

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

January 2016, issued March 2016

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Remit of the Complaints and Appeals Board

The Complaints and Appeals Board (CAB) is responsible for hearing appeals on complaints made under all complaints procedures, as set out in the BBC Complaints Framework, other than editorial complaints and complaints about the Digital Switchover Help Scheme. Its responsibilities are set out in its Terms of Reference at:

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

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

Development and support of BBC apps for Windows Phone

Summary of finding

The Panel considered an appeal regarding the basis on which BBC app development was prioritised and improvements made available to different mobile platforms. It concluded that:

- having considered the evidence, the BBC was not in breach of the requirement in the Trust's policy on the syndication of BBC on-demand content ("The Policy") to make content available on a fair, reasonable and non-discriminatory basis
- the decision by the Executive to direct investment to platforms with the highest reach was reasonably practicable in accordance with the Policy

The complaint was not upheld

Appeal Findings

Development and support of BBC apps for Windows Phone

The complaint

The original complaint concerned the allocation of development resources and the basis on which BBC apps were made available to different mobile platforms. The core allegation was that the BBC had failed to provide adequate services to three million Windows phone users. Therefore, the Panel was asked to decide whether the BBC was in breach of the Trust's policy on the syndication of BBC on-demand content, specifically the requirement to make BBC content available across all major platforms on a fair, reasonable and non-discriminatory basis.

Summary of the appeal

The complainant alleged that BBC app development was prioritised for iOS and Android, despite the fact that Windows Phone was an established platform with over three million UK users.¹ In particular, the complainant stated that:

- every application launched by the BBC on Windows phone had been poorly conceived, poorly executed and subsequently poorly received
- all of them had taken the form of web wrappers rather than genuine native applications and BBC News was not available at all
- BBC Sport, BBC iPlayer and BBC iPlayer Radio had fundamental operating problems that had not been addressed by the BBC
- Windows Phone was the only modern operating system without full BBC support, and the only one without any official BBC News app or "web wrapper"
- Android and iOS devices had full support, as did Kindle Fire tablets, Fire Phones and now BlackBerry 10 through the Amazon app store
- the BBC removed a third party app for Windows Phone, when numerous other third party BBC News apps were readily available, without adequate explanation

The complainant also sought clarification of BBC policies regarding the availability of apps on different mobile platforms.

Relevant BBC Policies and Guidelines

The Panel noted that it considered the following to be relevant to the appeal:

- Under the Royal Charter, the BBC's sixth public purpose is "helping to deliver to the public the benefit of emerging communications technologies and services". In the corresponding purpose remit, one of the BBC's specific priorities is to "make engaging digital content and services available on a wide range of digital platforms and devices".
- Clause 12 of the Agreement places specific obligations upon the BBC in this respect:

¹ According to figures shared with the BBC by "3 More Reasons", the number of Windows Phone users in the UK is 3.2million.

The BBC must do all that is reasonably practicable to ensure that viewers, listeners and other users (as the case may be) are able to access the UK Public Services that are intended for them, or elements of their content, in a range of convenient and cost effective ways which are available or might become available in the future²

- The On-Demand Syndication Policy³ sets out a commitment to platform neutrality and provides clarity as to:
 - I. The terms on which BBC on-demand public service content and associated data are syndicated
 - II. The process by which the Trust will assess new arrangements

The Policy considers that there is generally public value in syndication and encourages the Executive to make content available as widely as possible. Paragraph 11 embeds the principle that licence fee payers should be able to access BBC on-demand content from as many platforms and devices as possible. But this is not an absolute principle, as set out at paragraph 12:

This does not mean that the BBC must make its content available on every platform and device: that would be impracticable (not least because it would not represent the best use of licence fee funds). However, the BBC's overall approach to syndication should always be guided by the belief that arrangements should aim to serve licence fee payers, by enabling convenient access to the full range of recently transmitted BBC linear content, whatever their choice of platform or device.

Paragraphs 13 and 14 go on to state that:

Other factors must also be considered, such as value for money and competitive impact. In particular, given the proliferation and rapid development of platforms and devices, it will not represent value for money for the BBC to make its content available on every platform and device. To do so in any particular case will require a clear and strong justification.

The Policy therefore sets out what the Trust might regard as "reasonably practicable" in terms of syndication arrangements, having regard to the full range of public purposes, obligations and objectives. The key requirements of the Policy are set out at paragraph 16. Of particular relevance to this appeal are 16(a), 16(b) and 16(f), which underline the importance of easy access and a high-quality experience. They provide that syndication arrangements should be designed such that licence fee payers:

- a. Have easy and timely access to the full range of BBC content
- b. Can quickly and easily discover BBC content on third party platforms and devices, for example, by linking to content or accessing it through third party navigation systems, such as EPG or search
- f. Have a high-quality experience (e.g. ease of use, picture and audio quality)

The need to ensure that all syndication arrangements deliver value for money is also important (as at paragraph 17). The Policy also provides, at paragraph 19, that the BBC should comply with all relevant legal and regulatory requirements, including state aid law,

² Clause 12(1), BBC Agreement.

³ While the complainant did not make specific reference to the Policy, the Trustees agreed it was the appropriate reference for considering this appeal.

BBC Editorial Guidelines and the fair trading framework. The Policy further states that the BBC should ensure that it acts on a fair, reasonable and non-discriminatory basis when entering into syndication arrangements.

The Panel's decision

The Panel considered the complaint against the relevant standards, as set out in the Charter, the Agreement and the Policy. In reaching its decision it took full account of all the available evidence, including (but not limited to) a paper prepared by the Trust Unit and a submission from the Executive. The grounds of the appeal fell under the following principal heading:

The way in which BBC app development is prioritised favours other mobile platforms (notably iOS and Android) and is, prima facie, in breach of the requirements of the Policy to act on a fair, reasonable and non-discriminatory basis.

In order to determine the appeal, the Panel was asked to consider whether the BBC had favoured other mobile platforms when making development decisions in a way that could not be justified under the Policy, i.e. could not be regarded as a "reasonably practicable" approach in the circumstances. In doing so, the Panel had regard to whether the BBC's approach to syndicating content on mobile devices complied with the requirements under the Policy, in particular, the need to:

- I. Enable convenient access to the full range of recently transmitted BBC linear content, [regardless of] platform or device (paragraph 12)
- II. Provide easy and timely access to the full range of BBC content (paragraph 16(a))
- III. Ensure that users can quickly and easily discover BBC content on third-party platforms and devices (paragraph 16(b))
- IV. Ensure that audiences have a high-quality experience (paragraph 16(f))
- V. Demonstrate value for money for licence fee payers (paragraph 17)
- VI. Operate on fair, reasonable and non-discriminatory terms (paragraph 19)

The Panel also considered whether the decision to direct investment to platforms with the highest reach (providing native apps on iOS and Android and more limited functionality on Windows Phone) was reasonable. As the Policy notes, it will not represent value for money for the BBC to make its content available on every platform and every device. The key question is whether the Executive had due regard to the requirements of the Policy. That is to say, whether its approach to Windows Phone was "reasonably practicable" in accordance with the Policy.⁴

In considering the complaint, the Panel had regard to the external environment and the fact that the UK smartphone market is already fairly mature. It noted that while Android and iOS account for almost 90% of the UK market, Windows has a sizable base with over three million users.⁵ The Panel discussed the growing importance of the smartphone as a device to access the internet and concluded that this reflected a more general shift towards individual consumers having greater control over their media consumption. They discussed how, as a result, content suppliers were likely to focus on smartphone strategies, and this would reinforce the trend. The Panel noted that while web browsers remain the primary method of accessing content online via mobile devices, apps are forecast to overtake the browser as the primary method of getting online.

⁴ As at paragraph 14.

⁵ Or c. 11% of the market.

The Panel noted that video content can be accessed on mobile devices using a native app, a mobile website or a wrapper app, depending on the platform. Trustees discussed the benefits of native apps, which generally provide a faster, feature-rich experience but noted they are also more expensive to develop and maintain than a mobile website or wrapper app.

In terms of the Executive's approach, the Panel noted that much of the investment in this area was directed towards the mobile platforms with the highest reach in a bid to maximise what was available. Trustees discussed whether Windows Phone had gained sufficiently to warrant investment in native apps and considered the Executive's argument that support of devices with a low user base was best achieved with platform neutral web standards and responsive mobile websites. Trustees concluded that while this approach was broadly consistent with the requirements of the Policy, it has resulted in a disparity in the features available on the different platforms and the experience they provided. The Panel identified a wider problem about the availability of apps on Windows Phone and concluded that the platform was important enough to warrant some investment.

The Panel noted, however, that the Executive had rejected a native app strategy for Windows because of low usage of BBC iPlayer and the fact that only 68k daily requests come from the wrapper app despite one million installs. However, the Panel considered that one million installs signalled demand and concluded that low usage could alternatively be the result of a poor user experience. In particular, the Panel noted that the complainant had pointed to poor user reviews of BBC wrapper apps and numerous complaints about compatibility issues and operating problems with Windows.

Nevertheless, the Panel considered there was therefore some logic to the approach employed by the Executive given that the cost to develop, test and support a News app for Windows Phone was broadly equivalent to the cost of doing so for Android or iOS, but with a significantly lower user base. The Panel then discussed whether this approach was consistent with earlier decisions to develop native apps for iOS and Android, which at the time had a smaller user base. Trustees were referred to the 2010 decision on proposals to launch BBC apps for news and sport and agreed on the need for extra care when assessing the likely market impact of app availability on other handset providers.

