

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

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Remit of the Complaints and Appeals Board

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

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

All Trustees are members of the Board; Richard Ayre is Chairman and Mehmuda Mian is Vice Chairman. The duties of the CAB are conducted by Panels of the Board consisting of at least three Trustees, including either the Chairman of the CAB or the Vice Chairman of the CAB and other Trustees as required. The Board is advised and supported by the Trust Unit.

The Board considers appeals against the decisions and actions of the BBC Executive in relation to general complaints, fair trading, TV licensing and other matters including commissioning and procurement but not including editorial complaints and Digital Switchover Help Scheme complaints, as defined by the BBC Complaints Framework and Procedures. The Board will also consider complaints about the BBC Trust.

The Board will consider appeals concerning complaints which fall within the BBC's complaints process as set out in the BBC Complaints Framework and which:

- raise a matter of substance – in particular, that there is sufficient evidence to suggest that the complaint has a reasonable prospect of success and there is a case for the BBC Executive to answer
- have already been considered by the BBC Executive under stages 1 and 2 of the BBC's general complaints procedures and which are now being referred to the Trust on appeal as the final arbiter on complaints (unless it is a complaint about the BBC Trust)

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

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

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

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

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

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

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

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

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

Rejected Appeals

Presentation of the weather on BBC TV

The complainant appealed to the Complaints and Appeals Board following the decision of the BBC Trust's Senior Editorial Strategy Adviser that the complainant's appeal did not qualify to proceed for consideration by the Board.

The complaint

Stage 1

The complainant wrote to the BBC to complain that the map used for TV weather forecasts minimised the northern parts of the UK and that the narrative forecast also over-emphasised weather in the south compared to other parts of the country.

The BBC replied explaining the principles behind deciding which area of the country to cover at any one time and directed the complainant to the more local forecasts as well.

The complainant wrote again, saying that the BBC's reply was irrelevant and inappropriate. He stated that his complaint was about disproportionality in the map which exaggerated the south at the expense of the north of the UK. This led to forecasts for the north being less precise and adequate than they needed to be.

The BBC responded, explaining that each forecast included a tour of the UK map which started in different parts of the UK and lasted around 40 seconds. The rest of the bulletin focussed on key parts of the weather story. The tilt of the graphic map was to facilitate the use of computer graphics such as topography or rain particles.

At this stage, the complainant also wrote to the BBC Trust to complain that his original complaint had been poorly handled and to restate his critique of the weather map.

The Trust replied explaining that it was aware of problems in the complaints handling processes and was promoting an improvement.

Stage 2

The Head of BBC Weather wrote, having been contacted by the BBC Trust, saying that the aim of BBC Weather was to bring an informative overview of UK and other weather and that this was supplemented by other services on TV, radio and online. She said the map was merely a tool to help with presentation. The tilt of the map was nothing to do with a bias towards the south but rather the generation of computer graphics. She added that Scotland – with its interesting weather – was often in the weather headlines.

Appeal to the BBC Trust

The complainant escalated his complaint to the BBC Trust, saying that it fell into two parts: firstly, the deliberate failure of BBC Weather to offer an equal and competent weather service to all areas of the UK; and secondly, the failure of the BBC to offer an adequate complaints service. Other international broadcasters managed to provide a fair service for their whole countries and the BBC should do so too. On complaints handling, the complainant said that he had sent four online complaints in the last six months and

that none had received a proper response. He said that only when he had sent a posted letter did he receive a proper response.

In reply, the Senior Editorial Strategy Adviser said that she did not consider that the complainant's point regarding the tilt of the weather map had a reasonable prospect of success if put before the CAB. This was because the Trust's Editorial Standards Committee had considered a very similar case previously and did not uphold it. The previous case concerned a complaint that the weather maps used by the BBC distorted Scotland and diminished it. Referring to the previous case, the Senior Editorial Strategy Adviser said that:

"The Committee noted that it had considered a complaint regarding the weather map and Scotland on 17 April 2008. It noted that it had decided that changes made to the tilt in the weather map of 2005 had adequately dealt with concerns about the distortion of Scotland at the time. This matter had been considered at the Governors Programme Complaints Committee (GPCC) in 2006.

