

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

April, June & July 2016, issued October 2016

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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](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](http://bbc.co.uk/bbctrust) or is available from:

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

# Requests to review the Trust Unit's decisions on Television Licensing appeals

The following complainant 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 Licensing complaint – concerning a refund

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 complainant wrote to TV Licensing (TVL) several times asking why she had been charged for a full quarter when she had moved home less than two months after the automatic renewal of her TV licence.

The complainant made the following points:

- Her previous licence had expired at the end of June and had automatically renewed at the start of July. She had moved from her house in early August of the same year. She therefore calculated that her refund should have amounted to £131.15.
- She stated that TVL's policy of only refunding the fee in respect of unused quarters was a "wholly unacceptable explanation for retaining money to which [TVL had] no right".
- It was not good enough to say there was no legal obligation to provide refunds.
- Nor was it good enough to say that costs must be kept as low as possible. In this day and age computers could calculate refunds and the cost of doing so was exactly the same regardless of the length of the void period.
- It followed that this was not a policy to minimise costs but to maximise revenue and it was "manifestly unfair".

Following Stage 1 and Stage 2 responses from the TVL Customer Relations and Operations Director and the BBC's Head of Revenue Management, the complaint was escalated to the BBC's Managing Director, Finance and Operations, for a Stage 3 response. The BBC's Managing Director, Finance and Operations, made the following points:

- The Licence Fee is a charge for permission to install and use a television receiver to watch and record television programmes.

- It is payable regardless of the period of time for which it is required or the value a person perceives they have gained from it.
- There is nothing in law that requires a refund to be given when a person no longer needs it, but the BBC does have discretion to allow refunds where it considers them appropriate.
- TV Licensing's Refund Policy sets out the circumstances when a refund will be given and how the refund is calculated.
- The policy provides for a refund on unused quarters (three month periods) where it is no longer needed.
- Given that the complainant had moved in August, she was not eligible for a further refund.
- In the interests of all licence fee payers, TV Licensing must offer refunds consistently and in line with policy.
- Any decision on extending the facility for refunds further in the future must take account of the likely impact on the BBC's ability to provide programme services for the public.
- The BBC's policies including the Refund Policy were under constant review and this aspect of the policy may be looked at in the future; the complainant's comments would be taken into account at the next review of the Refund Policy.

## **The appeal**

The complainant appealed to the BBC Trust. She said:

- She had renewed her licence at the beginning of July and moved out in early August of the same year. She had reclaimed for the unused part of her TV licence.
- TV Licensing had informed her that they had simply been following the policy which had been laid down for them by the BBC.
- She was complaining about the policy, not their implementation of it.
- The BBC had informed her that there was nothing in law that required a refund; it followed that if she had moved the day after renewing her licence the policy required TV Licensing to charge her for three months. She complained that was "quite indefensible", and "manifestly unfair".
- She asked that the policy be reviewed and her own licence calculated on a daily, not a quarterly basis.

## **Decision of the Head of Editorial Standards, BBC Trust (the "Adviser")**

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

The Adviser noted that the Licence Fee was a charge for the permission to install and use a television receiver for watching and recording television payments. It was not a fee for a service nor calculated on a time basis.

The Adviser noted that the Licence Fee Refund Policy was discretionary in that the BBC was under no legal obligation to provide refunds of licence fees in circumstances where a licence fee payer had moved from the address for which a licence fee had been issued. The Adviser considered that the Refund Policy had been correctly applied to the facts of this case.

The Adviser further noted that the BBC was required to act in the interests of all licence fee payers and that any decision to change the policy in future would need to take

account of the likely impact on its ability to provide a level of programme services to the public.

The policies and processes of the BBC were, however, under constant review and the Adviser acknowledged that the comments of the complainant would be taken into account at the next review of the Refund Policy.

The Adviser noted that in April 2014, in a separate appeal, the Complaints and Appeals Board of the BBC Trust agreed that TV Licensing's Refund Policy<sup>1</sup> had been correctly applied. She noted the factors considered relevant to its decision in that case, namely:

- In the absence of any legislative requirement to refund fees where a licence was no longer needed, refunds of portions of the TV licence were in the BBC's discretion.
- In view of the costs arising from the administration of refunds, and in order to protect the interests of all licence fee payers, the BBC's policy of refunding only unused quarters of TV licences was a valid one.

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

The complainant requested that the Trustees review the decision not to proceed with the appeal. The complainant said that the BBC's TV licence refund policy was unfair.

- Noting that the Adviser had said that the Licence Fee is a charge for permission to install and use a TV receiver to watch and record television programmes, the complainant said it was compulsory to have a TV licence and that it was a criminal offence to install and use a television without paying it.
- The root of the complaint was that the TV licence is payable regardless of the period of time for which it is required, or the value a person perceives they have gained from it.
- The fact that the BBC had some discretion in regard to refunds showed it was manifestly unfair to rely on the law's silence.
- It is not a sustainable response to say that the practice of quarterly refunds is fair because it is in accordance with the manifestly unfair policy.
- That the policy allows for a refund on unused quarters (three month periods) was manifestly unfair when a TV licence was needed for less than a three month period.
- The complainant fully understood that within the terms of the policy she had not been eligible for a further refund but said that equity demands that she should have been so eligible.
- Noting that "Any decision on extending the facility for refunds further in the future must take account of the likely impact on the BBC's ability to provide programme services for the public", the complainant said this was effectively an admission that the BBC would rather retain the unfair revenue than balance its budget by raising the fee.

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

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

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<sup>1</sup> [http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/appeals/cab/mar\\_2014.pdf](http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/appeals/cab/mar_2014.pdf)

Trustees considered the point made by the complainant that the BBC's TV licence refund policy was manifestly unfair.

Trustees were aware that the Government's White Paper "A BBC for the future: a broadcaster of distinction" published in May 2016<sup>2</sup> explained that there had been recent moves by the BBC and TV Licensing to simplify the licence fee refund policy. TV Licensing has confirmed that, from the beginning of the first full financial year of the new Charter period (April 2017), monthly refunds will be available. However, in the meanwhile the current policy remains in place.

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

- In the absence of any legislative requirement to refund fees where a licence was no longer needed, refunds of portions of the TV licence were in the BBC's discretion.
- TVL and the BBC had correctly applied TV Licensing's Refund Policy which was current in 2015 in this case. 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.