The Panel recognised that Windows Phone users wanted a native app experience, and discussed whether the Executive had achieved the right balance between utility and cost. The Panel welcomed news that the Executive was working with Microsoft and noted that the release of Windows 10 may allow developers to port iOS and Android apps directly to Windows Phone with minimal modification. The Panel agreed that this could in theory result in the same app experience for Windows Phone and may help to restore the balance in app availability. However, Trustees concluded that it was still too early to assess whether the approach would succeed and noted alternative arguments that the best experience would always come from tools developed specifically for a given platform.

The Panel also discussed BBC support for other devices and noted that Kindle allows most Android apps to work without modification and therefore incurs very little cost, while BlackBerry 10 devices have access to the mobile website and support costs are minimal.⁶

The Panel then considered whether the decision had been made on an objective basis. It agreed that the Executive had to balance the need to provide a good user experience with

⁶ While BlackBerry 10 OS and v.10.3 or higher can use the Amazon app store, there are no compatible BBC apps (either native or wrapper) for any BlackBerry device. Therefore the only way a BlackBerry user can access BBC content is using the mobile websites.

a commitment to secure value for money and concluded that the approach employed for Windows Phone was reasonable. However, it noted that the shift to mobile consumption would make the BBC more dependent on platform providers to reach its audience and the precise detail of how BBC content was syndicated would therefore become more important over time.

On the related issue of the third party app, the Panel accepted the Executive's explanation that it contravened the terms of use for online services and was therefore removed.⁷

The Panel concluded that the BBC had taken a reasonably practicable approach and was not in breach of the Policy; therefore it decided not to uphold the complaint. In reaching its decision, the Panel noted that while the BBC must do all that is reasonably practicable to ensure that viewers can access its on-demand content in a range of convenient and cost-effective ways, this did not necessarily mean that it had to launch the same apps on every available platform or to do so simultaneously. It was mindful, however, of the need to ensure the Executive discharged its commitment to improve app experience for Windows Phone. It acknowledged efforts by the Executive to redress the balance in app availability but underlined the need to do so in a timely manner. The Panel will therefore ask the Trust's Services Committee to monitor progress in this area as part of its oversight of the regular syndication reports it receives from the Executive.

Finding: not upheld

⁷ These included a trademark infringement of BBC logo; the BBC released a statement explaining its decision: <http://www.pocket-lint.com/news/120272-bbs-removal-unofficial-app-windows>.

Requests to review the Trust Unit's decisions on appeals

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

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

Decision of BBC Audience Services not to respond further to an out of time complaint about BBC Norfolk

The complaint concerned the complainant's experience of trying to provide content for BBC Norfolk and his impression that the BBC, and BBC Norfolk in particular, was biased against him.

The complainant made the following points when he raised his concerns with BBC Audience Services in 2015:

- The complainant said he was leading an unfair dismissal case against his employer, on his own behalf, in 2013 and had handed confidential contact information about other employees at the same company, who he said had been "questionably disposed of" by the company, to a BBC Norfolk reporter. He asked the reporter to contact him so that he could share his story of how he and the other employees were being abused by their employer.
- BBC Norfolk had failed to pursue this news story.

Audience Services explained in April 2015 that the complaint was out of time:

"We understand you've contacted us regarding a number of different issues, whilst we appreciate your feedback and the time you've taken to submit your complaint we must make you aware of our complaints guidelines.

Audience members must submit their complaint within 30 days of transmission or publication of the programme or issue they're contacting us about, as this is not the case with your complaint it is with regret that we cannot proceed further.

The link below will direct you to our guidelines and should be of help when submitting future complaints:

<http://www.bbc.co.uk/complaints/handle-complaint/>

Appeal

The complainant also contacted the Trust about his concerns. The Trust Unit explained that the role of the BBC Trust was distinct from that of the BBC's management and the Trust has no role in day-to-day operational or editorial decisions, such as which news stories should be covered.

The Trust Unit noted that the complainant had previously filed a complaint with the BBC, and acknowledged that he felt that his complaint had not been resolved, but explained that the complaints process asks for any appeals to be made within 20 working days of receiving the BBC's Stage 1 response.

The complainant contacted the BBC Trust again on 4 December 2015. He said he was disappointed in the way his complaint was being handled. He said he had submitted a number of complaints to the BBC and was not entirely satisfied with the way any of them had been handled. He said nothing was being done.

Decision of the Head of Editorial Standards, BBC Trust

The Head of Editorial Standards, BBC Trust decided that it was not appropriate, cost-effective or proportionate to take this matter on appeal as it had no reasonable prospect of success. This was because:

1. the operational management and the direction of the editorial and creative output of the BBC were matters for the Executive Board and not the Trust, and so a decision not to carry a news story about a company's handling of confidential data; whether or not to reply to the complainant; or carry a story proposed by the complainant was not a matter the Trust would interfere with.
2. the complaint was submitted outside the time limit set out in the Complaints Framework to appeal this matter to the Trust as the BBC's last Stage 1 response was in April 2015.

The Head of Editorial Standards, BBC Trust, 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. She 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 did not receive the BBC correspondence dated 2 April from Audience Services. He had therefore had no opportunity to discuss or appeal the editorial issue with the BBC.
- His complaint was not just about an editorial issue. He said that fundamentally, his complaint was about what appeared to be efforts by various BBC employees to limit and/or obstruct his access to the BBC's internal and external communication facilities.
- He believed the difficulties he had experienced in his interaction with BBC Norfolk regarding his suggested news story were just a symptom of broader BBC bias and/or hostility toward him.
- He believed that the "silent treatment" he had been receiving from BBC employees who had refused to respond to emails he had been sending them since he did a film-making course was evidence of broader bias against him. He also felt the difficulty he had had in getting to the stage where he could communicate with the Trustees directly was also evidence of bias against him. He felt that the process of communicating with the BBC was convoluted.
- He noted that at least one visit he made to a BBC office in London a few months previously had apparently gone unrecorded and that a request he submitted (in line with the Data Protection Act 1998) for information that the BBC held about him seemed to have been honoured only partially.

The Panel's decision

Trustees noted the points made by the complainant, the BBC and the Trust Unit.

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 complaint had been submitted beyond the time limits set out in the BBC Complaints Framework. This was the case even though he had explained he had not received the email sent to him by the BBC on 2 April.
- the BBC's Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board. "The direction of the BBC's editorial and creative output" was specifically defined in the Charter (Article 38, (1) (b)) as a duty that was the responsibility of the Executive Board, and one in which the Trust did not normally get involved. In this case, decisions about which news stories to cover in BBC regional news output were made by the Executive.
- it was a matter for the BBC as to whether it wished to correspond with the complainant outside the formal complaints process.
- concerns that the BBC had not complied fully with a Data Protection request should be taken up with the Information Commissioners Office: <https://ico.org.uk/>

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.

The pronunciation of Welsh place names on BBC Radio Wales

The complaint concerned the pronunciation of Welsh place names on BBC Radio Wales. The complainant made the following points:

- He referred to the 2011 Census which proved that Cymraeg (the Welsh language) is a fragile entity.
- He considered that Radio Wales's behaviour in mis-pronouncing Welsh place names was tantamount to bullying a vulnerable person.
- He believed that some Radio Wales listeners hated the Welsh language and that was why the BBC would not correctly pronounce some place names.
- He regarded the mispronunciation of Welsh place names during traffic reports as a "matter of substance" that could have caused road accidents because Welsh speakers might not have understood the announcer's information.
- He referred to Pontypridd and Bassaleg as examples of this.

BBC Audience Services made the following points:

- The BBC made regular efforts to improve pronunciation and delivery of Welsh and accepted English pronunciation of place names in response to feedback.
- They agreed with the complainant's comment regarding the pronunciation of Pontypridd, but did not intend to change the BBC's pronunciation of Bassaleg on Radio Wales, which reflected its widespread and accepted use locally.
- The BBC took its role of reflecting the whole of Wales, in both languages, very seriously, and did this in a combination of ways.
- In January 2016, the BBC was launching Share Your Welsh, a month-long, station-wide campaign to encourage people to learn Welsh.

The Head of English Language Programmes and Services, BBC Wales, issued a response at Stage 2. He made the following points:

- He accepted that the pronunciation of Pontypridd had been incorrect.
- In the case of Bassaleg, he disagreed that the pronunciation was unacceptable. He said "there are many shades of grey when it comes to place name pronunciation, we feel that changing the pronunciation of Bassaleg would not reflect its widespread and accepted use locally".
- What was acceptable and unacceptable to individuals was a complex matter and was dependent on factors such as where people lived, if they were Welsh speakers, English speakers, born in Wales, or born outside of Wales.

Appeal

The complainant appealed to the BBC Trust on the substance of his complaint. He reiterated his concerns and asked for details of the employment policy for BBC presenters and the BBC's pronunciation policy.

Decision of the Trust Adviser

The Trust Adviser (the Adviser) carefully reviewed the correspondence that had passed between the complainant and the BBC. She decided that the complainant's appeal should not be put before Trustees because it did not have a reasonable prospect of success.

The Adviser noted that both Audience Services at Stage 1, and the Head of English Language Programmes and Services, BBC Wales, at Stage 2 had acknowledged that the pronunciation of Pontypridd had been incorrect and therefore she believed Trustees would consider this aspect of the complaint had been resolved.

With regard to Bassaleg, the BBC had not accepted that the pronunciation used was wrong. She noted that the Head of English Language Programmes and Services, BBC Wales, had referred to the pronunciation which was widespread and accepted locally.

