

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

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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://www.bbc.co.uk/bbctrust/assets/files/pdf/about/how_we_operate/committees/2011/cab_tor.pdf

All Trustees are members of the Board; Richard Ayre is 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 and Digital Switchover Help Scheme 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

Rejected Appeals

Appeals rejected by the CAB as being out of remit or because the complaints had not raised a matter of substance and there was no reasonable prospect of success.

Choice of stories covered by BBC News

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

Complaint and Appeal

The complainant first contacted the BBC on 24 January 2013 and asked for a definition of "news". He considered the BBC's news reports were skewed towards negative stories and failed to report "news of the good that humankind is capable of". In particular, he referred to a report about a car accident in which person had died. He considered the report did not have general significance but was voyeuristic. In later correspondence, the complainant repeated his concerns and also noted that the reporting of "positive" stories "does not equate to some fluffy extra".

In his appeal to the BBC Trust, the complainant stated he had not been given an adequate response to his original complaint. He considered that BBC News reports "do not fairly reflect in a balanced way all aspects of news happening within the world both negative and positive." He stated that "good news should be 50% of every broadcast." By "good news", the complainant said that he did not mean stories that were a "token fluffy light gesture", but he wanted news stories which reflected "every aspect of what is good and positive", such as latest inventions, science, health innovations, space exploration, creative endeavour and people's achievements.

The complainant considered that the selection of some news stories was voyeuristic and found it hard to believe that so few positive stories were considered newsworthy enough for inclusion in the News. He believed the editorial decision-making was biased towards negative news.

Decision of the Senior Editorial Strategy Adviser

The Senior Editorial Strategy Adviser (the Adviser) carefully reviewed the correspondence that had passed between the BBC and the complainant and appreciated the strength of the complainant's feelings on this subject. She considered the complaint had not engaged the Editorial Guidelines relating to Impartiality, but was about how news judgment was exercised.

The Adviser noted that the 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.

She noted that "The direction of the BBC's editorial and creative output" is specifically defined in the Charter (paragraph 38, (1) (b)) 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 relates to a breach of the BBC's editorial standards.

The Adviser considered that decisions relating to what stories are considered newsworthy enough for inclusion in BBC News reports fall within the category of the BBC's editorial and creative output and are the responsibility of the BBC Executive. The Adviser considered it would not be appropriate, therefore, for the appeal to be put before Trustees on this point.

In his correspondence with the BBC, the complainant had requested an explanation from the BBC as to why the news was in general "predominantly skewed towards the negativity within society and is never balanced with news of the good that humankind is capable of". The Adviser noted that the complainant was dissatisfied with the response he had received at stage two of the complaints process in response to this. She noted that the Head of Accountability, BBC News, had addressed this in her response of 17 March 2013 which stated:

"You suggest that "good news" must comprise 50 per cent of every bulletin and would like to know our definition of news. There is no definition as such but, broadly speaking, the BBC's approach includes a consideration of what is of interest to audiences as well as an assessment of the significance of a development or event. Decisions on what to cover and how to cover it are taken strategically, at board level, as well as minute by minute, with editorial discussions going on throughout the 24-hour news cycle. Editors make judgements about the newsworthiness of stories based on experience, knowledge and expert advice amongst other things, including an understanding of their audiences based on research-based evidence, and taking competing news developments into account.

There are all sorts of issues for editors to consider, including (but by no means exclusively) topicality, relevance to a particular audience, how unusual a subject is, whether there are good pictures or sound, if there are legal matters to factor in – a host of considerations. In general, we believe that news programmes need light as well as shade, "hard" and "soft" news, plus sport, culture and the arts, business news etc and I believe that, contrary to your criticism, we do indeed cover "positive" stories. However, the relative airtime given to news items cannot be based on a mathematical formula because what to cover depends on what is happening on any particular day. We can't measure the minutes devoted to one subject and compare them with those spent on another totally different item. As the BBC's Editorial Guidelines outline (<http://www.bbc.co.uk/editorialguidelines/page/guidelines-impartiality-introduction/>), due weight is considered and editorial judgement comes into play. The BBC's priority is to ensure that across all output our coverage is fair, accurate and reflective of a wide range of perspectives. We believe that it would in fact show bias to adopt your suggestion because it would be unbalanced and distort the news agenda if we took decisions based on your formula. It is a fact that what is unexpected or surprising and new is very often an unhappy development."