Trustees decided 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 agreed that the appeal did not qualify to proceed for consideration.**

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/524863/DCMS\\_A\\_BBC\\_for\\_the\\_future\\_linked\\_rev1.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/524863/DCMS_A_BBC_for_the_future_linked_rev1.pdf)

# 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.

## Decision of BBC Reception Advice not to respond further to a complaint about poor TV reception since digital switchover

The complaint concerned the consistently poor quality of the complainant's television reception since digital switchover. The complainant made the following points:

- The problem had been constant and persistent since digital switchover.
- He had changed the external aerial and manually retuned but has never received the pictures or sound that he would reasonably expect.
- The Freeview Advice Line was involved in the investigation and agreed that his problem would be raised with BBC staff at a meeting held on 4 February 2016 at 12.30 pm but this did not happen and his complaint was not being followed up any further.
- BBC channels were affected more than others.
- HD channels could be reduced to no signal or could be normal at different times.
- All channels varied at different times. It was unusual for all channels to be normal at the same time, although this did occur on 15-17 February with progressive deterioration of all channels over the evening of 17 February.
- Picture and sound quality had never been acceptable since digital switchover.
- His neighbour was also affected in the same way.
- He did not feel his complaint was being properly investigated and the problem was not being resolved. He felt the advice offered by the Senior Reception Analyst at stage 1 was no help and basically told him to go away, which was not good enough.

The Senior Reception Analyst made the following points at stage 1, giving advice on how the complainant might improve his TV reception, and also addressing the issue of poor handling of the complainant's concerns:

- He explained how the Freeview Advice system worked using a front and second line call centre team who handled the majority of enquiries. Any further in-depth reply was provided by a very small team of analysts. For reception queries the analyst team was not directly customer facing as it would quickly become overwhelmed. This system worked well the majority of the time. It was not the BBC's intention to appear obstructive and he was sorry if the complainant found the process unsatisfactory.

- The BBC was beginning a review of the advice service to assess possible changes and improvements to how it directly communicated with customers on reception issues, and he would be very happy to feed the complainant's comments into this process.
- With regard to the reception problem, he confirmed that some details of the case had been discussed with Digital UK but no further conclusions had been drawn other than the ones previously settled on.
- Looking at the details presented by the complainant, he did not believe this case fell under the "interference" category.
- He had completed extensive research using prediction and mapping tools plus checking the complainant's local geography. His conclusions were:
  - Sandy Heath was a major transmitter, serving a huge population. He confirmed that the transmitter was in good health generally and due to the long timescale during which the complainant had been experiencing problems, he felt that could be ruled out as a problem.
  - The coverage predictions for Sandy Heath to the complainant's location were good for the majority of BBC and commercial services with only some HD services being transmitted on certain channel numbers predicted to offer "variable" coverage – which could account for some of the problems the complainant was experiencing with channels 32 and 34.
  - Coverage prediction could be checked in more detail on the Digital UK website at: <http://www.digitaluk.co.uk/coveragechecker/main/display/detailed/NN7+2OZ/15/0/u0m705jpuinfts748r33mhes50>
  - He had found no other significant reports of problems near the complainant's location.
  - He understood there were large trees in close vicinity, some changes in terrain height and roof top aerials pointing to either Sandy Heath or Oxford transmitters. Oxford did provide good coverage and therefore was a viable option but importantly it could indicate that local aerial installers were choosing to point to one transmitter or another, based on the specific location of individual homes.
- Considering this evidence his advice was as follows: ensure correct tuning to the selected transmitter; check cables and connections, especially if distributing signals via a distribution amplifier.
- If problems persisted he suggested contacting the local aerial installer again. An aerial installer would be able to troubleshoot the system and have the crucial local knowledge to help decide the best transmitter to choose from according to the location. If a terrestrial transmitter was not viable, they would be able to advise on alternatives, such as Freesat, the subscription free satellite system which offered over 200 free TV and radio channels.

In response to the complainant's follow-up complaint, the Senior Reception Analyst said that he did not believe the reported problem was related to an external "interference" source. He felt he had given the complainant the best advice he could and there was no further help he could offer, so was closing the case.

At stage 2, the Spectrum and Investigations Manager endorsed the replies given by the Senior Reception Analyst and had nothing further to add.

## **Appeal**

The complainant appealed to the BBC Trust on the substance and handling of his complaint. He reiterated his concerns about his poor television reception and made the following further points:

- He had found no way to contact the transmitter operator to discuss the possibility that the transmitted signal was not sufficiently robust to reach his property which was 45 miles from both Sandy Heath and Oxford transmitters.
- He had reached a stalemate with both Digital UK and BBC Reception whereby both bodies said there was nothing wrong with the transmitter and BBC Reception claimed there was no evidence of interference.
- He had spoken to Ofcom who had advised him that the issue was not their responsibility. Ofcom had told him that it was the BBC's responsibility, even when non-BBC channels were affected, and that the problem should be subject to a "level 2 review", which the complainant did not believe had been carried out.
- He was not satisfied that both Digital UK and BBC Reception presented themselves as offering advice, but did not accept responsibility for ensuring that action was taken to address problems.
- He felt that as he was paying a TV licence fee, he was entitled to expect the same quality of TV service as other TV licence payers.
- If it was not the Trust's responsibility to intervene in this matter, he said he expected it to be able to identify the appropriate body which bore ultimate responsibility to provide him with a good TV service.

### **Decision of the Trust Adviser**

The Trust Adviser (the Adviser) sympathised with the complainant's frustration that he had not been able to resolve the problems he had experienced with his TV reception, but she decided that the point she should consider was whether the complainant's appeal against the decision of BBC Reception Advice not to correspond further had a reasonable prospect of success. She decided it did not.

The Adviser noted that the complainant did not believe a "level 2 review" had been carried out. However, she considered that this referred to the BBC's stage 2 procedure specified in the BBC Complaints Framework as follows:

For editorial and general complaints, the process has three stages, with the initial contact with the BBC called stage one.

Complainants who are unhappy when they have received their first response may ask for a further reply (stage one b).

If complainants are still unhappy following this, they can complain either to the BBC's Editorial Complaints Unit (for editorial complaints) or the relevant area of BBC management (stage two). You can only reach this stage after stage one b is completed and your reply from the BBC will tell you who to contact in these circumstances.

The Adviser considered that the BBC had investigated the complaint at stage 2 and the response written by the Spectrum and Investigations Manager was the stage 2 response which followed the stage 1a and stage 1b responses from Audience Services and the Senior Reception Analyst. The complaint was not upheld by the Spectrum and Investigations Manager at stage 2. The complainant's appeal was the third and final stage of the complaints process.

