

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

February and March 2016, issued May 2016

Remit of the Complaints and Appeals Board	1
Summary of findings	3
Appeal Findings	4
Television Licensing Appeal: The conduct of a TV Licensing Visiting Officer and the content of enquiry letters – TVL00068	4
Requests to review the Trust Unit’s decisions on appeals	10
Complaint of discrimination and bullying by the BBC against an independent production company	10
An allegation of plagiarism	17
Appeals against the decision of BBC Audience Services not to correspond further with the complainant	22
Decision of BBC Audience Services not to respond further to a complaint about BBC coverage of climate change	23
Decision of BBC Audience Services not to respond further to a complaint about filming for the BBC series Two Doors Down	26
Decision of BBC Audience Services not to respond further to a complaint about a breach of copyright	30
Decision of BBC Audience Services not to respond further to a complaint about BBC News coverage of the migrant crisis	33

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 Stages 1 and 2 of the BBC's general complaints procedures and which are now being referred to the Trust on appeal as the final arbiter on complaints (unless it is a complaint about the BBC Trust)

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

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

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

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

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

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

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

It is published at bbc.co.uk/bbctrust or is available from:

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

Summary of findings

Television Licensing Appeal: The conduct of a TV Licensing Visiting Officer and the content of enquiry letters – TVL00068

Summary of finding

This appeal is about:

- Point A: The conduct of a TV Licensing Officer during a visit to a property
- Point B: The content of enquiry letters

The Panel concluded in relation to Point A that there was insufficient relevant evidence available to it to enable it to say that either the account of events given by the Complainant or that given by the Visiting Officer was more likely than not to be accurate.

Finding on Point A: Not upheld

The Panel concluded in relation to Point B that the letters sent to the complainant by TV Licensing were not illegal; that in the absence of any response from the complainant as to whether he required a TV Licence, TV Licensing was correct in the way it applied its mailing strategy; and that the Executive had given a satisfactory explanation as to why the complainant had received a further mailing in May 2015, which was that TV Licensing had correctly acted on information that had been passed to them from a third party which had indicated that there may have been a change of occupancy at the address in question.

Finding on Point B: Not upheld

This complaint was not upheld

Appeal Findings

Television Licensing Appeal: The conduct of a TV Licensing Visiting Officer and the content of enquiry letters – TVL00068

Background

This appeal is about the conduct of a TV Licensing Visiting Officer and the content of enquiry letters.

Relevant information about TV Licensing policy as it relates to issues raised in this complaint

The TV Licensing website at <http://www.tvlicensing.co.uk/about/our-commitment-to-you-AB5> includes a page which outlines the TV Licensing principles of customer service.

The TV Licensing website also publishes its policy regarding sending letters. The relevant pages can be accessed at <http://www.tvlicensing.co.uk/about/foi-administering-the-licence-fee-AB20>

The complaint

The complainant initially wrote to TV Licensing in September 2013. Below are the key points from his correspondence:

- The TV Licensing Visiting Officer (the Officer) banged on the door and announced himself.
- The complainant said to the Officer that he did not have a television, and that the Officer pushed him aside as he walked into the house.
- According to the complainant, the Officer then walked into a big room and could see there was no television set.
- The complainant said that he closed the front door and said to the Officer that he wanted to know who he was and was told that he had already been shown the Officer's pass.
- When the complainant said he had not, the Officer quickly showed him a piece of paper without enough time for the complainant to see what was written on it.
- The complainant said he had asked the Officer his name and had been refused in a very severe and discourteous manner. The complainant asked that he now be told the Officer's name.
- The complainant felt the Officer should have been wearing his ID.
- The complainant said that he had stopped the Officer from leaving by initially shutting the door but when he had left the Officer had pushed the complainant backwards off the doorstep.

- The complainant denied the Officer's later report that he had been locked in by the complainant and that he had refused to unlock the door.
- The complainant said he followed the Officer to his car and filmed him with his camera phone before he drove off.
- The complainant said he reported the incident to the police.
- The police told him that they would keep the case open whilst he wrote to TV Licensing.
- The complainant said the visit was unnecessary as TV detector vans could be used in such circumstances.
- The complainant said he also wanted to complain about the letters he had been sent. He said it was illegal to send "threatening letters or letters that can easily cause upset, misery, fear or trepidation".
- The complainant included a copy of a letter he had received from TV Licensing.

During Stages 1 to 3 of the complaints process, the following took place:

TV Licensing sent the complainant several responses. According to TV Licensing, the Officer's recollection of events was different from that of the complainant:

- The Officer said he showed his ID promptly and explained the purpose of his visit.
- The occupant initially declined the Officer's request to check whether he had a television, but then changed his mind and admitted the Officer.
- Once the Officer was inside, the occupant locked the door and twice refused the Officer's request to unlock it.
- The visit concluded with the occupant unlocking the door following the Officer's stated intention to call the police and the Officer then departed.
- In line with his working instructions, the Officer immediately reported his account of the visit to his manager which was also referred to the police.

TV Licensing also said that

- The manager had discussed the complaint at length with the Officer who denied any suggestion that he had failed to conduct the visit properly.
- The manager considered that the behaviour attributed to the Officer would have been uncharacteristic.
- It was not TV Licensing's policy to disclose a Visiting Officer's name.

TV Licensing also responded to the complaint about the character of its enquiry letters. The response quoted directly from the information published on the TV Licensing website and referenced earlier in this decision document.

In relation to the conduct of the Officer, the complainant was advised that as his account of the visit and that of the Officer were very different and, with no other factors to take into account, the complaint could not be further investigated.

The complainant was advised that the complaint had been noted on the TV Licensing Officer's record so that it could be taken into account should anyone else raise similar concerns.

The complainant then received letters from the BBC Executive, as set out in Stages 2 and 3 of the TV Licensing complaints and appeals procedures¹. These letters reiterated what had been said by TV Licensing.

In a letter from the BBC Executive dated June 2014, the complainant was advised that the Officer had been given an action plan and additional training. The complainant was also advised in this letter that if TV Licensing receives no response to their letters or to a visit from an Officer they may consider using detection equipment but it was not feasible to use it as an alternative to sending letters and visits.

The complainant was also told in a letter from the BBC Executive dated November 2014 that TV Licensing's records reflected that he did not need a licence.

Appeal

The complainant appealed to the Trust in a letter received in March 2015. The complainant said that:

Point (A): The conduct of a TV Licensing Visiting Officer

- The Officer had forced his way into his home, assaulted him, refused to show any form of identification and then lied about what had happened.

Point (B): The content of enquiry letters

- The letters he had received were threatening and were designed to cause fear and trepidation.
- In a letter to the BBC Trust in May 2015 the complainant said "Just to add insult to injury you [BBC] have sent me another threatening letter".