The Adviser noted the BBC had its own Pronunciation Unit which could advise staff and that, generally, where more than one pronunciation was established, the Unit did not attempt to prohibit the use of a pronunciation which was widely accepted. The Unit had offered the following information in this case:

"The choice of pronunciation would appear to depend on a number of factors, including whether the speaker is an English native speaker based locally (where Welsh is not as widely spoken as in North Wales, for example) or is a Welsh speaker based in another part of Wales (e.g. North Wales).

The local English pronunciation (i.e. the accepted Anglicisation used locally in Bassaleg) is BAYZ-leg (-ay as in day, -z as in zebra, -e as in get), although BAYSS-leg (-ss as in essay) might also be heard. The Welsh pronunciation of Bassaleg is bass-AL-eg (-ass as in lass, -al as in pal, -e as in get, stressed syllable appears in upper case) and this is likely to be favoured by Welsh speakers.

... Interestingly, Bassaleg School's answerphone message is recorded first in Welsh as bass-AL-eg and then in English as BAYZ-leg – so they use a different pronunciation depending on the language context. ... Ultimately, it is an editorial decision for broadcasters."

The Adviser noted that editorial decisions were the responsibility of the BBC and not a matter for the Trust, unless there was a potential breach of the Editorial Guidelines – which the Adviser did not consider was the case here. She appreciated that the complainant strongly disagreed with the way presenters on BBC Radio Wales pronounced certain place names but she considered these were reasonable editorial judgements and that the BBC's responses to the complainant had explained this.

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:

- Questions he had put had not been answered – he narrowed them down to three:
 1. Did the Job Description / Person Specification for presenters / announcers job vacancies on Radio Wales demand at least a "C" pass at GCSE Level Welsh Second Language?
 2. Did the BBC conduct continual assessments to prove that presenters / announcers had sufficient command of the Welsh Language (and its successful enunciation) to execute their duties on a daily basis?

3. Was there a "Pronunciation Policy" document on pronunciation of Welsh place names available for all your presenters / announcers?
- Too many BBC presenters had great difficulty in enunciating Welsh place names because they lacked grounding in the language and were not being given the necessary continuing professional development (CPD) in the subject.
 - He named presenters who showed great support for Cymraeg including one who had responded by saying that she "could never pronounce it other than the Welsh Language way". He said that therefore even BBC staff opinion concurred with his own, and supported his view that it was a "matter of substance".
 - For the BBC to suggest that choice of pronunciation depended on the part of Wales the speaker came from, or whether he was Welsh speaking or not, reflected a misconception that all Welsh speakers resided in the so called "Welsh speaking heartlands" of the north and the west of Wales.
 - He noted the Adviser's view as to which pronunciation of "Bassaleg" was "likely to be favoured by Welsh speakers" and asked whether it could not also be favoured by sympathetic English speakers.
 - He noted that the Adviser dismissed his argument that although English place names like "Brum" for "Birmingham", "Lipool" for "Liverpool" and "West 'm" for "West Ham" (East London) were "widespread and accepted locally", they were not adopted by either English local or national radio stations. He said that English national radio respected and protected the English Language (which had less need of protection than Cymraeg).
 - He noted the Adviser's observation that Bassaleg School's answerphone message gave the first pronunciation as Welsh "bass-AL-eg" and then English "BAYZ-leg", and her assertion that pronunciation depended on "language context". He said the context was quite simple: it was a Welsh Language place name which on national radio air waves had to be pronounced correctly: a fact which Bassaleg School had the grace to acknowledge, while Radio Wales did not.
 - He noted that the place name derived from the word "Basilica" and said that as a Christian he objected to the mispronunciation and asked if the BBC would mispronounce a place name in Pakistan derived from the name of the prophet?
 - He also cited a number of other names which he said had been mispronounced by Radio Wales presenters.
 - He said he had sought to avoid being "trivial, misconceived, hypothetical, repetitious ... vexatious"; instead he offered transparency, courage, fairness, compassion for a dying language and fresh arguments.
 - He said all the examples he had cited cancelled out the efforts of the BBC's "Share Your Welsh" feature.

The Panel's decision

Trustees noted the points made by the complainant, the BBC and the Adviser. They noted that this was a matter which deeply concerned the complainant.

The complainant's three questions were a matter for BBC Wales and not the Trust as they concerned operational matters. The questions would be returned to BBC Wales. New concerns about place name pronunciations should be raised at Stage 1 of the complaints procedures. They could not be considered upon appeal unless they had been raised with the BBC in the first instance.

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

- this was an editorial decision for the BBC and not a matter for the Trust, unless there was a potential breach of the Editorial Guidelines – which Trustees did not consider was the case here.
- the reply from the BBC had been reasoned and reasonable. The BBC Pronunciation Unit did not attempt to prohibit the use of a pronunciation which was widely accepted.

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 internet search capability concerning BBC News online articles

The complaint concerned a request by the complainant for a number of BBC News online articles to be made less accessible via Google searches.

Stage 1

The complainant made the following points:

- The articles related to the spent conviction of a family member and were no longer newsworthy. The complainant said their “permanent re-heating through internet search engines as though they were ‘news’ effectively comes down to a kind of life sentence for the whole family”.
- The family surname was very unusual; when people made internet searches for general information about other members of the family, details of the court case emerged and this had a potentially damaging effect on the reputation of other family members by association.
- The complainant fully understood that reports on court cases needed to be made available to the public; she was not asking the BBC to remove the articles from its digital archive. However, she asked the BBC to consider taking steps to ensure these articles did not come up automatically at the top of the first page. She suggested anonymising them or making them inaccessible to name search robots, which she understood to be technically easily possible.

BBC Audience Services made the following points:

- They explained that the BBC did not interfere with the way its output appeared in search engines.
- They suggested that the complainant approach Google with her request.
- They gave a Stage 2 referral to the Head of Public Policy & Corporate Affairs, BBC Scotland.

Stage 2

The complainant made the following points:

- She approached Google as suggested by Audience Services, but received an unsatisfactory response. Google suggested she turn to the source media of the URLs, indicating that webmasters have the capacity to tag URLs and thus prevent them from being found in Google searches while keeping them still accessible at root.
- She repeated her original request that the BBC take action to reduce the possibility of the name coming up in Google searches.
- She acknowledged the BBC’s stated policy of not interfering with the way BBC stories appeared in internet search engines, as explained by the BBC but suggested that it might be appropriate for the policy to be updated in view of the realities of the digital age.
- She said she could not understand why the BBC would not acknowledge its own portion of responsibility in taking a critical interest in the way its data was processed by search engines of commercial providers, whose principles might be far below the BBC’s own ethical standards.

- She suggested that the BBC change its policy and “allow editors to positively respond to requests by victims of the wildly uncontrolled regime of Google to tag certain articles at root and thus prevent search robots from indexing them”.
- She believed there were no technical problems in following her suggestion, and she understood that other media providers had adapted their own policies along those lines, thus making sure they had their own say in the way their data were used.

The Stage 2 responder made the following points:

- In reaching his stage 2 finding, he had consulted the Assistant Editor, Editorial Standards, BBC Online and the relevant Head of Editorial Standards and Compliance.
- He said he fully appreciated the arguments made by the complainant on a topic of personal sensitivity, but having taken advice within the BBC, he was not in a position to accede to the complainant’s request as it was the BBC’s policy not to interfere with online search capabilities in this area.

Appeal

The complainant appealed to the BBC Trust on the substance of her complaint, which she believed was well founded and should be favourably considered by the BBC. She made the following points:

- She would like the Trust to consider her original request in the light of points she had raised during her complaint and Stages 1 and 2 and outlined above, particularly “in light of the more principled points I have raised with regard to the policy of non-interference with the way BBC generated data are being presented in the net via search engine providers”.
- She repeated her request for the BBC to tag the online articles in question so as to prevent them from being presented by search engines in the future, either as a “justified exception” to the BBC’s policy, or as a result of a change to the policy itself.
- Several other big media companies had agreed to her request (sometimes after further consideration). She wondered why, of all media companies, it should be the BBC which failed to act sensitively in relation to her concerns.

Decision of the Trust Adviser

The Trust Adviser (the Adviser) carefully reviewed the correspondence that had passed between the complainant and the BBC, including the counsel’s document submitted by the complainant in support of her request. She sympathised with the distress experienced by the complainant because of the way news reports concerning a member of her family, published in a previous year, could be easily accessed on the internet via a Google search of the family name. However, she decided that the complainant’s appeal did not have a reasonable prospect of success.

The Adviser noted that the complainant felt that her request for the news articles to be “tagged” (so that they did not appear in search engines so prominently) could be granted either a) as an exception to the BBC’s policy; or b) as a result of the BBC making a change to its policy in the light of recent digital technology developments.

The Adviser noted that before making his Stage 2 finding, the Stage 2 responder had consulted senior members of the BBC Executive. He had concluded, as a result of the

advice he received and having due regard for the points made by the complainant, that the BBC policy in this area was not to interfere with online search capabilities.

The Adviser agreed with the advice given by the Stage 2 responder which was that the complainant should direct her request to Google – although she acknowledged that Google had, so far, not been helpful in terms of her request.

