

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

December 2016, issued February 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 or is available from:

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

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 case the correspondence was reviewed by a senior member of the Trust Unit who advises Trustees on Editorial Standards. The 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 correspondence with the BBC, the complaint's appeal/s to the Trust, the response/s from the Trust Unit and the complainant's request/s to review that decision.

Decision of BBC Audience Services not to respond further to a complaint about Victoria Derbyshire, BBC Two and BBC News Channel

The complaint concerned the production team's handling of an application by the complainant to be an audience participant on the programme. The complainant made the following points:

- He felt he had been let down at the last minute when he had taken time off work in the expectation of being offered a place as an audience participant.
- He said he did not understand the production team's offer of a reserve place, as he did not see why someone would be invited to take part if the production team was not sure they would attend. He felt it was the job of the researchers to enquire whether the person would definitely attend.
- He said he had been promised a phone call from a member of the production team on a particular evening to discuss his complaint but that did not happen.
- He mentioned a previously scheduled televised event in Nottingham for which he had been selected as part of the audience, but which had been cancelled due to the tragic death of MP Jo Cox. Though he understood why the programme had had to be cancelled, he felt that because he had been let down on that occasion it would have been courteous to give him priority for a place on this one.
- He requested his details be removed from the BBC database as he did not want to be in the position of being let down again.
- He said he was disappointed by the tone of the producer in her response to his complaint.
- He had applied to the programme via his local MP and did not see all the disclaimers on the website.
- He said he had used satire in his comments about the Nottingham programme and apologised if the producer had been offended by it.
- He said he had spent a lot of time with the *Victoria Derbyshire* show researcher at his own expense, and concluded that not everyone had to do this because for such a small programme, the production team could not possibly have interviewed so many applicants in such a short space of time. He therefore believed that some people must have been selected without being interviewed, which was unfair.
- From what he saw on the broadcast programme, there was plenty of standing room in the studio and he felt that a space could have been found for him, especially as he understood that not every audience participant was expected to turn up on the day.
- He said that he had received a text message from a member of the production team asking him if she could call him to discuss his complaint, but she had not called, and he hoped she had not been prevented from doing so.

In response to a further complaint, Audience Services reviewed the correspondence, consulted the programme Editor and issued a response in which they made the following points:

- Having spoken to those involved with the programme, they understood that the complainant was kept fully informed that the phone call with the programme researcher was merely a briefing conversation – average length 10-15 minutes - and that it did not guarantee him a place in the audience.
- There were hundreds of applicants and the programme team therefore had to ensure the audience reflected a wide and diverse range of views and experiences

by conducting those initial briefing conversations with applicants. Briefing conversations were conducted by the programme's audience team with all audience members who made contact.

- The complainant had been informed by email that unfortunately he did not have a place in the audience, but if he wished to be on the reserve list his name could be added, but that did not guarantee a place as it depended on other audience members who might drop out.
- Audience Services understood that the complainant replied to the email saying he was happy to be on the reserve list and be contacted by 7am on the morning of the show if a place became available. The producer emailed back to confirm this and stated that she would only be in touch if she was able to offer a place.
- Audience Services understood that the complainant then emailed the day before the show to complain about not being contacted to be offered a place. However, it appeared that the complainant had previously advised the programme producer by email that he was happy to be on the reserve list until the following morning.
- The programme producer had clearly explained to the complainant that she could only contact him if a place became available.
- They noted that the complainant had asked the programme producer not to contact him again, thus she did not do so; however, the complainant emailed her the following day to express unhappiness that she had not called him as promised. Audience Services said they had been advised this was not something that she or any other team member had promised to do.
- They noted that the complainant had mentioned there being empty seats in the audience. They explained that in fact, all of the seats had been taken, thus it was not the case that there were spaces available on the programme.
- Having reviewed the emails sent to the complainant by the programme producer, they considered them to be polite and courteous, and explained that the programme was unable to offer a place to everyone who applied.
- They noted that the programme producer had also pointed out that the *Victoria Derbyshire* programme was in no way linked to the local BBC programme in Nottingham to which the complainant referred, and which was cancelled due to the death of Jo Cox MP. The producer was not in a position to offer any particular preferential treatment to the complainant because of that cancellation.
- No audience members were given guaranteed places due to MPs' recommendations, although it was clear that several MPs in the area spread the word about the debate and the weblink to apply for the show to their constituents (this weblink also stipulated that it was not possible for all applicants to be contacted or given a place).