More specifically, the complainant had also requested an explanation for the inclusion of a particular fatal car accident in the news at 10. The Head of Editorial Compliance and Accountability, BBC News had responded, giving the editorial reason behind including that particular story. She said that the unusual nature of the accident meant that it carried "wide resonance" and that the "definition of newsworthiness included that which is highly unusual".

Although the Adviser noted that the complainant did not consider the explanation he had been given was adequate in relation to his complaint that more positive news stories should be included, the Adviser considered Trustees would be likely to conclude it was a reasonable and reasoned response to the questions that the complainant had posed. Therefore, the Adviser considered this point too did not have a reasonable prospect of success if it were to proceed to appeal.

The Adviser concluded that there was no reasonable prospect of success for this appeal and it was not appropriate that it should proceed to the Trust for consideration.

Request for review by Trustees

The complainant requested that Trustees review the decision of the Senior Editorial Strategy Adviser that the appeal should not proceed.

The complainant said that his central complaint - that news editors were biased in favour of negative news stories - had not been addressed. He said that it was not a 'fact' that unexpected or surprising events are often unhappy developments, but that these were editorial decisions. He said that he had never been able to put his case to news editors and that he would like Trustees to view his correspondence and review the Adviser's decision.

The Panel's decision

The Panel was given the complainant's appeal to the Trust, the reply from the Trust's Adviser, the challenge to the Trust's Adviser's decision and also the complainant's previous correspondence with the BBC.

The Panel agreed that under the BBC's Royal Charter and accompanying Agreement there is a clear division of responsibility between the Executive Board and the Trust. The Panel further agreed that the direction of editorial and creative output is a matter for the Executive Board, and not one in which the Trust normally gets involved.

The Panel considered that this complaint, which concerned decisions relating to what stories are considered newsworthy enough for inclusion in BBC News reports, fell within the direction of editorial and creative output and was not, therefore, a matter for the BBC Trust. The Panel did not think that the complaint had engaged the Editorial Guidelines relating to Impartiality, but was about how news judgment was exercised. The Panel noted the complainant had said his complaint of bias had not been addressed. However, the Panel considered that the Executive had responded to this allegation and had provided a reasonable explanation of the factors that contribute to editorial decision making.

The Panel concluded that the appeal did not have a reasonable prospect of success.

The Trustees wished, however, to draw the complainant's attention to the public consultation which would begin later in the summer on the Trust's service review of News. Trustees noted this would be an appropriate route by which the complainant could bring his views to the Trust.

The Panel therefore agreed that the appeal did not qualify to proceed for consideration.

BBC News Online, 17 April 2013

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

Complaint and Appeal

The complainant initially contacted the BBC about a video report within a news online article. He complained that a reporter was shown in the video driving a car apparently without a seatbelt and then parking on double yellow lines. BBC News Online sent a response which stated:

"You are quite right, the reporter wasn't wearing a seatbelt and should have been.

He was driving on a very quiet road and was confident there was no other traffic nearby.

But even so, driving without a seatbelt is illegal and we have reminded him of that fact."

The complainant considered this was no more than a "slap on the wrist" and believed the BBC should have reported the matter to the police. The complainant appealed to the Trust after receiving a stage 2 response which concluded the BBC had already taken proportionate action.

The complainant escalated his complaint to the BBC Trust, saying that since the BBC was unwilling to escalate the matter of a BBC news presenter being seen in a video report not wearing a seatbelt to the Police, he would forward the Police all relevant evidence of the matter, including his email correspondence with the BBC.

Decision of the Senior Editorial Strategy Adviser

The Senior Editorial Strategy Adviser (the Adviser) carefully reviewed the correspondence which had passed between the complainant and the BBC. She noted the complainant had of his own volition decided to bring the matter to the attention of the police.

The Adviser noted that decisions concerning the compliance with the Highway Code by news reporters fell within the category of operational management.

The 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, led by the Director-General.