She noted a recent ruling by the European Court of Justice (ECJ) that individuals had the right, under certain conditions, to ask search engines to remove links to articles that contained personal information about them. These conditions included information that is inaccurate, inadequate, irrelevant, or excessive. The ECJ ruled that the “Right to be Forgotten” in law was not absolute, but would always need to be balanced against other fundamental rights including freedom of expression, which includes freedom of the press. In the recent ruling, the ECJ concluded that taking down the original articles would be too great an interference with freedom of expression, but that de-linking (in certain circumstances) would allow the correct balance between rights to privacy and freedom of expression.

The Adviser noted the legal position as it pertained to this complaint:

- It was up to the search engine to determine whether or not to grant the request to de-link the articles at the centre of the complaint; Google and other internet search engines would normally assess these on a case-by-case basis.
- If the original article was factually correct and concerned a matter of public interest, the case for allowing the link to remain might well outweigh the individual’s right to privacy. Google and others would make the BBC aware of such requests, and would give the BBC the opportunity to set out any relevant facts, but ultimately the decision would sit with the search engine.
- If unhappy with the outcome of that decision, individuals could appeal to their national data protection authority or their national courts; the BBC itself, as publisher of the original article, would not have any right to appeal their decision.

In terms of the BBC’s involvement in such cases, the Adviser noted that decisions relating to content on the BBC News website were part of the editorial and operational management of the BBC. As such, she considered that these were decisions which were the responsibility of the BBC Executive rather than the Trust. The Trust would not become involved unless they raised broader issues such as a breach of the Editorial Guidelines or a station’s service licence, which did not apply in this case.

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 her appeal. She made the following points:

- The key issue on which the Trust Adviser’s decision had been based was that decisions in relation to content on the BBC News website were part of the editorial and operational management of the BBC and were the responsibility of the BBC Executive rather than the Trust. The reason she had appealed to the Trust was

precisely because the responses she had received from the Executive were not satisfactory, coming down to a “mere reiteration of the BBC’s principle of not interfering with the way their content is displayed on the net through search engines”.

- No reason was given as to why the BBC was not prepared to consider this case as an exception or as to why the BBC would not consider her arguments to alter their policy, which in her opinion, failed to adequately reflect the challenges of the media age. She felt it was a matter of responsibility for the BBC, as a leading producer of information, not to leave to commercial search engine providers decisions about what they did with the information created.
- She wished to ask the Trustees to allow her appeal on the basis that her complaint had been dealt with insufficiently at the editorial level. She said her key request was for the BBC to consider a change of policy to allow editors to consider requests such as hers “on an individual basis, including the consideration of measures such as ‘tagging’ articles, instead of ‘hiding’ behind an inflexible policy of ‘non-interference’”.
- She said it would be difficult to imagine why her request for a change of policy that would allow her original request to be honoured should be seen as not falling under the rubric of “raising broader issues” which the Adviser marked as the type of case the Trustees would consider.

The Panel’s decision

Trustees noted the points made by the complainant, the BBC and the Adviser. They also noted that the complainant had submitted a note from counsel explaining the circumstances from his viewpoint. They appreciated this was a matter that deeply concerned the complainant as she was concerned about the impact of the articles being available and easily searchable on family members including young people.

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

- The BBC’s take down policy was available on-line:
<http://www.bbc.co.uk/editorialguidelines/guidance/removal-online-content>
- The policy explains that there is “a presumption that material published online will become part of a permanently accessible archive and will not normally be removed or we risk erasing the past and altering history”. An exception could be made where there might be significant harm or distress.
- Trustees appreciated that the complainant was not asking for the articles to be removed but wanted them to be made less searchable. Trustees were aware it was possible for the BBC to make an article less searchable (or anonymise the case) and that the complainant had advised the BBC that other media concerns had done this.
- The complainant’s case - including her concerns about the impact the searchable articles were having - had been considered by the BBC which had explained they appreciated the argument she had made on a topic of personal sensitivity. However, the BBC had decided not to make an exception in this case or to change its general policy explaining that its policy in this area was not to interfere with online search capabilities.
- The articles were court reports and a matter of public record. The public interest in continuing to make court reports accessible as part of the archive was very high. In this case the court reports concerned sexual assault.
- It was appropriate for the Executive to have responded based on the current policy.

- This was an operational and editorial matter and thus a matter for the BBC Executive. In all the circumstances the decision taken by the BBC was reasonable.

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 Today, BBC Radio 4

The complaint concerned the use of grammar in the *Today* programme.

The complainant made the following points:

- The BBC constantly broke the rules of grammar by referring to single sports teams, countries and organisations in the plural.
- The BBC also often used the incorrect tense.
- He gave a reference to the IRA as an example. The *Today* report stated that the IRA “are involved in the murder”. It should have said “The IRA was involved in the murder”.
- In another example, he referred to the statement “the Director General is making his big speech in a couple of hours”. It should have said “the Director General will be making his big speech...”

BBC Audience Services made the following points:

- The BBC always aimed for the highest standards in its output; standards that not only included fairness, accuracy and impartiality, but also clear and easily understood English.
- The nature of news meant that bulletins and reports were frequently prepared under great pressure, particularly in a live “rolling” news environment.
- The BBC regretted mispronunciations and grammatical errors but mistakes of this nature did occasionally slip through, despite the best endeavours of experienced BBC editors.

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 reiterated his concerns about the use of poor grammar on the *Today* programme, and stressed that it was a frequent occurrence, not an occasional one.

He did not agree with Audience Services that bad grammar was not a matter of significance. As the leading broadcaster in the UK, it was incumbent on the BBC to set an example by always using correct grammar.

Decision of the Trust Adviser

The Trust Adviser (the Adviser) sympathised with the complainant’s concerns and acknowledged his view that he had raised a matter of significance which merited a more detailed investigation. However, she decided that the complainant’s appeal did not have a reasonable prospect of success.

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.

The Adviser noted that decisions about the wording of news reports were made by the *Today* programme editors and presenters. She 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" was defined as a duty that was the responsibility of the Executive Board. Editorial decisions about the content and style of reports in the *Today* programme were the responsibility of the BBC programme Executive rather than the Trust.

The Adviser acknowledged the complainant's dissatisfaction with the responses he had received from Audience Services, but having reviewed the correspondence that had passed between the complainant and the BBC, she considered that Audience Services had explained that verbal grammatical errors could take place within a pressured "live" news environment despite the best endeavours of the editorial team. She did not consider that grammatical errors of this nature engaged the Editorial Guidelines which was the threshold at which Trustees would consider becoming involved in a complaint.

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 made the following point:

- In terms of the importance of the subject of his complaint, he felt that the constant breaking of the rules of grammar, by the BBC was a matter of importance. "To say in a news report that 'England are out of the World Cup' when it should be 'England is out of the World Cup' is clearly incorrect grammar. England is one country, and therefore, is singular. The word 'are' is plural. Similarly, Arsenal is a football team to say 'Arsenal are' is equally incorrect. The players are plural, the team is singular."

The Panel's decision

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

The Panel noted that the issue in front of them was whether the decision by Audience Services not to correspond further with the complainant was correct.

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

- "The direction of the BBC's editorial and creative output" was defined as a duty that was the responsibility of the Executive Board. Editorial decisions about the content and style of reports in the *Today* programme were the responsibility of the BBC Executive rather than the Trust.

- Audience Services had explained that verbal grammatical errors could take place within a pressured “live” news environment despite the best endeavours of the editorial team.
- Trustees acknowledged the importance of good grammar as a general rule, but considered that grammatical errors of the nature described by the complainant did not engage the Editorial Guidelines.

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 the scheduling of BBC promotions

The complainant considered that the way promotions were scheduled indicated that they took precedence over programmes.

The complainant made the following points:

- The complainant as an example said that the weather forecast was truncated in order to get a trailer in before the pips.
- Trailers were still shown, even when programmes were behind schedule.
- Audience Services had not addressed his complaint. He said they had attempted to justify why trailers were considered more important than programmes.
- He queried why, when using the Electronic Programme Guide, trailers were included at the end of timed recordings. He believed this could lead to a recorded programme over-running – therefore the start of another programme could be missed because the trailers on one channel ran past the start time of another programme on another channel.

Audience Services made the following points:

- The BBC's research indicated that trailers were appreciated by audiences and gave them reminders about programmes they would not wish to miss.
- BBC research also indicated that the audience generally found BBC trails to be entertaining and informative.
- Regarding the use of EPG, they explained that the BBC did not have any control over this as timings were set by the EPG. They noted that some digital receiving equipment allowed you to change the start and end time of a programme, so the complainant might want to investigate whether this was possible with his own equipment.

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

Appeal

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

- He said his case did not start out as a complaint, but as a query to find out why they were so many trailers and why they had priority in the schedules.
- He asked what the 'official' line was on trailers, such as how many could be shown one after the other, how often the same trailer could be repeated, and what the point of them was.
- He said he was also concerned at the suggestion that recordings finish based on the EPG. His research had led him to understand that the EPG was simply the interface that showed what programmes were due to be broadcast and when. Once a recording had started, it was supposedly a 'programme delivery control' (PDC) which told the recording to finish. He asked why someone at the BBC would try to pretend it was the recorder that was to blame rather than the broadcaster.
- His own recorder used PDC to know when to stop recording, and, as he had already pointed out, the PDC for the end of BBC programmes must be sent AFTER the trailers. He said that must be a BBC decision and indicated that the BBC was

determined that he get the trailers, even at the expense of missing the start of another programme. Therefore, he would like to know whether the BBC considered it right to force trailers to be recorded rather than indicating that the recording can finish when the programme finishes.

Decision of 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 concern about the purpose of trailers and that he felt they were prioritised unduly over programmes.

