

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

June & July 2014 issued September 2014

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Remit of the Complaints and Appeals Board

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

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

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

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

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

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

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

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

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

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

The Board also reserves the right to decline to hear an appeal whilst it relates to matters which are the subject of or likely to be the subject of, or relevant to, legal proceedings.

The Board will not generally reconsider any aspects of complaints that have already been adjudicated upon or considered by a Court.

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

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

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

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

Summary of findings

Television Licensing TVL0060

Summary of finding

The complainant contacted the BBC about the use of what the complainant felt was “covert surveillance” by Television Licensing, on or around his property, in pursuit of information about the complainant’s circumstances. The complainant cited two instances of this, being two separate conversations he alleged occurred:

1. between his neighbour and a TV Licensing officer, during which the complainant claims the officer attempted to obtain personal information about the complainant and
2. between the complainant and a TV Licensing officer, during which he claims the officer attempted to obtain personal information about his neighbour.

The complainant described this and other matters as “covert surveillance”. The complainant also complained about the way his complaint was handled.

The appeal was originally heard by the Trust’s Complaints and Appeals Board (CAB) on 22 May 2014. In the course of drafting the appeal finding, the Trust Unit sought and obtained further clarification and detailed information from the Executive, in particular the information held by Television Licensing about visits to the complainant’s property and postcode in late 2010.

Covert Surveillance

The Committee decided, with regard to the allegation of ‘covert surveillance’, that ultimately, the complaint could not be made out, due to the passage of time, and because there was not enough evidence to confirm or rebut the allegations.

Finding: Not upheld

Breach of Privacy

The Committee concluded, with regard to the allegation of ‘breach of privacy’ that

- in the context of the BBC Trust’s responsibility for ensuring that arrangements for the collection of the licence fee were appropriate and proportionate, the issues raised were sufficiently serious to consider in principle;
- it was “appropriate and proportionate” for TV Licensing to attempt to decide whether a licence was required by means of visits to a property, when other methods to make contact have been made (such as letters and phone calls), but have received no response;

- there were certain lines of questioning which would be appropriate for a TV Licensing officer to follow, including asking a neighbour whether or not a property was occupied and that it would also be appropriate for the officer to record the answers to these questions onto the TVL database (with or without the occupant's knowledge); and
- this policy was proportionate in the circumstances.

Finding: Not upheld

Complaints Handling

The Committee concluded, with regard to the allegation of 'complaints handling' that,

- notwithstanding the complainant's acceptance of the apology offered by the BBC Executive, the Executive had not written to the complainant despite saying in July 2013 that this was what they would do; and
- there had been a failure in complaint handling.

Finding: Upheld

For the finding in full see pages 5 to 13.

Appeal Findings

Television Licensing TVL0060

This appeal originally came before the Complaints and Appeals Board at its February 2013 meeting. The Panel decided that one element of the appeal qualified for consideration. This element was considered first at the May 2014 meeting and again at the July 2014 meeting. The Panel's finding is reflected here. The Panel decided that the remainder of the appeal did not qualify to proceed for consideration. The elements of the appeal which were not considered are reflected under Rejected Appeals.

The complaint

The appeal concerned the use of what the complainant feels was "covert surveillance" by Television Licensing, on or around his property, in pursuit of information about the complainant's circumstances. The complainant has cited two instances of this, being two separate conversations he alleges occurred:

1. between his neighbour and a TV Licensing officer, during which the complainant claims the officer attempted to obtain personal information about the complainant and
2. between the complainant and a TV Licensing officer, during which he claims the officer attempted to obtain personal information about his neighbour.

The complainant described this and other matters as "covert surveillance". The complainant also complained about the way his complaint was handled.

The appeal was originally heard by the Trust's Complaints and Appeals Board (CAB) on 22 May 2014 (CAB(14)27). In the course of drafting the appeal finding, the Trust Unit sought and obtained further clarification and detailed information from the Executive, in particular the information held by Television Licensing about visits to the complainant's property and postcode in late 2010.

This information was placed before the Panel, together with the original appeal paper for reconsideration.

Background

Stage 1 complaint

Correspondence between the complainant and TV Licensing regarding this aspect of the complaint began in the autumn of 2012.

Stage 2 complaint

There were several exchanges in 2013 between the complainant and the BBC Executive's Head of Revenue Management, i.e. at Stage 2. In his letters the complainant raised a number of points, broadly about what he viewed as the discriminatory nature of TV Licensing policies towards legally unlicensed households.

On 16 March 2013 the complainant stated:

"I should add that I have evidence of covert surveillance by enforcement officers taking place at my premises during 2010"

In her reply of 8 April 2013 the BBC Executive's Head of Revenue Management stated:

"I was concerned to read in your letter that you believe covert surveillance of your property took place in 2010. If you will kindly provide more details, I will be happy to look into this further for you"

In his letter dated 16 May 2013 the complainant referred to conversations both he and a neighbour had allegedly had with a TV Licensing visiting officer in late 2010 where the visiting officer had allegedly attempted to obtain personal information about neighbours.