The complainant responded further, making the following points:

- He felt it was clear that the programme was badly organised as the producer had admitted in her final response when she said that changes would be implemented for future programmes for anyone who, like the complainant, was chosen for interview. He still felt it was unacceptable that someone could be chosen without going through the interview process and it would also stop invited people having to drop out leaving the production team to find last minute replacements. He said that working people like himself could not be expected not to show up for work without giving notice.
- He had received an invite from his MP to apply for the show but the producer, in her correspondence, had stated that she was unaware of any link with MPs. The complainant said that someone from the programme must have been in contact with the MP, as he would not have made up the email that he personally sent to the complainant. He felt it was not plausible that the producer of the show did not know that the MP's assistance had been requested to help fill the audience.

- He was unhappy that the producer was still insisting that a colleague on the production team never promised to ring him regarding his complaint. He had saved the message in which this promise was made as proof of this and it troubled him that he had not been believed. He said he would like to be told the reason why the member of the production team who promised to ring him did not do so. If it transpired that she was prevented from doing so, then he believed action should be taken against whoever did that.
- He also did not think that it was acceptable for the programme producer to put in her email that she would not respond to another email from the complainant. He felt that was arrogant behaviour and extremely disrespectful.

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 asked for all the correspondence between himself and the BBC to be taken into account. In summary, he wished to appeal about the following:

- the way he was treated by the BBC when he applied to be an audience participant on the *Victoria Derbyshire* programme.
- the conduct of the programme producer who handled his complaint about not being selected to be part of the audience.

Decision of the Trust Adviser

The Trust Adviser (the Adviser) understood that the BBC had decided to cease handling this complaint at Stage 1. 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 that it did not.

The Adviser reviewed all the correspondence that had passed between the complainant and the BBC. She ascertained the context of the event in which the complainant was applying to take part and noted that it was a large scale audience debate with the Labour leadership candidates. The programme had an invited audience of 120 members of the public, who had to be fairly balanced in terms of the candidate they supported in terms of gender, ethnicity and age. It was clearly stated on the online application form that the production team were unable to give a place to all applicants for reasons of balance. It was explained to applicants during the short briefing chats on the telephone that not all applicants would get a place and that those briefing chats (on average 10 minutes) were for the purpose of ensuring the audience included a wide range of people with a wide range of views.

The Adviser noted that the programme producer had contacted the complainant shortly after his telephone briefing conversation with a programme researcher. She explained that she was unable to offer him a place at that time, but she asked whether he would like to be on the reserve list, and if so, what the latest time would be that someone could contact him about appearing on the show. She explained that some people dropped out at very short notice but it was impossible to predict how many would do so. The Adviser noted that the complainant had replied that he would like to go on the reserve list and had added that as he lived so close to the Nottingham studios, short notice to attend would not cause him too much inconvenience. He specified 7.00 a.m. on the day of the broadcast (Wednesday 17 August 2016) as the deadline for being contacted because that was the time he left for work.

However, subsequently, in an email to the producer on 16 August 2016, the complainant asked her not to contact him about taking up a reserve place the following morning:

“My employer will not allow me to not turn up for work without approval ... so please don't contact me tomorrow as you have not been in contact with me today.”

The Adviser noted that in later correspondence, the complainant said that he had taken time off work to be on the programme and appeared to have had a clear expectation of being asked to attend the studio. However, the Adviser had not seen evidence that any member of the production team had led him to believe that he would be invited to attend unless a confirmed applicant dropped out; that being the case, she did not consider that the production team had encouraged him to try to arrange time off work in the hope that he would be offered a place. The producer had clearly stated in her closing email of 15 August 2016, “If I can offer you a place I'll be in touch”.