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 agreed that the BBC was responsible for investigating complaints of interference to domestic radio and television reception and she considered there was evidence that a

detailed investigation had been carried out. She noted the points made by the Senior Reception Analyst and his conclusion that no other significant problems had been reported in the complainant's area. She also noted his advice that if the problem persisted, it would be a good idea to contact the local aerial installer again for further advice. The Confederation of Aerial Industries keeps a list of accredited installers. If a terrestrial transmitter proved not to be a viable option, the aerial installer would be able to advise on alternatives, such as Freesat, the subscription free satellite system which offered over 200 free TV and radio channels.

The Adviser appreciated that the complainant did not consider this advice to be an acceptable solution and, upon the advice he had received from Ofcom, believed the BBC should bear ultimate responsibility for the problem. However, the Adviser noted the conclusions of a report jointly produced in December 2014 by Ofcom and the BBC about problems with TV reception in Thanet.

The Adviser noted that, if, following the investigation by the BBC, there was evidence of interference caused by something outside the complainant's control and which was unlawful, the BBC may refer the case back to Ofcom for possible enforcement action. However, it appeared that in this case, there was no such evidence. The Ofcom/BBC Thanet report explained that in some cases, viewers who lived in a poor Freeview signal area would ultimately need to consider using an alternative to terrestrial reception such as satellite. The Adviser noted that this was an option advised to the complainant by the Senior Reception Analyst. The report can be read by following this link: [http://stakeholders.ofcom.org.uk/binaries/research/tv-research/Thanet\\_Report.pdf](http://stakeholders.ofcom.org.uk/binaries/research/tv-research/Thanet_Report.pdf)

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 proceed further with trying to resolve the problem he was experiencing with poor TV reception. She also noted that the problem was an operational one which was outside the scope of the BBC Trust to resolve.

Taking this into account the Adviser considered Trustees would be likely to conclude 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 and did not propose to put it before Trustees.

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

The complainant requested that the Trustees review the decision not to proceed with his appeal. He referred to his original complaint and following emails and letters. He said:

- He had followed all the procedures required by Digital UK, the Freeview Advice Service and BBC Reception at considerable effort, time and cost including replacing all the TV equipment at his address. He did this because he was assured that good reception would be available from the Sandy Heath transmitter in his location but the problem remained unsolved.
- The Senior Reception Analyst's response was based on his predictions and understanding using estimation tools. These were endorsed by the Spectrum and Investigations Manager. There was no measured or objective evidence provided that there was not a problem with the TV signal at his location. His evidence was that there is a problem.
- The Trust Adviser referred to the Thanet report where measurements were gathered using specialist equipment. He had requested the use of such objective measurement techniques at his location but this had been refused. This was not

treating all licence fee payers consistently. He asked again for this work to be carried out in his location.

- He did not agree that the Senior Reception Analyst should dismiss the possibility of a problem with the Sandy Heath transmitter on the basis of the long timescale during which he had been experiencing problems. He felt this actually confirmed that the signal had never been sufficiently robust from the switchover date.
- While he had not been able to establish the service level obligation placed on broadcasters in relation to signal strength and coverage levels, he had established it was the responsibility of the BBC to deliver a TV service to the approved standard. As he did not receive that standard of service it was due to a failure by the BBC. This indicated there was a case to be considered fully. It was not equitable to all TV licence fee payers for the BBC not to achieve the correct standard of TV service in some locations.
- There was someone within the BBC who was responsible for implementing the action needed to resolve the problem.

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

A panel of the Complaints and Appeals Board considered 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 not to correspond further with the complainant was correct.

Trustees were aware that the BBC has an obligation under the BBC Agreement to make "reasonable arrangements for the investigation, at the BBC's expense, of complaints of interference by electro-magnetic energy affecting domestic television and radio reception within the UK". Since July 2010 this obligation has been discharged via the BBC's Radio and Television Investigation Service (RTIS). Where third party interference is suspected the RTIS refers the case to Ofcom for investigation. The BBC also provides a Reception Advice service which provides help and advice concerning BBC services such as general advice on receiving broadcast television services, transmitter faults, and coverage predictions.

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

- The complaint had been replied to by the BBC's reception service:
  - The service had not identified interference as an issue.
  - The service had decided that the duration of the problem suggested this was not due to a transmitter fault.
  - The service had used street view maps and advised both that local conditions might be a factor (eg trees) and that other houses pointed their aerial at a different transmitter and so it was worth contacting a local installer who would have local knowledge.
  - The service had no further advice to offer.
- Ultimately although the BBC sought to provide a transmission service for all licence fee payers it would be disproportionate to continue to investigate cases where both interference and a transmission fault had been ruled out.
- It was not always possible to receive the BBC from a local transmitter and some licence fee payers unfortunately could not rely on a rooftop aerial.

Trustees agreed that the complainant had received a reasoned and reasonable reply from the BBC.

Trustees concluded that it was not appropriate, proportionate or cost-effective to proceed with the appeal since 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 production casting decisions

The complainant informed the Trust that he had been attempting for a long time to gain information about the BBC's policy in relation to casting criteria for disabled actors via correspondence with the BBC, without success. Following his letter to the BBC Director-General about the issue, he said he was surprised to receive a response from the Audience Services Complaints team. He said he was not making a complaint; however, he wished to make the following points:

- His main concern was about being given the opportunity to be considered for work with the BBC as a disabled actor.
- He wanted to know whether any HIV actors were currently being employed by the BBC to portray characters with this condition; also, how many characters were currently being portrayed in drama, soaps and comedy that were seen to be living with HIV?
- His attempts to pursue his enquiry had involved contacting many different people whose titles included "Disability" but he felt that departments in this area did not communicate with each other very well and the process for advancing his enquiries did not seem to be effective; he was still no further forward in resolving his concern about HIV stigma and fairness in casting for disabled actors.
- He felt that the BBC allowed able-bodied actors to steal opportunities for roles which could be done by disabled or diverse talent/artists.
- He was disappointed in what he perceived as a lack of progress in terms of the employment of disabled actors even though the BBC Director-General announced in 2014 the BBC's aim of increasing on-air diversity.
- He did not feel the BBC was always transparent about its casting procedures. When he contacted BBC casting departments, they always said that casting was done through Spotlight, in a democratic and unbiased way. The complainant disagreed and said he had contacted Spotlight and had been told that they did not get most castings from the BBC because the casting departments went to their best agents first.
- He felt that the BBC was wasting his time by referring him to different people and was not looking into his concerns properly. He said he wanted Audience Services to contact the casting department and check the casting criteria and ask them why he had not been seen. He believed it was because he had declared a disability on his CV.
- Telling him to contact his agent for feedback was not a viable suggestion as agents were only able to obtain feedback following an audition. His agent could not give him feedback on why companies were not giving him auditions in the first place.