The Committee therefore concluded that there were no new grounds to consider a complaint about the presentation of Scotland in the weather map or in the silhouette of the British Isles given the map had not changed since the ESC rejected a complaint about this issue in April 2008."

It seemed to the Senior Editorial Strategy Adviser that this reasoning still applied and the complainant had not raised any substantially different issues. For this reason, she did not propose to take this aspect of the complaint any further.

On the matter of the inadequate handling of the complaint, the Senior Editorial Strategy Adviser noted that the complainant had contacted BBC Audience Services three times regarding his initial complaint (on 6 September 2011, 6 October 2011 and 7 November 2011) and then received a reply on 8 November 2011 which included an apology for the delay but did not provide a reason. This part of the complaint was referred back to the BBC's Head of Audience Services to provide a stage 2 response on this matter.

In terms of the later handling of the complaint, the Senior Editorial Strategy Adviser noted the delay between the complainant's next contact with the BBC (9 November 2011) and the subsequent response from BBC Complaints (30 January 2012). At the time of the complaint there was no target time for second responses to follow up complaints at Stage 1. The Senior Editorial Strategy Adviser hoped this point would be addressed in part by a change to the BBC's complaints processes. The Trust had recently completed a review of the BBC's Complaints Framework and one of the changes that would be introduced in June was a new deadline for responses at this stage (20 working days, or 35 working days in the case of complex complaints). Performance against this deadline would be measured and published.

At Stage 2 the delay in response (between the complainant writing in February 2012 and the Head of BBC Weather's response on 23 March 2012) seemed to be because the Head of BBC Weather did not receive the complainant's letter. There were many possible reasons for this and the Head of BBC Weather had provided an apology in her response. The Senior Editorial Strategy Adviser therefore did not think it would be proportionate to take the appeal on these points to the CAB.

The complainant requested that the Board review the decision of the Senior Editorial Strategy Adviser not to proceed with the appeal. He restated his concerns and did not accept that the weather map had been changed to improve computer graphics. His concerns about the delay and inadequacy of responses had also not been properly answered.

The Panel's decision

The Panel was provided with the complainant's appeal to the Trust, the response from the Senior Editorial Strategy Adviser and the complainant's letter asking the Board to review her decision. The Panel was also provided with the Stage 2 finding and the item in question.

The Panel noted the BBC Executive's response that the tilt of the graphic map was to facilitate the use of computer graphics such as topography or rain particles. The Panel also noted that this was the third time the Trust had considered a complaint about the weather map. The Panel agreed with the Senior Editorial Strategy Adviser's view that the complainant had not raised any substantially different issues and that there were no new grounds to consider a complaint about the presentation of the North of England or Scotland in the weather map. On this basis, the Panel concluded that there was no reasonable prospect of success for this element of the appeal.

The Panel also noted the complainant's concerns about the delays experienced in the handling of his complaint and that both Audience Services and the Head of BBC Weather had apologised. The Panel noted that a further explanation of the delays at Stage 1a (that is, the first response received by the complainant at Stage 1) was being sought and agreed that they would not consider that aspect of his complaint at this stage. The Panel agreed that the delay at Stage 1b was quite short and that, at that time there was no deadline for Stage 1b responses. The Panel therefore considered that the BBC had not broken any commitment to respond to the complaint within a particular period of time. In relation to the Stage 2 response, the Panel accepted the explanation that the complainant's Stage 2 letter had not been received by the BBC in the first instance. In these circumstances, the Panel agreed that it would be disproportionate to hear the handling complaint on appeal. The Panel considered there was no reasonable prospect of success for these elements of the complaints handling appeal.