The Trust Unit asked the BBC Executive to explain why the complainant had received a letter in May 2015, noting that the complainant had been advised seven months prior that TV Licensing's records reflected that he did not need a licence. The BBC Executive said the following:

"The address was confirmed as being set as no licence needed as [the Executive Board Member responsible for Licence Fee Collection] appropriately advised [in her Stage 3 response]. Then following information provided from a third party data supplier which indicated that there had been change of occupancy, mailings to the address commenced in February 2015. TV Licensing may write to an address enquiring about the licensing requirements if they have reason to believe occupancy [of] the address may have changed. Third party information may be used for this purpose.

¹ http://www.bbc.co.uk/bbctrust/governance/complaints_framework/television_licensing.html

As no response was received further mailings were sent in March, April and May. Whilst customers are under no obligation to respond, it is helpful if they do so. These letters become more progressively strongly worded in tone if no response is received. The letters have no consequence for someone who does not require a licence.

The address was set back to no licence needed in June 2015.”

The complainant was informed of this response and confirmed that he wanted this additional point included in his appeal to the Trust.

The Trust Adviser considered that the complainant raised matters of substance which the Panel considered as an appeal.

The Panel's decision

Point (A): The conduct of a TV Licensing Visiting Officer

The Panel referred to confidential and privileged legal advice.

The Panel first considered whether the Officer's visit had been conducted in accordance with TV Licensing's commitments to its customers, in particular those clauses which state that:

- licensing officers will be “polite, courteous and fair”
- they will “avoid threatening or intimidating behaviour”
- they will “follow applicable laws, regulations, policies and codes of practice”.

The Panel considered that it should weigh the available evidence and determine, if possible, whether either the complainant's or the Officer's version of events was accurate, on a balance of probabilities.

The Panel considered the following points:

- that the respective accounts of the complainant and the Officer as to what happened differed on significant points
- that their accounts differed as to whether the complainant's front door had been locked or not, but the Panel was of the view that irrespective of whether the door could be locked or not, if the door had been kept closed when the Officer wished to leave the complainant's premises, this would have had the same effect as the door being locked
- that the complainant was asked if he still had the video material of the Officer leaving his home which he referred to in correspondence, and whether he had a note of which police station he had called, who he had spoken to and any case reference number. The Panel noted that the complainant's response did not shed further light on some of the issues he raised
- that the Officer's manager said he considered that the behaviour attributed to the officer would have been uncharacteristic; but that the complaint had been recorded in the Officer's file and that an action plan had been drawn up for the Officer. The Panel noted that TV Licensing had taken action regarding the Officer

even though the events which led to the complaint could not be independently verified

- that TV Licensing and the BBC had been asked a series of questions relating to the issues raised in the complainant's appeal, but no further relevant evidence emerged to help the Panel to establish what had happened.

After deliberation, the Panel concluded that there was insufficient relevant evidence available to it to enable it to say that either of the two accounts was more likely than not to be accurate. Therefore the Panel decided it could not uphold the appeal.

Finding on Point A: Not Upheld

Point (B): The content of enquiry letters

The Panel referred to confidential and privileged legal advice regarding the complainant's contention that certain of the letters were "illegal".

The Panel took into account that every letter the complainant received advised him of how he could inform TV Licensing that he did not need a licence and that there was no indication from either the complainant or TV Licensing records that the complainant had responded to any of the 38 letters he had received between when the previous licence for the property expired in 2010 and the visit he received from TV Licensing in September 2013. The Panel also took into account that in its review of TV Licensing in 2009, the BBC Trust stated that it was not possible to distinguish between those who chose not to notify TV licensing that they did not require a TV Licence and deliberate evaders. The 2009 review endorsed TV Licensing policy on the matter and stated that "the Trust supports the continuation of TV Licensing's working assumption that households who do not notify TV Licensing of their status should continue to receive standard mailings".

The Panel noted that the BBC supplied copies of the letters which the complainant would have received prior to the letter which he submitted as part of his complaint. The BBC also summarised the mailing history for the address in question. The earlier letters sent to the complainant reflected the information on the TV Licensing website which states that letters get progressively stronger if no response is received. Whilst all the letters invite the occupant to pay the licence fee, they also explain clearly how to advise TV Licensing if no licence is required – and offer a means of doing so both online and over the phone.

The Panel concluded that the letters sent to the complainant from TV Licensing were not illegal. The Panel also concluded that in the absence of any response from the complainant as to whether he required a TV Licence, TV Licensing was correct in the way it applied its mailing strategy. The Panel also concluded that the complainant could have put a stop to the letters by informing TV Licensing that he did not require a TV Licence. The Panel suggested that TV Licensing should consider how the standard text in letters sent by TV Licensing could make it clear that calls to their 0300 790 6165 line cost no more than a national rate call to an 01 or 02 number and count towards any inclusive minutes in the same way as 01 and 02 calls.

The Panel then considered whether the explanation given by the BBC Executive for the reason why the complainant received a further mailing in May 2015 was satisfactory. The Panel was of the view that TV Licensing had correctly acted on information that had been passed to it from a third party which had indicated that there may have been a change of occupancy at the address in question. This had resulted in further letters being sent to the complainant's address to ascertain whether the TV Licensing requirements had changed. The Panel noted that once TV Licensing was informed that there had been no change of

occupancy at that time, and it remained that no TV Licence was needed at the premises in question, the address was set back to "no licence needed"; this would prevent mailings from being sent for a further set period of time.

Finding on Point B: Not Upheld

Overall Finding: Not Upheld

Requests to review the Trust Unit's decisions on appeals

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

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

Complaint of discrimination and bullying by the BBC against an independent production company

This complaint concerned a decision to terminate an independent production company's commission. The principal points of complaint were:

- The BBC had commissioned an independent production company to make a series of four documentary programmes in 2007.
- The BBC withdrew this commission in 2010 and served a Takeover Notice.
- The complainant considered the material he had provided to the BBC had been produced by an experienced team and was of a high quality.
- The complainant considered he had not been given proper reasons why the commission had been withdrawn and that no concerns had been raised by the BBC prior to serving the Takeover Notice.
- During this time-frame, the complainant had separated from his partner who was also a co-director of the independent production company.
- The complainant's former partner was related to a senior BBC figure and he considered this had affected the treatment that he and his independent production company had received. He claimed to have evidence of this.
- He considered the BBC had acted unfairly and, in seeking to recover some of the costs of the commission, had attempted to bully and intimidate him.
- There had been a number of matters that had made it more difficult for him to succeed in securing BBC work – including a decision not to invite him to an informal reception and not to send commissioning information to him.
- The complainant had suffered ill-health and eventually felt he had no option but to close his company.

The complainant had initially made a complaint to the BBC in 2009. At that time, he was working on the series of four documentary programmes which had been commissioned in 2007 and were due to be broadcast in 2010. The initial correspondence has not been seen by the BBC Trust and appears to no longer exist, however, in May 2009, the BBC replied to the initial complaint. The response included the following points:

- It set out who was responsible for commissioning different elements of BBC output.
- It reassured the complainant that the senior BBC figure who was related to the complainant's former partner had not been involved in commissioning independent production companies.
- It noted that the senior BBC figure had filled out and signed a "related party transaction form" which set out the "trading relationship between [the

complainant's company] and the BBC and the relationship between [the complainant's former partner and their relative]".