The BBC board-level disability champion wrote to the complainant on 7 May and 22 May 2014 and made the following points:

- She said the BBC continually aimed to increase the positive portrayal of disabled people and welcomed the complainant's feedback to help with this. She said she had passed on his comments to the BBC Head of Diversity and thanked the complainant for attending a disability diversity sector casting event held at the BBC on 3 December 2013.
- She explained that for the portrayal of visible disabilities, the BBC always tried, where possible, to cast disabled actors to authentically portray those characters. However, for non-visible disabilities such as HIV, this was not usually something

the BBC was able to achieve. She acknowledged that many disabled actors faced barriers to gaining work in the industry and the BBC aimed to provide support to disabled actors, such as through the casting events attended by the complainant.

In correspondence and phone calls with the complainant, the BBC Diversity and Inclusion Lead discussed the issue and the complainant understood that he would try to talk to some programme producers about the possibility of more story lines involving disability in *EastEnders* and other dramas.

BBC Audience Services corresponded with the complainant from February 2015 when letters sent by the complainant to the BBC Director-General and the Director of BBC Television were given to them for response. Audience Services made the following points:

- The responsibility for casting lay with individual casting directors at the relevant production companies, either independent or in-house BBC. The complainant should pursue his ambitions through auditions, casting agencies and his agent.
- They apologised for any confusion caused by differing responses and the different BBC departments the complainant had been in touch with.
- They were unable to say why the complainant had not been successful with casting auditions in recent years as each programme had its own production team with its own casting aims and needs.
- They suggested that the complainant ask for feedback via his agent or directly with productions he had contacted.
- They reiterated that diversity was very important to the BBC and the BBC had committed to quadrupling the on-screen representation of disabled people by 2017, and increasing disabled staff and disabled leadership in the organisation to over 5% by 2017.
- They said they had no reason to believe that the complainant's lack of BBC auditions was related to his disability.

Audience Services said they had nothing further to add and that they had no reason to believe that the complainant's lack of BBC auditions was related to his disability.

## **Appeal**

The complainant appealed to the BBC Trust on the substance of his complaint. He said he had received no reply to the question he had been asking in terms of disability and diversity: "What are you [the BBC] hoping to achieve? And what have you done so far?"

He wanted to know how the BBC's announced aims of increasing diversity could help him carry on with his acting career.

## **Decision of the Trust Adviser**

The Trust Adviser (the Adviser) acknowledged the complainant's long-standing strong concern about this issue but she decided that the appeal did not have a reasonable prospect of success.

The Adviser considered that there were two parts to the complaint: firstly, the complainant felt he had not received the clarification he sought concerning the BBC's general strategy relating to diversity, specifically regarding disability; secondly, he was concerned about casting decisions relating to himself, which led him to believe that because he had disclosed a disability he was being treated unfairly.

The Adviser noted that the complainant had received several responses on both of these issues from different areas of the BBC but the complainant felt that these departments should communicate better with each other and provide him with more concrete reasons for his lack of casting success in recent years. She understood that BBC Audience Services had decided not to correspond further with the complainant after their letter of 15 July 2015. 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.

The Adviser appreciated how much time and effort the complainant had put into pursuing his case for employment as an actor with a disability and she noted that in a recent BBC News online article, Lenny Henry had spoken of "initiative fatigue".

(<http://www.bbc.co.uk/news/entertainment-arts-27992392>). Although Mr Henry was speaking specifically about black, Asian and minority ethnic (BAME) artists, the Adviser considered this was also relevant to the complainant's concerns about disability. She was sorry to hear of the difficulties he had experienced and wished him success in the future. She noted that the BBC had acknowledged that there was still more work to be done generally regarding diversity both in terms of BBC output and in the BBC workplace and that the Director-General had unveiled plans to increase diversity on 20 June 2014. (<http://www.bbc.co.uk/mediacentre/latestnews/2014/bame-representation-plans>).

Director-General Tony Hall said:

"The BBC gets much right on diversity, but the simple fact is that we need to do more. I am not content for the BBC to be merely good or above average. I want a new talent-led approach that will help set the pace in the media industry. I believe in this and want our record to be beyond reproach. That won't be achieved overnight, but the package of measures I've put in place, alongside the support we'll get from leading experts, will make a tangible difference."

A month later, on 16 July 2014, the Director-General made an announcement specifically about disability, as noted by the complainant in his correspondence. The full text of this announcement could be found at:

<http://www.bbc.co.uk/mediacentre/latestnews/2014/representation-disabled-people>

Tony Hall said:

"It is vital we reflect the public we serve – both on and off air. While the BBC has some good schemes in place, we must and can do significantly more. That's why we want to quadruple on-screen representation and open up many more opportunities for disabled people to work at the BBC."

He also stated:

"We have set a target to quadruple on-air representation and/or portrayal from 1.2 per cent to 5 per cent by 2017."

The Adviser understood that the complainant wanted more specific information about casting decisions that would help him to determine what the casting criteria now were and why he had not been called in for a casting session. He had written to Director of Television Danny Cohen to try to obtain some more information. However, the Adviser noted that Audience Services stated in their correspondence:

"Director of Television Danny Cohen is not responsible for casting on BBC productions. That responsibility lies with the various individual casting directors at

the relevant production companies, whether they be independent or in-house BBC.”

The Adviser noted that BBC board-level disability champion Anne Bulford had explained in her email of 22 May 2014 that:

“For the portrayal of visible disabilities, we always try, where possible, to cast disabled actors to authentically portray those characters. For non-visible disabilities such as HIV, this isn’t usually something we are able to achieve. We acknowledge that many disabled actors face barriers to gaining work in the industry and so we aim to provide support to disabled actors, such as through the casting event you attended.”

The Adviser noted that Audience Services had explained that casting decisions were the responsibility of the individual casting directors at the relevant production companies. She also noted that the Royal Charter and accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. “The operational management of the BBC” was defined as a duty that was the responsibility of the Executive Board under paragraph 38, (1)(c). The Adviser believed Trustees would be of the view that decisions about casting for BBC productions were part of the operational management of the BBC and were the responsibility of the individual production teams rather than the Trust.

The Adviser acknowledged the complainant’s belief that his lack of success in obtaining acting roles was related to his disclosure of being HIV positive.

However she noted that the CV he had submitted with his correspondence indicated that he had worked for the BBC since disclosing his HIV status, in episodes of *Casualty* and *Holby City*. Therefore, the Adviser had not seen evidence that he was being discriminated against because of his illness. While she appreciated the complainant’s frustration at not securing more auditions and roles, she considered Trustees would be likely to conclude that it was a matter for the relevant casting directors – either working directly for the BBC or for independent production companies – to decide who should be cast in each role.