The BBC Executive's Head of Revenue Management responded to the letter dated 16 May on 4 July 2013 and stated:

"Thank you for providing details of a visit to your address on Thursday 18 November 2010. It is unacceptable for a visiting officer to discuss a person's TV Licensing business with a neighbour. I view this matter seriously therefore I have asked TV Licensing to investigate this matter and respond to you directly once their investigation is complete."

Stage 3 complaint

On 22 July 2013, the complainant requested:

"Withdrawal by TV Licensing of all covert surveillance of unlicensed addresses except where there is evidence of licence evasion or other reasonable grounds for such surveillance"

The complainant also asked that his complaint be escalated to the BBC Executive Board.

The Managing Director, Finance and Operations, for the BBC Executive responded to the complainant on 29 October 2013. In that letter she stated

"I have been assured by TV Licensing that there is no evidence to suggest that covert surveillance has been carried out on your property."

Appeal

The complainant appealed to the BBC Trust in a letter dated 21 November, received on 25 November 2013. The reference to "covert surveillance" on or around his property was as follows:

"This issue has not been resolved to my satisfaction nor does it appear to have been fully investigated by the BBC. In particular, in her letter to me dated 4 July 2013 [the Head of Revenue Management] responded to the issue of covert surveillance by stating 'I view this matter seriously therefore I have asked TV Licensing to investigate this matter and respond to you directly once their investigation is complete'. At the time of writing I have not received a satisfactory response on the subject of covert surveillance, nor have I received any further correspondence on this matter from TV Licensing."

Response from the Trust Unit

The complainant was advised on 23 January 2014 that, in the view of the Head of Editorial Standards, BBC Trust, the aspects of his appeal concerning what he viewed as the discriminatory nature of TV Licensing policies towards legally unlicensed households (which formed the major part of the appeal) did not qualify for consideration by the Trust. The complainant challenged this decision and on 20 February 2014 a Panel of the Board agreed that these aspects of the appeal did not have a reasonable prospect of success and did not qualify to proceed for consideration.

One element of the complaint was taken on appeal. In her letter of 23 January the Head of Editorial Standards, BBC Trust, explained that TV Licensing usually interpret the phrase "covert surveillance" as meaning the use of hand-held devices or detector vans. The Head of Editorial Standards, BBC Trust concluded that the policy of "covert surveillance" according to this understanding of the phrase (i.e. the use of hand-held detection devices and / or detector vans) was an operational matter for the BBC and therefore not a matter on which the BBC Trust would be involved.

However, the Head of Editorial Standards, BBC Trust understood that the complainant was using the term "covert surveillance" to describe conversations both he and a neighbour had allegedly had with a TV Licensing visiting officer where the visiting officer had allegedly attempted to obtain personal information about neighbours. She decided on this basis that the complainant had raised a matter of substance regarding his assertion that he had not had "a satisfactory response on the subject of covert surveillance, nor have I received any further correspondence on this matter from TV Licensing". The Head of Editorial Standards also said she would look at the handling of the complaint by the Executive.

The complaint

The allegations regarding actions by TV Licensing Officer/s

The complaint was set out in the complainant's letter of appeal to the BBC Trust¹ and his specific evidence, contained in an earlier letter to the Executive², of two conversations which had allegedly taken place with one or two TV licensing officers some three years earlier, in late 2010. The complainant also made a number of comments on the investigation undertaken by the Trust Unit in May 2014 on his complaint.

The complainant made it clear that he considered that any use of hand-held devices to record personal data on a TVL database without his knowledge or permission, such as whether a property was occupied or not, to constitute "covert surveillance" and a "breach of privacy".

The complainant explained that he was complaining about the:

"...surveillance of the property itself, investigation of its occupants and surveillance activity such as trying to establish whether the property is occupied or not. It also concerns possible 'covert' recording of such surveillance information in the TV Licensing database".

¹ dated 21 November 2013

² dated 16 May 2013

In respect of the conversations, the complainant initially stated³ that 'on or about 18 November 2010':

- a TV Licensing officer had called at his premises to make enquiries as to whether a TV licence was needed at his property;
- the TV Licensing Officer informed him that previous visits had been made by TV Licensing to his property;
- that he, the Complainant, was unaware such visits had been made; and
- the TV Licensing Officer then began to ask about a neighbouring property and "...in effect, started 'fishing' for personal details about this property's occupancy and its inhabitants". He added that he was "very surprised by this request" and "refused to disclose any personal details".

In the same letter, the complainant stated that subsequent to the TV Licensing Officer's visit on or about 18 November 2010, he had a conversation with a neighbour where he "discovered further information" about previous enforcement visits. He stated that:

- His neighbour informed him of a conversation they [neighbour] had had with a TV Licensing Officer which had concerned the complainant's "whereabouts", "possible need for a television licence" and "the fact that (the complainant's) property did not have a valid TV licence...";
- The complainant stated that he was "pleased to learn that they [neighbour] had refused to disclose any personal details when quizzed about my whereabouts".