She 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" are defined as duties that are the responsibility of the Executive Board under paragraph 38, (1)(b) and (1)(c). She considered that decisions about which trailers to show and when were operational matters that rested with the BBC and were not a matter for the Trust.

The Adviser noted that the BBC scheduling teams took into consideration a number of factors when deciding on the billed broadcast times of programmes. For instance, depending on how they have been acquired for broadcast, programmes did not all run to the same length. In order to make the schedule run smoothly, as well as for strategic purposes, schedulers inserted 'interstitial' material such as trailers between programmes. When a programme was billed at a certain time, schedulers had a certain amount of leeway to comply with 'billed time', which meant that some programmes might finish slightly before or after their billed end time. The schedulers made editorial and operational decisions about the amount of promotional material that could be accommodated within each programme junction, and what the promotional priorities were. The Adviser appreciated that the complainant found this frustrating if he had set his digital receiving equipment to record using the EPG billed times; she understood that this was why Audience Services had suggested the complainant might want to adjust his recording times manually in order to avoid any truncation of those programmes he wished to record. She appreciated that this was not an exact science and could cause inconvenience if the complainant wanted to record consecutive programmes on different channels, which were billed to start at the same time as a previous programme ended.

The Adviser noted the complainant's view that Audience Services had given him "what appears to be a slightly controversial response" and his query regarding the 'official' line in the number of trailers that could be shown one after the other, how often it could be repeated, and what was their exact purpose. She noted that Audience Services had referred to research into viewer views on promotions. She thought the complainant might be interested to read more about this in an Ofcom research study: Television promotions - what the viewers think. A report of the key findings of a qualitative and quantitative study

This study could be accessed at:

<http://stakeholders.ofcom.org.uk/binaries/research/tv-research/promoviewers.pdf>

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:

- A key point of his complaint had not been addressed: why were PDCs sent after the trailers following a programme, rather than after the programme itself.
- The Trust Adviser had failed to acknowledge that the Complaints Unit response was misleading and failed to properly identify the actual technology used to give a variable end-of-recording time. The suggestion by the Complaints Unit that manual time settings be used was ludicrous. The whole point of having PDCs was so that the whole programme was recorded, even if it was running a bit behind schedule.
- The Trust Adviser had not denied that the BBC was forcing trailers on those who recorded programmes using PDCs, even at the expense of missing the start of another programme which was scheduled to start at the same time as another finished. He asked for someone to do something to overturn that policy or point to the right person within the BBC who should be approached to get it changed.

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:

- Decisions about the scheduling and broadcast of promotions were part of the operational management of the BBC. This was specifically defined in the Royal Charter (article 38, (1) as a duty of the Executive Board and one in which the Trust did not get involved.
- Trustees acknowledged the complainant's dissatisfaction with the Programme Delivery Control (PDC) which he relied on for video recording content using information from the Electronic Programme Guide (EPG). They noted that Audience Services had explained that the BBC did not have any control over this as timings were set by the EPG. Audience Services had noted that some digital receiving equipment allowed the option of manually changing the start and end time of programmes, and suggested that the complainant might want to investigate whether this was possible using his own equipment. Trustees acknowledged that the complainant did not consider this to be a reasonable option, but they considered that Audience Services were trying to be helpful in terms of the substantive complaint by suggesting a way in which the complainant could record programmes without missing the start or end of them. Trustees did not consider that the response from Audience Services had been misleading.

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 references to Rugby League and Rugby Union

The complaint concerned the complainant's view that the "Rugby World Cup" should be referred to as the "Rugby Union World Cup".

The complainant made the following points:

- It was inaccurate and inappropriate to speak of a "Rugby World Cup". It gave the misleading impression that Rugby Union was the only form of rugby, ignoring Rugby League.
- He requested the BBC always to refer to either Rugby Union or Rugby League as appropriate.

BBC Audience Services made the following points:

- The BBC referred to the "Rugby World Cup" as it was the official name given to the tournament by the sport's governing body.

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 said that Rugby League was treated as the poor relation; referring to Rugby Union as "Rugby" was dismissive of Rugby League.

Decision of the Trust Adviser

The Trust Adviser (the Adviser) understood that BBC Audience Services had ceased handling this complaint at 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 – however, she decided it did not.

The Adviser noted that all BBC output was required to meet the standard of "due accuracy" which, under the Editorial Guidelines, was defined as follows:

The term 'due' means that the accuracy 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 noted that it had been explained by BBC Audience Services at Stage 1 of the complaints process that the BBC did not decide on the name "Rugby World Cup". This decision was taken by Rugby Union's world governing body, World Rugby, and the BBC's coverage of the competition would reflect the name of the event. The Adviser had not seen evidence of a lack of due accuracy which would be likely to lead Trustees to conclude there had been a breach of Editorial Guidelines.

The Adviser noted that the complainant had not specified a particular piece of BBC output as the focus of his complaint, but appeared to be making a general point about the BBC's coverage of the Rugby World Cup as a reflection of the status of Rugby League compared with Rugby Union. She considered Trustees would be likely to conclude that, having received a general complaint about references to "rugby" rather than "rugby union" or "rugby league", Audience Services had given a reasonable response about the BBC's general approach.

The Adviser also noted that the Royal Charter and accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. Day-to-day editorial decisions rested with the BBC – unless there had been a possible breach of the Editorial Guidelines (which the Adviser considered was not the case here).

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:

- his complaint related to a minority sport that was often ignored and marginalised by the media in the UK.
- the BBC as the nation's broadcaster played a vital role in presenting minority sports fairly and in an unbiased way.
- by presenting Rugby Union as Rugby this dismissed and marginalised Rugby League and does damage.
- he asked for the BBC to refer to the two sports as Rugby Union or Rugby League.

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 complainant had not specified a particular piece of BBC output as the focus of his complaint, but appeared to be making a general point about the BBC's coverage of the Rugby World Cup as a reflection of the status of Rugby League compared with Rugby Union.
- as explained at Stage 1 by BBC Audience Services, the BBC did not decide on the name "Rugby World Cup". That decision was taken by Rugby Union's world governing body, World Rugby, and the BBC's coverage of the competition would reflect the name of the event.
- the Royal Charter drew a distinction between the role of the BBC Trust and the BBC Executive. "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 refer to Rugby Union and Rugby League 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 the BBC's use of Facebook and other social media platforms

The complaint concerned the BBC's use of Facebook and other social media services as the platform for viewing BBC content and engaging with BBC programmes.

The complainant made the following points:

- Content for BBC programmes such as BBC Breakfast should be available on the BBC's website and not just on social media services such as Facebook or Twitter as less than 50 percent of the population used social media.
- The BBC was inappropriately promoting one commercial service, Facebook, when there were other social media alternatives.
- Users accessing BBC content on Facebook were encouraged to "Sign up" or "Log in" to Facebook.
- The BBC had a good website which should be used for this purpose.

BBC Audience Services made the following points in its two responses:

- Advertising and product placement were forbidden under the terms of the BBC's charter.
- The BBC used technology to make it easier and more convenient for audiences to contact, contribute and interact with presenters. This had evolved through email and through texting to the use of social media tools today.
- Social media sites such as Facebook allowed quick communication and access to additional content; communication via social media was also cheaper, enabling more of the licence fee to be invested in programmes.
- Whilst Facebook was not used by everyone, it was popular and the BBC had a duty as a public service broadcaster to reflect its audience's interests and embrace new technologies that make it more accessible.
- All content placed by the BBC on social media sites was freely available and neither an account nor subscription was required to view BBC content.
- The social media companies did not benefit and the BBC's audiences were not disadvantaged by the BBC placing content on social media websites.

Audience Services said they had nothing further to add and that they did not believe the complaint had raised a significant issue of general importance that justified further investigation.

Appeal

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

Decision of the Trust Adviser

The Trust Adviser (the Adviser) understood that BBC Audience Services had ceased handling the complaint at 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 it did not.

The Adviser appreciated the complainant's view. She noted, however, that the BBC's Royal Charter and the 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 specifically defined in the Charter (Article 38, (1) (c)) as a duty that is the responsibility of the Executive Board, and one in which the Trust does not get involved unless, for example, it considers that there has been a breach of any operating framework the Trust has set, or a breach of any regulatory requirements or the law. In this case, the decision about which platforms to use to deliver additional BBC content and to engage with audiences was an operational decision which rested with the BBC's management. The content delivered via Facebook was freely available to audiences irrespective of whether they were a Facebook user or not, so non-Facebook users were not discriminated against by this decision.

The Adviser also noted that Audience Services had explained in its responses the reasons for the BBC's use of new technologies, and the benefits to the BBC and licence fee payers of using social media to share content and engage with audiences.

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 made the following points:

- The main point of his complaint had not been addressed. He believed it was wrong that the BBC should invite (on some occasions, not always) responses to surveys, submissions and access to additional information related to programmes solely via social media platforms. He gave some examples of occasions when this had occurred. He felt that such responses should always be invited via the BBC website as well as social media platforms.
 - It had been stated that it was not necessary to subscribe to Facebook to view the BBC pages. When visiting the BBC Breakfast Facebook page he had received pop ups inviting him to sign in or log in; a third pop up box saying continue without signing in might make this more acceptable but even then Facebook tracked nonsubscribers (he noted a recent Belgian government decision) which he felt it unlikely the BBC would condone.
 - The BBC must use all platforms to get information across.
- Anyone who did not wish to subscribe to social media sites was being disadvantaged. He believed that licence fee payers should not be expected to subscribe to a third party organisation in order to participate in or view any BBC output.
- Output and access should not be dependent on what is cheaper thus excluding groups.
- Others agreed with him.
- Less than 50% of the population used social media.
- Any survey carried out via social media was going to result in a "skewed distribution" in terms of response.
- People without computers and smart phones are being disadvantaged.