Taking this into account the Adviser considered Trustees would be likely to conclude that the BBC had given reasoned and reasonable responses 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. The Adviser did not propose to put it before Trustees.

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

The complainant requested that the Trustees review the decision not to proceed with his appeal. He referred to his original complaint and following emails and letters. He said:

- He had had two roles in BBC productions - one after the BBC contacted his agent, and the second he secured after attending a disability casting event. Therefore, as he had only actually been offered one audition by the BBC in 15 years, he was making a reasonable point.
- He felt he had had to deal with a lot of bureaucracy trying to seek out relevant opportunities for those on a disabled register, which indicated how the process was not a disabled-friendly one.

- Individuals and organisations he had encountered had expressed concerns that there are difficult issues for HIV actors in deciding whether or not to disclose their status in case it affects their employment opportunities. He thought the only way to counter this was by allowing more positive role models to step forward.
- He believed that the BBC casting department had a list of favourite top agents but that information was not disclosed to artists. He said this was unfair as the BBC was owned by licence fee payers. He would have to pay to be on Spotlight (the online casting facility).
- Was he been treated fairly in employment terms?
- His own condition was considered to be an “invisible visible disability”, that is someone would not know he had a disability by observing him but once they have been made aware of it they may perceive him in a different way.
- Organisations for many reasons might prefer to only present people with HIV within a dramatic context rather than a real-life one.
- He understood from a recent meeting at the BBC that he did come under the diversity inclusion strategy.

### **The Panel’s decision**

A panel of the Complaints and Appeals Board considered 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 not to correspond further with the complainant was correct.

Trustees appreciated that the writer did not view himself as a complainant but was trying to achieve change for actors with HIV and, on a personal level, wanted to be considered for casting in dramas and did not understand why he had not been called for auditions.

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

- The Royal Charter draws 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 are defined as duties that are the responsibility of the Executive Board, (Royal Charter, Article 38, (1)(b and c)).
- Casting for BBC productions was an aspect of the editorial and creative direction and operational management of the BBC and was the responsibility of the individual production teams rather than the Trust.
- There was no evidence to suggest that he had been discriminated against by the BBC as a result of the disclosure of his HIV status.

Trustees agreed that the complainant had received a reasoned and reasonable reply from Audience Services.

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.**

# 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 accessing Strictly Come Dancing clips online**

### **Decision of BBC iPlayer Support not to respond further to a complaint about accessing Strictly Come Dancing online clips**

The complainant wished to download the "How to do the Strictly" clip. However, he could not download the clips of dance routines but instead had to stream them. That was problematic because it required a good mobile signal which he did not have.

The complainant made the following points:

- He wished to download the "How to do the Strictly" clip, but the BBC no longer provided a method for accessing iPlayer content by means of conventional download files which was supported by his version of Windows. He did not wish to use Windows 7 as he had not found it to be an improvement on XP in terms of usability, performance, support or control. The issue of XP was a "red herring". He considered that what he ran files on had no impact on the BBC system which ran iPlayer.
- The problem was that the BBC Android app did not list the file he was looking for.
- He found the process of submitting complaints via the online webform to be unfit for purpose; 350 characters was not sufficient and he was unable to reply to emails sent by the Complaints team.

The BBC iPlayer Support team made the following points:

- They suggested he install Windows 7 in order to access iPlayer downloads.
  - BBC iPlayer no longer supports Windows XP, as Microsoft ended support for it in April 2015.
  - The BBC endeavoured to support widely-used, older operating systems, but where the publisher of the operating system ends support (as in this case), they could not guarantee ongoing support.
  - Microsoft recommended users of Windows XP to download the Windows Upgrade Assistant to see if their PC could run Windows 8.
- Clips could not be downloaded from the BBC site.
- BBC Downloads is part of the catch-up service offered for broadcast output, but clips are not part of the iPlayer service; they are put on BBC programme web pages by production staff and can only be accessed via a web browser, not the iPlayer app.
- BBC iPlayer and Strictly Come Dancing websites were maintained by different teams. BBC iPlayer Support tested the Strictly Come Dancing clips on the BBC in-house Android devices and confirmed they were available and worked.
- The clips the complainant wished to view were not available on the BBC iPlayer app, but could be found on a browser by searching for Strictly Come Dancing and, when on the programme page, clicking on "Clips" to play them.

BBC iPlayer support 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 replies he had received had been dismissive and ignored his points.
- The point which had not been addressed was that the search facility on his tablet failed to identify a clip that could be found on a PC.
- The responses he had received said that the clips could not be downloaded from iPlayer, but he said they could – but not on his tablet, and that was what he needed in order to practise the dance moves with a group of people.
- The format presented was effectively limited to where a live stream could be obtained, either via WiFi or 4G, because the dance clips needed to be watched and practised on a number of occasions. The BBC failed to realise that even 3G was difficult to find away from population hotspots, so that many people were unable to get access, thus discriminating against a large segment of the population.
- The dependence on use of iPlayer meant the format was non-standard and could therefore not be viewed on anything but iPlayer.
- He was unhappy about having to complain via the webform and considered the character allowance was too low. He believed this was intended to limit the number of complaints submitted.

### **Decision of the Trust Adviser**

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

The Adviser acknowledged the difficulties the complainant had experienced in trying to make his complaint and sympathised with his frustration at not being able to view the Strictly clips in a way he found practical for the purpose of practising the dance moves with a group of people.

She noted that the iPlayer Support team had explained the following points:

- The BBC no longer supported Windows XP, because technical support provided by Microsoft ended in April 2015.
- BBC clips were uploaded to the BBC website by the production teams and could only be accessed via a web browser. They were not part of the iPlayer system, so could not be accessed via the iPlayer app, which was only designed to support content that was available on iPlayer.
- The iPlayer Support team had tested whether the clips concerned could be accessed on a portable device via a browser, and found that they could.

The Adviser understood that the complainant believed his complaint had been misunderstood and his key concerns ignored. In his appeal, he said that the iPlayer clips could be downloaded onto his PC, but that when he tried to search for them via the BBC app on his tablet in the same way as he had searched for them on his PC, they could not be found. She also noted that a key concern for the complainant was the limitations in 3G and 4G access for groups of people outside "population hotspots", and his view that this discriminated against a large section of the population. She acknowledged these concerns, but noted that they were not concerns he had specifically raised as key points during his correspondence with the iPlayer Support team, and she therefore did not consider they had ignored these comments, or that their responses indicated they "could not be bothered". However, she acknowledged that the 350 character limit on the webform contributed to the difficulty the complainant had experienced in trying to communicate technological issues. In 2012 the Trust conducted a review of complainants' views on the complaints process; with regard to the webform it was found that most people were satisfied with it as a means of communicating their concerns. However, the

complaints process was kept under review by the Trust and feedback was seen by the BBC's senior management teams.

