

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

July & September 2014 issued December 2014

Remit of the Complaints and Appeals Board	1
Summary of finding	3
Appeal Finding	4
Television Licensing TVL0063	4
Rejected Appeals	18
BBC Investigations telephone call	18
Use of offensive language in out-take	22
Jamaica Inn, BBC One, 21 April 2014	26
Decision of BBC Audience Services not to respond further regarding a complaint about receiving BBC South East in West Sussex instead of BBC South	29
Decision of BBC Audience Services not to respond further regarding a complaint about BBC News, guest reviewer	34
Decision of BBC Audience Services not to respond further regarding a complaint about a business reporter and presenter on Radio 5 Live	38
Decision of BBC Audience Services not to respond further regarding a complaint about the BBC's World Cup coverage	44
Decision of BBC Audience Services not to respond further regarding a complaint about Rugby League coverage within BBC News programmes	46
Decision of BBC Audience Services not to respond further regarding a complaint about BBC News	50
Decision of BBC Audience Services not to respond further regarding a complaint about Question Time, BBC One, 12 June 2014	55

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 was Chairman at the time of these decisions. 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

Summary of finding

Television Licensing TVL0063

Summary of finding

The complainant wished to establish the principle that the BBC are obliged to make a refund to the estate of a deceased person, when that deceased person aged 75 or over had continued to pay for a TV licence which he or she had in fact been entitled to receive free of charge. Such refunds are made to living persons who have inadvertently paid for a licence when over 75.

The Panel concluded that;

- the Trust is not a court of law, and cannot rule definitively on the question whether the sums in question in cases such as this would be recoverable in court. The Panel recognised, too, that the complainant had in fact been offered a refund, making the question here one of principle
- the Panel noted that such sums might be recoverable through the Courts in certain circumstances, but that the legal position remained unclear and (for the reasons stated above) decided that it did not need to determine whether this particular complainant would be legally entitled to a refund
- the Trust has a Charter duty to ensure that the arrangements for collecting the licence fee are efficient, appropriate and effective, so as there was no definitive legal answer, the Panel went on to consider the policy of TVL in cases such as this
- Panel members recognised that a universal policy of refunds may not be appropriate and considered the rationale for not making refunds, including the fact that the Department for Work and Pensions (which pays the BBC for each licence issued for free) must protect the public purse; the concession is meant to meet a need during a person's lifetime; the legislation does not make the position clear; refunds might reduce the incentive to make timely applications for a free licence; and there could be a loss of revenue and increased risk of fraud
- nevertheless it was not satisfied that a policy that differentiates between claims made on behalf of the deceased and those made by or on behalf of the living was fully justified
- it would therefore ask TVL to review its policy, with a view to treating both classes of claim on an equal basis.

FINDING: Upheld in part

For the finding in full see pages 4 to 8.

Appeal Finding

Television Licensing TVL0063

Television Licensing Appeal: Circumstances in which the BBC should make refunds when a person aged 75 or over continues to pay for a TV licence which he or she is in fact entitled to receive free of charge

Background

The appeal concerns the circumstances in which the BBC should make refunds when a person aged 75 or over continues to pay for a TV licence which he or she is in fact entitled to receive free of charge. Normally, the BBC will make a refund to a living person in such a case, but not to the estate of a deceased person who had in his lifetime continued to pay for a licence that she or he should have received free of charge.

In this case, for some 17 months after his 75th birthday (24 October 2011) and up to his death in March 2013, the complainant's ex-husband ("CW") continued to pay for a TV licence which in fact he was entitled to receive free of charge. On 1 May 2013, the complainant (acting as CW's personal representative) sought a refund for that period. Although ultimately the BBC offered a refund on an exceptional basis, they continue to maintain that they are not obliged to return the fees paid. The complainant wished to pursue this appeal to establish the principle that the BBC are obliged to make a refund.

Legislation

The concession for over-75s is contained in paragraph 6(1) of the Communications (Television Licensing) Regulations 2004¹:

"No fee shall be payable for a TV licence... where—

- (a) the licence is issued to a person aged 75 years or more or to a person who will attain that age in the calendar month in which the licence is issued; and
- (b) the single place, vehicle, vessel or caravan specified in the licence is the sole or main residence of that person."

Under the BBC Agreement,² the Department for Work and Pensions ("DWP") reimburses the BBC for the value of each free licence issued.

The complaint

On 1 May 2013, the complainant wrote to TVL seeking a refund. This was declined by TVL on the grounds that CW had never applied for a free licence and it was not possible to offer a retrospective refund. TVL added:

¹ S.I. 2004 No.692. <http://www.legislation.gov.uk/ukSI/2004/692/contents/made>

² Clause 78.

“... the free licence is authorised by the DWP [Department for Work and Pensions] and they are responsible for the payment of the concessionary licence. Unfortunately they will not authorise payment after someone has passed away.”

The complainant wrote again on 17 May and received a more detailed response from TVL, dated 24 May. The letter stated:

“the wording of this legislation means that a person can only be allowed the free licence concession if it is issued to them, and unfortunately a free licence can’t be issued to a deceased person. It’s therefore not possible to refund licence fees in lieu of a free licence that was never applied for.”

The complainant challenged the assertion that the free licence must be applied for, and emphasised that the key proposition is that “No fee shall be payable...” She continued:

“I believe you are confusing law with policy. I accept that the issuing authority needs to have a policy in place so that it can comply with the relevant legislation and you have clearly introduced such a policy to enable you to know when a customer attains the age which brings Para 6 into play. However, you are telling me the policy excludes persons who fail to notice the information note on your written communications (and I still aver that this is easy for the elderly to miss). But your policy should support and enhance legislation, not override it.

...

“The onus of complying with the related legislation is yours. Whilst it is regrettable that [CW] did not assist you by notifying you formally of his 75th birthday, this does not affect that onus and you are acting ultra vires by insisting that the fee remain with you as you are in breach of the legislation.”

TVL replied:

“I’d like to clarify that by law we’re unable to accept an application for a free Over 75 TV Licence once the TV Licence holder has passed away. I’d also like to explain that the regulations brought in the free licence to those aged 75 years and older. However, the only way of ensuring the free licence goes to those who are entitled to it, is for them to make the application. There’s no onus on TV Licensing to force the free licence on anyone, but when an application is received we’ll verify that information and either issue or deny the licence... Without an application we are unable to assist.”

The complainant then escalated the case to TVL’s Operations Director. The complainant argued:

“I find the statement that ‘the only way of ensuring the free licence goes...’ ...rather disingenuous. It’s not the only way ... the onus must surely be on the issuing authority to comply with legislation concerning that authority... You could have other, failsafe, systems such as obtaining the applicant’s date of birth when a licence is first applied for, or arranging links with other government departments...

“What you appear to be saying is that you have to comply with the Regulations but only when the customer asks you to do so!

"...You have made a fee payable, for understandable reasons, but now you know the circumstances there is no excuse for withholding return of that fee from the estate administrators."

The Operations Director confirmed TVL's position, stating:

"The wording of [paragraph 6(1)(a)] makes it clear that a licence must be issued to the person for whom no fee will be charged. It is not possible to issue a licence... to a person who is deceased, so it follows that an application must be received from that person or their representative when they are alive."

The Operations Director also responded to the suggestion that TVL could hold details of a person's date of birth from other government departments by saying that that would require new legislation.

The complainant then escalated her complaint to the Head of Revenue Management. The complainant stated that:

"...the main issue seems to be your representatives' belief that the legislation creates a 'free licence' (which is somehow separate and different to a normal licence) and that this has to be applied for by the customer. This is mentioned nowhere in the legislation and is clearly nothing more than a concept introduced by TV Licensing as part of their procedure for identifying customers who should not be charged a fee..."

...

"...your argument is based entirely on there being 'licences' and 'free licences'... You may be right but I challenge you to direct me to the legislation that states that. I firmly believe from my reading of the Act that a licence is a licence and that the import of the Act is to define when a fee can legally be charged..."

The Head of Revenue Management replied as follows:

"Customers aged 75 and over are eligible but not obliged to apply for a Free Over 75 TV Licence. National Insurance Numbers are requested from customers to confirm eligibility and therefore allow TV Licensing to reclaim the cost of these licences from the DWP.

"The DWP have responded by saying that they do not believe licences should be backdated. There does not appear to be anything in the legislation that sets out any requirement of [*sic*] obligation to backdate such payments. Their rationale is that the 'need' has passed and that refunding the estate of the deceased is not in the interests of the public purse.

"As a Free Licence cannot be issued retrospectively or the cost of this licence be reclaimed, TV Licensing will not issue a refund to the estate of the deceased as the BBC and other Licence Fee Payers would be out of pocket."

The Head of Revenue Management then sent a second reply. Amongst other points this clarified the DWP's position:

"The DWP have responded to my enquiries by saying that legislation does not permit licences to be issued retrospectively and the DWP has no obligation to make payments that do not fall due under an Over 75 Licence."

She added that consideration had been given to making a discretionary refund but that the BBC had decided that would not be appropriate.

Appeal to the Trust

A refund was agreed, as an exception, by the Managing Director, BBC Operations and Finance. Notwithstanding the refund, the complainant appealed to the Trust. She summarised her arguments as follows:

"... I have taken as my basis the Communications (Television Licensing) Regulations 2004. Paragraph 6 specifies that 'No fee is payable for persons aged 75 years or more'. This is a very specific statement and I have repeatedly asked how the BBC manage to interpret this as 'a fee shall be payable'. From reading the legislation it seems clear that it is illegal to continue to retain any fee paid inadvertently by an over-75 customer once the BBC is made aware of that customer's age.

"In her letter [the Managing Director, BBC Operations and Finance] again ignores that question, saying merely that the Dept for Work and Pensions supports 'the view that legislation does not permit licences to be issued retrospectively etc.'. All well and good, but we are not talking here about a retrospective licence. The fee had been paid. A licence obtained. That argument only holds water if there are two specific types of licence – the normal one and a free over-75 one – rather than just a standard licence which is issued with a fee for anyone under 75 and free to others...

"Also, in her next paragraph [the Managing Director, BBC Operations and Finance] says that the fee-free licence is a concession which must be applied for. Again this seems to be contradicted by Para 6 of the Regulations.

"The whole subject of licences is governed by legislation. All I have asked for is to be quoted the specific legislation which supports the view that (1) there are two different types of licence and that (2) for anyone over 75 the removal of the fee is a concession rather than mandatory."

The Panel's decision

The Panel noted that the Trust is not a court of law, and cannot rule definitively on the question whether the sums in question in cases such as this would be recoverable in court. The Panel recognised, too, that the complainant had in fact been offered a refund, making the question here one of principle. The Panel therefore decided that it did not need to decide whether this particular complainant would be legally entitled to a refund.

On the other hand, the Panel noted that the Trust has a Charter obligation to hold the Executive to account for compliance with the law, and a duty to ensure that the arrangements for collecting the licence fee are efficient, appropriate and effective. Members of the Panel also noted that they had received privileged legal advice indicating that there was a reasonable likelihood of recovery of such sums through the Courts in certain circumstances although the legal principles involved remained unclear.

Accordingly, as there was no definitive legal answer, the Panel went on to consider the policy of TVL in cases such as this. As noted above, the BBC will refund living persons who have inadvertently paid when over 75, and the DWP will reimburse the BBC in such

cases. The relevant paragraph of the Memorandum of Understanding between the DWP and the BBC provides that DWP will reimburse the BBC a sum that includes:

“compensation for refunds paid on expired licences by virtue of a person being issued with an Over 75 Licence one or more years after becoming eligible... Refunds, if claimed, will be backdated to the 1st of the month of the 75th birthday of that person, or to 1st November 2000, whichever is the later. **The estate of an Over 75 licensee shall not be entitled to claim such a refund**”.
(Emphasis added.)