On 16 August, the complainant sent an email to the producer at 7.39 a.m. expressing his disappointment at not having been contacted. He stated:

“I am very disappointed and appalled by the way I have been treated by the BBC. After I was let down at the last minute after taking time off work for the debate on the European Referendum in Nottingham (although the decision was justified and correct), I would have thought that priority would have been given to those people for the next event.”

The Adviser considered that Trustees would be likely to conclude that the production team had kept him appropriately informed of the progress of his application and had not given him any false expectations. He had clearly stated in his email of 15 August 2016 that the production team could contact him up to 7.00 a.m. on the morning of the live show (Wednesday 17 August 2016), and the producer had thanked him for letting her know this, telling him she would be in touch if she could offer him a place, which evidently she could not.

The Adviser noted that the reason production staff asked prospective audience participants on the reserve list to specify a contact deadline was because they understood that people needed varying amounts of notice depending on their circumstances, such as work, childcare, location etc. The Adviser understood that the complainant had said he could be contacted about attending the studio up until 7.00 a.m. on the morning of the programme itself, and he had stated that the short notice would not be too inconvenient as he lived near the studios. The production team had not suggested that he make himself available by taking time off work in the hope that he would be contacted.

The Adviser noted the complainant's view that it was indicative of bad organisation to keep people on a reserve list in case confirmed participants could not attend at the last moment. She noted that the operational management of the BBC was defined in the Royal Charter as a duty that was the responsibility of the BBC Executive Board rather than the Trust. She noted that it was standard operational procedure for willing programme participants to be kept on a reserve list in case previously confirmed participants could not attend on the day due to unforeseen circumstances such as illness, family or workplace emergency. She did not believe Trustees would consider that it was unreasonable for the production team to make preparations for such eventualities. She noted that the complainant had expressed his willingness to be kept on a reserve list and his correspondence indicated that he was well aware that he might be contacted at short notice, or not at all.

The Adviser noted that the complainant drew attention to a previously scheduled televised debate on the EU Referendum in which he had been selected as an audience participant and said he had expected to be given priority on the *Victoria Derbyshire* programme as he had been let down on that previous occasion. The Adviser noted that the producer had responded to him on this point, explaining that the EU Referendum programme was not connected to the *Victoria Derbyshire* programme. The Adviser noted that applicants' personal details were not circulated around the BBC to other production teams, and there was no overall BBC selection mechanism in place to take other programme audience applications into consideration in the way the complainant seemed to have anticipated.

With regard to the handling of his complaint by the *Victoria Derbyshire* programme producer, the Adviser noted that the complainant referred to a telephone call he had been promised by another member of the production team, apparently due to take place on Wednesday 17 August 2016, to discuss his complaint about the way he had been treated when applying to be a member of the audience. The Adviser also noted that in his email of 16 August 2016, he had asked the programme producer not to contact him on Wednesday 17 August as she had not been in contact with him on 16 August. He had also asked the producer in his email of 16 August to remove all his contact details from the BBC database. The Adviser read the text message screen shots submitted by the complainant showing communication between himself and a programme researcher, and noted that he had also asked the researcher in these texts to remove all his contact details from the BBC database. The researcher had apparently texted him back to ask if she could ring him the following day (Wednesday 17 August) to discuss his complaint further, and the complainant had texted back to say that she could, but he expected to be working very late. The Adviser considered that it would be reasonable to infer from this response that the complainant might not be available to talk to the researcher at a reasonable hour that day, and furthermore, he had made two requests that day for all his contact details to be removed, suggesting he did not want to be contacted again. On Wednesday 17 August, the Adviser noted that the complainant sent further emails to the producer expressing his disquiet over the way he had been treated and in her response, the producer referred to his previous email which she said "states clearly that you didn't want to be contacted again by our team".

The Adviser noted that the complainant was concerned that the programme researcher might have been prevented from ringing him to discuss his complaint further on Wednesday 17 August. She had not seen or heard evidence to suggest that was the case but she considered that Trustees would be likely to agree it would not be unreasonable for members of the production team to confer with each other about how best to handle a complaint which had involved them in separate threads of individual correspondence with the complainant on the same issue. She noted that the programme producer had apparently come to the conclusion that engaging in further communication with the complainant was unlikely to be productive in terms of resolving his complaint. In response to a further email from the complainant on Thursday 18 August, the producer stated:

"Thanks for your email. I don't think there's anything that I can say which will make you view this situation any differently. I understand your frustration at not getting a place and that your time was wasted on your conversation. I will ensure that it's reiterated to all applicants who are spoken to on the phone for future debates regarding the fact we can't get back to everyone. We didn't receive any applicants via MPs so not sure what you mean by that. Anyway I won't be able to reply to any further emails so as I have already said we can't offer a place to everyone and I understand your disappointment."