- It gave information about how to pitch for independent commissions and stated there was no evidence that the complainant had been "excluded from any independent producers' list or events".
- A decision not to invite the complainant to an informal reception in 2007 was a legitimate judgement because of the need to reduce the guest-list.
- It noted that the complainant had not subscribed to the BBC's relevant mailing list and that, at the time, the complainant's company did not have a point of contact listed.
- It gave information about how the complainant could enter the relevant details in order to get information about independent commissioning.
- It noted that his company was producing a series of programmes that were due to be broadcast the following year and sent him best wishes regarding that production.

There was further correspondence which is now missing. However the complainant was dissatisfied and renewed his complaint. In June 2009, he received a further letter from the BBC. The letter made the following points:

- Having investigated the complaint, the BBC did not agree that the complainant's company had been unfairly treated.
- The complainant should contact the BBC Trust if he wished to pursue his complaint.
- The response stated:

Your letters have referred to, but not included, evidence in support of your claim that your company has been disadvantaged by the actions of [the senior BBC figure who was related to the complainant's former partner]. You may wish to include any such evidence in your submission to the BBC Trust.

In June 2010 the BBC terminated the commission for four documentary programmes with the complainant's company.

In December 2014, the complainant contacted the BBC with a summary of his complaint. He was sent a response which noted that he had been advised, in 2009, to pursue his complaint to the BBC Trust if he remained dissatisfied with the BBC's response. The complainant stated that he had done that, but had not received a response.² The BBC sent a substantive response in March 2015. This included a review of the earlier correspondence. This noted that the complainant had been given guidance about how to ensure the right details had been provided to the BBC so that he received commissioning information. It asked him to provide evidence to support his complaint that he and his company had not been fairly treated. In terms of the decision to terminate the contract to produce the documentary series, it stated:

In the light of your company's failure to film all the required material and its inability to account for unspent funds, I can only conclude that [the BBC] acted fairly and in the best interest of the production, with due regard to proper stewardship of licence fee payers' money.

² The Trust Unit could find no record of his having contacted the Trust at that time.

The complainant challenged the decision and stated that he did not consider the investigation had been sufficiently thorough. As well as reiterating his complaint, he indicated that he might take legal action.

He was sent a final response on 29 May. This stated that the BBC could find no evidence of "bullying or poor treatment". It advised the complainant that he could appeal to the BBC Trust or, if he wished to pursue legal action, should contact BBC Litigation. It again noted that the complainant should submit any evidence he had that supported his claims.

The complainant wrote again to the BBC asking for details about why the documentary commission had been removed from his company in 2010. He was advised, again, to either contact BBC Litigation or the BBC Trust in order to pursue his complaint.

Appeal

The complainant contacted the BBC Trust on 22 June 2015. He set out the course of events that he said took place around the commissioning of the series by the BBC. He described the deterioration of the relationship between his company and the BBC and how it resulted in the eventual winding up of his company. He stated that the Trust should contact him if it required any further information.

Decision of the Trust Adviser

The Trust Adviser (the Adviser) considered that the complainant's appeal should not be put before Trustees because it did not have a reasonable prospect of success. The Adviser noted there were discrepancies in the complaints correspondence and the complainant's letter of appeal as to the years in which events had taken place. However, in the Adviser's view, this did not materially affect her decision.

The Adviser noted from the correspondence that the complainant had raised concerns with the BBC that dated back to 2007 and had pursued them in 2009. She noted that he had been requested to provide evidence to substantiate his claims in 2009, but she had seen no information to suggest that he had done. She noted that the complainant had also been directed towards the Trust in 2009. She noted that the complainant stated that he had written to the Trust and received no reply. She could find no record of the BBC Trust having received any correspondence from the complainant in 2009. She was aware that systems were in place to record mail coming to the Trust, and ascertained that there was no record of any letter from the complainant having arrived. She accepted, however, that it was possible that the complainant had written to the Trust and that his letter had gone astray or, through oversight, had not been responded to at the time. She noted that there was no record of any inquiries or chasing letters from the complainant.

The Adviser noted that the complainant had referred to the existence of supporting evidence and the BBC had invited him to submit this several times. He had also been asked to provide any evidence that the BBC had not acted reasonably and proportionately in the interests of licence fee payers. She noted there was no information suggesting the complainant had provided any of the evidence he had referred to, to support his case.

The Adviser noted that the Complaints Framework set out clear timeframes for complaints to be pursued and considered that this was done with good reason, as it was increasingly difficult to investigate complaints properly and efficiently as time passed. She noted that the General Complaints Procedure stated:

2.1 You must make your complaint within 30 working days of the date on which the BBC made a decision or acted in a way that gives rise to your

complaint. If you contact the BBC after that time, please explain why your complaint is late. Exceptionally, the BBC Executive may still decide to consider your complaint, but only if we decide there was a good reason for the delay.

If the Executive decides not to investigate your complaint because it is late, you can ask the Trust to review that decision....

5.10 The Trust will only consider an appeal if it raises “a matter of substance”. This will ordinarily mean that in the opinion of the Trust there is a reasonable prospect that the appeal will be upheld. In deciding whether an appeal raises a matter of substance, the Trust may consider (in fairness to the interests of all licence fee payers in general) whether it is appropriate, proportionate and cost-effective to consider the appeal.

The Trust may not consider an appeal that is trivial, misconceived, hypothetical, repetitious or otherwise vexatious.

The Adviser also noted that, according to Article 38(1)(b) and (c) of the BBC’s Royal Charter, “the direction of the BBC’s editorial and creative output” and “the operational management of the BBC” are the responsibility of the Executive Board. Article 9(3) prohibits the Trust from exercising or seeking to exercise the Executive Board’s functions.

The Adviser considered that decisions about which programmes to commission were editorial and creative ones. She considered that decisions about who to employ to manage commissions were operational ones. These rested with the BBC and the Trust had no remit to intervene, unless there was evidence to show that the BBC had behaved in a way that was in breach of any of its commitments.

The Adviser considered that Trustees would be likely to conclude that the investigation should not be reopened at a distance of more than five years because of the difficulty in obtaining enough evidence to allow a robust decision to be made and because it would not be proportionate – in the interests of all licence fee payers – to pursue a complaint so long after the events complained about when there was no explanation as to the delay. She also noted that the complainant had been invited to supply evidence to substantiate his complaint but there was no evidence that he had done so.³

She considered that, in the absence of any evidence produced by the complainant, decisions about which programmes to commission and who should work on them were matters for the BBC Executive and not for the Trust.

Taking all this into account, the Adviser did not consider that the appeal raised a matter of substance. In particular, she did not think 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 any aspect of it before Trustees.

Request for review by Trustees

The complainant raised two points:

- The BBC had informed him that the Takeover Notice had been issued because the material he had provided had been too poor – he strongly disputed this and stated that the production values of the programme were of the highest standard.

³ The complainant had referred to having email correspondence which supported his complaint. He had been invited by the BBC to send this in, but had not done so. Nor had it been sent to the BBC Trust.

