

- this was not an easy decision
- Radio 2 had to reduce programming costs in order to make savings in line with the rest of the BBC
- as a relatively small percentage of the audience listened to Radio 2 through the night, changes had to be made to ensure that programming spend reached the most listeners
- while he appreciated that the changes had disappointed the complainant, he hoped it would be of some consolation to know that both presenters would continue to broadcast on BBC Radio.

The complainant was dissatisfied with this response. He asked whether an 'obsession' with ratings had killed off live radio on Radio 2 after midnight, when it was a valuable community resource.

BBC Audience Services said that they had nothing to add to the previous response and they did not consider the complaint to have raised a significant issue of general importance that might justify further investigation.

Appeal

The complainant appealed to the BBC Trust. He said that the withdrawal of live programming from BBC Radio 2 from midnight to 3am represented a significant cut in the scope of BBC services because of the loss not just of two experienced broadcasters, but also the live contributions of listeners via social media.

The Panel's decision

A panel of the Complaints and Appeals Board considered the points made by the complainant and the BBC.

The Trustees noted that the issue in front of them was whether the decision by the BBC to decline to enter into further correspondence was correct.

Trustees recognised that Radio 2 overnight had loyal followers and the ending of live presentation had been a disappointment to the complainant.

Trustees however agreed that the matter was not admissible having concluded that:

- the Royal Charter 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” of the BBC was specifically defined in Article 38, (1) (b) as a duty which was the responsibility of the Executive Board. The Royal Charter also explained that the Trust must not exercise or seek to exercise the functions of the Executive Board, (Article 9, (3))

- the BBC was entitled to make operational decisions. The Trust would only have a role if the BBC was potentially in breach of any of its other commitments – for example, if one of the licence-fee funded services had not operated within the terms set out in its Service Licence
- the changes to BBC Radio 2’s overnight schedule did not require amendments to the station’s service licence, so approval by the Trust was not required; this was therefore an operational decision and an editorial matter for the BBC Executive
- the complainant had received reasoned and reasonable responses which set out the rationale for the change, which included the need to make savings whilst ensuring that the remaining budget was spent on those parts of the schedule which reached the largest number of listeners.

Trustees concluded that it was not appropriate, proportionate or cost-effective to admit the appeal as it did not have a reasonable prospect of success.

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

Decision of BBC Audience Services not to respond further to a complaint about television coverage of FA Cup matches involving Welsh teams

The complainant contacted the BBC to complain that Welsh viewers benefited from additional television coverage of FA Cup matches. He said:

- there were two Welsh teams (Cardiff and Swansea City) in the FA Cup third round
- one of these teams was guaranteed to be rewarded with a television fixture
- as this match would be shown on BBC One (Wales) this meant that Welsh viewers were benefiting from an extra match, compared to viewers in England
- he understood that BBC nations had their own arrangements with football associations and he wished to understand what these arrangements were
- he did not consider it fair that Welsh viewers saw Welsh teams play, when the BBC did not show matches featuring East Midlands teams on BBC One (East Midlands).

BBC Audience Services said in reply:

- the BBC shared FA Cup rights with BT Sport, which limited the BBC somewhat on what it could show
- the BBC aimed to include content which appealed to a wide range of audiences but it would not be cost effective to feature matches from each English region in the BBC's regional schedules
- the contractual arrangements enabled the BBC to choose two matches in Round 3 for live broadcast, whereas BT had three matches. After this, BBC Wales and S4C were allowed contractually to show Welsh sides live if they were in the competition. This sat outside the BBC network window
- highlights of all the third round matches would be shown on BBC One, the BBC Red Button and the BBC iPlayer shortly after broadcast
- the complainant's concerns had been recorded on the BBC's Audience Feedback Report. This was seen by the BBC's senior managers and programme makers and helped inform their decisions about future programmes.

The complainant was not satisfied with this response. He considered that the contract was unfair in televising additional Welsh matches. As the BBC response had suggested that the BBC Wales decisions sat outside the network window, he also asked whether he needed to pursue his complaint with an outside body. The part of the contract which gave further matches to BBC Wales and S4C should be thrown out.

BBC Audience Services said that they had nothing to add to the previous response and they did not consider the complaint to have raised a significant issue of general importance that might justify further investigation.

Appeal

The complainant appealed to the BBC Trust. He said that he wanted an answer to the question, 'Is it fair?' and to understand whether he should be bringing the matter to the attention of bodies outside the BBC.