The Adviser noted "The operational management of the BBC" was specifically defined in the Charter (paragraph 38, (1) (c)) as a duty that was the responsibility of the Executive Board, and was one in which the Trust did not usually get involved.

The Adviser considered Trustees would be likely to conclude that these were operational matters, and as such would be the responsibility of the BBC Executive and it would not be appropriate for Trustees to be involved in those decisions. She therefore considered the

appeal did not have a reasonable prospect of success and she did not propose to place it before Trustees.

The Adviser noted that the complainant thought the video report had been edited to remove a shot of the reporter driving while not wearing a seatbelt. She considered that, if that were the case, Trustees would consider it a decision made in the interests of road safety.

The Adviser noted the strength of the complainant's feelings and was grateful to him for bringing the matter to the attention of the BBC but concluded that there was no reasonable prospect of success for this appeal and it was not appropriate that it should proceed to the Trust for consideration.

Request for review by Trustees

The complainant requested that Trustees review the decision of the Senior Editorial Strategy Adviser that the appeal should not proceed.

The complainant asked if the BBC was unfairly safeguarding the reporter on the grounds that he was an employee. He said that employees should be reprimanded on the basis of bringing the corporation's reputation into disrepute. He said that the BBC's reminder to the reporter to wear a seatbelt was not sufficient or acceptable.

The Panel's decision

The Panel was given the complainant's appeal to the Trust, the reply from the Trust's Adviser, the challenge to the Trust's Adviser's decision and also the complainant's previous correspondence with the BBC.

The Panel agreed that under the BBC's Royal Charter and accompanying Agreement there is a clear division of responsibility between the Executive Board and the Trust. The Panel further agreed that the operational management of the Corporation is a matter for the Executive Board and is not something in which the Trust normally gets involved.

The Panel noted that the complainant had received an apology from the BBC and had been told that the reporter had been reminded of the requirement to wear a seatbelt. The Panel noted the complaint did not engage the Editorial Guidelines. It considered that the management of the BBC's staff in this case, including its reporters, was an operational management issue for the BBC Executive and was not a matter for the BBC Trust.

The Panel concluded that the appeal did not have a reasonable prospect of success.

The Panel therefore agreed that the appeal did not qualify to proceed for consideration.

Behaviour of BBC presenter

The complainant requested that Trustees review the decision at Stage 1 of the BBC's complaints process not to engage in any further correspondence with the complainant on the same issue.

The complaint and appeal

The complainant first contacted the BBC in early 2008 regarding the behaviour of a BBC presenter towards her colleague which the complainant considered amounted to sexual harassment.

The complainant renewed his complaint on 8 October 2012 and stated that he wished to have his concerns reconsidered.

On 15 January 2013, BBC Audience Services notified the complainant that he would not receive further correspondence from the BBC in relation to his complaint.

The complainant appealed to the BBC Trust, saying that he did not believe his complaint was being treated appropriately and in an unbiased manner by BBC Audience Services. He said he had complained a number of times at the end of 2007 and the beginning of 2008 about the presenter's behaviour which he considered included "unwelcome fondling" and inappropriate comments. In the complainant's opinion, the behaviour amounted to sexual harassment.

Decision of the Senior Editorial Strategy Adviser

The relevant correspondence was carefully reviewed by Trust's Senior Editorial Strategy Adviser (the Adviser).

The Adviser noted that the complainant's appeal was sent to the Trust on 16 April 2013. The complainant appeared to the Adviser to have been prompted to contact the BBC and subsequently the Trust by the controversy surrounding Jimmy Savile. The complainant stated that:

"...it is now clear had our concerns been properly investigated by [BBC Audience Services] in 2007/8 - this more than likely would have resulted in the flood gates opening ... with in all probability Jimmy Savile being mentioned and brought to account whilst he was alive!!!"

The Adviser noted that under the BBC's Complaints Framework complaints must normally be escalated to the Trust within 20 working days of the final response from the BBC Executive. In this case the final response to the original complaint was sent by the Executive on 8 February 2008. The appeal was sent to the Trust on 16 April 2013 and was therefore well outside the 20 day limit. The Adviser noted no reasons had been put forward for the delay.

The Adviser noted the seriousness of the claim made by the complainant. However, she did not accept that the Savile controversy justified re-opening this particular complaint.