The Adviser understood that the complainant believed he had been recruited for the audience by his MP. The Adviser noted that the producer had stated they had not recruited via any MPs but that the complainant disputed this. She noted that in his telephone call of 22 August 2016, the complainant said he had been invited onto the show by his MP and had applied to be in the audience. She did not consider Trustees would agree there was evidence of any involvement by the MP other than perhaps to alert his constituent to the fact that the programme was taking place and he could apply directly to the programme team to take part in it.

The Adviser noted that the complainant found the tone of the producer's response arrogant and dismissive. Having reviewed the correspondence she noted that the producer had responded several times to the complainant. The Adviser considered that these responses had been generally polite and addressed the points raised by the complainant, though not to his satisfaction. She considered Trustees would be likely to be of the view that when the producer stated that she would not be responding to any further emails, this had been intended to convey that the producer had looked into the issues of concern raised by the complainant, had sought to address them and, while recognising that the complainant would not consider the matter resolved, had concluded that there was nothing further she could add. The Adviser noted that Audience Services, having conducted their own investigation into the complaint about the way the complainant had been treated by the production team, had concluded that there was nothing they could add to their response either and therefore they had closed down the complaint at Stage 1b, in line with the BBC Complaints Procedure, which states that complaints may not go on to be investigated at Stage 2 if judged at Stage 1b not to raise a significant issue of general importance that might justify further investigation. That did not mean that the complaint was trivial, but it did mean that the BBC had to decide whether the cost of investigating the complaint further could be justified against the likely outcome.

Taking this into account the Adviser considered Trustees would be likely to conclude that both the programme producer and Audience Services 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 made the following points:

- He considered that the amount of time taken over the complaint was avoidable; he felt that a simple apology and a small reimbursement would have been adequate to resolve his complaint.
- He had been informed by the BBC that the programme team was small and it was not possible to interview everyone who applied to be on the show because of the large number of applicants; therefore they felt the need for a reserve list in case a number of people withdrew. He maintained that it would have been better to have picked the audience from people who had been interviewed and could guarantee their attendance.
- He considered that contradictory statements had been issued by the BBC about whether or not every applicant was interviewed.
- He said he had agreed to be on the reserve list but would have expected to have been contacted at least the night before as he had to arrange cover at work.

- He said he had sent a message the night before the show requesting that his details be removed from the BBC database. He did this because he was very unhappy for the following reasons:
 - Because he was told that there were always a large number of people withdrawing (5-20), he was expecting a call.
 - During his interview he was asked if he would agree to be contacted on a regular basis by the programme for various polls they conducted and he consented to this.
 - He had been let down by BBC Nottingham over a previous programme regarding the EU referendum. The programme was cancelled at very short notice, for understandable reasons, but the promised invitation to the show when it was eventually made did not materialise. He had assumed that BBC Nottingham would be involved in the programme at the centre of his current complaint.
 - The accumulation of being led to expect a call which never came and being let down on a previous occasion made him feel insignificant and he did not feel he wanted to give any more of his time to the BBC for no reward.
 - He believed it was untrue that the production team had not contacted any MP seeking people for the audience. He felt that the response he had received from the BBC on this point had tried to make him look ridiculous. He said he had contacted his MP's office and it had been confirmed to him that somebody from the programme's production team did contact them to ask if they could select suitable people to apply to be part of the audience. He found it hard to believe that the programme producer was unaware of this.
- The BBC's response regarding the reason why he did not receive a phone call was disappointing. He said he was told that it was his own fault for saying that he did not want to be contacted again by the BBC. He said that was a very poor excuse as it was clear that the offer to ring him came after he sent the message regarding his unhappiness at the way he had been treated.
- He said he was still seeking a simple resolution to this matter, which was reimbursement of his call costs and an apology for the incorrect statements that were written against him. He also said that an invitation to a BBC show of his choice would be commendable.