The Panel's decision

A panel of the Complaints and Appeals Board considered the points made by the complainant and the BBC.

The Trustees noted that the issue in front of them was whether the decision by the BBC to decline to enter into further correspondence was correct.

Trustees agreed that the matter was not admissible having concluded that:

- the Royal Charter 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” of the BBC was specifically defined in Article 38, (1) (b) as a duty which was the responsibility of the Executive Board. The Royal Charter also explained that the Trust must not exercise or seek to exercise the functions of the Executive Board, (Article 9, (3))
- the terms of sports contracts and the choice of which FA Cup matches to cover on BBC television at network and at national level were editorial matters, responsibility for which rested with the programme makers who reported to the Executive Board
- the complainant’s concerns had been directed to the correct BBC department and this was a matter for the BBC, rather than an external body
- the complainant had received reasoned and reasonable responses from Audience Services which explained in detail the contractual arrangements underpinning the selection of FA Cup matches in Wales and the UK.

Trustees concluded that it was not appropriate, proportionate or cost-effective to admit the appeal as it did not have a reasonable prospect of success.

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

Decision of BBC Audience Services not to respond further to two complaints about a lack of national news coverage of a protest by the WASPI campaign at Westminster on 8 March 2017

Two complainants contacted the BBC to complain about the lack of news coverage of the WASPI [Women Against State Pension Inequality] Campaign protest which took place at Westminster on 8 March 2017, coinciding with the Chancellor of the Exchequer’s statement on the Spring Budget 2017.

One complainant said that 5,000 people had travelled from all over the country to take part, and she asked whether the lack of coverage was a result of government interference. The second was disappointed that there were no reports of the protest in the BBC’s East of England news bulletins.

BBC Audience Services said in reply:

- many marches and protests take place in London and other UK cities; the BBC did not cover them all routinely but considered each protest on a case-by-case basis and took into consideration the wider context of the story at hand
- the BBC covered the story on the main ‘Wales Today’ evening news bulletin, travelling with local women from across Wales. The report was also published online for a wider audience:

<http://www.bbc.co.uk/news/uk-wales-39206302>

<http://www.bbc.co.uk/news/uk-wales-39195325>

- the BBC understood that this was an issue which affected a significant number of people, with MP backing, and it would continue to report on any developments in the story.

The complainants were dissatisfied with this response: neither of the complainants lived in Wales so they would have preferred national coverage, particularly as they said this was a story which affected 3.4 million women.

BBC Audience Services replied, stating:

- the BBC had received a number of complaints about this issue, so in order to reply promptly and use the licence fee efficiently it was sending the same response to all complainants
- BBC News had previously covered the issue of the increase in women's state pension age, and the effects on a number of women born in the 1950s. Speakers from WASPI had taken part in editions of *Money Box* and *Today* on BBC Radio 4, and the *Victoria Derbyshire* programme broadcast on BBC 2 and the BBC News Channel
- BBC News did not cover every protest at Parliament. When it did so, it was in conjunction with reporting of the issues involved. As the Budget did not alter the terms of state pension arrangements for women, the BBC's live coverage did not include this issue on 8 March 2016. However, the BBC did cover the planned protests in advance of the Budget, on regional and local news programmes (both on television and radio)
- the subject might be revisited in the future by BBC News as part of its coverage of personal finance matters
- the complainants' concerns had been recorded on the BBC's Audience Feedback Report. This was seen by the BBC's senior managers and BBC News teams.

BBC Audience Services said that they had nothing to add to the previous response and they did not consider the complaints to have raised a significant issue of general importance that might justify further investigation.

Appeals

The complainants appealed to the BBC Trust. Both complainants were disappointed by the lack of coverage of the story: one complainant believed there should have been national coverage given the significant impact of the changes to the state pension age for women; the second complainant was disappointed by a lack of coverage on any news programme that covered the East region. The first complainant repeated her concern that the BBC was acting on instructions from government. The second said she was disappointed with a generic message sent to all those who had lodged similar complaints.

The Panel's decision

A panel of the Complaints and Appeals Board considered the points made by the complainant and the BBC.

The Trustees noted that the issue in front of them was whether the decision by the BBC to decline to enter into further correspondence was correct.