Panel members recognised the complexities of the situation: a universal policy of refunds may not be appropriate. For example, some people aged over 75 might for their own reasons choose to continue to pay the licence fee; and TVL goes to some lengths to make clear in its publicity that over-75s can get a TV licence for free, so it might be hard for a complainant to prove in every case that the payments were made in ignorance of the availability of a free licence. The Panel also considered the rationale for not making refunds, which seemed to include the following:

- DWP is under a fiduciary duty to protect the public purse: payments should not be made unnecessarily, as the free licence is issued only when it is applied for and not (for example) out of an obligation or in consequence of National Insurance contributions
- the free licence is meant to meet a particular need in a person’s lifetime; and by definition the need has passed when the person dies, and cannot be converted to a cash benefit for relatives
- the legislation is silent on the subject
- if fees had to be refunded, it would reduce the incentive on over-75s to make timely applications for a free licence
- if refunds were payable it could lead to claims, and a loss of revenue
- it could increase the risk of fraud.

Nevertheless, the Panel was not satisfied that a policy that differentiates between claims made on behalf of the deceased and those made by or on behalf of the living was fully justified. The Panel therefore decided to ask TVL to review its policy, with a view to treating both classes of claim on an equal basis. Members of the Panel recognised that any revised policy would need to deal with the practical consequences of the change. The Panel saw no reason to require TVL to actively seek out cases where now-deceased members of the public might have paid their licence fees in error. The Panel concluded that such cases would be difficult to detect and it would be hard to prove the circumstances in which payments had been made, and (considering that the sums involved and number of cases were likely to be small), the effort would be disproportionate.

FINDING: Upheld in part

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.

BBC Investigations telephone call

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

Complaint

The complainant had initially appealed to the BBC Trust about a local radio station. She had been a regular contributor to the station and had made a gift of a purse of old coins to it in 2010 to be auctioned for charity. The purse of coins had subsequently been lost and, when the complainant had sought to ascertain what had happened, she had become increasingly concerned at the treatment she had received from the station. CAB Trustees considered her initial appeal relating to this in February 2014. The appeal related both to the substantive issue of the lost coins and also to an additional complaint about the way the complaint had been handled. The Trustees decided the complainant should receive £240 to compensate her for the loss of the coins and also for the postage fees she had incurred. Their conclusions included the following statement:

"The Panel noted that the BBC had apologised repeatedly to the complainant and several of these apologies had been made by the Radio Station and BBC Complaints as well as one from the HRLP [Head of Regional and Local Programmes]. The Panel considered that the poor aspects of the handling of this complaint were sufficiently acknowledged and apologised for by the BBC and were therefore resolved.

The Panel wished to add its apologies to the complainant for the distress caused by the original loss of her donation and for the handling of the complaints linked to the missing wallet.

Finding: Resolved with remedial action required."

The complainant wrote again to the BBC Trust on 7 April 2014. While she acknowledged the decision of Trustees, she considered that they had not taken due account of all the matters she had raised. She stated she was also concerned about a new incident in which she had been telephoned by a member of BBC Investigations. Her letter made the following points:

- She complained about the behavior of two members of staff at a local radio station – a phone answerer and the Managing Editor. She stated that the phone answerer had made an unsolicited telephone call to her which had left her "extremely shocked".
- She considered the Managing Editor had not fully understood how distressing she had found this.

- She considered Trustees had not sufficiently appreciated that she had, for around 30 years, been a regular contributor to the local radio station; however, since this incident, she had not been able to comment on air.
- She stated that she had been telephoned at home by a member of the BBC Investigations team. She stated she considered this was “bullying” and she had been greatly distressed by it. She stated that the investigator had informed her she would not be put on air by the local radio station and should not ring the station again. She stated the investigator had informed her that the station’s phone answerer would be likely to go to the police about the complainant’s behaviour.

The complainant was sent a further response from the BBC Trust on 25 April. This addressed the first three bullet points set out above and notified the complainant that the Trustees had considered the information she had raised when they had initially looked into her appeal. They considered the decision they had made properly reflected their findings and drew attention to the series of apologies the complainant had received, which Trustees considered had resolved the situation.

There was one element of the appeal which Trustees were unable to address because the BBC had only responded at Stage 1 – this related to the unsolicited telephone call to the complainant from BBC Investigations. Trustees passed this element of the appeal back to the Executive so that they could respond substantively at Stage 2. Subsequently the Managing Director, Finance and Operations, wrote to the complainant. She stated:

“I am responsible for the BBC Investigations Service so I was very sorry to learn that you received a call from a member of one of my teams that caused you distress.

“I have also seen a copy of the letter sent to you by [the] Managing Editor – [local radio station], and can confirm that the call made to you by [the investigator] was as a result of a misunderstanding between the individual investigator and the staff of the radio station. The call should not have been made and I can only repeat the apologies of my colleagues for the distress caused. I can also confirm that at no stage has anyone from the BBC made any attempt to report you to the police.”

The complainant remained dissatisfied. She wrote again to the Trust, she noted the number of apologies she had been given by the BBC but considered that these had been issued without conveying any meaning. She stated that she wanted to be able to take part in the local radio station’s on-air discussions again, as she had previously done. The complainant also wrote to the Managing Director, Finance and Operations and stated that she wished to have a public apology broadcast by the local radio station.

The complainant was sent a further response by the Managing Director, Finance and Operations. She stated:

“...the BBC Trust has already considered the issue of your taking part in phone-ins and I can only reiterate that editorial decisions about what content to broadcast are made by the production team.”

In terms of the complaint about the actions of BBC Investigations, the Managing Director, Finance and Operations, stated she had nothing to add to her previous comments and advised the complainant she could appeal to the BBC Trust on this point.

Appeal

The complainant appealed to the Trust on 30 June 2014. She stated she was making a formal complaint about the Managing Editor of a local radio station; the phone answerer; and the investigations officer who had contacted her. She stated that she wished the Trust to investigate further her complaint.

Decision of the Senior Complaints Adviser

The Senior Complaints Adviser (the Adviser) appreciated that this had been a long and distressing process for the complainant. She acknowledged the strength of the complainant's feelings and also acknowledged that her distress had been further increased by receiving a telephone call from a member of the BBC Investigations team. However, she decided that the appeal did not have a reasonable prospect of success.

The Adviser carefully read the correspondence that had passed between the complainant and the BBC. She also understood that, in addition to the correspondence, the complainant had also made a number of telephone calls to the BBC Trust in which she had repeatedly queried why the two members of staff at the local radio station had remained in their posts.

She understood that BBC Investigations could be called in by the BBC in a situation where a member of the public made repeated phone calls that members of staff had found distressing or harassing. She understood that, in this instance, the phone answerer at the radio station had felt harassed and upset by the telephone calls made to the station by the complainant and by comments made about her by the complainant.

The phone answerer had sought the advice of her Managing Editor who had, in turn, suggested she contact BBC Investigations for their advice. As a result of that, a member of staff for BBC Investigations had telephoned the complainant. The Adviser understood that, after the complainant had stated how distressing this had been, there had been a further inquiry to try to establish what had happened before the telephone call had been made.

The Adviser understood that the phone answerer had been greatly distressed by phone calls made to the station by the complainant. As a result, the Managing Editor of the local radio station had suggested she should contact BBC Investigations. After the phone answerer had spoken to a member of the BBC Investigations team, he had telephoned the complainant. He considered that, having discussed the matter with the phone answerer, he had adequate authority to make the call; however, before making the call he had sought to contact the Managing Editor of the local radio station to assure himself that this would be an appropriate step. He had not been able to reach her and instead left a message for her. He subsequently could not recall if he had later spoken to her. He considered that he should contact the complainant because he had felt the station's phone answerer had appeared to him to be very distressed and, as it was a Friday, he was reluctant to leave the situation unaddressed over the weekend.

The Adviser understood from this that there was ambiguity about what had been authorised – it did not appear that the Managing Editor had suggested the complainant should be rung by BBC Investigations. The Adviser noted the phone answerer had authority to contact BBC Investigations – but considered she would have been more likely to take their advice, rather than issue instructions to them. She noted the investigator had tried to contact the Managing Editor of the local radio station which also, to her mind, indicated he felt some uncertainty about what course of action was appropriate.

The Adviser noted that subsequently the Managing Director, Finance and Operations, had written to the complainant and explained that the call had come about: "...as a result of a misunderstanding between the individual investigator and the staff of the radio station".

She noted too that the Managing Director, Finance and Operations, had given her own personal apologies to the complainant for this.

The Adviser considered Trustees would be likely to conclude the Managing Director, Finance and Operations, had given a reasonable summary to explain how the call came to be made, had acknowledged the distress the complainant felt and had apologised for the way the matter had been handled.

The Adviser considered, in the light of this, that Trustees would be likely to conclude the matter had been resolved by the Executive at Stage 2. Therefore she did not consider the appeal had a reasonable prospect of success and she did not propose to put it before Trustees.

Request for review by Trustees

The complainant asked for Trustees to review the decision of the Senior Complaints Adviser that the appeal should not proceed for consideration.

In her challenge of the Senior Complaints Adviser's decision, the complainant stated that the seriousness of the matter and the consequences for her mental and physical health caused by the ongoing complaint had been underestimated. She said she had found the phone call from Investigations frightening and threatening, as it threatened possible police action.

She said that she had been contributing to the station's phone-ins for 35 years and did not feel that any of her actions had been rude or harassing in nature. She stated that the investigator should not have phoned her but that, as he had done so, he should have listened to her side of the story. She said that she thought the call was made in order to frighten and threaten her.

She asked for disciplinary action to be taken and for her name and character to be cleared.

The Panel's decision

The Panel noted the complainant's appeal to the Trust, the reply from the Senior Complaints Adviser and the challenge to the Senior Complaints Adviser's decision.

The Panel acknowledged that there had been a number of issues which had concerned the complainant and it expressed its deep regret for this. However, it noted that the complainant had received a full apology from the BBC, and that her original complaint had now been resolved with remedial action. The Panel considered that no further action was called for, and therefore decided that the appeal did not qualify to proceed for consideration.

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

Use of offensive language in out-take

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

Background, Complaint and Appeal

On 1 May 2014 *The Mirror* published a video clip, filmed during the making of a *Top Gear* programme in 2012 but never broadcast. The clip showed Jeremy Clarkson reciting the nursery rhyme Eeny, Meeny, Miny, Moe as he attempted to choose between two cars.

The rhyme, in its traditional form, includes a word now generally recognised to be racially offensive. Mr Clarkson is heard apparently mumbling the word.

The story, and subsequent reaction including from the BBC and Mr Clarkson, was reported on the BBC website.

A number of complainants contacted the BBC. The BBC did not uphold the complaints. The Trust subsequently received a number of appeals relating to the clip during May and June 2014. Most were complaining about Mr Clarkson and one expressed support for him (the latter is not included here).

As all of the appeals raised the same substantive issues they were consolidated in accordance with paragraph 5.6 of the General Complaints and Appeals Procedures (http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/our_work/complaints_framework/2012/general_complaints.pdf).

The Senior Complaints Adviser read each appeal and considered their respective merits individually in deciding whether each qualified for consideration by the Trustees. An independent editorial adviser also read all the correspondence and reviewed the relevant material.