- He noted that other people who had been part of the programme making team had continued to be employed by the BBC. He considered there was an inconsistency with the BBC's argument. He believed that either the production team was sufficiently good to have provided material of a usable quality - in which case, the commission ought not to have been revoked - or the production team was not good enough - in which case it was a misuse of licence fee payers' money for the BBC to continue to employ the same people who had previously worked with him.

Trustees requested to see more paperwork before making a decision about whether or not to consider the complaint on appeal. They were subsequently supplied with the "Notice of Termination" letter that had been sent to the complainant by the BBC in 2010 and also with a letter to the BBC from the liquidator in 2010.

The Notice of Termination letter set out that in April 2007 the production company had been commissioned to produce a documentary series of four programmes that involved following people and events over a number of years.

The letter stated that, in light of concerns raised by the BBC, the company had provided all the material it had recorded to the BBC in June 2010. It noted that while material had been recorded for the first and second programme in the series, no recording had taken place during the previous 12 months and, therefore, there did not appear to be any material for the third programme; nor did it appear that there were any plans to record the material that would be needed for the fourth programme.

A named individual who was a producer/director for the series had not worked for the production company after June 2009 and did not appear to be fulfilling a role that had been ascribed to him. The production company had not alerted the BBC to this change.

The production company had already been paid to record material for all four programmes, although it appeared that it had only recorded material for two. The production company also sought payment to carry out post-production work for all four programmes - despite not having recorded the material for the third and fourth programme.

The letter noted that the original commissioning contract had been superseded, a little over a year after the commission had been awarded, by a variation to the contract. It noted that some of the unedited material supplied by the production company had been recorded according to the technical requirements of the original commission rather than the updated commission - and as a result could not be used because they did not meet the amended technical specifications.

The letter also noted that one requirement of the commission was to track people and events over a number of years - however the failure to record the necessary material over time meant that some early material, that would otherwise have been useable, could not be used because there was a lack of continuity.

The letter from the liquidator included information about the independent production company's profits and losses in the years before it was put into liquidation. The company had had a history of making radio and television output for a number of sources and had been trading in profit in 2008 and 2009, but thereafter had made a loss. The complainant's former partner - who had been a co-director of the company - had left the company in February 2009.

In his explanation as to the failure of the company, the complainant had made the following points:

- His former partner had been the named Executive Producer for the four part documentary series.
- After their relationship broke down, his former partner had also left the company.
- Concurrently, a BBC Commissioning Executive who had been overseeing the series for the BBC had left the corporation.
- The BBC would not accept the complainant as the new Executive Producer for the series, nor would it accept any of the alternative names he suggested or any other names he put forward.
- It was therefore impractical to make progress regarding the final one and a half programmes.
- The complainant considered he had tried to reach a compromise with the BBC, but that this had proved impossible.
- In June 2010 the BBC had notified the company that they were ending the commission so that recording for the outstanding 1.5 programmes and post-production work for 2.5 programmes would be carried out by the BBC.

The complainant was sent copies of the paperwork that had been supplied to the BBC Trust and was invited to comment on them. In particular, he was asked for his response to the Notice of Termination and also for contemporaneous material which might support his complaint. He sent two further letters supporting his complaint which disputed the version of events set out in the Notice of Termination letter to him by the BBC of 2010. He also supplied an email chain from the summer of 2010 which addressed the possibility that the BBC might bring the commission in-house.

The Panel's decision

Trustees noted the points made by the complainant, the BBC and the Adviser.

Trustees noted that, when the complainant had appealed to the Trust, he had stated that the reasons behind the decision to terminate the commission for the four-part documentary series remained "shrouded in mystery". Trustees noted that the correspondence was incomplete and that it would have been helpful to have seen the complainant's contemporaneous response to the Termination of Contract letter. However they noted his current view regarding the termination.

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

- decisions about which programmes to commission were editorial ones and decisions about which companies to commission and who to employ in commissioning roles were operational ones. They noted that both these matters rested with the BBC – unless any BBC was potentially in breach of the Editorial Guidelines or any of the other guidelines and standards the BBC was required to reach.
- the complainant had been given reasoned information about the decision to revoke the commission at the time. The Termination of Contract letter had set out the reasons behind the decision to end the commission. These had included a failure to record all the necessary material and a failure to follow people and events over time to allow a story to be told across the documentary series. This failure of continuity had apparently meant that some otherwise useable material could not be broadcast. There had been a variation to the technical requirements

after the series had initially been commissioned and that this change had apparently meant that some early footage could not be used.

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.

An allegation of plagiarism

The complaint concerned a programme proposal submitted to the BBC by the complainant in 2009 which the complainant said bore striking similarities to a subsequent BBC commission.

The complainant made the following points:

- The BBC programme broadcast in 2015 on BBC Four, was “exactly the programme” he had pitched in April 2009, including the presenter. His proposal had been rejected by BBC Commissioning in November 2009.
- He tried to raise his concerns with BBC Four commissioning prior to broadcast of the programme, but said that no-one would talk to him until after the broadcast.
- He said his programme proposal had been plagiarised and there was a copyright issue.
- He requested transparency on the commissioning timeline and the engagement of the presenter in the BBC broadcast programme.

The complaint went to Stage 2 and was investigated by the BBC Independents Executive who made the following points in her findings summary:

- The complainant submitted his idea, to the BBC in April 2009 as a 6 x 1 hour series presented by [NAME] via the BBC e-commissioning system. It was then passed to the Head of Commissioning for Music. The idea was rejected on 2 November 2009.
- The complainant had supplied the BBC Independents Executive and, prior to this, BBC Audience Services with his account, and the grounds on which he felt that the series idea he submitted in 2009 was passed to another independent production company.
- The BBC Independents Executive spoke to the Head of Commissioning for Music at length about the provenance of the commissioned idea in order to establish a timeline around both the complainant’s submission and the process by which the final programme was commissioned.
- The BBC Independents Executive also corresponded with the Channel Editor of BBC Four about his involvement in the initial stages of the discussion with the producer, and the Executive Producer from the independent production company which made the broadcast programme.

The main points of similarity between the two programme ideas were:

1. Both the complainant’s proposal and the commissioned programme featured the same presenter.
2. Both involved the history of a specific form of song.

The main points of difference between the two programme ideas were:

1. The complainant’s proposal was for a 6 x 60 minute part series covering the history of the song form in chronological order, decade by decade.
2. The commissioned programme was an hour-long documentary focused on the song form and how it worked, extending into contemporary composition in the relevant country and how the tradition led to new lyrical forms.
3. The complainant’s programme idea featured the presenter and access to her personal archive; whereas, initial development and interest in the idea for the commissioned programme was not based on the presenter’s prior agreement or

her archive. She was on a list of potential presenters under consideration and she was confirmed in 2014 before full production started in January 2015.