In later correspondence⁴, the complainant had gone on to provide further, more specific, detail:

- The TV Licensing Officer's visit occurred on or about 15 November 2010;
- He stated he believed that "covert surveillance" had taken place in the six weeks leading up to 15 November 2010 (including the conversation between his neighbour and a TVL officer);
- He believed that information may have been recorded on to the TV licensing database using a hand-held device as a result of this surveillance (including the conversation);
- In relation to the conversation that he himself had had with the TVL officer in November 2010, he added that the questioning about the neighbour's property "...went beyond merely asking whether or not the property was occupied. In his questioning he was clearly attempting to secure as much information as possible including details of the property, the names of its occupiers, and information about its current state of occupancy."

The BBC Head of Revenue Management's response to the allegations

In a letter to the Trust Unit of 9 April 2014 regarding the investigation into the complaint, the BBC's Head of Revenue Management stated that:

"TV Licensing had now confirmed (via the BBC Executive), based on a fresh correct search of the database, that a visit to the complainant's address did in fact take place on 15 November 2010, as well as to another address within the same postcode on the same date and around the same time. Another visit was also apparently made to an address in the same postcode earlier that year in October 2010. The outcome of the visit to the complainant's property on 15 November

³ dated May 2013

⁴ 5 May 2014, response to Trust Unit

2010, as shown on TV Licensing records, was for the property to be confirmed as not requiring a TV licence.”

The Executive stated that recording a property as not requiring a TV licence should only occur when a householder co-operates with requests by a TV Licensing visiting officer to confirm that no TV receiving equipment is at use at the address. The outcome of the visit to another address within the same postcode on the same date, as shown on TV Licensing records, was to have recorded the other address as unoccupied. The Executive stated that this outcome should only be recorded if the visiting officer sees evidence to suggest that the house is unoccupied.

The BBC's Head of Revenue Management also informed the Trust that:

- Further details of the visits cannot now be provided (for example by interviewing the relevant visiting officer) since considerable time has passed since the visits in 2010.
- Even if TV Licensing had correctly identified that a visit had taken place at the time the initial request for an investigation was made (i.e. in April 2013), this was still almost three years after the date of the visits and it would not have been reasonable to conduct further investigations at that time.
- “TV Licensing’s officers must adhere to a strict code of conduct and it is inappropriate to discuss other householder’s licensing situation with a neighbour. We would not, however, consider it inappropriate for a visiting officer to simply ask a neighbour whether or not a property was occupied which would not involve disclosure of any personal information.”
- The purpose of gathering personal data is to administer the TV Licensing system.
- The BBC was still satisfied that no “covert surveillance” took place at the complainant’s property in 2010, even under the complainant’s interpretation of the phrase.

Further Trust Unit enquiries

The Trust Unit sought to establish exactly what, if any, information was held by Television Licensing regarding visits to the relevant postcode in late 2010. TV Licensing provided the information held in the relevant TVL database for the complainant’s postcode as at 15 November 2010. A member of the Trust Unit staff also spoke with a member of Capita staff with responsibility for assurance around field operations to ensure that they understood each of the fields in the database and the information recorded therein. The information showed that:

- Several previous visits had been made to the complainant’s property, where TV Licensing Officers had recorded leaving calling cards.
- In the period in question (i.e. six weeks leading up to 15 November 2010):
 - The TVL database shows that a property in the same postcode was visited on 6 October 2010 and that the result is recorded as “left calling card but could not confirm occupied”. On the face of this information, it would appear that the TV Licensing Officer did not speak with anyone at this

⁵ For the purposes of this investigation the Trust Unit looked beyond this time period

address. It therefore follows that this neighbour is unlikely to be the same neighbour with whom the complainant says he spoke.⁶

- As to whether the TV Licensing Officer may have spoken with another neighbour in the postcode regarding the complainant's property on this date, there are no entries regarding visits to his property for this date. When queried, Capita informed the Trust Unit that TV Licensing Officers do not go door-to-door, but are directed to specific addresses (due to the timing of TVL's mailing campaigns, which must allow the respective individual a reasonable time to respond and which are therefore different in each case). If an officer had been directed to the complainant's property on 6 October, then an entry should have been made for this date and a result recorded, as on prior occasions.
- The Trust Unit reviewed the information on the TVL for a number of months previously, but the database does not contain a record of any other visits by licensing officers to any other properties in this postcode. Therefore it appears unlikely – again on the face of the available information – that a TV Licensing Officer would have been in the postcode making enquiries regarding the complainant's address.
- Another visit to this postcode was made on 15 November and on this date:
 - A visit was made to the complainant's property by another TV Licensing Officer (not the same individual who visited on 6 October 2010). The outcome was recorded as "confirmed no set (do not need a licence)", which appears to corroborate the complainant's evidence that he spoke with a TV Licensing Officer who came to visit his property to make enquiries on or about this date.
 - A visit was also made to another neighbour in the same postcode. The recorded outcome in this case was "confirmed unoccupied". There is nothing beyond this information in the database that would either corroborate or conflict with the complainant's account of being asked questions about his neighbour's property at this time. On the available evidence, it is impossible to know whether the neighbour to whom the complainant refers is the same neighbouring property visited by TV Licensing on 15 November 2010.