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 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. "The operational management of the BBC" was defined as a duty that was the responsibility of the Executive Board under article 38, (1) (c). Trustees considered that the responsibility for decisions about the process for selection of programme audience participants for the *Victoria Derbyshire* show lay with the *Victoria Derbyshire* production team.
- the BBC had issued a comprehensive explanation of the audience selection process and, while noting that the complainant felt there had been contradictions during the course of his communication with the production team, they believed that the complainant had been kept adequately informed. Trustees noted that the producer had explained to the complainant that the team did not have any links

with the producers of the previous Nottingham programme which had been cancelled.

- when the *Victoria Derbyshire* producer had stated that she would not be responding to any further emails from the complainant, Trustees considered that this had been intended to convey that she had investigated the issues of concern raised by the complainant, had sought to address them and, while recognising that the complainant would not consider the matter resolved, had concluded that there was nothing further she could add. Trustees considered that, during the course of his correspondence with the BBC, the complainant had received several reasonable and polite responses to his complaint explaining the process for selecting participants, and explaining why, on this occasion, he had not been selected.

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.

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 Procedure¹ 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 stages². 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 stages³. The BBC's Fair Trading complaints panel which is appointed by the Executive Fair Trading Committee (EFTC) will

¹http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2014/complaints_fr_work_general.pdf

²http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2016/complaints_fr_work_tv_licensing.pdf

³http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2014/complaints_fr_work_fair_trading.pdf

respond at Stage 1. If the complaint qualifies for an appeal, the BBC Trust will respond at Stage 2.

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 a complaint about background sound

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 music and other sound which accompanied speech in BBC output. The complainant made the following points:

- In drama and documentary programmes, he felt that important speech was often almost drowned out by loud music and noise. He said the volume should be kept to a sensible level.
- In nature and gardening programmes, he felt that natural sounds would be more suitable than music.

BBC Audience Services made the following points:

- The BBC appreciated that some viewers and listeners found it hard to hear programme dialogue clearly. There appeared to be a number of reasons for this, including mumbled and muffled voices, unfamiliar accents or a noisy environment. Others found that background music could be too loud or simply badly chosen. The BBC regretted the frustration this could cause.
- It was difficult to strike the right balance between differing opinions on acceptable levels of noise and music. Music was added to programmes for many reasons and could be vital to underpinning moods and feelings, adding dimensions to a programme or conveying emotion.
- Programmes could often sound different in the editing suite compared to an ordinary television set. Although producers could control many of the effects within the programmes they made themselves, other programmes were bought in and there was no straightforward way to vary background sound levels before they were shown.
- Many televisions and recording devices now had options whereby audio settings could be changed to a personal preference setting, or amended to suit the type of programme being viewed. There is usually a default setting for "music" or "speech" which enabled viewers to adjust their televisions to make speech clearer. Similarly, viewers with surround sound systems might be able to clarify speech by increasing the volume on the centre (dialogue) speaker whilst decreasing the volume on the surrounding channels (music and effects).
- In 2009 BBC Television launched an extensive study into why some people were experiencing difficulties. As a result of that research, a "best practice guide" was produced which provided programme makers with an overview of the things they could do to make a difference to the audience's ability to hear and therefore enjoy BBC programmes.

Audience Services said they did not believe the complaint had raised a significant issue of general importance that might justify further investigation.

Appeal

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

- One did not expect to hear sudden bursts of loud music (often computer generated) whilst walking in the countryside or by the sea, or in a library or a museum.
- He felt the BBC's attitude was that there was nothing they could or wished to do about the problem.
- He said that judging from the number of letters published in the Radio Times on this subject, he believed his concerns were shared by a large proportion of the audience.

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 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 who to employ as a sports presenter, match commentator or pundit were part of the editorial and operational responsibilities of BBC Sport.
- The complainant had received a reasoned and reasonable reply. BBC Audience Services had explained to the complainant that the BBC was committed to equal opportunities for all and chose presenters based on their talent and experience, but would not expect everyone to agree with every choice made.