The BBC Independents Executive could find no grounds for upholding the complaint. She stated that:

- The subject could not be protected by copyright. Neither could copyright extend to a period of history or the use of a presenter whose career has been strongly associated with that subject area or period of history.
- The complainant's series proposal and the programme as broadcast covered similar subject matter but approached it in different ways, although there were likely to be common points of comparison due to received knowledge of the chronology, characters and events of that subject area. In the view of the BBC Head of Commissioning for Music, the programme as broadcast took a different approach to the complainant's proposal (as detailed in her notes).
- In the case of the programme as broadcast, early development of the idea was not initiated by the Head of Commissioning for Music but by the Channel Editor of BBC Four who discussed the idea with the independent production company eventually commissioned to make the programme in an ideas meeting on 27 June 2014. The Channel Editor of BBC Four said he did not come into contact with the complainant's original treatment. He was working in Science and History in 2009 and in any event, it was not easily possible or commonplace for commissioners in other genres to look at proposals for other genres. If he had chosen to search the BBC system for ideas in a similar territory in 2014 he would have had to make a specific request to the business systems team or to the Independents Executive as the proposals system was being migrated from the old e-commissioning system to a new system called BBC Pitch. No evidence of such a request was found by the Independents Executive.
- The inclusion of the proposed presenter in the complainant's 2009 proposal, and her subsequent role as presenter of the programme as broadcast, were not sufficient grounds to uphold the complaint. The presenter was a common figure associated with the tradition of this song form and one of the few figures with recognition amongst a British audience. The commission was not dependent on specific access to the presenter as she was one of a number of presenters initially considered.
- It was common for more than one company to pitch an idea in the same territory, especially in one specialist genre and over a period of some years. In the case of this complaint, six years had elapsed between the complainant's submission of his proposal and the commission of a single one-hour documentary on the same subject. It was not commonplace or expected of commissioners to cross-check their archives for ideas of a similar nature when they were commissioning.
- Commissioning priorities and strategies for genres and channels did change frequently and certainly changed over the period covered by this complaint.
- The programme as broadcast was commissioned to tie in with two events: the Eurovision Song Contest's 60th Anniversary and the Year of Song and Dance for BBC Music.

The complainant found the report by the BBC Independents Executive to be neither fair nor accurate. He said the specific outcome he sought was a written apology from the BBC and an assurance that when considering programme ideas, commissioners in future would cross-check their archives for programme proposals of a similar nature.

Appeal

The complainant appealed to the BBC Trust on the substance of the complaint. He made no additional points in his appeal, but asked for assurance that the Trust was in possession of his full report and that it remained intact with no redaction of any kind.

Decision of the Trust Adviser

The Trust Adviser (the Adviser) carefully reviewed the correspondence that had passed between the complainant and the BBC. She acknowledged the strength of the complainant's feelings about this matter but she decided that the appeal did not have a reasonable prospect of success.

The Adviser noted that the Royal Charter and accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. "The direction of the BBC's editorial and creative output" and "the operational management of the BBC" were defined as duties that were the responsibility of the Executive. In this instance, the Adviser believed that Trustees would be of the view that the responsibility for commissioning and editorial decisions concerning the broadcast programme rested with the commissioning editors and programme makers.

Nonetheless, the Adviser acknowledged the complainant's view that his programme proposal had been plagiarised. She noted that the BBC Independents Executive had investigated the complaint and concluded that there was no evidence to support the allegations of copying. She noted that the complainant had requested the BBC Executive to give "a full and transparent timeline of the commissioning process and individuals who brought our original idea to broadcast".

The Adviser considered that the BBC Independents Executive had provided the requested timeline in her findings, though the BBC did not agree that the programme as broadcast was plagiarised from the complainant's programme proposal. The Adviser noted that the BBC Executive disputed the complainant's belief that the proposals were similar in format, as explained in the Independents Executive's finding. The Adviser believed that Trustees would be likely to agree with the Independents Executive that the BBC programme as broadcast took a different approach, although there were similarities in the subject matter. She noted that the subject area could not be protected by copyright.

Furthermore, the Adviser noted that the Channel Editor of BBC Four did not take up this appointment until four years after the complainant's proposal was submitted and rejected. She had not seen evidence to contradict the Channel Editor's statement that he had not had sight of the complainant's proposal in the e-commissioning system which was in operation at the time of the submission in 2009, a system that had since been replaced. She also noted that the Head of Commissioning for Music, who had seen and rejected the complainant's proposal in 2009, was not involved in the initial stages of the BBC's broadcast programme of 2015, but was kept informed of the ideas and developments discussed between the Channel Editor of BBC Four and the commissioned independent production company's Executive Producer in 2014.

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 made the following points:

- The presenter was in possession of the copyrighted Programme Proposal months before the complainant pitched it to the BBC and she was fully aware of its contents.
- The presenter was not the complainant's first presenter of choice; other presenters were not available at that time. Neither was the offer of use of her archive a big enough difference between the complainant's Proposal and the transmitted programme to claim such a difference in content.
- For the BBC to claim that the running time of the complainant's Proposal and the transmitted programme was a significant reason of difference was not acceptable.
- The BBC claimed that the development of the programme idea discussed between the Channel Editor for BBC Four and the other independent Production Company must have at some point included the presenter. Those two had been in possession of the complainant's Proposal. The complainant did not accept that previous knowledge of the Proposal had not been raised during those meetings.
- In her letter the Adviser had noted, as did the Channel Editor for BBC Four, that the subject area could not be protected by copyright. The complainant strongly disagreed; it was not "the subject area" at focus here. The Programme Proposal had a copyright logo and company name on each page and was a specific document that carried with it Intellectual Property rights for the making of a film for television which was totally different. That letter as such also carried copyright protection in law.

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, in particular, the complainant's point that the programme idea had been copyrighted and was protected in law. The Trustees were unable to make a decision on a legal claim. That was properly a matter for the court if the complainant wished to seek a legal remedy. If the complainant wished to take this complaint further he should contact the BBC's Litigation department.

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

- Trustees had not seen evidence to support the complainant's allegation that material from the Proposal had been copied.
- The Royal Charter sets out a division of responsibility between the BBC Executive and the BBC Trust. "The direction of the BBC's editorial and creative output" and "the operational management of the BBC" were defined as duties that were the responsibility of the Executive Board under article 38, (1)(b) and (c). The responsibility for commissioning and editorial decisions concerning the broadcast programme rested with the commissioning editors and programme makers.

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 BBC coverage of climate change

The complaint concerned the BBC's general coverage of climate change across its output. The complainant considered the BBC's coverage was biased and made the following points:

- The BBC's coverage of climate change was not duly impartial and there had been a virtual elimination of climate change sceptics from TV and radio.
- It would be more accurate for BBC environment correspondents Matt McGrath and Roger Harrabin to be described as "green activists".
- It was universally acknowledged across social media and areas of the mainstream press that the BBC was biased on the issue of climate change.
- The BBC said its reporting was based purely on what scientists were saying; yet the weather changes scientists had predicted had not come to pass.
- Climate change was a very controversial subject and was not "settled" so why did the BBC not treat it as such under the requirements of the Editorial Guidelines? Scepticism was an essential element of scientific study.
- There were two sides to the debate: the alarmist side, epitomized by the COP21 "travelling circus" November meeting in Paris, and the rationalists who believed that better understanding of the issue was needed before further billions of pounds were wasted on restructuring economies.
- He did not feel Audience Services addressed his concerns.