The Panel's finding

The Panel noted the passage of time since the events in question (more than two years had passed between the alleged incidents and the complaint being made to the Head of Revenue Management about the conversations) and the following related difficulties:

- The complainant himself recognised that his own evidence is incomplete and "leaves gaps because of the passage of time" and "because unfortunately it has not been possible to provide full independent corroboration of the detailed evidence as supplied".
- The Panel understood that it was not possible to receive any evidence from the neighbour who the complainant alleged told him that TV Licensing asked her for detailed personal information about him.
- The Panel questioned whether it would be fair to attempt to interview the TV Licensing Officers who visited the postcode on the two dates in question regarding conversations alleged to have occurred some three and a half years ago given they were continually visiting properties and interacting with the public.
- The Panel also questioned whether it would be fair, in the absence of being able to retrieve reliable evidence from TVL (through no fault of that party), to rely solely on the complainant's evidence.

⁶ When this information was shared with the complainant, he stated that this was another neighbour.

The Panel then reviewed the applicable provisions of the TV Licensing England & Wales Visiting Procedures, which state that:

Neighbours and other third parties must not be approached to provide information about the occupiers or status of a property.

If however a neighbour or Police Officer approaches the Enforcement Officer ('EO') and volunteers information that is relevant to the immediate investigation or will assist future enquires, then that information must be captured, but the EO must ensure as far as possible that it is accurate, relevant to our enquires and not excessive (i.e. not more than is necessary).

If a property appears to be unoccupied and a third party such as a neighbour makes contact with the EO, then the EO may attempt to confirm that status. The EO may only ask if the property is occupied or not if they have reasonable grounds to suspect the property may be unoccupied.

If advised that a property is occupied, no further questions should be asked of the third party but information obtained about an occupier must be recorded if it is relevant and not excessive, and appropriately actioned by following up the visit.

The Visiting Procedures also repeatedly state that TV Licensing Officers should take care not to disclose any personal data to the third party.

The Panel also noted that TV Licensing's Privacy Policy advised the public that, in order to identify and communicate about TV Licensing matters, TVL may also record information obtained from third parties, including personal information and contact information about licensable properties and information relevant to any investigation related to a TV licensing offence (amongst other things).

The Panel noted the Executive's response to the Trust Unit, which stated that "we would not ... consider it inappropriate for a visiting officer to simply ask a neighbour whether or not a property was occupied..." expressed in the context of the complainant alleging he had been asked about a neighbour's property during a visit to his own.

The Panel noted that the complainant disagreed with the statement that the BBC was satisfied that no covert surveillance took place even under the complainant's interpretation of the phrase as he felt the BBC's evidence was inconclusive and they had ignored his evidence. He also disagreed with the statement by the BBC's Head of Revenue Management and viewed this as breach of privacy.

Covert surveillance'

The Panel noted the complainant had not submitted his complaint regarding the conversations until over two years after the two alleged conversations had taken place. The Panel also noted that the available evidence was incomplete, largely as a result of the passage of time, though also due to the fact that a witness was unavailable, and that the complainant had himself recognised this problem. The Trust Unit had made attempts to see whether further detail could be obtained from TVL, but, whilst it was possible to confirm that visits had taken place, the information held did not corroborate the complainant's allegations. In addition, it was no longer possible to obtain any further information from TVL, again due to the passage of time. The Panel considered that it was not fair to rely solely on the complainant's evidence, which itself is incomplete.

The Panel decided that, ultimately, the complaint could not be made out, due to the passage of time, and because there was not enough evidence to confirm or rebut the allegations. Therefore the Panel declined to uphold the appeal.

Finding: Not upheld

'Breach of privacy'

However, the Panel felt that whilst it could not look at the specific circumstances of this case, in the context of the BBC Trust's responsibility for ensuring that arrangements for the collection of the licence fee were appropriate and proportionate, the issues raised were sufficiently serious to consider in principle. This would ensure that the complainant and TV Licensing were aware of the Panel's decision as to what was or was not acceptable. The Panel emphasised the importance of agents working within the clear rules designed to protect individuals' privacy and to ensure that any personal data is collected and used only properly and for the purpose of enforcement.

The Panel agreed with the Executive that it was "appropriate and proportionate" for TV Licensing to attempt to decide whether a licence was required by means of visits to a property, when other methods to make contact have been made (such as letters and phone calls), but have received no response.

The Panel also agreed with the Executive that there were certain lines of questioning which would be appropriate for a TV Licensing officer to follow, including asking a neighbour whether or not a property was occupied and that it would also be appropriate for the officer to record the answers to these questions onto the TVL database (with or without the occupant's knowledge).

The Panel also considered that this policy was proportionate in the circumstances. The Panel agreed that discussing whether an identifiable member of the public was licensed or not with a neighbour was not acceptable, nor was the disclosure of any personal data about one member of the public to another. The Panel also agreed that, once an officer was informed by someone that a neighbouring property was occupied, no further questions should be asked and that, thereafter, only strictly relevant information volunteered by a neighbour should be recorded. However, it noted that this was accepted by the BBC and confirmed this was an appropriate and proportionate policy for collecting the licence fee.