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 Breakfast, BBC News Channel, 21 September 2016

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 a *Breakfast* presenter who had pronounced the name of Alloa Athletic Football Club incorrectly. The complainant made the following points:

- The presenter had announced the name "Alloa" incorrectly, making it sound as if it was a Hawaiian team. He felt that this was a very basic error.
- He felt that such an error gave a very bad impression in terms of audience perception of the BBC as a credible source of football information.
- In a follow-up complaint, he said that the response from Audience Services had not addressed his concern because it appeared to assume that his complaint was about mispronunciation but that was not the case. He said his main concern was that by mispronouncing the name, it was obvious that the *Breakfast* presenter had not heard of Alloa Athletic FC, founded in 1878 - a football team so well known that anyone with any knowledge about football would have heard of them. He felt that such an error indicated that the presenter was simply reading from a script that she had hardly any knowledge about.
- He felt that the BBC had made a decision to stop allowing experts to talk about what they knew, and instead pursued a policy of "ticking boxes" and "meeting quotas".

BBC Audience Services made the following points:

- The BBC aimed for the highest standards in its reports, and that included clear and easily understood English.
- They regretted mispronunciations but said that mistakes of this nature did occasionally slip through, despite the best endeavours of experienced BBC editors.

Audience Services said they did not believe the complaint had raised a significant issue of general importance that might justify further investigation.

Appeal

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

He believed that his complaint about the BBC's choice of football presenter had raised a significant issue of general importance.

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 the decision by Audience Services to decline to enter into further correspondence was correct.

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

- Decisions concerning programme presenters were editorial and operational ones that rested with the BBC. In general, the BBC was free to make editorial decisions as long as its output met the standards set out in the Editorial Guidelines. The Royal Charter (article 38, (1) (b) and article 38, (1) (c)) specifically defined “the direction of the BBC’s editorial and creative output” and its “operational management” as duties of the Executive Board, and ones in which the Trust did not get involved.
- Whilst acknowledging that the complainant wished to make a wider point about the BBC’s choice of “experts” to present information related to football, they considered that Audience Services had addressed the complainant’s concern, as expressed in his original complaint, about the mispronunciation of the name “Alloa” in connection with Alloa Athletic FC.
- The complainant had received a reasoned and reasonable reply.

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 Springwatch, BBC Two

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 the presenting team for the next series of *Springwatch*, which would no longer include Martin Hughes-Games.

The complainant made the following points:

- He considered Martin Hughes-Games to be an excellent presenter and he felt the BBC had made a poor choice by not including him in the next series of *Springwatch*.
- He hoped this was not because Mr Hughes-Games was “a white middle-class male”.
- In response to Audience Services’ assurance that diversity was not an issue in the decision about future appearances of Mr Hughes-Games in *Springwatch*, the complainant said he would like to know the reasons why Mr Hughes-Games would not be in the next series.

Audience Services assured the complainant that the decision was not about diversity and said that talks about Martin Hughes-Games’ role after the current season of *Springwatch* were still ongoing.

They said they did not believe the complaint had raised a significant issue of general importance that might justify further investigation.

Appeal

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

- He believed that the BBC Executive should provide reasons for the apparent decision not to feature Martin Hughes-Games as a presenter in future series of *Springwatch*. He requested the Trustees to refer the matter back to the Executive.
- He said he accepted that the reasons would be quite general and would not be detailed, but he thought the Executive should provide the information he had requested.
- Licence fee payers ought to be given some insight into decisions about output which they disagreed with in order to bring a complaint if they wished to do so. He said he did not see how he could complain about bad decision-making if he was not allowed to know the reason for the decisions made.
- He believed that this case raised questions about diversity, racism and sexism and he felt the Executive should show that justice was being done behind the scenes by providing the reasons why they had made their decision in this case - rather than simply saying it was not on diversity grounds.
- He questioned whether the BBC Executive was trying to hide the fact that the decision *was* made on diversity grounds. Martin Hughes-Games was a well-loved, knowledgeable, inspiring presenter and he could not think of any other reason why the BBC would let him go.