The Senior Complaints Adviser's consolidated decision below dealt with all the issues that had been raised and was intended to ensure that the key reasons for the decisions were communicated to complainants in an efficient manner.

Below is a summary of the allegations.

- Jeremy Clarkson's use of an offensive term betrayed a racist attitude and was the latest in a series of racist and offensive remarks that had been made by him.
- BBC management did not seem to take his offences seriously, was inconsistent in the sanctions it was prepared to apply to him when compared to other individuals, and appeared to protect him for commercial reasons.
- There had not been meaningful apologies by the BBC and Mr Clarkson, and appropriate remedies and sanction had not been applied, including providing additional training for Mr Clarkson, and disciplinary action up to and including dismissal.

Decision of the Senior Complaints Adviser

The Senior Complaints Adviser (the Adviser) noted that the incident in question had not resulted in a potentially offensive term being broadcast, and she noted the following from the BBC's coverage of the story:

On Friday, Clarkson spoke to The Sun, where he writes a column, and attempted to explain the incident.

"I wish to God my attempts to cover up that word were better," he said.

"I was simply mumbling - saying 'ner ner' or something similar. Anything but the n-word.

"It was my mistake and I apologise for not covering it up. But if you look closely at the footage, you can see what I'm trying to do."

He also showed the newspaper production notes for the Top Gear episode, in which he attempted to have the offensive word removed.

The 54-year-old told producers: "I didn't use the N-word here but I've just listened through my headphones and it sounds like I did.

"Is there another take?"

It appeared to the Adviser that the BBC had taken appropriate action in ensuring that the film had not been broadcast but she appreciated that the complainants still felt strongly about the incident and considered that BBC management should take action against Mr Clarkson even though it had not been the intention for the clip to be made public.

The Adviser noted that some complainants thought the BBC had not taken the incident seriously and appropriate apologies had not been made. The Adviser noted that complainants had received the following response from BBC Audience Services at Stage 1:

"We appreciate the strength of feeling some people have had concerning the alleged comments made. We have released the following statement in response:

"Jeremy Clarkson has set out the background to this regrettable episode. We have made it absolutely clear to him the standards the BBC expects on air and off. We have left him in no doubt about how seriously we view this."

At Stage 2, the following statement was given to complainants:

"The BBC Controller of Entertainment Production says:

The Director-General of the BBC has taken this issue very seriously and has discussed the matter with Jeremy Clarkson. Mr Clarkson made it clear that he abhors racism and, following their meeting, he apologised profusely. The Director General has made it clear that Top Gear should continue to be irreverent and challenging but that anything it broadcasts must be within BBC and Ofcom guidelines. To ensure that remains the case the oversight of the programme will be strengthened further."

The Adviser considered there was evidence that efforts had been made to consider the issue at the highest level in the BBC and that apologies had been made. The Adviser also noted from the BBC's website coverage that Mr Clarkson himself had released a video saying he was "begging forgiveness" for the error, and that, writing in the Sun, he considered he had been given a final warning by BBC management.

The Adviser thought it was important to point out that it was not for the BBC Trust to consider the details of any disciplinary conversations there might have been with Mr Clarkson, or to weigh any action or lack of action taken in his case against other cases where different circumstances would have applied. These matters, she considered, were in the domain of the operational management of the BBC.

She noted that 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 operational management of the BBC" is specifically defined in the Charter (Article 38, (1) (c)) as a duty that was the responsibility of the Executive Board, and one in which the Trust did not usually get involved unless, for example, it raised broader issues such as a breach of the BBC's Editorial Standards.

Decisions relating to the disciplining or not of staff and contributors fell within the category of day to day operational matters and were the responsibility of the BBC Executive. Therefore, the Adviser considered that it would not be appropriate for Trustees to consider the substantive issues contained in the consolidated complaint.

The Adviser emphasised that the Trustees would continue to consider at Appeal appropriate cases where there had been alleged breaches of the BBC's Editorial Guidelines in material that had been broadcast or published.

The Adviser noted that one of the complaints had included the following, relating to complaints handling by the BBC:

"I am extremely unhappy that I had to wait a considerable amount of time for a substantive response to my complaint, only to be faced with a regurgitation of the official press release regarding this matter, which did not address any of the specific points raised in my complaint."

The Adviser looked at the dates of the correspondence in this case: the complaint was first made on 5 May 2014, a holding reply was sent on 13 May 2014, and a substantive, Stage 2 reply was given on 22 May 2014. The Adviser noted that the BBC had apologised for the delay and she thought that this had not been excessive in the circumstances, with complaints on the issue and the need for a discussion between Mr Clarkson and the Director-General before a statement could be issued.

She also noted that Audience Services had consolidated complaints, as the BBC Trust had done with appeals on this matter, and this meant that, regrettably, responses could not be personalised and would not have been able to take into account the detailed points each complainant had made. She thought it unlikely the Trustees would consider the BBC had been unreasonable in this respect as it was important that the complaints process should ensure the licence fee was used efficiently.

For all the reasons set out above, the Adviser considered the appeals did not have a reasonable prospect of success and she therefore considered they should not be put before the Trustees on appeal.

Request for review by Trustees

A complainant asked Trustees to review the decision of the Senior Complaints Adviser that the appeal should not proceed.

The complainant reiterated the points made in her appeal.

The Panel's decision

The Panel noted the complainant's appeal to the Trust, the reply from the Senior Complaints Adviser and the request to Trustees to review the Senior Complaints Adviser's decision.

The Panel agreed that the incident did not engage editorial standards as the material had not been broadcast.

Trustees were aware that decisions regarding the employment of staff or freelancers including on air talent (including disciplinary action) is an operational matter which is the responsibility of the Executive Board (Royal Charter, (Article 38, (1) (c)).

The Panel agreed with the Adviser who had written that she:

“...thought it was important to point out that it was not for the BBC Trust to consider the details of any disciplinary conversations there might have been with Mr Clarkson, or to weigh any action or lack of action taken in his case against other cases where different circumstances would have applied. These matters...were in the domain of the operational management of the BBC.”

The Panel noted that the BBC had made a public statement in response to this incident:

“Jeremy Clarkson has set out the background to this regrettable episode. We have made it absolutely clear to him the standards the BBC expects on air and off. We have left him in no doubt about how seriously we view this.”

The Panel concluded that there was no reasonable prospect of success for an appeal.

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

Jamaica Inn, BBC One, 21 April 2014

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

Complaint

The complainant contacted the BBC on 22 April 2014 to express his concern over poor sound clarity in the BBC drama, *Jamaica Inn*.

He believed that the sound quality of most BBC dramas had deteriorated over recent years when he would have expected it to have improved with new technology.

In his follow-up letter he complained

- about the standardised responses he had received and that the general response did not answer all his points.
- that the BBC had not acknowledged blame and had failed to provide an explanation for the poor sound quality.
- that the reply had misrepresented the defect and claimed an improvement in episode 2 and 3 which had not been experienced.

Appeal

The complainant contacted the BBC Trust on 4 June 2014. He reiterated his concerns about poor sound quality in *Jamaica Inn*.

He said the BBC was still withholding a full explanation as to why the quality of the sound in many of its drama programmes was so poor and what it was doing to avoid a recurrence of the poor sound quality.

Decision of the Senior Complaints Adviser

The Senior Complaints Adviser (the Adviser) carefully read the correspondence that had passed between the complainant and the BBC. She acknowledged the strength of the complainant's feelings and fully accepted how frustrating it was not to have been able to hear the programme clearly. However, she decided that the complainant's appeal did not have a reasonable prospect of success.

The Adviser noted that more than 500 people had complained about the sound quality of *Jamaica Inn* after the first episode was broadcast and the BBC had issued a press statement apologising to viewers and saying it would be "adjusting the dialogue levels in episode two and three to address audience concerns". Following those adjustments, the Adviser noted that the number of complaints received after the broadcast of episode two dropped by more than half.

The Adviser noted that the Head of Drama Commissioning had appeared on BBC News on 23 April 2014 to speak about the sound issues and had acknowledged that there was probably more than one cause for the poor sound and had apologised for the poor sound quality experienced by viewers. The Stage 2 response to the complainant included his statement:

"I would like to again apologise for the problems some viewers had with the sound in this drama.

"I appeared on BBC News on 23 April speaking about the sound issues. I explained that actors not being clear was obviously one part of the problem.

"We have now looked into all the possible causes and whilst it remains the case that some viewers had problems with the delivery of some of the lines, there may have been other factors.

"Importantly for viewers, we have now come up with a set of steps which we hope will prevent the same sorts of problems in any future BBC drama production.

"I hope that you can accept our further apologies, and take some comfort in our assurance that we will do everything we can to avoid a repetition of this."

The Adviser acknowledged that the complainant would have preferred a more detailed explanation of exactly what the BBC was doing to avoid a repetition of the sound problems on *Jamaica Inn* in future dramas. However, she noted that where the BBC Executive accepted a breach and apologised, the Trustees usually considered the matter resolved. She noted that in this instance, the Head of Drama Commissioning had acknowledged that several factors may have been involved which contributed to the poor sound quality and had apologised to those whose enjoyment of the programme had been affected.

The Adviser noted that 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 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 get involved unless, for example, it related to a breach of the BBC's editorial standards, which did not apply in this case. Similarly, "the operational management of the BBC" was also defined in the Charter (Article 38, (1) (c)) as a duty that is the responsibility of the Executive Board.

The Adviser considered that decisions relating to how actors delivered their lines fell within "the editorial and creative output" of the BBC while technical issues involved in the programme's broadcast would be matters of the BBC's operational management. She therefore considered that Trustees would be likely to conclude that it would not be appropriate for them to consider the substantive complaint.

The Adviser therefore considered that the complainant's appeal did not have a reasonable prospect of success and she did not propose to put it before Trustees.

Request for review by Trustees

The complainant asked that Trustees review the decision of the Senior Complaints Adviser that the appeal should not proceed. He referred to recent issues with another drama.

The Panel's decision

The Panel noted the complainant's appeal to the Trust, the reply from the Senior Complaints Adviser and the request to Trustees to review the Senior Complaints Adviser's decision.

The Panel regretted the impact that the diminution in sound quality had had on the enjoyment of *Jamaica Inn* for this viewer and others. Trustees acknowledged that other dramas had encountered similar difficulties. Trustees were aware that this was an issue the BBC's management was taking seriously and wished to reassure the complainant that this was the case. It was disappointing to all concerned when a major drama in which the Drama Department had invested time, resource and creative commitment disappointed viewers because of its sound quality.

The Panel noted the Senior Complaints Adviser's point that 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 Panel agreed that sound quality was an editorial, creative and operational matter which is specifically defined in the Charter (Article 38, (1) (b and c)), as a subject that is the responsibility of the Executive Board, and one in which the Trust did not get involved.

The Panel noted the complainant's dissatisfaction with the consolidated response he had received at Stage 1. However, the Panel was aware that 2.6 of the General Complaints and Appeals Procedure states that:

- If the BBC receives a number of complaints about the same issue, it may –
- compile a summary of the range of issues raised;
 - consider them together across the full range of issues identified;
 - send the same response to everyone...

The Panel noted that the complaints procedures were last updated in 2012 following a public consultation. The Trust's response – which can be found at

http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/our_work/complaints_framework/2012/complaints_framework_review.pdf

– included consideration of speeding up the complaints process for a number of complaints about the same subject by normally bringing together (consolidating) the handling at all stages of the BBC's processes so that one generic response is sent out to all complainants.