Finally the Panel also recognised that the work of agents is extremely demanding and is conducted in the interests of the vast majority of licence fee payers who receive a television licence and who should not be expected to subsidise the small number who deliberately try to evade detection.

Finding: Not upheld

Complaints handling

The Panel noted that prior to April 2014, the complainant had not received information from the BBC Executive or TV Licensing regards any investigation which had been carried out as a result of the information provided by the complainant in May 2013 about conversations with TV licensing officers, which he termed as 'covert surveillance' on his property. This was despite the Head of Revenue Management assuring the complainant

in July 2013 that she would ask TV Licensing to investigate the matter and respond to the complainant directly.

The Panel noted that the BBC's Head of Revenue Management acknowledged that TV Licensing did not write back to the complainant with the results of their investigation in 2013 and that the investigation used the incorrect date range to search for visits.

The response from the BBC's Managing Director, Finance and Operations at stage 3 ("I have been assured by TV Licensing that there is no evidence to suggest that covert surveillance has been carried out on your property ") was based on the fact that an incorrect date range had been used by TV Licensing when asked by the BBC's Head of Revenue Management to investigate this point in April 2013.

The Panel also noted that the BBC's Head of Revenue Management apologised to the complainant for this oversight.

The Panel noted that, in a letter dated 5 May 2014, the complainant accepted the apology offered by the BBC Executive.

The Panel noted that the BBC's handling error was compounded by the Executive misunderstanding the complainant's use of the term "covert surveillance".

The Panel concluded that, notwithstanding the complainant's acceptance of the apology offered by the BBC Executive, the Executive had not written to the complainant despite saying in July 2013 that this was what they would do. The Panel concluded that there had been a failure in complaint handling.

Finding: Upheld

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.

Review of Trust Unit decision not to proceed with a Television Licensing appeal

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.

This appeal originally came before the Complaints and Appeals Board at its February 2013 meeting. The Panel decided that one element of the appeal qualified for consideration. This element was considered first at the May 2014 meeting and again at the July 2014 meeting. The Panel's finding is reflected in Appeal Findings above. The Panel decided that the remainder of the appeal did not qualify to proceed for consideration. The elements of the appeal which were not considered are reflected here.

Complaint and Appeal

The complainant appealed to the Trust by a letter dated 21 November 2013 (received 25 November 2013), having received a letter rejecting his complaint from the BBC's Managing Director, Finance and Operations dated 29 October 2013 (representing the final stage of the complaints process within the BBC Executive and TV Licensing).

The complainant said he had lived continuously at the same address for over thirty years and during that time had never owned a television. He said that he had therefore never required a television licence. He said that he had raised a complaint about the BBC's television licensing policies, which he believed to be unfair. The complainant said they discriminated against lawfully unlicensed households.

The complainant said he had raised a number of points with the BBC in his letter dated 22 July 2013, and that in his opinion none of these points had been dealt with satisfactorily. In particular he noted four points that he said remained unresolved:

- Mandatory co-operation with TV Licensing enquiries
- Covert surveillance
- Unannounced doorstep visits
- Targeting of enforcement activities

The complainant said that the BBC Trust should conduct an independent review of the matters raised by his complaint.

The complainant said that BBC policy to maximise TV licence revenue, minimise TV licence collection costs and minimise TV licence evasion collectively act against the interests of lawfully unlicensed households. He asked the BBC Trust to review the balance between minimising TV licence collection costs and being fair and non-discriminatory towards no TV households.

The complainant said that under certain circumstances TV Licensing enforcement activities can lead to intimidation and harassment of innocent, law abiding citizens. He asked the Trust to provide independent scrutiny of these issues.

The complainant said that changes in BBC policy were made following a BBC Trust review of TV licence fee collection arrangements in March 2009; however, no further specific changes had been made as a result of the issues raised by his complaint.

The complainant said he was disappointed that the BBC had not offered a personal apology for the “harm and distress caused at my home address over the last 25 years”.

The complainant asked that TV Licensing amend its policy of applying a two-year “protective guard” on his property and amend this to five years with immediate effect.

Decision of the Head of Editorial Standards, BBC Trust

The Head of Editorial Standards, Trust Unit noted the correspondence that had passed between the complainant and the BBC, and she acknowledged the strength of the complainant’s feelings.

The Head of Editorial Standards, Trust Unit considered firstly the four key points that the complainant said remained unresolved, and which he had summarised in his appeal letter dated 21 November 2013.

Point One – Mandatory co-operation with TV Licensing enquiries

The Head of Editorial Standards, Trust Unit noted that the complainant had said the BBC should withdraw its existing enquiry policy that mandates enforced co-operation between TV Licensing and members of the public who do not require a TV licence. (This referred to both written communication and doorstep visits from TV Licensing.)