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

Removal from filming session, 28 January 2012

The complainant appealed to the BBC Trust's Complaints and Appeals Board following the decision of the Senior Editorial Strategy Adviser that the complainant's appeal did not qualify to proceed for consideration by the Board.

The complaint

Stage 1

The complainant wrote to BBC Scotland, complaining about what he considered to be his unwarranted ejection from a filmed performance by a singer-songwriter ('the performer') at the Tron Theatre, Glasgow the previous day. Having paid £30 for a *Celtic Friends* pass to the *Celtic Connections* festival, he had seen a notice headed "Celtic Connections Friends" in the *Friends of Celtic Connections* lounge area at the Glasgow Royal Concert Hall, inviting attendance for the performance. He said that he had expected to attend the performance simply as an audience member; that no-one had warned him about any of the hazards he encountered (such as junction boxes on the floor); and that it had not been clear to him beforehand that filming would be taking place.

In reply, the Head of Productions at the independent production company mac^{TV}, stated that the notice was worded as follows:

Below is the list of Horo Gheallaidh filming sessions at the Tron Theatre. As always, the line-up and timings may be subject to change.

If you would like to attend, please call Angela Mackay on [redacted] or just turn up at the Tron.

According to the Head of Productions, mac^{TV}, the notice was accompanied by a draft timetable of the filming schedule, and the programme makers had also given the festival organisers a production telephone number, allowing *Celtic Friends* to request further information.

The complainant subsequently argued that: he had had no reason to request any further information, as it was not for him to ask if there were, for example, any unusual health and safety issues; given the plethora of information on display, it was unreasonable to expect him to have read every word of the notice; the notice had placed insufficient emphasis on the important difference between this and other *Celtic Connections* events (i.e. that it was being filmed); he had been given no information about being filmed for television broadcast; and the notice did not mention television at all.

The complainant had telephoned Ms Mackay, who confirmed that he could attend. On arriving at the Tron Theatre, he was directed to a room where several others, including Ms Mackay, were seated. He said Ms Mackay gave him no information, advice or guidance on any special requirements concerning filming, and he therefore expected to attend simply as an audience member. He made a comment to Ms Mackay based on the similarity of the performer's name to that of a pole dancer, by asking her whether the performer was this pole dancer. Ms Mackay laughed. The complainant also asked her where her accent was from, and she responded "The Western Isles".

The complainant was then led into the production area. According to the Head of Productions, mac^{TV}, he was accompanied by a crew member for safety reasons. He stated that he was accompanied as one of a group, not as an individual.

The Head of Productions, mac^{TV}, stated that there was no charge for admission to the performance, and that the following notice was displayed on the entrance door to the production area:

Mactv are filming a series of music programmes in the Tron.

If you would like to sit in the audience, please make yourself known to us

The complainant said that he did not see this notice as the door was already open. Almost immediately on entering the production area (which he described as dimly lit with an apparently smoky atmosphere), he stumbled over a track on the floor. Having first been shown to an unstable barstool on which he considered it unsafe to sit, he was subsequently taken to a lower seat at a table, in the course of reaching which he stumbled over what he described as a large junction box with cables, covered with a black sheet. He believed that he should have been warned in advance of such hazards, which he described as serious health and safety issues.

The Head of Productions, mac^{TV}, asserted that the crew had followed all professional and health and safety procedures, as was expected of them and explained that the 'smoke' was generated by a 'hazer' machine, which is categorised as non-hazardous under control of substances hazardous to health (COSHH) regulations.

The complainant then asked a female bystander (the performer's make-up artist) whether she was his blind date. He noticed that the performer was nearby, and that she was looking at him and smiling, and he thought that, in the circumstances, the subsequent exchange between him and the performer could reasonably be regarded as having been invited by her.