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 BBC had Editorial Guidelines⁸ and Guidance⁹ on Surveys, Opinion Poll, Questionnaires and Straw Polls. All content had to abide by the Editorial Guidelines. In particular it was made clear, in relation to surveys, that:

“If audiences are told that a survey has been commissioned by the BBC, they must have confidence that it has a level of statistical credibility which justifies any claims or assumptions about how representative it is.”

There was no reason why a survey should not be carried out through social media – what was important was that there were controls in place to ensure that it was accurately reported.

- BBC Facebook pages were freely available to audiences irrespective of whether they were a Facebook user or not; therefore non-Facebook users were not discriminated against by the use of Facebook.
- it was important to embrace new means of reaching out to audiences such as social media and to encourage them to interact with the BBC by, for example, inviting the submission of photographs even though the invitation might be extended through one particular type of social media and not the BBC website.
- the BBC's Royal Charter and the 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. “The operational management of the BBC” is specifically defined in the Charter (Article 38, (1) (c)) as a duty that is the responsibility of the Executive Board, and one in which the Trust does not normally get involved. In this case, the decision about which platforms to use to engage with audiences was an operational decision which rested with the BBC's management.

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.

⁸ <http://www.bbc.co.uk/editorialguidelines/guidelines/politics/opinion-polls>

⁹ <http://www.bbc.co.uk/editorialguidelines/guidance/surveys>

Decision of the BBC iPlayer Support team not to respond further to a complaint about the BBC iPlayer service

The complaint concerned the live streaming of BBC local news programmes on BBC iPlayer. With the exception of London regional news, these were not currently available on iPlayer.

The complainant made the following points:

- Everyone in the UK paid the same licence fee but the only regional news programme available live on iPlayer was the London news. People who lived outside London had no iPlayer access to their own live local news output.
- He felt the BBC had a fundamental obligation to be fair to all its audiences and by not providing live regional news streaming on iPlayer, he felt the BBC was not being fair to viewers outside London, and was demonstrating a pro-London bias.

The BBC iPlayer Support team made the following points:

- BBC iPlayer was hoping to have the live regional streams available “in the next couple of months” (their response was dated 8 July 2015). The technical team was working on the infrastructure changes to allow that to happen.
- BBC One London was the default service (not just for BBC iPlayer but for traditional linear broadcasting as well).
- Recorded versions of regional news programmes were available on iPlayer shortly after broadcast so programmes could be accessed from the regions in that way.
- BBC iPlayer had been in constant development since its launch, and was trying to deliver the best service it could, including live regional news streams, but there had been infrastructure challenges along the way.

BBC iPlayer Support said it had nothing further to add and 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 said the BBC had not answered his questions directly. These were:

1. Given the way it was funded, did the BBC have a responsibility to be fair to all licence fee payers?
2. Was it fair that the BBC iPlayer service only supplied local news for London and the South East?

Decision of the Trust Adviser

The Trust Adviser (the Adviser) considered the point she had to address was whether the BBC had acted appropriately in declining to correspond further regarding the complaint. She decided that the complainant’s appeal did not have a reasonable prospect of success.

The Adviser noted that BBC iPlayer had originally informed the complainant that they hoped to have overcome the infrastructure challenges surrounding BBC iPlayer's capacity to deliver live regional streaming by the beginning of September (their response of 8 July suggested the launch of regional news live streaming would be two months after that date). The Adviser contacted BBC iPlayer Support for an update on the situation as it was now October and live regional news streaming had not yet been introduced. BBC iPlayer Support explained that it was taking longer than anticipated to get the infrastructure in place to support the integration of live streaming into iPlayer and they now expected it to start at the end of the year or early next.

The Adviser acknowledged that the complainant found it inconvenient not to be able to watch his local news programmes live on iPlayer, but noted that the iPlayer Support team had explained that although it was not yet possible to receive them live on iPlayer, they were available very soon after broadcast as part of the catch-up service. She noted that BBC iPlayer Support had explained to the complainant at Stage 1 that:

"BBC iPlayer has been in constant development since its launch, and we are trying to deliver the best service we can, including regional live streams. There have just been infrastructure challenges on the way in delivering these streams."

The Adviser noted that technical support and development of the iPlayer service was part of the operational management of the BBC. The Royal Charter and accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. "The operational management of the BBC" was defined as a duty that was the responsibility of the Executive Board.

In this case, decisions about the technical development of the iPlayer service were the responsibility of BBC iPlayer; the Trust would only have a role if the BBC was potentially in breach of any of its other commitments – for example, if one of the licence-fee funded services had not operated within the terms set out in its Service Licence. The Adviser had not seen evidence of such a breach in this instance.

The Adviser acknowledged that the complainant felt it was unfair that people outside London should have to pay the same licence fee as London-based viewers because of this difference in the iPlayer live streaming service. The Adviser noted that the licence fee covered audiences for a very wide range of services, and not every audience member would have an equal capacity or interest in receiving every single piece of BBC output. She regretted that BBC iPlayer was not yet able to support the live streaming of regional news, but noted that this was being worked on and although there had been a delay for technical reasons, it was now hoped to have the service up and running by the end of the year, or early in 2016.

Taking this into account the Adviser considered Trustees would be likely to conclude that BBC iPlayer 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 made the following points:

- The essence of his complaint was that the BBC had a regional bias towards London and South East of England to the detriment of television licence fee payers elsewhere in the country. He said that because bias was difficult to prove or quantify, he had decided to concentrate in this complaint on a specific issue that was provable: namely that the BBC was providing online local news programmes for London but not for people living elsewhere in England. This was particularly important to the complainant as it was no longer possible to watch any of his local news programmes on analogue television.
- The BBC had not addressed the issue and so he had subsequently posed two questions which they had not answered:
 1. Given the way that it was funded, did the BBC have a responsibility to be fair to all licence fee payers?
 2. Was it fair that the BBC iPlayer service only supplied local news for London and the South East?
- He requested the Trust respond to two more detailed questions concerning access to regional news programmes on BBC iPlayer:
 1. At the moment the BBC iPlayer “live streamed” BBC1, BBC2, BBC3, BBC4, CBBC, Cbeebies, BBC News, Parliament, ALBA & S4C; in addition to this during the 2012 Olympics it allowed viewers to watch several different live events simultaneously. So if BBC iPlayer was able to provide multiple programmes being broadcast from different locations, why (in detail) was it so technically difficult to provide LIVE regional news services on iPlayer and why was it taking so long to resolve the issue?
 2. It was initially stated (8 July 2015) that regional streams would be available “in the next couple of months”; this had subsequently been changed to “now hoped to have the service up and running by the end of the year, or early in 2016”. Did the BBC have a “go live” date and if so when is it? When was this project started?
- The complainant also made a number of general points, accompanied by requests for information, concerning the “issue of wider pro-London bias at the BBC”. He wanted to know if the BBC Trust or any other body analysed programmes (drama and documentary) to ensure a fair representation of all the regions of the UK. If not, how could the Trust decide whether or not there was a pro-London bias? Did the Trust concern itself with the issue?
- He asked a number of questions about BBC Trust Unit staff.

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 the BBC iPlayer team 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:

- BBC iPlayer had explained that the service had been in constant development since its launch and the BBC was striving to deliver the best service it could, including regional live streams.

- Trustees understood that live streamed regional news was now available on iPlayer.
- The BBC's Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board. "The operational management of the BBC" was specifically defined in the Charter (Article 38, (1) (c)) as a duty that is the responsibility of the Executive Board, and one in which the Trust did not normally get involved. In this case, decisions about which platforms to use to deliver live BBC regional news output were made by the Executive.

Trustees acknowledged the complainant's wider concern about a possible "pro-London bias". However, these points had not been raised earlier in the complaints process and so it was not appropriate to deal with them on appeal. However, the complainant might wish to be aware that the BBC had public purposes. One of these is the requirement to represent the UK, its nations, regions and communities. Annual surveys were undertaken by the Trust. They could be found at this link:

http://www.bbc.co.uk/bbctrust/governance/tools_we_use/public_purposes.html

The most recent published research (for 2014-15) showed that the majority of participants in England agreed that the BBC is good at representing life in their region to the rest of the UK, both in its main UK news and current affairs content (61%) and in its drama and entertainment programming (60%). However, the Trust noted a gap between performance and expectation in its last Annual report. This was a matter the Trust would continue to monitor. It noted that:

To remain relevant to all licence fee payers, the BBC must represent the whole of the UK in a number of ways – in its programmes; in how and where it makes them; and in terms of the people it employs.

In terms of the specific concerns raised in the substantive complaint, 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 the Daily Politics, BBC Two, 23 April 2015

The complaint concerned the complainant's belief that he had been misrepresented on the programme.