At the time the Trust decided the proposal should be approved:

"The Trust notes most audience research participants, and 50% of the consultation respondents, were in support of this proposal. It is important to make sure the complaints system is prepared for what may be a continually increasing volume of complaints. Being able to group together complaints on the same or similar issues is a sensible measure for the BBC to take and will ensure that complainants are dealt with in a timely way. This represents value for money for licence fee payers. The Trust is confident that, as complainants will be able to escalate their complaint if they are not satisfied with the initial response they receive; individual points of complaint will not be lost."

The Panel concluded that there was no reasonable prospect of success for an appeal.

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

Decision of BBC Audience Services not to respond further regarding a complaint about receiving BBC South East in West Sussex instead of BBC South

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

Complaint

The complainant first contacted the BBC in July 2012. He was concerned that, following Digital Switchover, he received local television news South East Today instead of his previous service South Today. He stated that local news, weather and travel had switched from the Rowridge transmitter, which had covered his area, to the Whitehawk transmitter which did not.

His efforts to pursue this with his cable provider, Virgin Media, had been fruitless. He queried why the decision had been made to transmit output from BBC South East to audiences in West Sussex instead of BBC South; he stated that if output from BBC South East was to be transmitted to West Sussex, the weather and news ought to cover the area.

He was not satisfied with the response from Audience Services which explained that it was an editorial decision by the BBC to change transmitters but did not give him an explanation for the decision despite repeated requests. He said he was advised to change his provider to resolve the issue but did not consider this was reasonable.

The complainant renewed his complaint with BBC Audience Services in February 2014. He stated that nothing had been done to extend the service provided to residents in West Sussex. He referred to the recent flooding, road closures and disruption to the transport networks and noted the significant role played by local news in conveying information about this. He repeated his view that, if it were not possible to change transmitters so that he received BBC South Today, there was a responsibility of BBC South East Today to: "ensure that we receive the news, weather and transport problems in our areas".

He received a substantive response from BBC Complaints on 7 February 2014 which repeated the information he had previously been sent by Audience Services, it stated:

"We understand that you remain dissatisfied with the local area news you are receiving in Worthing.

"Virgin Media customers in Brighton and the surrounding areas receive South East Today. The BBC took the editorial decision that the regional variant should be South East Today and only one regional broadcast can be delivered on this platform.

"We appreciate you are not happy with this and that you would like to hear the news from West Sussex particularly regarding the disruption due to recent flooding.

"Much of the recent disruption in West Sussex has been a national news story and you can also get local details from BBC local radio."

The complainant remained dissatisfied and renewed his complaint. He was sent a final response from BBC Complaints which stated:

“We feel that we responded as fully as we could, given the nature of your complaint, and do not have more to add. This reply is therefore to explain that we do not consider the points you raised suggested a possible breach of standards.”

The complainant was advised that BBC Complaints would not respond further on this matter. He was informed he could appeal to the Trust against this decision.

The complainant escalated his complaint to the BBC Trust on 14 April 2014. He said the change affected thousands of customers with a cable service and he believed they should not be ignored. He requested a satisfactory resolution to his complaint.

Decision of the Senior Complaints Adviser

The Senior Complaints Adviser (the Adviser) carefully read the correspondence that had passed between the complainant and the BBC and she acknowledged the strength of the complainant’s feelings.

She noted that the background to the complaint was the decision by English Regions to use Digital Switchover as an opportunity to change the English Regional variant receivable on Freeview in the Brighton area from BBC South to BBC South East Today. She noted that the explanation given by the BBC’s Digital Switchover team to viewers who enquired about the change was:

“Switching off the analogue signal brings many benefits. A stronger digital signal means almost everyone will be able to receive digital TV through an aerial and also frees up broadcast space for services like HDTV and local TV. For the Brighton area there’s an additional BBC editorial change. BBC management has long felt that regional TV viewers in Brighton would benefit from the City being included in the South East region rather than the South region. Brighton will be a much larger part of South East Today region so more airtime can be devoted to the city.

“With this editorial ambition of offering the people of Brighton more coverage of their City the BBC has decided that digital switchover offers an opportunity to deliver this enhanced service. So, from March this year, South East Today will become the primary regional news provider for Brighton.

“However, some Brighton viewers may still be able to choose to watch South Today. Some Freeview users will still receive more than one signal so may be able to choose which programme suits their needs best, check your signal prediction at Digital UK at www.digitaluk.co.uk. People watching on Freesat or Sky will be able to find South Today further down the electronic programme guide.

“Virgin Media customers will only be able to receive South East Today due to technical limitations with the platform.

“We understand that people feel strongly about their region and its news coverage. We hope that for those viewers with a strong loyalty to South Today the commitment to more coverage of Brighton in the smaller South East region will convince them over time that the BBC has made this decision to serve them better.”

The Adviser acknowledged that the complainant was unhappy about this decision and had been unable to ascertain from his enquiries to the BBC and Virgin Media who was responsible for responding to his concerns about the lack of local news coverage in his area following the change of transmitter.

She acknowledged his concern that no-one seemed to “take ownership” of the fact that he could not receive BBC South Today for local news and also acknowledged his view that if he had to continue to receive BBC South East Today, then the BBC should ensure that West Sussex was included in the coverage of local news and weather.

The Adviser noted that the complainant had been unable to establish whether it was the service provider (in this case, Virgin Media) which made the decision about regional programming, or whether that was the BBC’s responsibility, and whether anything could be done to help viewers whose households effectively fall outside the new boundary lines.

She obtained a response on this matter from the BBC Executive which stated:

“The BBC advises Virgin Media on which version of BBC One should be provided in a particular area. However, the areas covered by the component Virgin Media cable networks do not necessarily align to terrestrial coverage areas. Also, the way in which Virgin’s infrastructure is formulated means that individual homes or streets cannot be separately configured to receive a specific BBC One version. In a very limited number of areas, where the Virgin media infrastructure allows, an alternate version of BBC One is listed at channel 858.”

She hoped this information would be useful to the complainant but appreciated that it did not resolve his substantive complaint which was that he would like to be able to receive local news for his area, BBC South, without changing his Virgin Media provider. She noted that he felt something should be done to rectify the problem which did not entail him having to change his provider from a cable service he was happy with in other respects. She acknowledged that he was unhappy with a previous response from Audience Services dated 17 September 2012 in which they had advised the complainant:

“Virgin Media customers in Brighton and the surrounding areas will only be able to receive South East Today due to technical limitations with the platform that only enables a single variant for BBC One. The BBC took the editorial decision that the regional variant should be South East Today.

“People watching on Freesat or Sky will be able to find South Today further down the electronic programme guide.”

She believed, however, that Trustees would be of the view that Audience Services had responded reasonably to the complainant’s concerns, even though they had been unable to resolve the issue in a way that was acceptable to the complainant, and which would not involve him having to change his cable service due to technical limitations of the Virgin Media platform.

She noted that the BBC had made an operational decision to change the transmitter covering the complainant’s area and an editorial decision that the single regional variant for BBC One should be *South East Today*. Although she was sympathetic to his dissatisfaction with the outcome of that decision, she noted that this was an operational and editorial issue which fell outside the remit of the Trust. 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 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 usually get involved unless, for example, it raised broader issues such as a breach of a station's Service Licence. Decisions relating to the technical distribution of BBC services are day to day operational matters and are the responsibility of the BBC Executive. Likewise, decisions relating to the editorial and creative output of the BBC are also matters for the BBC Executive and ones in which the Trust would not normally be involved unless there was a breach of editorial standards, which did not apply in this case.

The Adviser considered that BBC Audience Services had given a reasoned and reasonable response to the complainant and she considered Trustees would be likely to conclude the BBC had acted appropriately in declining to correspond further on this point. It followed from this that she did not consider the appeal had a reasonable prospect of success and she did not propose to put it before Trustees.

Request for review by Trustees

The complainant asked that Trustees review the decision of the Senior Complaints Adviser that the appeal should not proceed.

In his email of 16 June 2014, the complainant set out his reasons for the request. Whilst he accepted there was "no going back to BBC South Today", he stated:

- At no time has an explanation been given for the justification and factors leading to your 'Editorial Decision'.
- At no time has an explanation been given for what the so called 'Platform Limitations' are.

He continued:

"I reiterate, why can't South East Today area of coverage be extended to cover West Sussex, up to a further 30 miles west of Brighton? My reasoning for this is that we have no connection whatsoever to East Sussex in respect of Local councils, hospital trusts, emergency services, highways agency, schooling, etc. All this comes from offices based in Worthing or the county capital of the city of Chichester."

The Panel's decision

The Panel noted the complainant's appeal to the Trust, the reply from the Senior Complaints Adviser and the request to Trustees to review the Senior Complaints Adviser's decision.

The Panel recognised that decisions about what area should be included in a region's output was a decision for the Executive under the Royal Charter, which sets out, at Article 38, (1) (b) and Article 38, (1) (c) that "the direction of the BBC's editorial and creative output" and its "operational management" are duties of the Executive Board and ones in which the Trust does not get involved unless, for example, they relate to a breach of the BBC's editorial standards.

The Panel agreed with the Adviser that Audience Services had responded reasonably to the complainant's concerns, even though they had been unable to resolve the situation to his satisfaction, as Virgin Media was not in a position to offer an alternative service to the one designated by the BBC for his area.

The Panel concluded that there was no reasonable prospect of success for an appeal.

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

Decision of BBC Audience Services not to respond further regarding a complaint about BBC News, guest reviewer

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

Complaint

The complainant wrote to the BBC on 17 March 2014 to raise his concern that a former BBC journalist had appeared the previous week on BBC News as a guest reviewer of the morning newspapers. He noted her connection with a company about which he had made a serious complaint.

BBC Audience Services responded on 31 March 2014, stating that the journalist was not a member of BBC staff and was therefore "perfectly at liberty to undertake any commercial engagements she wishes". They explained that the journalist's association with [the company] did not preclude her from being an occasional guest on BBC News' newspaper review segment; there was no connection between the two things and the journalist had a lengthy journalistic past which remained relevant.

Audience Services also stated that the complaint was "clearly with [the company] rather than with [the journalist] or the BBC", and therefore advised the complainant to pursue his concerns directly with [the company] and/or the relevant trade organisation responsible for code of conduct enforcement and arbitration.

The complainant was not happy with this response and made a further complaint on 6 April 2014.

Audience Services replied on 15 April 2014 reiterating their previous response that the complaint was

"...with [the company] and as such, despite any involvement by [the journalist] with that company and despite the fact she may appear periodically on BBC programmes, this is not something involving the BBC as there is no connection between the two.

"As we also explained, the fact that [the journalist] chooses to advertise [the company's products] does not preclude her from being a guest on the BBC from time to time as [the journalist] has a lengthy journalistic past which remains relevant."

Audience Services also said that they could not engage in further correspondence on the issue as they did not consider that the points raised by the complainant suggested a possible breach of standards and they had nothing further to add to their previous response.

Appeal

The complainant appealed to the BBC Trust on 25 April 2014. He made the following points:

- He explained the issue he had had with the company. Subsequently, in response to a letter he wrote to her about the matter, the journalist confirmed to him that she had a business relationship with the company.
- He knew a number of other people in a similar position.
- The face of the journalist was being used to imply that the company's product was fine and engendered trust from people who might be unaware of the issues associated with the product; he believed the BBC was responsible for that.
- He disagreed with the statement made by Audience Services that:

"...despite any involvement by [the journalist] with that company and despite the fact that she may appear periodically on BBC programmes, this is not something involving the BBC as there is no connection between the two."
- He said the only reason the 'face' of the journalist had some value in the context of [the company] was because she was employed and given airtime by the BBC. He said whether the journalist was employed as staff or freelance was immaterial in this case and he quoted BBC editorial guidance regarding 'conflict of interest':

"The outside activities and interests of on-air talent need very careful consideration, particularly in relation to outside writing commitments, public appearances, endorsements of organisations and commercial advertising."
- He referred to his letter of 6 April in which he reminded the BBC of its decision not to include a planned investigation into [the company]. He said the BBC had never answered his question as to why it took that decision.