Trustees agreed that the matter was not admissible having concluded that:

- the Royal Charter 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” of the BBC was specifically defined in Article 38, (1) (b) as a duty which was the responsibility of the Executive Board. The Royal Charter also explained that the Trust must not exercise or seek to exercise the functions of the Executive Board, (Article 9, (3))
- decisions relating to which protests BBC News would cover were an editorial matter, the responsibility for which rested with BBC editors who reported to the Executive Board
- under the BBC’s complaints process⁸, if the BBC receives a number of complaints about the same issue it may compile a summary of the range of issues raised, consider them together across the full range of issues identified and send the same response to everyone
- the complainant had not provided evidence of any “government interference” and the Royal Charter⁹ guaranteed the editorial independence of the BBC
- the complainants had received reasoned and reasonable responses which explained that BBC News did not cover every protest at Parliament and the Budget did not alter the terms of state pension arrangements for women so the day’s live coverage did not reference the protests; BBC News had covered the issue previously (in *Money Box*, *Today* and *Victoria Derbyshire*) and had covered the build-up to the planned protests on regional and local programmes.

Trustees concluded that it was not appropriate, proportionate or cost-effective to admit the appeal as it did not have a reasonable prospect of success.

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

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http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2017/complaints_for_work_ed_complaints.pdf

⁹ http://www.bbc.co.uk/bbctrust/governance/regulatory_framework/charter_agreement.html

Decision of BBC Audience Services not to respond further to a complaint about BBC Radio Manchester use of its football commentator

The complainant contacted the BBC to complain that BBC Radio Manchester's football commentator Ian Cheeseman would not be covering the UEFA Champions League quarter-final first-leg match between Paris St-Germain and Manchester City.

The Editor of BBC Radio Manchester said in reply:

- she had corresponded with the complainant in the past and she understood how much he enjoyed Mr Cheeseman's commentary
- she agreed that he was a very good commentator and was valued by Manchester City fans
- the BBC had a duty to provide value for money to all licence fee payers and, with the costs of international broadcast equipment and travel, when BBC Radio 5Live were also travelling to cover a European match, BBC Radio Manchester had to consider whether it was appropriate to send two BBC broadcast teams
- on this occasion, BBC Radio Manchester would be providing local pre-match build-up and post-match analysis, and would be simulcasting 5Live commentary on its own frequencies
- coverage of future European games would be considered on a match by match basis
- Manchester City was hugely important to BBC Radio Manchester's local coverage and the station would continue to follow their fortunes with passion and pride.

The complainant was dissatisfied with this response. He wrote to the BBC Director-General, complaining about the reduction in the amount of Mr Cheeseman's commentary over recent months and describing this as poor treatment for a man who had given many years of loyal service to the same radio station.

The complaint was forwarded to BBC Audience Services for reply on behalf of the BBC's management. BBC Audience Services said:

- with regard to Manchester City's European games, the BBC had a duty to provide value for money to all licence fee payers, and when BBC Radio 5Live was already travelling to a match in Europe, BBC Radio Manchester had to consider whether it was appropriate to send another broadcast team
- Radio Manchester had shared match commentary with the 5Live team several times before, with other football clubs and with rugby league and rugby union coverage
- while the station's Editor appreciated that local listeners would always prefer local match commentary, the BBC as a whole was providing a comprehensive radio service covering Manchester City in Europe whilst also saving costs.

BBC Audience Services did not consider the complaint to have raised a significant issue of general importance that might justify further investigation.

Appeal

The complainant appealed to the BBC Trust. He said he would like a full investigation. He was dissatisfied with the replies he had received from the Editor of BBC Radio Manchester because the responses did not change, nor did they offer any compromise.

The Panel's decision

A panel of the Complaints and Appeals Board considered the points made by the complainant and the BBC.

The Trustees noted that the issue in front of them was whether the decision by the BBC to decline to enter into further correspondence was correct.

Trustees agreed that the matter was not admissible having concluded that:

- the Royal Charter 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" of the BBC was specifically defined in Article 38, (1) (b) as a duty which was the responsibility of the Executive Board. The Royal Charter also explained that the Trust must not exercise or seek to exercise the functions of the Executive Board, (Article 9, (3))
- decisions about which football matches to cover, and how to cover them, were an editorial matter, responsibility for rested with BBC Editors who reported to the Executive Board
- the complainant had received reasoned and reasonable responses which explained that the decision was intended to give value for money to all licence fee payers by sending only one broadcast team to cover the match; that BBC Radio Manchester would provide full pre-match build-up and post-match analysis; and that coverage of future European games would be considered on a match-by-match basis.

Trustees concluded that it was not appropriate, proportionate or cost-effective to admit the appeal as it did not have a reasonable prospect of success.

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