The complainant made the following points:

- He had contacted programme presenter Giles Dilnot on Twitter sending him his manifesto, and had asked him to cover how people had the option to spoil their ballot papers.
- He said that Mr Dilnot responded via Twitter that he had made a reference to the complainant on the programme and had covered the story on the programme.
- The complainant did not agree that this subject had been covered on the programme. He said that, instead, Mr Dilnot had asked studio guests about the opportunity to get young people to vote or the future availability to access a vote for "None of the above".
- He said he was complaining about "poor journalism" and wondered if anyone else had looked at the information he had given Mr Dilnot about spoiling ballot papers. He wanted to know if this was an "individual reporting error" by Mr Dilnot, or whether it was a "deliberate act by the editorial team to mislead the population over what is available to them".
- He requested information about the editorial process for the programme, so that he could determine the BBC's level of impartiality.
- He said he had submitted a follow-up complaint on 30 July 2015 but had not received a second response from the BBC. He submitted a further follow-up complaint on 16 October 2015 which did not contain any further information but referred to his email of 30 July 2015 and stated he had not received a reply.

BBC Audience Services made the following points:

- They apologised for the delay in responding to his complaint.
- During an election campaign, BBC political correspondents often spoke to voters generally about their vote and the election campaign. Giles Dilnot spoke to many people on Twitter about how voter turnout could be increased. Some said they wanted a "None of the above" option on the ballot paper, others such as the complainant, wanted a campaign to explain it was a valid option to spoil the ballot paper.
- During the *Daily Politics* broadcast from a Northampton shoe factory, one employee, a young man who saw no point in voting, made a late decision not to appear on the panel. In order to reflect his view, Mr Dilnot mentioned to the floor manager of the factory that many of the young men working there had no interest in voting. Mr Dilnot said that someone had spoken to him via Twitter about a "None of the above" option on the ballot paper. Mr Dilnot asked the floor manager

whether he thought that might make young men like those working in the factory more inclined to vote.

- Mr Dilnot explained that it was a general question that he chose to phrase that way to highlight the fact that, as a reporter, he was happy to engage on Twitter in sensible discussion around the topic. Neither the complainant nor his campaign were mentioned; indeed, at the time, Mr Dilnot was not referring to the complainant, as his campaign was quite different.
- Audience Services said that it was in response to the complainant's Twitter messages that Mr Dilnot was referring to talking about this area previously on the programme. He had not confused the two topics, but was sorry if his Twitter response appeared to conflate the two. However, it was not the complainant or his campaign that was being referred to on the programme. While it was within the remit of BBC political correspondents to discuss such subjects, it was not their role to promote or endorse political campaigns.
- They said they had not received the complainant's follow-up complaint of 30 July 2015. They explained that the BBC's complaints process required follow-up complaints to be submitted within 20 working days. Therefore, they did not believe it would be an appropriate use of licence fee resources to correspond further.

Appeal

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

- He asked why it had taken over one month for the BBC to respond to his first complaint; he complained on 2 May, and received a response on 9 June.
- He stated that the Editorial Guidelines said that careful consideration must be given over the use of language to avoid undue influence; however, he considered that the *Daily Politics* programme had referred to the "none of the above" party in a way that was not impartial.
- He queried why the BBC routinely asked people "Who are you voting for?", and not "How are you voting?"
- Apart from the single time he had mentioned, on what other instances did the BBC educate its viewers about spoiling the ballot paper? It was an option available to every voter. Did the BBC consider it a key theme of the election?
- Regarding the issue of personal misrepresentation, he acknowledged the reference was to a generic Twitter user, but noted that Audience Services had advised him that the phrase was intended to educate the audience that they could engage via Twitter. However, he said this was clearly a reference to himself as the Twitter user in question.
- He had sent his follow-up complaint while in Peru and it had got lost somewhere. He mentioned personal circumstances which he said had contributed to the delay in chasing up a response to his follow-up complaint.

Decision of the Trust Adviser

The Trust Adviser (the Adviser) understood that BBC Audience Services had ceased handling this complaint at 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 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 noted that Audience Services had consulted the programme makers about the complainant's concerns and they had explained that neither the complainant nor his campaign had been mentioned, but Giles Dilnot was sorry if it appeared to the complainant that he was conflating two separate issues during the programme: the complainant's campaign, and the "None of the above" voting option. The Adviser reviewed the programme segment concerned and confirmed that neither the complainant nor his campaign had been referred to.

She noted that the item was a recorded report canvassing the views of workers on the factory floor of a shoe manufacturer in Northampton. The report reflected a range of views including that the younger men in the factory had appeared to be less interested in voting and a high proportion of them were not registered to vote. The Adviser considered that the report – and Jo Coburn's introduction to it – did not raise any issues of bias in terms of the content or language used. The Adviser had not seen evidence that she believed would be likely to lead Trustees to conclude that the *Daily Politics* programme had failed to meet the Editorial Guideline requirement for due impartiality. She believed Trustees would be likely to agree that misrepresentation of the complainant was not an issue which warranted further investigation.

She noted the complainant's view that the campaign to spoil ballot papers should have been included in the BBC's reporting during the run-up to the General Election, and that people should have been asked on the programme how they were voting, rather than who they were voting for. However, she noted that decisions about the content of the *Daily Politics* were made by the programme-makers. 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" was defined as a duty that was the responsibility of the Executive Board rather than the Trust. In this instance that responsibility lay with the *Daily Politics* editorial team.

The Adviser noted the points made by the complainant about the delay he experienced in receiving a first response from Audience Services, and their subsequent decision not to respond further because the follow-up complaint was not received within the 20 working day timeframe specified in the Complaints Framework. She noted that Audience Services had apologised for the delay in sending their first response and she considered that Trustees would be of the view that this aspect of the complaint had been resolved.

Separately, she considered whether Audience Services had acted reasonably in declining to correspond further when the complainant renewed contact outside the timeframe of

the complaints framework. She noted the complaints framework set out timeframes with good reason – they allowed the complaints process to work efficiently, in the interests of all licence fee payers, and it was increasingly difficult to investigate editorial complaints as time passed. She considered the complainant had been sent a full and appropriate response to his complaint and that it was reasonable for Audience Services to consider the later complaint had been submitted “out of time” and to respond to it on that basis.

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 made the following points:

- He clarified his main issue of concern. He said he understood that he had raised a number of questions and appreciated that his specific main point may have been drowned out. His main concern was that the BBC influenced and was likely to continue to influence voters, by accident or design, with its use of language. He believed this represented a breach of the BBC’s Editorial Guidelines.
- Every voter had the implied right to intentionally spoil their ballot paper. This represented an abstract way for those who were disenfranchised by the political system but engaged with politics to be able to participate in an election, without explicitly or implicitly giving their support to an element of the system that they did not wish to support. His impression was that the BBC was almost exclusively biased towards the question of “who are you voting for?”
- He noted that the Trust Adviser had stated that “people on the programme should have been asked how they were voting, not who they were voting for”; but across all of the BBC content that the complainant could recall, he was only aware of two instances where the issue of “how are you voting?” was addressed:
 - 1) on the *Daily Politics* show, Jo Coburn interviewed a representative from NOTA and suggested people should just spoil their ballot and there was no need for NOTA Party.
 - 2) one of twenty vlogs, by teenagers about the 2015 General Election.
- Did the BBC acknowledge that asking “who are you voting for?” in the context of a general election might have an influence on the way the Electorate engaged with the electoral process, and that “how are you voting?” (or alternative) should also be used to reduce bias? If the answer was yes could the BBC demonstrate how it was not biased in 2015 or give an assurance that the approach would change in 2020.

The Panel’s decision

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

Trustees noted a misunderstanding which they felt it would be helpful to clarify. The complainant believed that the Trust Adviser had said that “people on the programme should have been asked how they were voting, not who they were voting for”. In fact

Trustees agreed that the Adviser had not said that was her view. Instead she had been referring to the complainant's view on the matter: She noted:

"The complainant's view that the campaign to spoil ballot papers should have been included in the BBC's reporting during the run-up to the General Election, and that people should have been asked on the programme how they were voting, rather than who they were voting for."

The Trustees noted that the issue in front of them was whether the decision by BBC Audience Services to decline to enter into further correspondence was correct on the basis that the complainant was out of time.

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

- the editorial and general complaints and appeals procedures¹⁰ both require complainants to follow up on replies from the BBC within 20 working days if they are dissatisfied.
- the BBC had sent their reply on 9 June. It was reasoned and reasonable. It had said that the programme had not referred to him or his campaign.
- BBC Audience Services had not received a follow up on the complaint from the complainant until 16 October.
- even had they received his follow up that he believed he had sent on 30 July it would also have been out of time.
- the complainant had not asked the BBC for a reasonable adjustment at the time.
- the BBC received over a million audience contacts a year. It was increasingly difficult and took additional resource to verify facts and follow up on complaints as time passed. It was reasonable of the BBC in the interests of all licence fee payers to close complaints which were not pursued or were pursued out of time.
- in this case the BBC had not been made aware of his further concerns until he had contacted the Trust on 1 November – that is some five months after he had received his reply from the BBC and six months since the General Election.
- the appeal received by the Trust on 1 November had raised fresh concerns which had not been included in the first complaint – but the complaints procedures made it clear that the BBC may not consider new or different points after the BBC has replied to the first complaint contact.

Taking into account the complainant's explanation that he was delayed because of (amongst other matters) his disabilities Trustees at the complaint in question to see if the decision by BBC Audience Services to decline to enter into further correspondence was correct on the basis that the Editorial Guidelines had not been engaged.

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

- the programme had not referred to the complainant and his campaign.
- decisions about the content of the *Daily Politics* were made by the programme-makers. 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

¹⁰ http://www.bbc.co.uk/bbctrust/governance/complaints_framework/

BBC's editorial and creative output" was defined as a duty that was the responsibility of the Executive Board rather than the Trust. In this instance Trustees noted that this responsibility lay with the *Daily Politics* editorial team.