Decision of the Senior Complaints Adviser

The Senior Complaints Adviser (the Adviser) carefully read the correspondence that had passed between the complainant and the BBC, and she acknowledged the strength of the complainant's feelings.

The complainant had appealed on the substance of his complaint. The Adviser noted, however, that BBC Audience Services had ceased handling this complaint at Stage 1 and that the complaint had not gone to Stage 2. She therefore decided that the point she should consider was whether an appeal against the decision of BBC Audience Services not to correspond further with the complainant had a reasonable prospect of success.

The Adviser noted that the substantive complaint concerned a private dispute between the complainant and a company. She acknowledged the complainant's concern about the journalist's association with the company and his view that the BBC had a responsibility to ensure that the journalist did not appear in any current BBC output because of that association.

The Adviser noted that the journalist left the BBC a number of years ago and that her occasional appearances as a freelance guest reviewer of the newspapers for BBC News were editorial decisions taken by the production team on the basis of her journalistic background, as stated by Audience Services:

"...the fact that [the journalist] chooses to advertise [the company] does not preclude her from being a guest on the BBC from time to time as [the journalist] has a lengthy journalistic past which remains relevant."

The Adviser noted that the complainant referred to his concern that he had never received an answer from the BBC about why it had decided to drop a planned investigation into [the company]. She noted that the programme to which he referred dated back to 2010 and that it was not possible under the General Complaints Procedure to consider a complaint relating to an element of BBC output from that long ago.

However, she noted that 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 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 get involved unless, for example, it related to a breach of the BBC's editorial standards, which did not apply in this case. Decisions relating to which stories should be covered and which contributors should be invited onto BBC programmes fell within the "editorial and creative output" of the BBC and were the responsibility of the BBC Executive.

Having read the correspondence between the complainant and the BBC, the Adviser believed that Trustees would be likely to conclude that the complaint concerned a private dispute between the complainant and the company. She did not believe that Trustees would consider that the appeal raised a "matter of substance" as set out in the General Complaints Procedure, or that there was sufficient evidence to suggest that there was a case for the BBC Executive to answer. She believed 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 appropriate for them to decline to enter into further correspondence on the issue.

It followed from this that she did not consider the appeal had a reasonable prospect of success and she did not propose to put it before Trustees.

Request for review by Trustees

The complainant asked that Trustees review the decision of the Senior Complaints Adviser that the appeal should not proceed.

The complainant wrote on 16 July 2014 to record his disappointment with the Adviser's decision, stating the following reasons:

"I wrote to the BBC Trust on the advice of [name], BBC Audience Services. I am not asking the BBC to get involved in a dispute between myself and [the company], though there is indeed a story to be told. I am asking the BBC to implement its own editorial guidelines. [The journalist] is employed by [the company] to advertise their products because she appears on the BBC – it says so quite specifically on their website and in their adverts. That is wrong and the BBC guidelines say it is wrong."

The Panel's decision

The Panel noted the complainant's appeal to the Trust, the reply from the Senior Complaints Adviser and the request to Trustees to review the Senior Complaints Adviser's decision.

The Panel noted that the journalist has not been a BBC staff member for some years, and that she appears occasionally as a guest reviewer, invited by BBC News. The Trustees considered that this was an editorial decision.

The Panel recognised that choices concerning which guest contributors to use are decisions for the Executive under the Royal Charter, which sets out, at Article 38, (1) (b) and Article 38, (1) (c) that “the direction of the BBC’s editorial and creative output” and its “operational management” are duties of the Executive Board and ones in which the Trust does not get involved unless, for example, they relate to a breach of the BBC’s editorial standards. Trustees did not agree with the complainant that the Editorial Guidelines precluded the BBC from inviting the journalist to be a guest reviewer.

The Panel concluded that there was no reasonable prospect of success for an appeal.

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

Decision of BBC Audience Services not to respond further regarding a complaint about a business reporter and presenter on Radio 5 Live

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

Complaint

The complainant contacted the BBC on 9 May 2014 to complain about BBC business reporter and presenter Dominic Laurie's financial reporting.

BBC Audience Services issued a response to the complaint on 15 May 2014 stating:

"The range of tastes and opinions held by our audience is so diverse that it's inevitable some listeners will dislike or disapprove of certain presenters. It's a very rare radio personality who meets with everyone's approval, and it's clear that opinions on individual presenters can vary considerably.

"We don't engage any producer, presenter, interviewer or reporter unless we believe they're competent and can meet the specific demands required of them.

"We regret on this occasion you felt the need to complain and be assured that we've registered your concerns on our audience log..."

The complainant was not satisfied with this response and made a follow-up complaint on 21 May 2014. He did not agree with the previous response from Audience Services that the matter had anything to do with his own tastes and opinions.

The complainant contacted the BBC again about the issue on 10 June 2014 to make a further complaint and also about the generic reply he had received to his substantive complaint.

Audience Services responded on 11 June 2014 stating that the complaint had been referred to the relevant staff and explaining that the process of investigation could take longer than the target time of 20 working days. They apologised for this and requested the complainant not to contact them further in the meantime.

On 17 June 2014 Audience Services sent a Stage 1b response stating that they could not engage in further correspondence on the matter as they felt they had responded as fully as they could and did not consider that the points raised by the complainant suggested a possible breach of standards.

Appeal

The complainant appealed to the BBC Trust in a letter dated 23 June and received in the Trust Unit on 25 June 2014. He made the following points in his appeal:

- He reiterated his complaint and by way of example
 - complained about the mixing of decimals with fractions eg: "nought point half a per cent".

- a comment that the government would not raise interest rates due to next year's election when the government does not set interest rates.
- stating that "in a growing economy spare capacity reduces prices and thereby [inaudible] inflation". Whereas in a growing economy, the complainant said, prices are stable (generally) and gradually rise after spare capacity is eliminated.

With regard to complaints handling, the complainant objected to the generic replies which did not address the facts of his complaint.

With regard to the reply he received from Audience Services on 11 June explaining that it might take longer to reply than the target of 20 working days, he objected that he was asked not to contact BBC Complaints in the meantime.

The complainant sent a further letter to the Trust Unit dated 5 July 2014 expanding on his concerns and making additional points including referring to a follow-up complaint he had made to the BBC on 17 June 2014 regarding a further report.

He wanted this complaint (which had been dealt with as a separate complaint by Audience Services) linked to his appeal.

Decision of the Senior Editorial Strategy Adviser

The relevant correspondence was reviewed by the Trust Unit, and the sections of the programmes mentioned by the complainant were listened to. The Trust Unit's Senior Editorial Strategy Adviser (the Adviser) acknowledged the strength of the complainant's feelings, but decided that the appeal did not have a reasonable prospect of success.

The complainant had appealed on the substance of his complaint regarding the BBC business reporter and presenter's economic reporting. He had also appealed with regard to the handling of his complaint by Audience Services. The Adviser noted that Audience Services had ceased handling this complaint at Stage 1 and that the complaint had not gone to Stage 2. She therefore decided that, with regard to the substantive complaint, the point she should consider was whether an appeal against the decision of BBC Audience Services not to correspond further with the complainant had a reasonable prospect of success.

The Adviser acknowledged that the complainant had raised concerns that the BBC business reporter and presenter's reporting on financial matters contained inaccuracies. She considered whether the complaint engaged the BBC Editorial Guidelines on Accuracy. These can be found in full at <http://www.bbc.co.uk/guidelines/editorialguidelines>.

The Adviser acknowledged that the complainant believed the BBC business reporter and presenter had been inaccurate in his reporting about the setting of interest rates.

The Adviser noted that the 8 May 2014 edition of the Shelagh Fogarty Show contained an exchange between presenter Dotun Adebayo and Mr Laurie, as follows:

Dominic: The Bank of England kept interest rates on hold at zero and a half per cent.

Dotun: The rate setters are saying.....

Dominic: Would they raise rates 2 or 3 months before an election?

Dotun: They're independent, Dom! They're independent! What are you implying?

Dominic: I know, I know! I'm not implying anything...

Dotun: How very dare you?! It's a completely independent Monetary Policy Committee. If it was right for the economy two months before the election, even if the Chancellor called every one of them ... I would hope that they would put it up, that's what they're there to do.

The Adviser noted that the tone of the exchange between Mr Adebayo and Mr Laurie was in the spirit of Mr Adebayo light-heartedly rebuking Mr Laurie for a possible hint of scepticism about the political independence of the rate setters.

She did not believe that Trustees would be likely to conclude that evidence had been presented which suggested that a breach of the Guidelines on Accuracy had taken place, especially as Mr Adebayo had clarified for listeners that the Monetary Policy Committee was independent.

The Adviser noted that the BBC business reporter and presenter did say "Zero and a half per cent". Whilst she acknowledged the complainant's view that such a statement was an example of poor presentational style, she believed Trustees would not be likely to consider such a statement to be a breach of the Editorial Guidelines.

The Adviser noted that 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 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 get involved unless, for example, it related to a breach of the BBC's editorial standards, which did not apply in this case. The Adviser considered that Trustees would be likely to conclude that decisions relating to the presentational style of presenters fell within the "editorial and creative output" of the BBC and were the responsibility of the BBC Executive rather than the Trust.

The Adviser was unable to identify the specific line of BBC output which the complainant had complained about and which he said was delivered by the BBC business reporter and presenter at around 13.15 on 21 May 2014 as follows:

"In a growing economy spare capacity reduces prices and thereby [next word inaudible] inflation".

However, she noted that in the edition of the Shelagh Fogarty programme, broadcast on 21 May 2014, at approximately 13.15, Mr Laurie did explain his understanding of "spare capacity" in the economy as follows:

Matthew Pointon: ...so lots of slack can be taken up before price pressures really start to build and the Bank of England is going to be very careful, they don't want to raise rates too soon and derail the recovery.

Dominic Laurie: The trouble with this spare capacity measure which we will hear about an awful lot over the next year – just to recap for listeners – that's basically

an assessment that there are, for example, empty factory lines in towns and cities around the UK that are under shrink wrap, and that shrink wrap can be taken off and they can get going again and the idea is Matthew that basically, if there is that spare capacity that can come on line, it can create more stuff and therefore there is less demand for products and prices don't have to go up as fast ... there's more supply.

The Adviser noted that the points made by the BBC business reporter and presenter about "spare capacity" were broadly compatible with the complainant's own understanding of "spare capacity" as described in his appeal letter dated 23 June 2014:

"In a growing economy prices are stable (generally) and gradually rise after spare capacity is eliminated."

She did not believe that Trustees would be of the view that there was a contradiction between the BBC business reporter and presenter's definition of "spare capacity" in the economy and that put forward by the complainant. That being the case, she did not consider that the Guidelines on Accuracy were engaged on this point.