Audience Services made the following points:

- The BBC believed its general reporting on climate change was balanced. In dealing with any controversial matter the BBC was required to give a fair and balanced report.
- Balance could not only be judged on the basis of the time allocated to the representatives of either side of an argument. One person may make their points concisely while another might need longer to explain a point of view.
- Account needed to be taken of the way a subject was covered over a period of time; perfect balance was difficult to achieve on every single occasion while overall it was a more achievable goal.
- The BBC consulted with experts and received information from the Met Office when covering climate issues. The BBC was careful to cite its sources and tried to give an accurate picture rather than seeking to cause alarm.

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 reiterated his concerns about the BBC's general coverage of climate change across its output.

Decision of the Trust Adviser

The Trust Adviser (the Adviser) read the correspondence that had passed between the complainant and the BBC. She noted that BBC Audience Services had ceased handling this

complaint at Stage 1 and had not offered the complainant the opportunity to seek a further, more detailed, response at Stage 2. She decided 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 noted that all BBC output was required to meet the standard of "due impartiality" which, under the Editorial Guidelines, was defined as follows:

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

The Adviser acknowledged the complainant's long-standing view that the BBC did not apply the editorial requirement for due impartiality in its coverage of issues related to climate change. She noted that this appeal was not related to a specific piece of output, but was about the BBC's general coverage of climate change.

The Adviser understood that one concern of the complainant was that the BBC did not include voices sceptical of climate change, and that overall, the output was biased towards a view that considered climate change to be a proven fact, and that this was a scaremongering approach which promoted "green" policies by the BBC.

The Adviser noted that the complainant had mentioned specific correspondents whom he believed were biased. However, she noted that the recently broadcast Radio 4 three-part series, Changing Climate, did include several sceptical voices. More information about this can be found at: <http://www.bbc.co.uk/programmes/b06p7d29>

She noted that the Trust's Editorial Standards Committee (ESC) had explained its position on climate change in some of its findings in recent years. In March 2013, the Committee found that there was a broad scientific consensus that climate change is definitely happening, and the ESC laid out some of the reasons for reaching that decision, which included the following statement by the Royal Society:

"Our scientific understanding of climate change is sufficiently sound to make us highly confident that greenhouse gas emissions are causing global warming."

She noted that the Editorial Guidelines made specific provision to ensure that no voice was excluded from debate:

"We are committed to reflecting a wide range of opinion across our output as a whole and over an appropriate timeframe so that no significant strand of thought is knowingly unreflected or under-represented..."

...the omission of an important perspective, in a particular context, may jeopardise perceptions of the BBC's impartiality. Decisions over whether to include or omit perspectives should be reasonable and carefully reached, with consistently applied editorial judgement across an appropriate range of output."

The Adviser did not consider that there was a reasonable prospect of success for an appeal based on the complainant's view that the BBC had not included sceptical voices on the subject of climate change and had failed to be duly impartial. She believed that the BBC's approach to covering climate change had been made clear to the complainant at Stage 1 and that, in the absence of any specific allegations from the complainant, BBC Audience Services had addressed his concerns appropriately.

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 said that the BBC never puts forward the “sceptical point of view” in relation to climate change, and it was of great concern to him that the BBC had abandoned all impartiality in this aspect of its reporting. He felt it was a betrayal of all licence fee payers.

The Panel’s decision

Trustees acknowledged 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:

- The Trust’s Editorial Standards Committee (ESC) had explained its position on climate change in previous findings. In March 2013, the Committee found that there was a broad scientific consensus that climate change was definitely happening, and the ESC laid out some of the reasons for reaching that decision, which included a Royal Society statement that scientific understanding of climate change was sufficiently sound to make them highly confident that greenhouse gas emissions were causing global warming.
- The BBC consulted experts and received information from the Met Office when covering climate issues. The BBC was careful to cite its sources and tried to give an accurate picture rather than seeking to cause alarm.
- They noted that the complainant had not made a complaint about a specific piece of output and that Audience Services had explained at Stage 1 that account needed to be taken of the way a subject was covered over a period of time. Trustees had not seen evidence which would be likely to contradict the Executive’s view that general reporting on climate change was balanced.
- The Royal Charter set out a division of responsibility between the BBC Executive and the BBC Trust. “The direction of the BBC’s editorial and creative output” was defined as a duty that was the responsibility of the Executive Board under article 38 (1)(b). Day to day editorial decisions about how to cover the issue of climate change were matters for the Executive, not the Trust.

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 filming for the BBC series Two Doors Down

The complaint concerned aerial shots of the complainant's property taken from a remote-controlled drone during BBC filming which he believed breached his privacy.

The complainant made the following points:

- He had received no notification of the filming beforehand from either the BBC or the local council.
- He had not given his permission for shots of his property to be included in the filming.
- A BBC on-site spokesperson explained that the BBC had obtained the necessary permission from East Dunbartonshire District Council and had informed the police about the filming.
- He contacted the council who said they had requested that the BBC get permission from the local residents to notify them what was going on, but neither he nor other residents had received any notification.
- The BBC spokesperson assured the complainant that his house would not be featured but he said he could not be sure of that.
- Although the police told the complainant at first that they had no knowledge of the filming, they later told him that they had been informed and that the BBC did not require any further permission for the filming.
- He said the police told him he should make a formal complaint to the BBC. He believed that the BBC's guidelines said that the landowner's permission was required for filming of his property to take place.
- He did not know if the BBC camera had captured his land in shot but he felt the filming would make his house insecure and more susceptible to burglary.
- The BBC's safety notices were removed from the flight area at 11.30/11.45 a.m., and a UAS Camera System flight took place at 12.00/12.15 p.m. when no public warnings were displayed.
- The flight path was directly above an adjoining property and the Police Station. The action was directly above his own property and neighbours had asked him why a UAS System was flying above his property.
- As neither he nor his neighbours had given permission for the flights to take place, they requested a viewing of the BBC film footage prior to broadcast.
- If he did not get a satisfactory response he would go to the Civil Aviation Authority because drone regulations stipulated in Articles 166/167 that drones should not fly within 50 metres of premises or parked cars. He also believed that the weather conditions that day did not comply with CAA regulations.

BBC Audience Services made the following points following consultation with the production team and the aerial filming company concerned:

- All necessary clearances to undertake the filming had been given, and in the circumstances, production teams would not usually be required to obtain the consent of every property owner.
- The footage did not focus specifically on any individual properties and would instead consist of brief, extremely wide general shots of the area taken from a height. The direction of filming was in the opposite direction to the complainant's home.
- The filming was conducted in accordance with specific Permission for Aerial Work (PFAW) from the CAA, of which there are variations to Articles 166/167.