The Head of Editorial Standards, Trust Unit noted that the TV Licensing website makes clear that enquiry officers do not have any legal powers to enter homes without a search warrant granted by a magistrate (or sheriff in Scotland). Furthermore, members of the public are under no obligation to grant entry to an enquiry officer if they do not wish to do so. If refused entry by the occupier, the enquiry officer will leave the property. If enquiry officers are refused access or an occupant withdraws the right to visit, then TV Licensing reserve the right to use other methods of detection.

Enquiry officers may apply for authorisation to use detection equipment if they are refused entry on to premises. TV Licensing may also apply to a magistrate (or sheriff in Scotland) for a search warrant. However, this is only done as a last resort and when a senior manager and a legal adviser consider that there is good reason to believe that an offence has been committed.

The Head of Editorial Standards, Trust Unit also noted the responses that the complainant had received from the BBC on this point, in particular the letter from the Head of Revenue Management dated 8 April 2013, which made clear that no one was under any obligation to allow a TV Licensing Officer to enter their premises, nor were they under any obligation to respond to any enquiries they may receive from TV Licensing. Whilst the Head of Editorial Standards sympathised with the view of the complainant that in practical terms he had to reply to avoid further letters she noted that it was simple to inform TV Licensing that no licence was required at a property and could be done at the local library on the TV Licensing website. (She noted that the possibility of making a website declaration was set out in a letter of 27 November 2012.)

The Head of Editorial Standards, Trust Unit concluded that the existing enquiry policy made clear that there is no obligation to co-operate with TV Licensing enquiries, and the further actions that TV Licensing was authorised to take in such circumstances. She

believed Trustees would agree with the Executive's reasoning and she therefore believed there was no reasonable prospect of success in taking this point forward to the CAB.

Point Two – Covert surveillance

The Head of Editorial Standards, Trust Unit noted that the complainant had said that TV Licensing should withdraw all covert surveillance of unlicensed addresses except where there is evidence of licence evasion or other reasonable grounds for such surveillance.

The Head of Editorial Standards, Trust Unit noted that the complainant had raised a matter of substance regarding the fact that he had not had "a satisfactory response on the subject of covert surveillance, nor [had he] received any further correspondence on this matter from TV Licensing". This related to conversations both he and a neighbour had allegedly had with one or more visiting officer/s where the visiting officer had allegedly attempted to obtain personal information. This would therefore be subject to further investigation by the Trust Unit and put before Trustees.

Point Three – Unannounced doorstep visits

The Head of Editorial Standards, Trust Unit noted that the complainant had said that TV Licensing should withdraw all threatened use of unannounced visits to unlicensed addresses except where there are reasonable grounds for doing so. The complainant asked that the BBC make further policy changes on the use of unannounced doorstep visits in line with his recommendations.

The Head of Editorial Standards, Trust Unit noted that the BBC had responded to the complainant on this point in a letter from the Head of Revenue Management dated 4 July 2013. She noted that the BBC had explained that TV Licensing cannot know the situation, nor have evidence to suspect unlicensed use of a television receiver, until a visit is made. If prior arrangements were made, those evading the licence fee might be encouraged to conceal their receiver in readiness for the visit. The Head of Revenue Management went on to explain that the option remains for the householder to refuse access to a visiting officer, and that they can also ask the officer to call again if it is inconvenient at the time of the visit.

The Head of Editorial Standards, Trust Unit believed Trustees would agree with the Executive's reasoning and she therefore believed there was no reasonable prospect of success in taking this point forward to the CAB.

Point Four – Targeting of enforcement activities

The Head of Editorial Standards, Trust Unit noted that the complainant had said that the BBC should implement improved targeting of enforcement activities in line with the BBC Trust recommendations. The complainant also said that TV Licensing should reduce its doorstep visits to lawfully unlicensed households to below 30,000 visits per annum.

The Head of Editorial Standards, Trust Unit noted that the BBC had responded to the complainant on this point in a letter from the Managing Director, Finance and Operations dated 29 October 2013. She noted that the BBC had explained that considerable research is carried out to try to identify the most effective approaches to licence enforcement targeting. Furthermore, the BBC had said that whilst it was possible to identify areas where there had been high levels of evasion in the past, it would be unreasonable to concentrate exclusively on those households. The BBC concluded by noting that TV Licensing currently visits a selection of addresses where they have been told that no licence is needed.

The Head of Editorial Standards, Trust Unit believed Trustees would agree with the Executive's reasoning and she therefore believed there was no reasonable prospect of success in taking this point forward to the CAB.

The Head of Editorial Standards, Trust Unit then considered the remaining points in the complainant's letter of appeal.

BBC policy to maximise TV licence revenue, minimise TV licence collection costs and minimise TV licence evasion collectively act against the interests of lawfully unlicensed households. The BBC Trust should review the balance between minimising TV licence collection costs and being fair and non-discriminatory towards no TV households.

The Head of Editorial Standards, Trust Unit considered, and was in agreement with, the response provided by the Head of Revenue Management dated 8 April 2013. It stated that TV Licensing has to maximise licence revenue, minimise collection costs and minimise licence fee evasion and that the BBC did not believe that these considerations acted against the interest of households where no licence is needed. She believed Trustees would agree with the Executive's response, and she therefore believed there was no reasonable prospect of success in taking this point forward to the CAB.