With regard to the handling of the complaint by Audience Services, the Adviser acknowledged the complainant's disappointment at not receiving a more detailed response to his concerns from someone at a senior level who understood the economic issues at the centre of his substantive complaint. However, she noted that the complainant introduced additional points at different stages of his complaint as he gathered more examples of BBC output in the weeks following his original complaint. The Adviser appreciated that he submitted these new points as further evidence. However, the Adviser noted that, in the interests of both efficiency and cost-effectiveness, the Complaints Framework was not designed to work in this way.

The Adviser noted that this appeal was against the decision of Audience Services not to correspond further on this issue with the complainant, and that their letter closing down the complaint at Stage 1b was sent on 17 June 2014. She noted that the points made by the complainant in his second appeal letter to the Trust (dated 5 July 2014) included further points made to Audience Services after Audience Services issued their Stage 1b closedown letter. These points were addressed by Audience Services as a separate Stage 1a complaint. She acknowledged that the complainant was unhappy with Audience Services' response to that complaint and that he wanted the new points linked to his original complaint. However, she noted that the BBC Complaints Framework states:

Stage 1a complaints

2.7 Your complaint should include all of the points about the item that you wish to be considered as the BBC may not consider new or different points after Stage 1a of the Procedure has concluded.

Stage 1b complaints

3.2 In your complaint, please include the following:

- a clear and concise statement of the reasons why you are dissatisfied;
- any reference number provided and the date of the Stage 1a reply you received;

- the points that you raised at Stage 1a that you want the BBC to reconsider. The BBC will not consider new points unless, exceptionally, it is necessary to do so in the interests of fairness.

The Adviser was of the view that Trustees would conclude that it would not be necessary in the interests of fairness to make an exception to the procedures set out in the Complaints Framework on this occasion. She believed that Trustees would consider that Audience Services had provided a reasoned and reasonable response to the issues raised by the complainant in his first complaint and that it was appropriate for Audience Services to say that they could not respond further on this matter.

The Adviser acknowledged the additional points made by the complainant in his second appeal letter to the Trust dated 5 July. However, she noted that these points had not been made to Audience Services before the decision to close down the complaint at Stage 1b was made. It followed, therefore, that it would not be appropriate for Trustees to consider these additional points as part of this appeal, which was an appeal against the decision of Audience Services to close down the substantive complaint on 17 June 2014.

For these reasons the Adviser did not believe that the appeal had a reasonable prospect of success and she decided that it should not be placed before Trustees.

Request for review by Trustees

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

In his letter of 20 August 2014, the complainant took issue with the Adviser's analysis of the exchanges on the Shelagh Fogarty show between Dominic Laurie and Dotun Adebayo on 8 May 2014. He stated that it was Martin Lewis who corrected the reference to the Bank of England not being independent. He objected to the repeated use of the phrase "nought point half percent".

He said that none of BBC Audience Services' replies explained what stage the complaint had formally reached. In his view the facts he had brought up had not been addressed, and that it was not a problem with his "taste and opinion".

The Panel's decision

The Panel noted the complainant's appeal to the Trust, the reply from the Senior Editorial Strategy Adviser and the request to Trustees to review the Senior Editorial Strategy Adviser's decision.

Trustees appreciated that the complainant had found the complaints procedure frustrating and that he felt he had placed facts before the BBC which were being ignored.

The Trustees noted the complainant's view that the section identified by the Trust's Adviser was not the one he had complained about. Notwithstanding, Trustees considered that on either set of facts it had been made clear that it was the Bank of England Monetary Policy Committee which set interest rates and so there was no issue of the Guidelines having been breached. This was also the case for the use of the phrase "nought point half percent" which was a question of style rather than inaccuracy.

The Panel noted that decisions concerning standards of presentation of business news would be for the Executive to take. As the Royal Charter (Article 38, (1) (b) and Article 38, (1) (c)) sets out, "the direction of the BBC's editorial and creative output" and its

“operational management” are specifically defined as duties of the Executive Board and ones in which the Trust does not get involved, unless, for example, they relate to a breach of the BBC’s standards. In this case, the Panel did not consider the complainant had raised any evidence that the presenter had breached the BBC’s Editorial Guidelines, and therefore the Panel did not consider that his complaint raised a matter for the Trust.

The Panel concluded that there was no reasonable prospect of success for an appeal.

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

Decision of BBC Audience Services not to respond further regarding a complaint about the BBC's World Cup coverage

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

Complaint

The complainant contacted the BBC on 15 June 2014. While he appreciated the commentary from BBC Radio 5 live, he criticised the quality of the television commentary provided by Phil Neville and Rio Ferdinand.

BBC Complaints responded on 17 June 2014 to say that the BBC believed it had put together a very strong international line-up of commentators, with a wealth of experience and knowledge covering all aspects of the game at the very highest level.

It said that thoughts on individual presenters and commentators could vary considerably so it was inevitable some viewers or listeners would dislike or disapprove of certain presenters and commentators. It added that programme contributors were appointed on the basis of their experience, knowledge and talent, but that judgements were often subjective and so it would never expect everyone to agree with every choice it makes.

The complainant emailed the same day to criticise the commentators and the response from BBC Complaints. He said the BBC had a wealth of great local radio commentators and should have used them for the World Cup. He said the BBC had made the appointments without regard to what this would mean for the quality on offer to viewers.

BBC Complaints responded on 18 June 2014 to say it felt it has responded as fully as it could given the nature of the complaint and to say it had nothing further to add.

Appeal

The complainant appealed to the BBC Trust on 20 June 2014. The complainant appealed on the substance of his complaint, about the quality of the World Cup commentary by Phil Neville. He said the BBC had refused to accept that there was a problem and that it had been arrogant in its response.

The Adviser noted that BBC Audience Services had ceased handling this complaint at Stage 1 and that the complaint had not gone to Stage 2. She therefore decided that the point she should consider was whether an appeal against the decision of BBC Audience Services not to correspond further with the complainant had a reasonable prospect of success.

Decision of the Senior Complaints Adviser

The relevant correspondence was reviewed by the Trust Unit. The Senior Complaints Adviser (the Adviser) also carefully read the correspondence that had passed between the complainant and the BBC and she acknowledged the strength of the complainant's feelings. The Adviser decided that the complainant's appeal did not have a reasonable prospect of success.

The Adviser appreciated that the complainant had not enjoyed Phil Neville's commentary. She noted that BBC Complaints had replied promptly and explained the Corporation's rationale for choosing its World Cup commentators. She further noted that the BBC had received a number of complaints about Mr Neville's commentary during the England v Italy match and the Corporation had issued a statement on the BBC Complaint's website. A link to this can be found below:

<http://www.bbc.co.uk/complaints/complaint/worldcup2014commentary>

The Adviser noted that 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 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 get involved unless, for example, it related to a breach of the BBC's editorial standards, which did not apply in this case. Decisions relating to the choice of commentators fell within the "editorial and creative output" of the BBC and were the responsibility of the BBC Executive. The Adviser considered this was significant because it protected the BBC's editorial independence – which was of great value to licence fee payers.

The Adviser considered Trustees would be likely to conclude that BBC Audience Services had provided a reasoned and reasonable response to the complainant and had acted appropriately in closing down the correspondence. She therefore did not consider the appeal had a reasonable prospect of success and did not propose to put it before Trustees.

Request for review by Trustees

The complainant asked that Trustees review the decision of the Senior Complaints Adviser that the appeal should not proceed.

The complainant wrote on 20 June 2014 to set out his reasons for requesting an appeal. He reiterated his criticism of Phil Neville's commentary. He argued that dismissing his complaint was arrogant.

The Panel's decision

The Panel noted the complainant's appeal to the Trust, the reply from the Senior Complaints Adviser and the request to Trustees to review the Senior Complaints Adviser's decision.

The Panel noted that 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 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 get involved unless, for example, it related to a breach of the BBC's editorial standards, which did not apply in this case. The Panel agreed with the Adviser's point that decisions relating to the choice of commentators fell within the "editorial and creative output" of the BBC and were the responsibility of the BBC Executive.

The Panel concluded that there was no reasonable prospect of success for an appeal.

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

Decision of BBC Audience Services not to respond further regarding a complaint about Rugby League coverage within BBC News programmes

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

Complaint

The complainant contacted the BBC on 17 May 2014 to express her concern that the Rugby League Magic Weekend was not covered by BBC News, even though it was a big event attended by thousands of people.

BBC Audience Services responded on 22 May 2014 acknowledging that not everyone would agree with the subjective choices made by News Editors. Several factors were taken into consideration when editorial judgements were made about stories for inclusion in news programmes, such as whether the story was new, required immediate coverage, how unusual it was and how much national interest there was likely to be in the story.

The complainant did not feel this response addressed her complaint and she made a follow-up complaint on 2 June 2014 requesting a proper response to her question about why the Rugby League Magic Weekend had not been mentioned on the News.

She said 52,000 people attended it and six matches were played during the weekend including a French and London team as well as teams from the North West. By contrast, the Rugby Union match between Harlequins and Saracens had been mentioned on the News, even though only 9,022 people attended it.

The complainant was unhappy about the length of time it took to respond to her complaint and made further contacts on 6, 10 and 16 June requesting a reply. She telephoned the BBC Trust on 18 June 2014 to complain that she had not received a proper reply to her question. She said she felt totally ignored and angry about the way she had been treated.

The Trust Unit sent a response on 19 June 2014 explaining that the complaint was still at Stage 1b and noting that Audience Services had sent an email on 18 June 2014 explaining and apologising for the fact that it could take longer than 20 working days to provide a further response.

The complainant contacted the BBC again on 27 and 28 June asking what had happened to the Stage 1b reply from Audience Services. She also made another complaint on 29 June stating that there was no Rugby League mentioned on the News again that day.

Audience Services responded again on 30 June 2014 closing down the complaint. They explained that in order to use licence fee resources appropriately, the BBC would normally investigate where evidence was provided to suggest a possible breach of Editorial Guidelines but otherwise would not normally investigate further. They felt they had responded as fully as they could to the complaint and had nothing further to add.

Appeal

The complainant appealed to the BBC Trust on 7 July 2014. The complainant made the following points:

- She was not happy with the responses she received from Audience Services; in particular she was dissatisfied with the Stage 1b response closing down her complaint which she felt was rude and disrespectful.
- She felt her complaint had started off as a reasonable question but had now become a bone of contention as she felt she had not yet been given a proper answer.

Decision of the Senior Complaints Adviser

The Senior Complaints Adviser (the Adviser) carefully read the correspondence that had passed between the complainant and the BBC, and she acknowledged the strength of the complainant's feelings. She noted, however, that BBC Audience Services had ceased handling this complaint at Stage 1 and that the complaint had not gone to Stage 2. She therefore decided that the point she should consider was whether an appeal against the decision of BBC Audience Services not to correspond further with the complainant had a reasonable prospect of success.

The Adviser acknowledged the complainant's frustration at not having received a satisfactory answer to her question about why the Rugby League Magic Weekend was not mentioned in BBC News programmes. However, she noted that 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 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 get involved unless, for example, it related to a breach of the BBC's editorial standards, which did not apply in this case. Decisions relating to the choice of sports stories to include in BBC News fell within the "editorial and creative output" of the BBC and were the responsibility of the BBC Executive.

The Adviser noted that in their response of 22 May, Audience Services had acknowledged that choices about what sports news stories to cover were "subjective decisions made by our editors, and we accept that not everyone will think that we are correct on each occasion". She noted that Audience Services had reported the complainant's dissatisfaction with the lack of Rugby League news coverage as feedback on the audience log.

The Adviser believed that Trustees would be of the view that the choice of stories in BBC Sport News was a matter for BBC News Editors, and while acknowledging that the complainant did not agree with their decision on this occasion, she believed Trustees would consider that it was a matter for the BBC Executive rather than the Trust.