As the room was laid out like a bar, not a television studio, and believing himself to be in an informal setting at a rather insignificant gig, the complainant repeated his earlier comment by asking the performer whether she was the pole dancer he had mentioned to Ms Mackay. The performer said that she was not the pole dancer and the following conversation ensued:

"Where's your accent from?"

"Long Island, New York."

"Isn't that where Dumb and Dumber came from; Jim Carrey the actor...?"

"The who ...?"

"No, not The Who ..."

One of the production crew then interposed himself with his back to the complainant. The Head of Productions, mac^{TV}, took the view that his comment concerning the pole dancer was "not acceptable".

The complainant noticed during the first song that there were at least two cameras in operation. After the song had finished, he was told not to look at the cameras and (in his view, rather forcefully) to look at the performer all the time during filming.

He then asked the performer:

“Can you do any Hendrix?”

The complainant regarded this comment as just more harmless banter off camera, whereas the Head of Productions, mac^{TV}, described this and his previous comments as equally perplexing and unsettling to a singer about to perform.

The Floor Manager then asked to speak to the complainant outside the production area and removed the complainant’s jacket (which the complainant said contained £200) from the back of his seat. At the door, he was given his jacket, and was told that the performer did not want him in the session, as she did not like his comments. The complainant considered the Floor Manager’s behaviour to be disproportionate and unacceptable, whereas the Head of Productions, mac^{TV}, asserted that moving his jacket was intended to expedite a difficult situation with minimum disruption.

Having left the production area, the complainant then protested to Ms Mackay and told her that he intended to complain. She did not tell him whom to contact. It was not until the following day that he discovered that *Horo Gheallaidh*, for which the performance was being filmed, was a BBC programme.

The complainant complained that nobody had identified himself or herself to him, that nobody had outlined what was being done or on whose behalf, and that health and safety regulations, his consumer rights, and his rights to reputation and freedom of expression had been flouted. He considered that he had been publicly humiliated by his ejection, in that he had falsely been made to look as if he had deliberately disobeyed specific instructions and deserved to be summarily expelled like a wrongdoer. This had taken place in front of several people, at least one of whom was known to him personally. He argued that the manner of his ejection and the attribution to him of conduct that had caused embarrassment, disruption or a difficult situation, or that had justified someone laying hands on his property, was disproportionate, insulting and defamatory. He argued that a public authority (i.e. the BBC) needed to have a very serious reason (e.g. interests of national security) for interfering with the right to freedom of expression, and that in the circumstances there was no such reason. He noted that his relationship with the *Friends of Celtic Connections* had been severely damaged as a result.

The complainant also argued that he should have been specifically asked for his written permission for such closely controlled filming in the context of a commercial project for public broadcasting.

The complainant made a subject access request (SAR) under the Data Protection Act 1998 (DPA 1998). He asked for information, including images, relating to his attendance at the event. In response, BBC Information Policy and Compliance (IPC) stated that the BBC believed that his request for images fell within the exemption from disclosure afforded by section 32 of the DPA 1998 to information processed for the purposes of journalism, art or literature.

IPC also informed him that the records held by the complaints team were held for the purposes of handling complaints, and that the information was only made available to complaints staff, staff in the relevant production area and relevant BBC legal representatives if necessary. IPC enclosed a response dated 2 February 2012 from the Head of Productions, mac^{TV} which confirmed that, apart from his initial letter of complaint, mac^{TV} held no data relating to him.

Stage 2

The complainant emailed the Head of Public Policy and Corporate Affairs, BBC Scotland, saying that, whereas he had received a response to his SAR, he had received no substantive response to his complaint.

The Head of Public Policy and Corporate Affairs explained that the letter from mac^{TV} dated 2 February 2012 was a response to both his SAR and his complaint. As outlined in that letter, mac^{TV} staff had been concerned about possible disruption to the event, and there was nothing more to add to previous correspondence.