- In accordance with Articles 166/167, the flight distances were over 50 metres in altitude (recorded at 58 metres), all within the confines of the bowling-green premises.
- With regard to the weather conditions, the wind that day was recorded at an average eight mph (gusting at 12 mph). The aircraft was legally permitted to take off in winds up to 23 mph and could tolerate gusts higher than that. Flights were conducted between rain showers. Meteorological conditions were rigorously monitored and the aircraft would have landed immediately in the event of an unexpected change of weather such as rain or wind.
- Both the telemetry and positioning cameras ensured the aircraft complied with the intended area of flight. In addition to precision Pilot aids, four observers were positioned on the ground with walkie-talkie contact to the Pilot to create an additional level of control and to ensure compliant and safe operations.
- They acknowledged that the signs described by the complainant were moved early, but stated that the observers remained in position throughout.
- It was a known phenomenon when observing small aircraft (at most distances and heights) that they could sometimes look as if they were in positions they were not. At no point did the aircraft fly above structures, vehicles or persons outside the bowling-green premises and this was confirmed by the telemetry and positioning cameras.
- Health and safety was at the core of the filming company's operations. It had conducted hundreds of flights for a wide range of organisations, all without incident. The company was First Option Safety approved.
- They stated that it was not the BBC's policy to allow pre-transmission viewing of footage.

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 reiterated his concerns and made the following additional points:

- He requested a face-to-face meeting with the BBC management who allowed the BBC and its associates to flout "...both their own stated regulations and those of the UK authorities".
- He said he had not requested a review of the programme film footage; what he had requested was to see the camera views associated with his particular postcode location.
- He requested further information under the Freedom of Information Act regarding camera shots, flight path details, details of the filming agreement between the BBC and Police Scotland, and between the BBC and East Dunbartonshire Council.

Decision of the Trust Adviser

The Trust Adviser (the Adviser) read the correspondence that had passed between the complainant and the BBC. She understood that BBC Audience Services had decided not to correspond further with the complainant after Stage 1 and had not offered him the opportunity to seek a further, more detailed, response at Stage 2. She decided that the point she should consider was whether the complainant's appeal against the decision of Audience Services not to correspond further had a reasonable prospect of success. She decided that it did not.

The Adviser acknowledged the complainant's concerns and noted the responses provided by Audience Services and the company which conducted the flights associated with this complaint. She noted that the complainant believed the BBC and its associates had flouted "both their own stated regulations and those of the UK authorities". However, she had not seen evidence that this was the case based on the information provided by the complainant, the BBC and the company which conducted the flights. She noted there was no information to suggest the complainant himself had featured in any footage and the production company had also informed him that it had filmed in the opposite direction from the complainant's property.

She noted that the flying company had provided the complainant with detailed information about the flights concerned. The company had acknowledged that the signs were moved early, but said the four observers had stayed in place. The company had also stated that at no point did the aircraft fly above structures, vehicles or persons outside the bowling-green premises and this was confirmed by the telemetry and positioning cameras. The company had noted that it was a known phenomenon when observing small aircraft (at most distances and heights) that they could sometimes look as if they were in positions they were not.

The Adviser noted that the BBC was not obliged to provide film footage to the complainant on request, either of the finished programme pre-broadcast, or any footage that may have included brief general wide shots showing the complainant's home or surrounding homes even if it was not included in the final programme.

The Adviser noted that the Royal Charter and accompanying Agreement between the Secretary of State and the BBC draw a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. "The direction of the BBC's editorial and creative output" and "the operational management of the BBC" are defined as duties that are the responsibility of the Executive Board under paragraph 38, (1)(b) and (1)(c). In this instance, decisions concerning footage for inclusion in the programme, and the manner in which they were filmed, were matters for the programme-makers rather than the Trust.

The Adviser noted that the complainant wished to make a Freedom of Information request for further details of the filming. There was a dedicated team within the BBC which dealt with requests. His request had been passed on to them and they would respond to him directly in due course. Further information about the BBC Freedom of Information procedure could be found at <http://www.bbc.co.uk/foi/>

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 referred to his original complaint and following emails and letters. He asked for further information on some matters. He said:

- It would have been courteous if the BBC had given prior notification to local residents of their intentions – why didn't they?

- He had not requested a pre-transmission viewing of the programme, but had asked for camera shots of specific properties.
- There were no visible safety representatives despite the fact that a document he had been given said that there had been safety representatives present and the filming company had failed to comply with Health and Safety regulations by removing the safety notices prior to finishing their work.

The Panel's decision

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

Trustees noted that the issue in front of them was whether the decision by Audience Services 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 obtaining of footage for inclusion in the programme, and the manner in which they were filmed, 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.
- there was no information to suggest that the filming had not complied with the appropriate regulations.
- the BBC was not obliged to provide film footage to the complainant on request.

Trustees agreed that the complainant had received a reasoned and reasonable reply from a representative from the company which undertook the filming via 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.

Decision of BBC Audience Services not to respond further to a complaint about a breach of copyright

The complaint concerned an allegation that a Society showed a BBC DVD of Jonathan Miller's 1966 film *Alice in Wonderland* to an audience in 2013, without asking for permission from the BBC or paying for copyright.

The complainant made the following points:

- As a result of showing the BBC DVD, the Society had benefitted financially from what he understood was a criminal act.
- He felt it would create a damaging precedent if the BBC did not investigate this and take action, as it would amount to knowingly condoning a crime.
- He had submitted two previous reports about this issue via the BBC Complaints online web form but had received no response.
- He did not feel that simply noting his feedback was sufficient; he felt it was an important matter of principle and wanted to know what the BBC was doing about his report of an unlicensed broadcast of a copyright DVD to a paying audience.
- As the BBC was publicly funded, he felt that licence fee paying people had a right to know what steps the BBC was taking to protect its legal entitlements. He felt the BBC's case for any increase in the licence fee would be harmed if it was seen to be negligent in pursuing income it was entitled to.

BBC Audience Services made the following points:

- They had not received the previous contacts detailed by the complainant. They apologised for any inconvenience this had caused him.
- They noted his comments regarding the BBC DVD showing and thanked him for his feedback.
- They said they had passed the details of the complaint to the appropriate BBC department but regretted that they could not keep the complainant updated as to the progress of any follow-up.

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 reiterated his concerns and made the following additional points:

- He was not satisfied that the BBC appeared to be turning a blind eye to the breach of copyright.
- He considered that it was a 'significant issue'.

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 concerns and noted that Audience Services had said they had passed on the information he had reported to the appropriate department. She also noted that Audience Services had explained that they could not

keep him updated on the progress of any follow-up action the BBC might take. She appreciated that the complainant wanted to be kept informed of the outcome, but she noted that the BBC was not obliged to notify third party complainants of any decisions regarding legal action which might be taken by the Corporation.

She also noted that the Royal Charter and accompanying Agreement between the Secretary of State and the BBC draw a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. "The operational management of the BBC" is defined in the Royal Charter as a duty that is the responsibility of the Executive Board under Article 38, (1)(c). Decisions about BBC brand enforcement were the responsibility of the Executive and were not a matter for the Trust.