She noted that BBC Sport has committed to broadcasting live international rugby league for the next four years, including the Four Nations in 2014 and 2016 and the next World Cup in 2017. More information can be found at <http://www.bbc.co.uk/sport/0/rugby-league/28464023>

With regard to the complainant's concerns about the handling of her complaint, the Adviser noted that the complainant had, in particular, found the Stage 1b response rude and disrespectful. The Adviser noted that the responses from Audience Services were written in a standard format and acknowledged that the complainant would have preferred a response more tailored to her individual concerns. However, the Adviser noted that the BBC receives over a million contacts a year from its audiences and that the

use of standard formats enables the BBC to answer large volumes of correspondence as efficiently as possible while making best use of the licence fee. She also noted that although the complainant had stated her dissatisfaction several times about how long it took for Audience Services to reply to her complaints, they had responded within the timeframes set out in the Complaints Framework.

The Adviser further noted that under the Complaints Framework, it was open to the BBC to close down correspondence after stage one – copied below is the relevant section of the Editorial Complaints Framework which outlines the basis on which the BBC may not investigate a complaint:

Complaints that the BBC may not investigate

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

1.7.1 fails to raise an issue of breach of the Editorial Guidelines; or

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

The Adviser appreciated that the complainant was disappointed by the manner in which her complaint had been closed down without an answer which she found satisfactory, but overall, the Adviser believed that Trustees would consider it reasonable for the BBC to say that it could not respond any further to the complainant's correspondence on this issue. She believed they would be of the view that the first response from Audience Services had adequately and reasonably explained the editorial position in terms of the selection of sports news stories. For these reasons the Adviser did not believe the appeal had a reasonable prospect of success and decided that it should not proceed further.

Request for review by Trustees

The complainant asked that Trustees review the decision of the Senior Complaints Adviser that the appeal should not proceed.

The complainant re-iterated in her emails of 27 August and 16 September that she was unhappy as she felt that she had not received a reason for the decision not to mention a rugby league event which drew a very large crowd (52,000 fans), compared to a rugby union game which drew a much smaller crowd (9,022 fans).

The Panel's decision

The Panel noted the complainant's appeal to the Trust, the reply from the Senior Complaints Adviser and the request to Trustees to review the Senior Complaints Adviser's decision.

The Panel was mindful of the division of responsibility between the BBC Executive and the BBC Trust, and that the Trust does not generally become involved in editorial or operational decisions taken by the BBC. The Panel agreed that the choice of which sports would be included in the evening News bulletin is just such an editorial matter.

The Panel noted that the Royal Charter (Article 38, (1) (b and c)) sets out that "the direction of the BBC's editorial and creative output" and its "operational management" are a duty 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 Panel did not consider there was anything to suggest a breach of the BBC's editorial

standards in this case and so it did not consider that the complainant's appeal had a realistic prospect of success.

The Panel noted that the complainant had been presented with the opportunity to escalate her complaint to the BBC Trust, and it agreed that this had been correct because the ultimate decision as to whether or not a matter is for the Trust to consider on appeal is for Trustees.

The Panel therefore agreed that the appeal did not have a reasonable prospect of success and did not qualify to proceed for consideration.

Decision of BBC Audience Services not to respond further regarding a complaint about BBC News

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

Complaint

The complainant contacted the BBC on 28 April 2014 to express his concern that the BBC had not given enough news coverage, and no live coverage, of the canonisation of Pope John Paul II and Pope John XXIII on any of its channels.

Although BBC News had covered the story, he said it had only been the lead story on the BBC1 mid-day news, and had been relegated to the last story on the 10.00 p.m. news. The complainant said that, in news terms, the story had received less coverage than the death of Peaches Geldof and the sacking of David Moyes.

BBC Audience Services responded to the complainant on 1 May 2014 acknowledging his concerns and explaining that the BBC had to provide programming for a hugely diverse audience with differing tastes and preferences. They said it was not always possible for the BBC to provide live coverage of such events, and directed him to a detailed report of the event on the BBC News website at <http://www.bbc.co.uk/news/world-europe-27172118>.

The complainant was not satisfied with the response and made a follow-up complaint at Stage 1b of the complaints procedure on 8 May 2014.

He said he was making a Stage 2 complaint and wished to add a concern that the response had not informed him of what to do if he was dissatisfied with the response, as the BBC website stated should happen.

He asked why other programmes, including Live World Snooker, were more important. He asked why, if no live coverage of the canonisation mass could be scheduled, could there not have been an hour of highlights?

He said he would like to know how repeats and live snooker were the BBC's way of meeting the needs of a wide and diverse audience.

Audience Services acknowledged the Stage 1b complaint on 24 May 2014, explaining that it could take longer than the target time of 20 working days to issue a response. A Stage 1b response was issued on 19 June 2014 which explained that

"...the BBC News channel did have live coverage from the Vatican City. The Channel didn't have continuous coverage; however, we were there live for around 20 minutes at 9am and again at 10am as well as having coverage throughout the morning and day.

"BBC One also had news coverage of the ceremony throughout the day. This began with BBC Breakfast which had the canonisation as the second top story after the news of the death of 5 British servicemen in Afghanistan. The news in The Andrew Marr Show also covered the canonisation and it was the lead story on Weekend News at 13.00 and covered again in the news at 18.35 at 22.00."

Regarding the complainant's concerns about the lack of information given by Audience Services about how to escalate his complaint to Stage 2, they stated

"I'm sorry if the complaints website wasn't clear. What the website actually says, or intends to say, is that if you are unhappy with your first response, re-contact us and at that point we will then respond and advise if you may be able to take your complaint to Stage 2.

"If you are dissatisfied with our reply you should re-contact us in writing within 20 working days explaining why. You may be able to take the issue further to stage 2 and if so we will explain how.

"In order to use your licence fee proportionately we do not investigate minor, misconceived, hypothetical, repetitious or otherwise vexatious complaints which have not suggested evidence of a breach of standards...<http://www.bbc.co.uk/complaints/handle-complaint/>"

Audience Services explained that they could not engage in further correspondence on this matter as they believed they had responded as fully as they could and did not believe that the issues raised suggested a possible breach of Editorial Guidelines. They explained that the complainant could request a review of their decision from the BBC Trust.

Appeal

The complainant appealed to the BBC Trust on 11 July 2014. He said the responses from Audience Services at Stage 1 had failed to answer his complaint and made the following points:

- The canonisation mass was a major and unique event in that "a) it concerned the canonisation of two popes both of whom reigned in living memory; b) it was attended by two of their successors; c) it was of potential interest to 1.2 billion Catholics and other Christians or non-Christians throughout the world".
- The response failed to state why live coverage could not be shown on either BBC1 or BBC2 (as the main channels) when that morning's schedule contained regular programmes which could have been shifted or cancelled or were repeats.
- An hour of live coverage on BBC News Channel was not a satisfactory substitute for live coverage on BBC1 or BBC2. He stated that the hour of live news coverage was in fact only 20 minutes of live event footage.
- It had been stated that news programmes, including Andrew Marr, gave coverage, but that ought to be so standard as not to be worth mentioning. The World Cup and Wimbledon had been allowed hours of continuous live coverage.

Decision of the Senior Complaints Adviser

The Senior Complaints Adviser (the Adviser) carefully read the correspondence that had passed between the complainant and the BBC, and she acknowledged the strength of the complainant's feelings. However, she decided that the appeal did not have a reasonable prospect of success.

The BBC's editorial complaints system has three stages. The first two stages lie with the BBC; the third and final stage is an appeal to the Trust.

Complaints are answered at Stage 1 by BBC Audience Services. Where complainants remain dissatisfied after a Stage 1 response, they can request a further response at Stage 1. If they are still dissatisfied they may escalate their complaint to Stage 2. Complaints at Stage 2 are either answered by the BBC's Editorial Complaints Unit, or they are considered by a senior manager within the BBC.

However, under the Complaints Framework, it is open to the BBC to close down correspondence – it means the BBC is notifying the complainant that it does not wish to respond further and the complainant can appeal to the Trust if they consider the BBC was wrong to close down the correspondence. That is the procedure Audience Services followed in this case. BBC Audience Services notified the complainant on 19 June 2014 that they did not intend to correspond further as they had nothing to add to their earlier correspondence and they did not consider the complaint related to a breach of the BBC's Editorial Guidelines. 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 complainant appealed on the substance of his complaint, that the BBC should have broadcast live coverage of the canonisation mass on BBC1 or BBC2. The Adviser noted, however, that BBC Audience Services had ceased handling this complaint at Stage 1 and that the complaint had not gone to Stage 2. She therefore decided that the point she should consider was whether an appeal against the decision of BBC Audience Services not to correspond further with the complainant had a reasonable prospect of success.

The Adviser acknowledged the complainant's view that the BBC did not broadcast enough live coverage of the canonisation mass, and did not broadcast any live footage of the event on BBC1 or BBC2. By not doing this, he believed the BBC had not sufficiently recognised the great significance of this event.

She noted that Audience Services had explained the BBC's commitment to serving a hugely diverse audience with differing tastes and preferences, and she acknowledged the complainant's view that this was not a satisfactory answer to his particular complaint, especially as the BBC carried so much live coverage of, for example, sport.

The Adviser noted that 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 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 get involved unless, for example, it related to a breach of the BBC's editorial standards, which did not apply in this case.

Decisions relating to which stories should be included in BBC news output, the magnitude of their "newsworthiness", the manner in which news stories were reported, and which BBC channels reported them, fell within the "editorial and creative output" of the BBC and were the responsibility of the BBC Executive.

The Adviser also noted that decisions regarding how much coverage was given to major sporting fixtures and other major events were operational ones which were the responsibility of BBC commissioners and schedulers. "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 usually get involved unless, for example, it raised broader issues such as a breach of a station's Service Licence. The Service Licences for BBC channels can be found here: http://www.bbc.co.uk/bbctrust/our_work/services/television/service_licences.html

The Adviser noted that: BBC One's remit is to be the BBC's most popular mixed-genre television service across the UK, offering a wide range of high quality programmes; and that BBC Two's remit is to be a mixed-genre channel appealing to a broad adult audience with programmes of depth and substance.

She did not consider that she had seen any evidence to suggest that the Service Licences had been breached.

The Adviser noted that in their more detailed response at Stage 1b, dated 19 June 2014, Audience Services gave further information about the coverage of the Vatican event and stated

"...the BBC News channel did have live coverage from the Vatican City. The Channel didn't have continuous coverage; however, we were there live for around 20 minutes at 9 am and again at 10 am as well as having coverage throughout the morning and day.

"BBC One also had news coverage of the ceremony throughout the day. This began with BBC Breakfast which had the canonisation as the second top story after the news of the death of 5 British servicemen in Afghanistan. The news in The Andrew Marr Show also covered the canonisation and it was the lead story on Weekend News at 13.00 and covered again in the news at 18.35 at 22.00."

The Adviser acknowledged the complainant's strong belief that the event should have received more live coverage on the BBC's "main channels", but she considered that Trustees would be likely to conclude that the way in which the event was covered did not breach any of the BBC's Service Licences or the Editorial Guidelines. She believed it was therefore a decision which rested with the BBC Executive and was not a matter for the Trust.

She believed that Trustees would consider that Audience Services had provided a reasoned and reasonable response to the complaint, and that it was appropriate for them to say that they could not engage in further correspondence on the matter.

For these reasons she did not believe the appeal had a reasonable prospect of success and decided that it should not proceed further.