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 the decision by Audience Services to decline to enter into further correspondence was correct.

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

- decisions concerning programme presenters were editorial and operational ones that rested with the BBC. In general, the BBC was free to make editorial decisions as long as its output met the standards set out in the Editorial Guidelines. The Royal Charter (article 38, (1) (b) and article 38, (1) (c)) specifically defined "the direction of the BBC's editorial and creative output" and its "operational management" as duties of the Executive Board, and ones in which the Trust did not get involved.
- Audience Services had given a reasoned and reasonable response.
- whilst Trustees understood that the complainant wanted more information (and was motivated by his appreciation for the Watches and the presenter) contractual arrangements between the BBC and its employees were confidential.

Trustees decided not to admit 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 background music

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

The complaint

The complaint concerned the volume level of background music in BBC television programmes. The complainants made the following points:

- In their view, the volume level of music was set too high and drowned out not only speech but also natural “musical” or mood-enhancing background effects such as birds singing, wind in trees and rushing water in rivers. They also felt that sometimes silence was the best accompaniment to a beautiful landscape.
- They felt that the BBC’s response explaining that programmes could sound different in the editing suite from the way they sounded on a domestic television set begged the question as to why this factor was not taken into account more effectively during the post-production process.

BBC Audience Services made the following points:

- The BBC appreciated that some viewers and listeners found it hard to hear programme dialogue clearly. There appeared to be a number of reasons for this, including mumbled and muffled voices, unfamiliar accents or a noisy environment. Others found that background music could be too loud or simply badly chosen. The BBC regretted the frustration this could cause.
- It was difficult to strike the right balance between differing opinions on acceptable levels of noise and music. Music was added to programmes for many reasons and could be vital to underpinning moods and feelings, adding dimensions to a programme or conveying emotion.
- Programmes could often sound different in the editing suite compared to an ordinary television set. Although producers could control many of the effects within the programmes they made themselves, other programmes were bought in and there was no straightforward way to vary background sound levels before they were shown.
- Many televisions and recording devices now had options whereby audio settings could be changed to a personal preference setting, or amended to suit the type of programme being viewed.
- In 2009 BBC Television launched an extensive study into why some people were experiencing difficulties. As a result of that research, a “best practice guide” was produced which provided programme makers with an overview of the things they could do to make a difference to the audience’s ability to hear and therefore enjoy BBC programmes.

Audience Services said they did not believe the complaint had raised a significant issue of general importance that might justify further investigation.

Appeal

The complainants appealed to the BBC Trust on the substance of their complaint.

The Panel’s decision

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

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 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” 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 and creative decisions about when to use background music and the sound levels of music in BBC commissioned programmes rested with programme makers who reported to the Executive Board. This included the decision to run music at the same time as speech.
- Audience Services had provided a reasoned and reasonable response.

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 Radio Newcastle's breakfast show

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 the *Alfie and Charlie at Breakfast* show on Radio Newcastle. The complainant made the following points:

- He felt that the presenters talked too much.
- He felt that there was too much music, at the expense of taking calls from listeners.
- He felt that the show had changed for the worse and that it had become too much like a commercial station, with not enough emphasis on interesting discussions.

BBC Audience Services acknowledged the complainant's dissatisfaction, and explained that the BBC provides programming to a hugely diverse audience, with differing tastes, and that some programmes do not appeal to some people.

In a further response, they said they did not believe the complaint had raised a significant issue of general importance that might justify further investigation.

Appeal

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

- He had again listened to the show and was dissatisfied that an interesting discussion about parking bays had been interrupted by music.
- Some callers were rushed, as if there was not time to take their call.
- He believed that callers were more interesting than music.

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 the decision by Audience Services to decline to enter into further correspondence was correct.

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

- Decisions concerning the content of radio shows were editorial and operational ones that rested with the BBC. In general, the BBC was free to make editorial decisions as long as its output met the standards set out in the Editorial Guidelines. The Royal Charter (article 38, (1) (b)) specifically defined "the direction of the BBC's editorial and creative output" as a duty of the Executive Board, and one in which the Trust did not get involved.

- Audience Services had given a reasoned and reasonable response.

Trustees decided not to admit 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.