The Adviser appreciated the complainant's frustration at not being able to access Strictly clips in a way that was useful to him, but she felt that the iPlayer Support team had tried to address his concerns, and she had not seen evidence that they had been dismissive. They had explained that Windows XP was no longer supported by Microsoft, and that clips could not be viewed or downloaded from the iPlayer app, but could be streamed via an internet browser from the BBC website. The Adviser noted that decisions about the BBC's technology systems were part of the operational management of the BBC. The Trust did not have a role in these decisions unless they involved a breach of Editorial Standards, and the Adviser had not seen any evidence to suggest there was a breach of editorial standards in this instance.

With regard to the handling of the complaint, the Adviser acknowledged the complainant's frustration in not having more than 350 characters on the webform in which to describe his complaint. She also noted that he would have preferred to reply by email to responses issued to him. She noted that iPlayer Support had explained why they did not use email addresses and that the webform allowed them to ask relevant questions that would allow them to address the query. She noted that the webform also allowed complaints to be tracked efficiently, so that the BBC could ensure it had responded to complaints.

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

The complainant requested that the Trustees review the decision not to proceed with his appeal. The complainant reiterated his concerns with regards to the substance and handling of his complaint and made the following points:

- His complaint was that the BBC used "non-standard" files, which were consequently not viewable on all platforms. This had not been answered at any time.
- The word limit of the online webform meant that the BBC will gain only a limited understanding of some complex complaints.

### **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 iPlayer Support not to correspond further with the complainant was correct.

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

- Decisions concerning the availability and formatting of online clips for download were part of the operational management of the BBC. This was specifically defined in the Royal Charter (article 38, (1)(c)) as a duty of the Executive Board and one in which the Trust did not get involved.
- The BBC aims to make its services available on as many platforms and devices as possible, however; given the pace of technological change and financial restrictions of the BBC it is not possible for all content to be made available for all devices.
- BBC iPlayer Support had given the complainant a reasoned and reasonable reply.

With regard to complaints handling Trustees agreed that if they took this matter on appeal they would be likely not to uphold this complaint given that:

- The BBC receives over a million audience contacts a year and must have a cost-effective way to manage these. It is reasonable of the BBC in the interests of all licence fee payers to receive complaints through an online webform.
- Complainants who would like more space to detail their complaint can write to the BBC's postal address.

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.**

## Decision of BBC Audience Services not to respond further to a complaint about BBC reporting of boxing as an acceptable sport

The complaint concerned BBC coverage of boxing. The complainant made the following points:

- He regarded boxing as “anachronistic, brutalising and dehumanising” and had received abuse on Twitter for suggesting that the media should stop reporting it as sport.
- The news element of *Today* had queried whether boxing should be banned, yet had promoted it in the sports section, which seemed hypocritical.
- He was not happy with the initial response at Stage 1 from Audience Services which misunderstood his complaint. He did not want the BBC to stop reporting on boxing as a newsworthy issue, but to stop covering boxing as an acceptable sport.
- It was inexcusable for a publicly funded body like the BBC to include sports coverage of any activity whose rules did not forbid deliberate harm.
- Other events, including Miss World contest and Crufts dog show, were events the BBC had stopped televising because of issues associated with them. He believed the BBC should take the same stance towards boxing.
- He attached evidence of the brutalising effect of boxing on its supporters in the form of abusive tweets sent to him in response to his views.

Audience Services made the following points:

- At Stage 1a they recognised that some of the audience were not interested in sport but the BBC believed there was a huge audience for it and had an obligation to broadcast coverage of the most notable sporting events.
- Subsequently they apologised for not addressing the key point of the complaint.
- They stated that the BBC would cover and report on the Olympic sports.
- Whatever the complainant’s personal views, boxing remained an Olympic sport and as such it would continue to be legitimately covered by the BBC.
- The BBC had an obligation to reflect the interests of its audiences as a whole. Other audience feedback received did not suggest that the complainant’s views were widely shared amongst BBC audiences.
- They appreciated that the complainant strongly felt that the BBC should not cover boxing as a sport.
- It was not the BBC’s role to decide what was or was not a sport, or to ban coverage or reporting. They suggested the complainant made his views known to his MP and/or the Secretary of State for Culture, Media & Sport.
- The BBC would continue to report on professional – i.e. officially sanctioned, accredited and licensed - boxing matches, and to continue to discuss and facilitate the debate on ongoing concerns about it.
- The BBC was not able to comment on any Twitter responses the complainant might have received following the posting of his comments and his concerns would need to be raised directly with the site owners.

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. He made the following points:

- He said his central complaint was that the promotion of boxing as sport by the BBC incited violence and he considered this breached the Editorial Guidelines.
- Boxing was a controversial activity, opposed by many, including the BMA, yet the BBC promoted and reported it enthusiastically and unquestioningly.
- The BBC did not provide adequate warnings of potential harm before broadcasting coverage and news of boxing. Instead, the BBC promoted an anachronistic, brutalising and dehumanising activity as a good thing.
- The BBC was hiding behind the classification by third parties of boxing as an acceptable sport, and was thereby demonstrating unquestioning partiality towards these third parties.
- The BBC failed to consider the combined effect of the impact of boxing violence both in factual and fictional output.

### **Decision of the Trust Adviser**

The Trust 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 it did not.

The Adviser acknowledged the complainant's strongly held views about boxing and that he believed the BBC's coverage of boxing breached the Editorial Guidelines relating to impartiality and harm and offence.

She noted that all BBC output was required to meet the standard of "due impartiality" which, under the Editorial Guidelines, meant that the impartiality must be adequate and appropriate to the output, taking account of the subject and nature of the content, the likely audience expectation and any signposting that may influence that expectation. She also noted that BBC output was required to meet "generally accepted standards" so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material.

She noted that the complainant considered boxing was "a controversial issue". The Editorial Guidelines principally defined "controversial issues" as being matters of "public policy or political or industrial controversy". The Guidelines also stated that controversial subjects could be found in other areas – and stated that, in determining whether a subject was controversial, a number of factors might be taken into account, including "the level of public and political contention and debate" and "the distinction between matters grounded in fact and those which are a matter of opinion".