Appeal to the BBC Trust

The complainant escalated his complaint to the BBC Trust, asking why the confusion concerning his SAR and substantive complaint had arisen, and noting that, in his view, no valid reason had been provided. He also noted that the letter dated 2 February 2012 from the Head of Productions, mac^{TV}, referred to him in the third person, which implied that it was addressed not to him but to the BBC. He stated that the letter did not address all the points of his complaint, and argued that the BBC had an obligation to do so and to provide legally valid responses.

The complainant said that he was considering appealing to the Information Commissioner. He had received a letter dated 2 February 2012 from BBC Complaints, informing him that the matter had been passed to the Heads of Public Policy and Gaelic Services and that, due to the detailed nature of his complaint, it might take some time to look into it. The letter that the Head of Public Policy and Corporate Affairs, BBC Scotland, now claimed constituted the BBC's response was also dated 2 February 2012, from which he inferred that no time had been taken to look into the detail of his complaint.

He argued that the BBC was responsible for its subcontractors' actions in discharging its obligations under the European Convention on Human Rights (ECHR), with particular reference to those concerning freedom of expression.

He quoted from *A Guide to Human Rights Law in Scotland*, by Lord Robert Reed and Jim Murdoch (Reed and Murdoch) in support of his argument.

He described the BBC's view that mac^{TV} had been concerned about possible disruption to the event as biased and unjustified, as it disregarded several important points of complaint, including the omission of any statement by mac^{TV} staff identifying themselves or explaining what was going on. He argued that this had effectively nullified all his rights.

After quoting sections 6(1) and (6) of the Human Rights Act 1998 (HRA 1998) and Article 6 of the ECHR, he quoted Reed and Murdoch's discussion of courts' Article 6 obligation to give reasons for their judgments, and the authors' view that the same principles applied

to all tribunals established to determine civil rights. He also quoted Reed and Murdoch to the effect that the terms of section 6(6) of the HRA 1998 reflected the ECHR's imposition of positive as well as negative obligations. He also quoted a passage from Reed and Murdoch concerning the central importance of Article 6 and the pains taken by the European Court of Human Rights to protect the effective delivery of justice.

He argued that he was given no information at all about the making of any television programme, or the involvement of mac^{TV} or any other television company.

He concluded by stating that the letter from the Head of Productions, mac^{TV}, of 2 February 2012 had contained several additional statements about him that were disproportionate, insulting and defamatory.

In reply, the Senior Editorial Strategy Adviser said that her role was, first, to determine whether the appeal raised a matter of substance, and in particular whether there was sufficient evidence to suggest that it had a reasonable prospect of success if placed before the Trustees. She noted that she must also give consideration to whether it is appropriate, proportionate and cost-effective for the CAB to address the appeal.

In reaching her decision, the Senior Editorial Strategy Adviser took account of all the correspondence in the complaint, and of the programme makers' responses to the independent editorial adviser's questions.

First, she considered the matter concerning the complainant's SAR and substantive complaint. She noted that there was some confusion regarding receipt of responses from the BBC and the production company at Stage 1 of the complaints process.

However, she also noted that a response on this point, together with an apology for any confusion and for any lack of clarity regarding the fact that the response to his SAR also constituted the response to his complaint, was provided by the Head of Public Policy and Corporate Affairs, BBC Scotland in his email of 22 March 2012 at Stage 2 of the complaints process. She therefore considered that Trustees would be likely to consider this matter to be resolved and it would have no reasonable prospect of success. On that basis, she did not propose to put this element of his appeal to the CAB.

The Senior Editorial Strategy Adviser next considered whether, as the complainant had argued, he had been charged admission to the event. She noted that, in his initial letter of complaint, he asserted that he had "effectively paid £30 for the privilege of attending". The sum of £30 to which he referred was the price of his *Celtic Friends* pass, the benefits of which she understood included:

- Ticket to one New Voices concert
- Free *Celtic Connections* 2012 T-shirt
- Personalised *Celtic Friends* pass
- Access to the *Celtic Friends* lounge
- Priority entry to the Danny Kyle Open Stage
- The chance to be a judge at the Danny Kyle Open Stage

- Special offers and events during the festival
- Ticket offers on selected shows.