She noted that Audience Services had responded to the original complaint and had made it clear they did not agree with the complainant. They had sent a response on 8 February 2008 which stated:

"[The presenter] is obviously a tactile person and her warm and friendly approach along with the light-hearted banter with [name of co-presenter] is enjoyed by the majority of the programme's viewers.

I'm sorry to learn that you personally do not like [the presenter's] style of presentation and whilst you are welcome to send us your comments and views on the matter, as we do not judge her actions to represent "fondling" or "disgraceful and totally unprofessional" behaviour, she most certainly will not be "fired" as you demand.

Following the renewal of the complaint in 2012, BBC Audience Services had sent a final response to the complainant on 15 January 2013 which stated:

"The complaints service exists to for all licence payers to ensure that they can raise issues which may suggest, and then enable us to resolve, possible breaches of BBC Editorial Guidelines. We consider the volume of complaints from you has now made disproportionate demands on licence fee resources. You have a personal view on a matter which we disagree with entirely and whilst you are entitled to your view, your contacts do not give any evidence whatsoever to suggest breaches of our guidelines, and you have raised the same issue repeatedly after we have made our position clear."

The Adviser considered that Trustees would be of the view that the appeal was outside the time limit set in the Complaints Framework and therefore it was not appropriate for Trustees to consider the appeal.

The Adviser considered that Trustees would be likely to conclude that Audience Services had provided a reasoned and reasonable response to the complainant's concerns and that it was therefore reasonable for the BBC to decline to engage in further correspondence on the issue.

It followed from this that the Adviser did not consider the appeal had a reasonable prospect of success and she decided it should not therefore be put before Trustees.

In subsequent correspondence with the Trust Unit, the complainant asked when and by whom the presenter had been interviewed. In reply, the Trust Unit informed the complainant that the programmes he had cited had been watched by the Head of Editorial Standards who did not find anything to support the complainant's allegation.

Request for review by Trustees

The complainant requested that Trustees review the decision of the Senior Editorial Strategy Adviser that the appeal should not proceed.

The complainant said that he had an email from the presenter's colleague in which he said he had been told to say nothing. The complainant asked that the Trustees review the Adviser's decision.

The Panel's decision

The Panel was given the complainant's appeal to the Trust, the reply from the Trust's Adviser, the challenge to the Trust's Adviser's decision, the complainant's subsequent correspondence with the Trust and also the complainant's previous correspondence with the BBC.

The Panel noted that the BBC had provided a response to the original complaint at the time and that the complainant's appeal to the Trust was made several years after the initial complaint was made to the BBC Executive. The Panel also noted that after the complainant renewed his correspondence in 2012, BBC Audience Services sent him a final response on 15 January 2013. However, the complainant's request for an appeal was not sent to the Trust until 16 April 2013. The Panel agreed that the appeal was, therefore, outside the 20 working day time limit set by the Complaints Framework and the Panel noted no reasons had been given for this delay.

The Panel further noted that in deciding to cease correspondence with the complainant on this issue, BBC Audience Services had explained to the complainant that his contacts did not give any evidence to suggest a breach of the BBC's Guidelines and that the complainant had raised the same issue repeatedly after the Executive had made its decision clear. The Panel noted too the earlier responses given to the complainant by the Executive in relation to this complaint.

The Panel agreed there was no reasonable prospect of success for an appeal against BBC Audience Services' decision to cease corresponding with the complainant on this issue.

The Panel noted, however, that in his request for the Trustees to review the Adviser's decision, the complainant had sent the Trust a copy of an email which purported to be from the co-presenter alleged by the complainant to have been the victim of the claimed harassment and which had apparently not been sent to the Executive previously. The Panel agreed that given the serious nature of the complainant's allegations and the email, it was appropriate for the Trustees to put this email to the Executive and to seek assurance that they had looked into the issues raised.

The Panel subsequently received that reassurance from the Executive who confirmed they had spoken with the co-presenter concerned and he had offered a categorical assurance that he had not felt himself to be the object of any harassment. Panel members considered this reassurance addressed the complainant's concerns and agreed that it was not appropriate for the Trust to investigate further.

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