She noted that many sports involved significant elements of risk for those taking part. She appreciated the complainant held strong views on the subject and noted that he referred to one medical organisation, the British Medical Association, which had long called for a ban on boxing. However, she did not consider that boxing was a controversial matter as defined by the Editorial Guidelines. She also noted the complainant's view that boxing encouraged violence, but had not seen any evidence that, by including coverage of boxing matches in its output, the BBC was potentially in breach of editorial guidelines on harm and offence.

She noted the complainant's view that it was hypocritical to cover boxing as a sport while also reporting on its dangers in news output. However, she considered this was a matter of editorial judgment – and reflected the BBC's commitment to provide a broad range of subject matter and perspectives over an appropriate timeframe across the output as a whole.

The Adviser noted that decisions about which sports and news stories to cover and how they should be covered were made by BBC editorial teams. The Trust would not be involved in these decisions unless a possible breach of editorial standards was identified, and the Adviser had not seen evidence of that being the case in this instance.

The Adviser considered Trustees would conclude there was no evidence that the BBC had breached the Editorial Guidelines by reporting on boxing as a sport.

Taking this into account the Adviser considered Trustees would be likely to conclude 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. The Adviser did not propose to put it before Trustees.

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

The complainant requested that the Trustees review the decision not to proceed with his appeal. He reiterated that his complaint was that the BBC should not cover boxing as a sport and added that he believed:

- The controversial nature of boxing is not a matter of opinion but a matter of fact.
- The “deliberate harm” in boxing is not comparable with risk in other sports.
- There is evidence to suggest that coverage of boxing incites violence.

### **The Panel’s decision**

A panel of the Complaints and Appeals Board considered 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 not to correspond further with the complainant was correct.

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

- Decisions about the coverage of boxing as a sport are matters of editorial judgment for the BBC Executive. As the Royal Charter (article 38 (1) (b)) sets out, “the direction of the BBC’s editorial and creative output” is specifically defined as a duty of the Executive Board and one in which the Trust does not get involved.
- There was a body of opinion that boxing was violent in its nature and incited violence and so should not be permitted. However, boxing was legal (as long as it complied with the relevant rules) and was recognised as a sport. Given this the inclusion of boxing on the BBC’s UK public services was not of itself a breach of editorial standards.

Trustees agreed that the complainant had received a reasoned and reasonable reply from Audience Services.

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.**

# Admissibility decisions

The BBC's general complaints system has three stages. During the first two stages complaints are considered and replied to by the BBC. At the third stage the Complaints and Appeals Board of the BBC Trust may consider an appeal against a decision by the BBC.

Complaints are answered at Stage 1 by BBC Audience Services. 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 answered either by a senior manager within the BBC.

However, under the Complaints Framework, it is open to the BBC to close down correspondence at any stage – 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 was wrong to close down the correspondence. Where a complainant appeals to the Trust in these circumstances, and Trustees uphold the appeal, the complaint is sent back to the BBC for a further response.

The General Complaints and Appeals Procedure<sup>3</sup> explains that:

At all stages of this Procedure, your complaint may not be investigated if it:

- is trivial, misconceived, hypothetical, repetitious or otherwise vexatious.

In the cases where BBC Audience Services had ceased handling the complaints at Stage 1, the complainants appealed to the Trustees on the substance of their complaints. However, the point put to the Trustees was whether an appeal against the decision of BBC Audience Services not to correspond further with the complainant had a reasonable prospect of success.

In the cases which progressed to Stage 2 the decision for the Trustees was whether to take the complaint as an appeal or whether it had no reasonable prospect of success and was not admissible.

The BBC's television licensing complaints procedure has four main stages<sup>4</sup>. During the first stage, complaints are considered by Television Licensing. At the second stage, complaints are considered and replied to by the BBC Executive. Stage 3 is handled by the BBC's Executive Board member responsible for licence fee collection. At the fourth stage, the Complaints and Appeals Board of the BBC Trust may consider an appeal against a decision by the BBC.

A fair trading complaint may proceed through up to two stages<sup>5</sup>. The BBC's Fair Trading complaints panel which is appointed by the Executive Fair Trading Committee (EFTC) will respond at Stage 1. If the complaint qualifies for an appeal, the BBC Trust will respond at Stage 2.

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<sup>3</sup>[http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory\\_framework/protocols/2014/complaints\\_fr\\_work\\_general.pdf](http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2014/complaints_fr_work_general.pdf)

<sup>4</sup>[http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory\\_framework/protocols/2016/complaints\\_fr\\_work\\_tv\\_licensing.pdf](http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2016/complaints_fr_work_tv_licensing.pdf)

<sup>5</sup>[http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory\\_framework/protocols/2014/complaints\\_fr\\_work\\_fair\\_trading.pdf](http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2014/complaints_fr_work_fair_trading.pdf)

In each of the following cases the Panel was provided with the complainant's correspondence with the BBC and the complainant's appeal/s to the Trust. The Committee was also provided with any relevant output or published content.

## **Decision of BBC Audience Services not to respond further to complaints about background music in Mary Beard's Ultimate Rome, BBC Two, 27 April and 4 May 2016**

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

### **The complaint**

The complaint concerned excessive "foreground instrumental noise" in the programmes.

The complainant made the following points:

- He felt both episodes were completely spoilt by the overwhelming level of foreground instrumental noise.
- He regarded the noise as "foreground noise, not background music".
- However the BBC chose to describe the noise, he said it should not coincide with speech which was an integral part of the performance, especially if mumbled, muffled or heavily accented.
- It should not be necessary to use electrical appliances to correct badly prepared transmissions.
- As the BBC commissioned the programmes, it was the BBC's duty not just to remind producers but to specify basic requirements.
- He had the impression that old programmes had been "doctored" with noise that was not inherent when they were originally broadcast. He said he hoped the originals still existed and were not mutilated by that noise.

BBC Audience Services made the following points:

- The BBC appreciated that some viewers found it hard to hear dialogue clearly in programmes, and there could be a number of reasons for this including muffled voices, unfamiliar accents, a noisy environment, or loud and badly chosen background music.
- It was difficult to strike the right balance between differing opinions on acceptable levels of noise and music. Music in particular was partly a subjective matter in which personal taste played a large part. Music was added to programmes for many reasons and could be vital to underpinning moods and conveying emotion.
- Programmes could often sound different in the editing suite compared with being viewed on an ordinary TV set. Although programme makers could control many effects within the programmes they made in-house, other programmes were bought in and there was no straightforward way to vary background sound levels before broadcast.
- Many televisions and recording devices now had options whereby audio settings could be changed to a personal preference setting.
- A BBC study in 2009 had resulted in a "best practice guide" which provided programme makers with an overview of things they could do to make a difference to the audience's ability to hear and enjoy programmes.