Under certain circumstances TV Licensing enforcement activities can lead to intimidation and harassment of innocent, law abiding citizens. The BBC Trust should provide independent scrutiny of these intimidation and harassment issues.

The Head of Editorial Standards, Trust Unit considered, and was in agreement with, the response from the Head of Revenue Management dated 8 April 2013. It stated that the BBC did not accept the assertion that TV Licensing's communications amount to harassment and that the course of action pursued is necessary for the prevention of crime. She believed Trustees would agree with the Executive's response and she therefore believed there was no reasonable prospect of success in taking this point forward to the CAB.

The complainant said that changes in BBC policy were made following a BBC Trust review of TV licence fee collection arrangements in March 2009; however, no further specific changes had been made as a result of the issues raised by his complaint.

The complainant gave a specific example "A simple example ... would be the provision by TV Licensing of a free telephone service in line with BBC Trust Recommendations for use by lawfully unlicensed households".

The Head of Editorial Standards, Trust Unit noted, and was in agreement with, the response provided to the complainant by the Managing Director, Finance and Operations dated 29 October 2013. It stated that the BBC cannot always make changes based on an individual complaint; however, all comments and feedback are carefully reviewed and considered.

The Head of Editorial Standards, Trust Unit noted regarding the provision of a free telephone service, the *BBC Trust Review of Licence Fee Collection in 2009*⁷ recommended that:

"TV Licensing follows the rest of the BBC's example and considers replacing, in the most cost-effective way, its 084 numbers with 03 contact numbers for its dealings with consumers [specifically licence fee payers]"; and

⁷http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/review_report_research/tvl/tvl_report.pdf

"The BBC Executive must consider ways to make it easier for people without TV sets to let TV Licensing know that they do not have a TV. These measures could be as simple as promoting the free phone number more effectively for notifying TV Licensing that a household has no set..."

The Head of Editorial Standards, Trust Unit considered, and was in agreement with, the response from the Head of Revenue Management dated 25 January 2013. This stated that "TV Licensing ... don't offer a Freephone number because they have a responsibility to keep costs to a minimum for the benefit of all licence fee payers. Instead, TV Licensing uses 0300 numbers where calls cost only a few pence per minute and are free if you receive inclusive minutes to local rate numbers". The Head of Editorial Standards, Trust Unit believed Trustees would agree with the Executive's response and she therefore believed there was no reasonable prospect of success in taking this point forward to the CAB.

That TV Licensing amend its "no licence needed" policy of applying a two-year "protective guard" on the complainant's property and amend this to five years with immediate effect.

The Head of Editorial Standards, Trust Unit noted, and was in agreement with, the response provided to the complainant by the Managing Director, Finance and Operations dated 29 October 2013. It stated that the current "no licence needed" policy was implemented in 2010, following the BBC Trust's review of licence fee collection. TV Licensing extended the time from one year to two years during which people who do not need a licence would not be contacted. The complainant was advised that there were currently no plans to change this policy, although all TV Licensing policies and procedures were reviewed on a regular basis. The complainant was advised that as circumstances may change over time, TV Licensing was unable to place a five year 'protective guard' over his premises.

The Head of Editorial Standards, Trust Unit considered that Trustees would be of the view that the BBC had provided a reasoned and reasonable response to the complainant's concerns. It followed from this that she did not consider the appeal had a reasonable prospect of success and it should not therefore be put before Trustees.

Request for review by Trustees

The complainant requested that Trustees review the decision of the Head of Editorial Standards that the appeal should not proceed. The complainant agreed with the decisions of the Head of Editorial Standards regarding "covert surveillance" and "unannounced doorstep visits", but disagreed with her decisions with regard to "mandatory co-operation with TV Licensing enquiries" and "targeting of enforcement activities".

As to the first of these points, the complainant agreed the BBC had made it clear that no-one was obliged to allow a TV Licensing Officer to enter their premises (in the absence of a search warrant) and agreed that, if refused entry, officers could use other methods of detection (if, the complainant added, that is proportionate, accords with the Regulation of Investigatory Powers Act 2000, and is used only where there is evidence, or a reasonable suspicion, of unlawful activity). The complainant argued, however, that his complaint about the BBC's "no licence needed" policy had not been addressed and that the policy was badly formulated and unfair. He also criticised the views expressed by the Trust in its 2009 Report on licence fee collection:

- in paragraph 192, that those who choose not to notify TVL that they have no TV set cannot be distinguished from evaders (which the complainant considered amounted to treating them as "guilty until proven innocent"), and

- in paragraph 25, that it endorsed the policy of strengthening the message about evasion the longer a premises remains unlicensed.

As to the “targeting of enforcement activities”, the complainant considered that the BBC had not done enough to reduce contact with lawfully unlicensed households; that TVL officers are effectively “commissioned salesmen”, with inappropriate financial incentive; and that many of the visits (which he said numbered some 4 million per year) were made to unwary or vulnerable households and could lead to the issuing of TV licences where none is needed. He also criticised what he called “indiscriminate” enforcement letters. He argued that the BBC should have a target of making only 30,000 doorstep visits to lawfully unlicensed premises per year.