The Adviser noted that the complainant had experienced difficulties in bringing his concerns to the attention of the BBC via the complaints online web form. She regretted that this had caused him inconvenience and had led to a delay in responding to his complaint, but she noted that Audience Services had not found any record of his first two reports in their data system. She had not seen evidence that the BBC had deliberately ignored his complaint and noted that Audience Services had apologised for any inconvenience he had experienced.

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 said:

- He disputed the statement that the BBC did not have to notify third party complainants of decisions regarding legal action. Licence Fee payers had a right to be notified of any action taken in response to a complaint. The BBC could do this if they chose to and he wanted this information.
- This event had been high profile and if the BBC took action it would deter others.
- The BBC had a duty to take action in all cases of breaches of copyright both to ensure it does not lose income and because it should not condone crime.
- The following matters had not been addressed and therefore the reply from Audience Services was clearly not "reasoned and reasonable":
 - There must have been a technical problem with the web form as the BBC claimed it had not received his first two complaints. There had been no assurance that this would be investigated to prevent future problems. The web form was not fit for purpose.
 - Every time he contacted the BBC he had to fill out the same information again. This gave the impression that the BBC complaints procedure is deliberately difficult and time consuming and acts as a barrier against complaints.
- He had spent a considerable amount of time finding the web form and filling it in. If the complaint should have gone to the Executive and not to the Trust he asked why he was not told that or why it was not forwarded to them. He did not have the correct details even now to send the complaint to the right place to deal with the copyright breach.

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 the complainant was concerned that his web form complaint had gone to the Trust and not the Executive. Trustees were able to reassure him that his web form complaint had been made to the BBC Executive through BBC Audience Services and, as he had been informed, the details had been provided to the appropriate BBC department. The Trust had not been involved until he had appealed the decision of BBC Audience Services to close his complaint.

Trustees appreciated that it was frustrating to fill in the same information again during the course of a complaint. The Complaints and Appeals Board had asked the Head of Communications and Complaints in 2015 whether it would be possible to update the web form so that complainants did not have to fill in information again. He had told Trustees that the cost of the amendment would not be possible in the current financial year (ending March 2016) and that the number who complained about the web form was small. He had also said that it was possible the complaints system as a whole may change under the new Royal Charter and therefore it would be prudent to wait until those changes were clear so that all changes could take place at the same time. Trustees noted that the BBC needed to prioritise change with a view to value for money for the licence fee payer. But the complainant should be assured that the BBC was aware of this issue although it was not in a position to amend it at the present time.

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 regarding any legal action that might be taken 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 decision to keep him informed or not of what action would be taken as a result of his complaint was likewise an operational matter for the BBC Executive. There was no obligation to keep a complainant informed of decisions relating to legal action.
- Audience Services had no record of his first two complaints and had apologised to the complainant for the inconvenience this had caused him. Further action was not required.

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.

Decision of BBC Audience Services not to respond further to a complaint about BBC News coverage of the migrant crisis

The complaint concerned an alleged lack of impartiality with regard to the BBC's news coverage of the migrant crisis. The complainant made the following points:

- The BBC and other media were "deliberately colluding in a massive cover-up, a policy of non-information on the multitudes of rapes, violence, threats, forced prostitution, child brides and other cultural niceties being liberally bestowed on the local population of Europe".
- The BBC was not reporting alleged instances of refugees throwing away donated food because it did not meet their high standards.
- The BBC continually focused on the "poor refugees" angle and no other.
- The BBC had ignored incidents such as riots at the Calais Jungle camp, threats against local Calais residents, the Mayor calling for the army to be deployed and Norwegian and Swedish fire bombings.
- The BBC had a policy of "deliberate non-reporting to keep British people in the dark or a super injunction to prevent such reports".
- The BBC had not adequately addressed his concerns and appeared to be dishonest and evasive.

BBC Audience Services made the following points:

- The BBC had received a wide range of feedback about its coverage of the migrant crisis. For efficiency, a consolidated response was being given to the key concerns. Audience Services apologised if it did not address the complainant's specific concerns in the manner he would prefer.
- The situation along Europe's borders was complex. The BBC strived to reflect the different factors involved and aimed to show the different opinions about how the situation had come about, and how it should be resolved.
- BBC output had included voices from migrants and refugees who want to come to the UK and Europe; voices from the UK and across Europe who felt their countries could not cope with the increase in population caused by mass migration; voices of UK politicians and organisations who felt the UK in particular could not cope with an influx of migrants; concerns that public services such as the NHS and schools were already under enormous pressure.
- BBC output had also featured people concerned about the breakdown in security at some border crossings; government representatives from countries such as Hungary who were opposed to admitting refugees.
- The BBC had reflected the complex make-up of migrants making it clear that some were fleeing war in countries like Syria, but others were choosing to move country for economic reasons.
- The BBC aimed to report the subject in a fair, accurate and impartial manner. The BBC believed it had allowed its audiences to make up their own minds on the issues, and were sorry the complainant felt otherwise on this occasion.

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:

- His key concern was that “only a favourable view on migrants was being broadcast”.
- The BBC had not answered any of his questions at Stage 1 and had ignored his concerns.
- He felt that he had raised a significant issue of general importance, and to be told otherwise by the BBC was insulting and unacceptable.

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 noted that all BBC output was required to meet the standard of “due impartiality” which, under the Editorial Guidelines, was defined as follows:

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

She also noted that one of the guiding principles in terms of “due impartiality” was the BBC’s commitment to reflecting a wide range of opinion across the output as a whole and over an appropriate timeframe so that no significant strand of thought was knowingly unreflected or under-represented.

The Adviser acknowledged the complainant’s view that the BBC was only reporting certain aspects of the migration crisis and ignoring others and that he also considered that the BBC had not answered the specific points he had raised. She noted that BBC Audience Services had explained in their consolidated response that the BBC had given wide coverage to many different aspects of the migration situation across Europe in its coverage as a whole. She also noted that the complainant had not given specific examples of BBC output that he felt breached the editorial guidelines and she considered Trustees would be likely to conclude that, without specific elements of output to consider, it was reasonable for the BBC to respond in a general way. The Adviser considered that the broad response addressed the complainant’s key allegation that there was a lack of coverage given to voices expressing a “negative” view of mass migration into Europe.

Request for review by Trustees

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

The Panel’s decision

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

- The complainant had wanted to see a number of stories covered. The coverage of any particular story was a matter 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.
- The complainant had not specified any output which he thought was biased. The editorial complaints and appeals procedure explains that:
 - Your complaint should include:
 - the name / title of the broadcast or publication you are complaining about;
 - the date and time of the broadcast or publication;
 - the channel or service on which it was broadcast, or the web address on which it was published;
 - the nature of the complaint (giving reasons why you are dissatisfied with the BBC) and (where possible) the particular parts of the programme or publication you are complaining about; ...
 - The inclusion of these details (or as many of them as possible) is very important. A failure to provide them may mean that the BBC is not able to look into your complaint.

In the absence of such details in a complaint the BBC could not review content to assess whether it was duly impartial. It was therefore appropriate for Audience Services to reply with a consolidated response which explained to the complainant that a wide range of views on mass migration into Europe had been expressed in BBC output.

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.