She noted that the programme makers stated in correspondence that “There is no monetary charge made on any person who wishes to come in and enjoy the artists and the filming of *Horo Gheallaidh*”, to which the complainant had responded, “If I had not paid £30 to be categorised as a Celtic Friend I would not have been invited”.

The Senior Editorial Strategy Adviser took the view that the opportunity to attend special festival events at no additional charge was but one of a number of benefits and privileges that were potentially available to holders of a *Celtic Friends* pass. It would be highly artificial to attempt to apportion the cost of the pass among such benefits and privileges: some had an easily quantifiable monetary value, whereas others did not; individual pass-holders might ascribe different values to the same benefit; and different pass-holders might choose to avail themselves of different benefits. While she noted that possession of a *Celtic Friends* pass was a precondition of eligibility to attend the performance in question, she did not agree that the cost of the *Celtic Friends* pass, or any quantifiable portion thereof, was directly referable to the event in question, or that it was (as he argued) effectively the price of admission.

She then considered the health and safety issues that the complainant had raised. She noted that the potential “hazards” to which he referred were the track and the large junction box with cables, covered with a black sheet, over both of which he had stumbled, and the unstable barstool on which he considered it unsafe to sit.

She also noted that he had been accompanied by a crew member while he was moving within the production area, and that the programme makers had stated that the crew had followed all professional and health and safety procedures. In her view, it did not necessarily follow from the matters he raised that there had been any breach of health and safety regulations.

For these reasons, the Senior Editorial Strategy Adviser concluded that there was insufficient evidence to suggest that his appeal on health and safety grounds had a reasonable prospect of success, and she did not propose to put this element of his appeal to the CAB.

The Senior Editorial Strategy Adviser then considered whether he had been given sufficient notice of the fact that the performance was to be filmed. First she noted that, in his initial letter of complaint, he acknowledged that he became aware during the performer’s first song of the presence of cameras. Consequently, by the time he made his second comment (concerning Jimi Hendrix), he was already aware that the performance was being filmed.

With regard to the state of his awareness when he first spoke to the performer, the Senior Editorial Strategy Adviser noted that the invitation to which he responded had stated expressly that the performance was to be filmed, and that it was accompanied by a draft filming schedule – although these were displayed among a great deal of other information. She noted that the complainant had telephoned the programme makers, not the theatre, to ask about attending the event. The programme makers had posted a second notice on the entrance door to the production area, stating that a series of music

programmes was being filmed – although he stated that he was unable to read this as the door was opened. However, given the set up he had described inside the venue, she thought it reasonable to assume that even an uninformed observer would be immediately aware that filming was taking place.

Having regard to all the circumstances, the Senior Editorial Strategy Adviser concluded that the complainant was given sufficient notice before his first conversation with the performer that filming would be taking place.

She also considered that the issue of notice was immaterial to the appropriateness of his ejection. As he acknowledged in his initial letter of complaint, he was told:

“[The performer] doesn’t want you in this session. She didn’t like your comments.”

The complainant was therefore ejected at the performer’s behest. The fact that the performance was being filmed had no material bearing upon the performer’s reason for objecting to his comments, and the issue of whether he had been given reasonable notice of such filming was therefore irrelevant to the reasonableness of his ejection.

The Senior Editorial Strategy Adviser also noted the programme makers’ view that they had:

“the usual right of any owner/leaseholder/tenant/renter of premises to seek the removal of any person who at any time we do not wish to have on our premises.”

In the circumstances, the complainant and the other audience members had the programme makers’ permission, but not the right, to be present in the production area. The continuance of such permission depended upon, among other things, his conduct. With regard to the conduct that was expected of him and others, the programme makers had stated:

“our expectation would be that people behave in a responsible, lawful, courteous and reasonable manner allowing an environment where everyone is able to complete their work to the best of their abilities.”