- the decision to include or exclude a reference to a campaign or an option to spoil ballot papers was in this instance a matter for the editorial discretion of the BBC and did not engage the BBC's Editorial Guidelines.
- similarly the decision to use the form of words "who are you voting?" rather than "how are you voting?" (or alternative) when canvassing the electorate was in general a matter for the editorial discretion of the BBC and did not engage the BBC's Editorial Guidelines.

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 Have I Got News for You, BBC One, 2 October 2015

The complaint concerned the BBC's decision to employ Jeremy Clarkson as a guest host on *Have I Got News for You*.

The complainant made the following points:

- Given the circumstances in which Jeremy Clarkson had left the BBC why was the BBC now contracting him to host *Have I Got News for You*?
- This indicated double standards.
- The response from Audience Services did not address his complaint.

BBC Audience Services made the following points:

- Although Jeremy Clarkson's contract was not renewed on *Top Gear*, he was never banned from appearing on the BBC altogether.
- Mr Clarkson had decided against hosting *Have I Got News for You* in April, and the BBC had explained then that it would not discount him from hosting the programme at some point in the future.

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

Appeal

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

Decision of the Trust Adviser

The Trust Adviser (the Adviser) understood that BBC Audience Services had ceased handling this complaint at 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 it did not.

She acknowledged the complainant's view that in contracting Jeremy Clarkson to host an edition of *Have I Got News for You*, the BBC was failing to uphold the Corporation's values.

The Adviser noted that Audience Services had explained that although Jeremy Clarkson's contract on *Top Gear* had not been renewed, that did not preclude his employment on other BBC projects.

She noted that the Royal Charter and accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. "The direction of the BBC's editorial and creative output" and "the operational management of the BBC" were defined as duties that were the responsibility of the Executive Board under article 38, (1)(b) and (1)(c).

She noted these were intended to protect the BBC's editorial freedom and independence and allowed the BBC to make editorial decisions without the Trust's intervention – and the Trust would only have a role if, for example, a complaint raised a matter that was a potential breach of the BBC's editorial standards (as set out in the Editorial Guidelines) – which she did not consider was the case here.

She appreciated that the complainant strongly disagreed with the BBC's decision to contract Mr Clarkson to appear as a guest host on *Have I Got News for You*, but she noted that this was a decision made by the programme-makers as part of the BBC's editorial and creative output.

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:

- his complaint was definitely about a “matter of substance” because Jeremy Clarkson had violated the BBC Values through an act of violence and by not behaving as “one BBC”. He referred to the values:
 - We respect each other and celebrate our diversity
 - We are one BBC; great things happen when we work together
- that being the case, why would the management of the BBC contravene the BBC values by employing him again? The BBC had a set of values which were clearly being ignored. This was a systemic problem.

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:

- Jeremy Clarkson's contract on *Top Gear* had not been renewed but that did not preclude his employment on other BBC projects.
- the decision to seek to employ Mr Clarkson on *Have I Got News for You* was a decision regarding the BBC's editorial and creative output.
- the Royal Charter and accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. “The direction of the BBC's editorial and creative output” and “the operational management of the BBC” were defined as duties that were the responsibility of the Executive Board under paragraph 38, (1)(b) and (1)(c) of the Charter. The Trust would only have a role if a complaint raised a matter that was a potential breach of the BBC's editorial standards (as set out in the Editorial Guidelines), which Trustees did not consider to be the case in this instance.

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 the BBC Proms

The complaint concerned a lack of diversity in the music included in the BBC Proms. He made the following points:

- He did not believe the BBC Proms was sticking to the publicly stated original aim of presenting the widest range of music, performed to the highest standards, to large audiences.
- The 2015 Proms programme included 76 concerts of which only seven presented non-classical music.
- There were no brass bands, no folk music, no world music, jazz only in the shape of Frank Sinatra and swing, no opera and no apparent recognition of the wide range of music enjoyed by the UK public.
- It was the BBC who had chosen to call the Proms the “world’s largest classical music festival”, but it was not a classical music festival because the BBC said its original aim was to present the widest range of music, performed to the highest standards, to large audiences.
- What did the BBC propose to do about the lack of diversity in the Proms?
- He had concerns about the handling of his complaint as some of his queries went unanswered.

BBC Audience Services made the following points:

- The BBC had broadcast, as part of the Proms programme, a number of performances that were not classically related, but ultimately the BBC Proms was the world’s largest classical music festival.
- They apologised for not having responded to the complainant’s letters of 30 August and 16 September 2015. This appeared to have been due to duplication which caused administrative confusion at the BBC’s end. They recapped on all correspondence to date.
- In their response dated 19 October 2015, Audience Services summarised the content of the Proms concerts which the BBC had broadcast.
- The BBC did not have the resources or airtime to be able to replicate every aspect of the BBC Proms on radio and/or television and each year the BBC had to make very difficult editorial decisions about what to broadcast.
- The Proms was only one part of the BBC’s music output and, considered as a whole, the BBC carried an unrivalled breadth of music.

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 reiterated his concerns and made the following points:

- He did not feel the responses he had received addressed his central concern which was that the BBC publicly stated that the Proms “...still remains true to its original aim: to present the widest range of music, performed to the highest standards, to large audiences”.
- He had not received any explanation for the lack of diversity in the Proms music programming or any word about what the BBC proposed to do about this lack of diversity.

- He said the reply from Audience Services of 19 October 2015 listed music he had already alluded to in his original letter. He also said that the example of “opera” given by Audience Services, Fiddler on the Roof, was a musical, not an opera. He also noted that a lot of the music listed by Audience Services was performed outside the central Proms venue.
- He said that as well as not having addressed his concerns, his complaint had been handled inefficiently.
- He requested an explanation for the “misleading editorial content that promotes the proms”.

Decision of the Trust Adviser

The Trust Adviser (the Adviser) understood that BBC Audience Services had ceased handling this complaint at 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 it did not.

The Adviser noted that the complainant did not feel that the BBC Proms were true to a publicly stated aim of presenting the widest range of music, performed to the highest standards, to large audiences. She noted the context of this statement in an article about the history of the Proms published on the BBC website. The full article can be found at: <http://www.bbc.co.uk/programmes/articles/1sgMxZvFzHOG3Y1HktMfg6w/history-of-the-proms>

The closing section of the article is included below:

The 100th Proms season took place in 1994 and the festival now includes over 70 main Prom concerts every year, ever widening the range of symphonic and operatic music presented. The BBC Proms continues to welcome leading international performers whilst showcasing the best of the British music scene, including the BBC’s own orchestras and choirs.

Yet although the scope of the Proms has increased enormously since 1895, Henry Wood’s concept for the season remains largely unaltered: to present the widest possible range of music, performed to the highest standards, to large audiences. And promenading in the Royal Albert Hall’s arena continues to be a central feature, lending the Proms its unique, informal atmosphere.

The Adviser noted that the statement referred to by the complainant was made in the context of describing Henry Wood’s original concept for the Promenade concerts when they began in 1895, and which the BBC believed remained “largely unaltered” today. The Adviser noted that the concerts have grown out of a classical tradition and as explained by Audience Services in their response, western classical music remains at the core of the BBC Proms concert schedule, though other forms of music and new events have been introduced, such as “Proms in the Park”, “Proms Extra” and “Proms Inspire”. She considered that the Proms were very well established and that audiences understood they were rooted in Western classical music.

The Adviser noted that Audience Services had also explained that the BBC did not have the resources or airtime at its disposal to be able to replicate every aspect of the BBC Proms in its output, and had to make difficult editorial planning decisions. The Adviser noted that responsibility for editorial and operational decisions rested with the BBC Executive rather than the Trust.

The Adviser noted that the complainant had experienced difficulties in obtaining responses to his complaints at Stage 1. She noted that in their letter of 19 October 2015, Audience Services had apologised for not having responded to two of the complainant's letters and explained how duplication of correspondence had caused administrative confusion. She noted that Audience Services had drawn attention to the complaints webpage and requested that all comments and complaints should be made through the site or the corresponding phone lines and address. She considered that as Audience Services had apologised for not responding to the earlier correspondence, Trustees would be likely to conclude that this element of complaint had been resolved.

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:

- he had not received any explanation for the lack of diversity in the music included in the Proms programme, despite the fact that the literature is clear the Proms are about "ever widening the range of symphonic and operatic music presented".
- 15% of the UK population is made up of diverse ethnicity.
- his point about the erroneous response by Audience Services stating that Fiddler on the Roof was an opera when it was really a musical, had not been addressed.
- a lot of the music quoted by Audience Services was performed outside the central Proms venue.

The Panel's decision

Trustees 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 statement referred to by the complainant was made in the context of describing Henry Wood's original concept for the Promenade concerts when they began in 1895.
- the Royal Charter drew a distinction between the role of 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 (1)(c). Decisions about the scheduling and selection of the Promenade concerts for broadcast were matters for the Executive, not the Trust.
- Trustees noted the point made by the complainant that Fiddler on the Roof was more accurately a musical rather than an opera, but did not consider that this was a matter of substance which warranted further investigation. They noted that the performance of Fiddler on the Roof was described as a Broadway classic by BBC

Audience Services which was performed by Bryn Terfel in a Grange Park Opera production..

- the Proms season as a whole included works which were not performed at the Royal Albert Hall and it was not incorrect of Audience Services to refer to them.
- the Proms were provided for all audiences whatever their ethnicity.

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.