- The BBC regularly reminded producers about the need for them to consider the issue. Whilst there would always be a variety of views on the best use of background sound, the BBC was hopeful that, over time, their initiatives would help programme makers find the best balance for their audiences.
- The BBC wanted all audience members to fully enjoy its programmes and took the issue very seriously.
- In the case of *Mary Beard's Ultimate Rome*, the use of background music to create atmosphere distracted away from the words spoken.
- They thanked the complainant for his feedback which helped to shape the way the BBC did things in future.

Audience Services explained that they had nothing to add to their previous reply. They did not consider that the complainant had provided evidence which suggested a potential breach of the BBC's standards, or that his complaint has raised a significant issue that might justify further investigation.

## Appeal

The complainant made the following points to the BBC Trust:

- Since his first complaint about unnecessary and intrusive noise (so-called "background music") in 2006, his personal circumstances had not changed, except that he had been using a new good quality TV set since November 2009.
- His complaints about such noise had been made in three periods: March/April 2006, April/May 2011, and recently, with even more justification, April/May 2016. He wondered whether the 5 year intervals were significant.
- He accepted that many things other than so-called "background music" could interfere with audibility, but these factors were over-ridden by the noise of so-called "music".
- He said that music, if it coincides with speech, interferes with audibility.

## The Panel's decision

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

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

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

- In their response of 16 June 2016, Audience Services had said they were sorry that the complainant found it difficult to hear Mary Beard's words clearly, and had acknowledged that "in this case, the use of background music to create atmosphere distracted away from the words spoken".
- Audience Services had thanked the complainant for raising his concern and had explained that his feedback had been passed on to senior editorial staff and that such feedback helped to shape decisions about future BBC output.
- 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)).

- The responsibility for editorial and operational decisions about sound levels in programmes rested with programme makers. That included the decision to run music at the same time as speech.
- Audience Services had explained that the BBC took the issue seriously and was making an effort to educate programme makers about the issue by means of a "best practice guide" following on from a study conducted by the BBC in 2009.
- The issues raised by the complainant did not suggest a breach of the BBC's standards or policies or raise a significant issue of general importance.

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

## Decision of BBC Audience Services not to respond further to complaints about the addition of background sound and music to BBC programmes

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 had longstanding concerns about what he felt was the excessive use of background sound and music, particularly in science and factual programmes. He made the following points:

- Excessive music or sound added to science or factual programmes distracted from the arguments or subject matter. He felt it would be much better to try and restrict added sound to sound of direct relevance to the actual content.
- The usual reply he received from the BBC suggested his problem was that he found it hard to hear dialogue, which was not the case.

BBC Audience Services made the following points in response to his previous complaints:

- The BBC appreciated that some viewers found it hard to hear dialogue clearly in programmes, and there could be a number of reasons for this including muffled voices, unfamiliar accents, a noisy environment, or loud and badly chosen background music.
- It was difficult to strike the right balance between differing opinions on acceptable levels of noise and music. Music in particular was partly a subjective matter in which personal taste played a large part. Music was added to programmes for many reasons and could be vital to underpinning moods and conveying emotion.
- Programmes could often sound different in the editing suite compared with being viewed on an ordinary TV set. Although programme makers could control many effects within the programmes they made in-house, other programmes were bought in and there was no straightforward way to vary background sound levels before broadcast.
- Many televisions and recording devices now had options whereby audio settings could be changed to a personal preference setting.
- A BBC study in 2009 had resulted in a "best practice guide" which provided programme makers with an overview of things they could do to make a difference to the audience's ability to hear and enjoy programmes.
- The BBC regularly reminded producers about the need for them to consider the issue. Whilst there would always be a variety of views on the best use of background sound, the BBC was hopeful that, over time, their initiatives would help programme makers find the best balance for their audiences.

Audience Services said that he had complained to the BBC about the use of music and sound effects in BBC documentaries on a number of previous occasions; since June 2013 he had sent the BBC at least 25 messages on this subject. The BBC had replied each time explaining its position but although the BBC appreciated his feedback there was little more that Audience Services could usefully add by way of a response. Therefore they would not correspond further in response to additional points, or further comments or questions, made about this issue or the BBC's responses to it.

### Appeal

The complainant complained directly to the Trust about *Wonders of the Universe*, BBC Four, 6 June 2016. He made the following points:

- He had recently unsuccessfully tried to submit an online complaint at Stage 1 about *Wonders of the Universe*, BBC Four, 6 June 2016. He thought he might have been banned from using the online complaints form because he had used it too many times over the years for complaints about this one subject. He wondered if the form had been immobilised for him.
- He considered it a wonderful programme but said he almost gave up watching because of “the crashing blasts of sound and music which distracted from the visuals and excellent science”.
- He had tried to get the BBC to ask other viewers if they agreed with him or not but they did not admit to ever having done this.
- He wondered if Professor Brian Cox, who presented *Wonders of the Universe*, agreed with him.

### **The Panel’s decision**

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

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

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

- The complainant believed he had been banned from submitting complaints about this subject, but it had been established that this was not the case. The expedited procedure had not been applied to him.
- The complaint about *Wonders of the Universe* had not been considered by the BBC Executive at Stage 1. The Trust was unable to consider a complaint in the first instance. This was set out in the Agreement between the Secretary of State for Culture, Media and Sport and the BBC (Clause 90 (3)).
- The complainant’s concerns on this issue were not confined to one specific programme. However, other complaints on the same issue were now well beyond the time limit set out in the Complaints Procedure for submitting an appeal against the decision by Audience Services to close down correspondence at Stage 1. In the previous year, these included *Wonderful World of Blood with Michael Mosley*, BBC Four, 18 February 2016; *The Secret History of the British Garden*, BBC Two, 13 December 2015; *Panorama*, BBC One, 30 November 2015; *Secrets from the Ice*, BBC Four, 4 October 2015; *The Naked Choir with Gareth Malone*, BBC Two, 22 September 2015; *The Great British Bake Off*, BBC One, 19 August 2015; *Iceland: Land of Ice and Fire – Natural World*, 2 May 2015; *Mechanical Marvels: Clockwork Dreams*, BBC Four, 29 March 2015 and *Alaska: Earth’s Frozen Kingdom*, BBC Two, 4 February 2015.
- 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)).
- The responsibility for editorial and operational decisions about sound levels in programmes rested with programme makers.

- Audience Services had explained that the BBC took the issue seriously and was making an effort to educate programme makers about the issue by means of a “best practice guide” following on from a study conducted by the BBC in 2009.
- The issues raised by the complainant did not suggest a breach of the BBC’s standards or policies or raise a significant issue of general importance.

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