She considered this to be a reasonable expectation. She believed that Trustees would agree with the programme makers that the complainant’s comments could be seen as perplexing and unsettling to a singer about to perform. She considered that Trustees would regard his ejection as reasonable given that the performer had objected to his comments.

The Senior Editorial Strategy Adviser therefore concluded that there was insufficient evidence to suggest that his complaint that he had been wrongly ejected has a reasonable prospect of success and she did not propose to put this element of his appeal before the CAB.

With regard to his complaint that his consumer rights had been breached, the Senior Editorial Strategy Adviser was unaware of any consumer legislation that would have entitled him to remain in the production area, or to return to it after he had been induced to leave. For these reasons, she believed there is insufficient evidence to suggest that his complaint that his consumer rights had been unlawfully interfered with had a reasonable

prospect of success and again she did not propose to put this element of his appeal before the CAB.

With regard to his argument that his right to freedom of expression had been breached, the Senior Editorial Strategy Adviser noted that the right to freedom of expression:

“... may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society ... for the protection of the ... rights of others.”

The Senior Editorial Strategy Adviser considered that there was no reason why, in the circumstances, the complainant’s right to freedom of expression should have overridden the rights of others. Members of an audience knowingly and willingly accept the curtailment of their freedom to express themselves during a performance, in order to allow the performance to take place. In the circumstances, she did not see how the revocation of his permission to remain in the production area could reasonably be said to have interfered with his right to freedom of expression.

For these reasons, the Senior Editorial Strategy Adviser believed there was insufficient evidence to suggest that his complaint that his right to freedom of expression had been unlawfully interfered with had a reasonable prospect of success and she did not propose to put this element of his appeal before the CAB.

With regard to the complainant’s argument that he had not been asked for, or given, his written permission to be filmed, the Senior Editorial Strategy Adviser noted the programme maker’s view that audience members’ consent was implied by their continuing presence:

“We have not issued consent forms or waivers to individuals who have sat in on our filming. Access to the performances is by invitation only and thus attendance is taken as consent for filming.”

The Senior Editorial Strategy Adviser accepted the validity of this view, but noted that it was contingent upon audience members being given sufficient notice that they were to be filmed. As noted above, she believed that this was the case. So far as the manner of his ejection was concerned, she believed Trustees would agree that the programme makers achieved this as discreetly and circumspectly as circumstances permitted. Again therefore she did not believe these elements of his appeal had a reasonable prospect of success and did not propose to put them before the CAB.

The complainant requested that the Board review the decision of the Senior Editorial Strategy Adviser not to proceed with the appeal.

The Panel’s decision

The Panel was provided with the complainant’s appeal to the Trust, the response from the Senior Editorial Strategy Adviser and the complainant’s letter asking the Board to review her decision. The Board was also provided with the Stage 2 finding.

The Panel noted the complainant’s concerns about the handling of his complaint and also that, in his email of 22 March 2012, the Head of Public Policy and Corporate Affairs, BBC Scotland had apologised for any lack of clarity in his email. The Panel agreed with the

Senior Editorial Strategy Adviser that this aspect did not have a reasonable prospect of success on appeal.

On the main substance of the complaint, the Panel agreed that, irrespective of whether or not the complainant was aware that filming was taking place, the underlying issue was whether the production team had the right to eject individuals in a reasonable and proportionate manner from a performance, should their behaviour be inappropriate. The Panel agreed that there would not be a reasonable prospect of success for an appeal on the basis that the comments and behaviour of the complainant were appropriate or acceptable. The Panel also agreed that there would not be a reasonable prospect of success for an appeal on the basis that the complainant's consumer rights had been breached or that the manner of his ejection had not been achieved as discreetly and circumspectly as circumstances permitted.

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