Request for review by Trustees

The complainant asked that Trustees review the decision of the Senior Complaints Adviser that the appeal should not proceed.

In his email of 8 September 2014, the complainant objected to the explanation offered by the BBC that the Corporation has to cater for a "hugely diverse audience of differing tastes and preferences". He felt that no heed was taken of the 1.2 billion Catholics worldwide, and the potential audience of other Christians and people of other faiths who may have been interested and who appeared not to fit into the category (of a hugely diverse audience). He pointed to the BBC's extensive sporting coverage, including "wall to wall coverage of events like the Commonwealth Games", arguing: "It is never explained why other live events – routinely shown as I say – and often quite seriously disrupting schedules, ranked higher than this event."

He concluded:

“My belief, therefore, is that the BBC failed seriously in not offering live coverage to a unique event (unique, I repeat again in being a double canonisation with two popes present), which would seem to have met the audience criterion which the BBC sets itself. Also, there would not have been a serious disruption of BBC 1 or BBC2 schedules because of a) the comparatively short length of the ceremony – compared, say, with a sporting event - and b) the fact that much of that time was filled with repeats. In addition, in the absence of the live coverage there was no programme of highlights.”

The Panel’s decision

The Panel noted the complainant’s appeal to the Trust, the reply from the Senior Complaints Adviser and the request to Trustees to review the Senior Complaints Adviser’s decision.

The Panel noted the complainant’s view that there was not enough coverage on the News, and no live coverage, of this event. The Panel agreed, however, with the Adviser that decisions relating to scheduling and news story selection are matters concerning the direction of the BBC’s editorial and creative output and are therefore a matter for the BBC Executive and not the Trust.

The Panel noted that the Royal Charter (Article 38, (1) (b and c)) sets out that “the direction of the BBC’s editorial and creative output” and its “operational management” are a duty 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 Panel did not consider there was anything to suggest a breach of the BBC’s editorial standards in this case and so it did not consider that the complainant’s appeal had a realistic prospect of success.

The Panel concluded that there was no reasonable prospect of success for an appeal.

The Panel therefore agreed that the appeal did not have a reasonable prospect of success and did not qualify to proceed for consideration.

Decision of BBC Audience Services not to respond further regarding a complaint about Question Time, BBC One, 12 June 2014

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

Complaint

The complainant contacted the BBC on 12 June 2014 to raise his concern that when the Secretary of State for Work and Pensions was on the *Question Time* panel, no questions were put regarding his own department. The complainant queried whether the BBC had been instructed not to ask him questions about anything negative. He asked whether *Question Time* should bury public concerns or protect failing ministers.

BBC Audience Services responded on 17 June 2014 and explained that, as was normally the case, the questions for this edition of *Question Time* were selected by the studio audience. Their main subjects of interest that week were the worsening situation in Iraq, Islamic extremism in schools and the debate surrounding 'British values'.

The complainant remained dissatisfied and made a follow-up complaint on 19 June 2014. He asked how the audience chose the questions for discussion and what method was used by the BBC to ensure the audience asked relevant questions. He also wondered if the audience's choice of questions could be over-ridden by the producers.

Audience Services responded on 8 July 2014 reiterating their previous response that the audience chose the questions and that they were on topics of the most interest to the audience that week. They said that questions might also be chosen based on relevance to the area from which that particular edition of the programme was being broadcast.

The complainant was not satisfied with this response and made a further complaint on 9 July 2014. He wanted more detail about the process for choosing and vetting questions put to the panel. He wondered how the questions were prioritised and whether they were checked for legal compliance. He asked if there was a list of all the questions which members of the audience came up with for any one show, rather than just a list of the questions which were asked on air.

Audience Services sent a further response on 22 July 2014. They made the following points:

- *Question Time* did not censor audience members asking questions.
- Welfare was not at the forefront of the agenda in this edition.
- Mr Duncan Smith was on the panel representing the government. Every week, the government representative was expected to address a wide range of issues and was not there exclusively to speak about his own department.
- They declined to add anything further to their previous reply regarding the questions submission process. They did not believe the complaint raised a significant issue of general importance that might justify further investigation.

The complainant was informed that Audience Services had nothing further to add to their previous responses about how *Question Time* was produced and would not correspond further on the subject. The complainant was advised he could appeal against this decision to the BBC Trust.

Appeal

The complainant appealed to the BBC Trust on 22 July 2014. He said that the two responses he had received from Audience Services did not answer his questions.

He made the following points in his appeal:

- He had originally complained that Iain Duncan Smith, the Secretary of State for Work and Pensions, was not asked any questions regarding his own government department when he was on the *Question Time* panel. BBC Complaints had responded by saying that the audience selected the questions.
- In his second complaint he requested details of the process by which *Question Time* audience questions were vetted and chosen. This question had not been answered and the BBC said that it would not correspond further in response to additional points or further comments or questions.
- He said that the second response suggested that he had made two complaints about the same issue but that was not the case. He felt that his original complaint was a separate complaint from his query about the process for choosing questions.
- He felt he was being blocked from finding out about the *Question Time* process. As a licence fee payer he believed he had the right to understand how it worked.

Decision of the Senior Complaints Adviser

The Senior Complaints Adviser (the Adviser) carefully read the correspondence that had passed between the complainant and the BBC, and she acknowledged the strength of the complainant's feelings. However, she decided that the appeal did not have a reasonable prospect of success.

The complainant appealed on the substance of his complaint about the process for selecting questions to be put to the *Question Time* panel. He also appealed on the handling of his complaints. He felt that Audience Services had wrongly joined two complaints into one, resulting in his complaint being inappropriately handled as a Stage 1b closedown. The Adviser decided that the point she should consider was whether an appeal against the decision of BBC Audience Services not to correspond further with the complainant had a reasonable prospect of success.

The BBC's editorial complaints system had three stages. The first two stages lay with the BBC; the third and final stage was an appeal to the Trust.

Complaints were answered at Stage 1 by BBC Audience Services. Where complainants remained dissatisfied after a Stage 1 response, they could request a further response at Stage 1. If they were still dissatisfied they might be able to escalate their complaint to Stage 2. Complaints at Stage 2 were either answered by the BBC's Editorial Complaints Unit, or they were considered by a senior manager within the BBC.

However, under the Complaints Framework, it was open to the BBC to close down correspondence – this meant the BBC was notifying the complainant that it did not wish to respond further and the complainant could appeal to the Trust if they considered the BBC was wrong to close down the correspondence. That was the procedure Audience Services followed in this case. BBC Audience Services notified the complainant on 22 July 2014 that they did not intend to correspond further. 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 Adviser noted that in his original complaint the complainant pointed out that no questions were put to the Secretary of State for Work and Pensions about his own department. In this complaint he went on to raise his concern about the question selection process, stating that the absence of any questions about Iain Duncan Smith's own department begged the question "Were the BBC told not to ask him anything negative?"

In their response of 17 June 2014, Audience Services explained that the questions were selected by the studio audience according to their main subjects of interest that week.

The Adviser noted that the complainant did not consider that his second complaint was a follow-up complaint to the first. On 19 June 2014 he said:

"I made a complaint ... and was given an answer that the audience chooses the questions for the panel. How does that happen? What method do you use to ensure the audience asks relevant questions and can that (has it?) be overridden by producers."

The complainant reiterated his concern about the process by which *Question Time* selected questions for the panel and the Adviser considered it was reasonable for Audience Services to regard this second complaint as a follow-up complaint linked to the first.

Following Audience Services' second response, of 8 July 2014, which again explained that questions are chosen by the audience, the complainant sent a third complaint on the same subject on 9 July 2014. The Adviser noted that he was not happy with either response he had received thus far. He stated:

"I did get a response but it was 'The audience chooses the questions.' What I'd like detail about is the whole questions and submissions process. If an audience member has a question, how does that get translated to the chair inviting the audience member to ask their question aloud to the panel?"

"I'd assume that the audience has far more questions to ask of the panel than there is time to respond, so who says which is more relevant? Does anyone check them for legal complicity?"

"Is there a list recorded of all the audience questions for any particular show, rather than a list of those that are asked on air?"

The Adviser considered that the three complaints were linked and that new points and queries were submitted at each stage of the complaint. The second complaint referred to the original complaint, and the third complaint referred to the second. The Adviser therefore considered that Trustees would be of the view that it was reasonable for Audience Services to state in their third and final response of 22 July 2014:

“With regards to your initial complaint, we would like to assure you that *Question Time* does not censor audience members asking questions. It is a discussion programme which relies on engagement with the audience. On this particular week welfare was not at the forefront of the agenda. Mr Duncan Smith was there to represent the government. Every week we cover a range of issues and the government representative is expected to address a wide range of topics. They are not there solely or exclusively to speak about their particular department's brief. This is the case every week.

“We are sorry to tell you that, with regards to your questions about the questions and submission process, we have nothing to add to our previous reply. We do not believe your complaint has raised a significant issue of general importance that might justify further investigation. We will not therefore correspond further in response to additional points, or further comments or questions, made about this issue or our responses to it.”

The Adviser noted that the Complaints Framework stated that when complaints were considered at Stage 1b,

“The BBC will not consider new points unless, exceptionally, it is necessary to do so in the interests of fairness”.

The Adviser did not believe Trustees would consider that there was a reason to grant such an exception in this case.

In terms of the substantive complaint regarding the process for choosing the questions put to the panel on *Question Time*, the Adviser noted that the Royal Charter and the accompanying Agreement between the Secretary of State for Culture, Media and Sport 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 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 get involved unless, for example, it related to a breach of the BBC's editorial standards, which did not apply in this case. Decisions relating to production processes such as decisions about which questions should be put to the *Question Time* panel fell within the “editorial and creative output” of the BBC and were the responsibility of the BBC Executive.

The Adviser noted that Audience Services had explained that questions were selected by the audience according to weekly topics of interest and that panel members were expected to address a wide range of subjects. She believed that Trustees would consider Audience Services had given a reasoned and reasonable response to the complaint and that it was appropriate for them to say that they could not engage in further correspondence on the issue. She therefore decided the complainant's appeal did not have a reasonable prospect of success and that it should not be placed before Trustees.

Request for review by Trustees

The complainant asked that Trustees review the decision of the Senior Complaints Adviser that the appeal should not proceed. In his email of 17 September 2014, the complainant said that he had asked three questions, which he felt were “fair and open” yet had not received a satisfactory answer:

“The point is that the editorial process for selecting questions was not explained, is key here and one I'd like you to consider asking Audience Services to explain, in full. Does the editor have full and unfettered freedom to decide the questions they

want to be put to the panel? Do they apply some logic based on current political news, as in the studio where the audience watches news items from various stations or perhaps something else?"

He said that the issue was "skimmed over" by Audience Services "giving me a perfectly factual response but sadly not to the depth that I asked".

The Panel's decision

The Panel noted the complainant's appeal to the Trust, the reply from the Senior Complaints Adviser and the request to Trustees to review the Senior Complaints Adviser's decision.

The Panel concurred with the Adviser's explanation that the Royal Charter and the accompanying Agreement between the Secretary of State for Culture, Media and Sport 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 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 get involved unless, for example, it related to a breach of the BBC's editorial standards, which did not apply in this case. Decisions relating to production processes such as decisions about which questions should be put to the *Question Time* panel fell within the "editorial and creative output" of the BBC and were the responsibility of the BBC Executive.

The Panel agreed that Audience Services had provided a reasonable response to the complaint.

The Panel concluded that there was no reasonable prospect of success for an appeal.

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