The Panel’s decision

The Panel was given the complainant’s appeal to the Trust, the reply from the Head of Editorial Standards and the challenge to her decision. The complainant was notified, in advance of the Panel’s meeting, that this was the information the Panel would consider as part of the request for an appeal.

The Panel noted the complainant’s strength of feelings regarding his complaint.

The Panel agreed that the complaint was about the overarching TV Licensing policy, as opposed to any breach of the existing policy. The Panel therefore determined that the matter was not one on which it could adjudicate.

The Panel noted that the Trust has a specific duty under the BBC’s Royal Charter 2006 (Article 24(2)(m)) to ensure that the arrangements for the collection of the licence fee by the BBC Executive are efficient, appropriate and proportionate. In order to fulfil this function the Trust reviews and approves the Executive’s collection strategy on an annual basis.

The Panel agreed that it would bring the complaint to the attention of the Chairman of the Trust’s committee which carries out the annual review and approval of the Executive’s collection strategy. That Committee could then determine whether it was timely or appropriate to investigate the matter further.

The Panel therefore agreed that, except in relation to what the complainant had referred to as “covert surveillance”, the appeal did not have a reasonable prospect of success and did not qualify to proceed for consideration.

General complaints procedure

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 submitted a series of complaints to the BBC between 2009 and 2010, none of which were addressed satisfactorily in his view.

The complainant wrote to the Chairman of the BBC Trust on 17 July 2013 to express his dissatisfaction with the handling of his complaints.

The Trust Unit responded in a letter dated 5 August 2013 explaining that the deadline for challenging the Trust's decision (in February 2011) regarding his specific complaint from 2009-2010 had elapsed by more than two years and therefore the Trust was unable to look into its handling again.

Appeal

The complainant wrote again to the Chairman of the BBC Trust on 23 March 2014 asking for his complaints to be looked at again following changes to the Complaints Procedure which were introduced in 2012. He said there were three sets of previous complaints which he would now like to be reconsidered:

1. Chemical Ali trial/WMD response
2. Gordon Brown/Manga animation
3. Other complaints in relation to the '3 Ds' [Delay, Deny, Do Nothing]

The complainant said that in the previous responses he had received about these complaints, no mention was made of whether or not the changes to the Complaints Procedure would affect the way in which his complaints would be handled. This had left him feeling "fobbed off" and "in the dark".

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; however, she decided that the appeal did not have a reasonable prospect of success.

The Adviser acknowledged that the complainant believed the BBC had shown a lack of willingness to address his complaints in a way which was satisfactory to him and had found this frustrating.

The Adviser noted from the complainant's letter that his previous complaints were about "editorial decisions over a relatively short period of time" and she was pleased to hear that he felt that the editorial decision-making procedure did appear to have been rectified since then.

The Adviser noted that the BBC received around a million contacts each year from its audiences. The BBC Trust oversaw the complaints process and had introduced changes in 2012 that were intended to make it "faster, simpler and easier to use".

The amended Complaints Framework was designed to make best use of the licence fee, while at the same time facilitating the handling of a huge volume of correspondence as efficiently as possible.

The Adviser noted that the complaints process set out time frames for both complainants and the BBC. Complaints about editorial output had to be made within thirty working days of broadcast and the BBC had a target of ten working days to respond to an initial complaint. The Adviser considered that these time frames were included with good reason. They allowed audience concerns to be handled as efficiently as possible while making best use of the licence fee. The adviser hoped the complainant would understand that it became increasingly difficult to investigate complaints about BBC output as more time passed since the date of broadcast.

She noted that the complaints framework did, at every stage, allow complaints to be considered outside the set timeframes – however, this was only done “exceptionally”. She noted too that first-party complaints about online material could be made at any time, and were not subject to the same requirement that they be lodged within thirty working days of first publication. She considered this was a useful safeguard as there was an assumption that online articles would remain accessible following their publication.

She noted that the complainant reported he had experienced several delays when he was making his previous complaints. The Adviser accepted that people appreciated a timely response to their complaints and considered this was one area which the amended Complaints Framework was designed to address.

She noted that the complainant had complained to the Trust about the way his complaints of 2009-10 had been handled. He had been sent a reply in February 2011 that had given not just a date, but a time by which to respond. He had complained about this and been sent a response on 5 August 2013 which stated:

“With regard to the handling of your specific complaint from 2009-2010, I understand that you had contacted the Trust and that the Trust replied in February 2011, providing you the opportunity to ask the Trustees to review the Trust Unit’s decision, if you wished to challenge it. The deadline of 2.00 p.m. set in that letter was to enable any challenge to be included in the distribution of paperwork for the Trustees on the Editorial Standards Committee for that month. The Editorial Standards Committee meets on a monthly basis and so if a challenge had been received after that time, we could not guarantee that the Trustees would be able to consider the complaint until the following month’s meeting, leading to further delay in the handling of the complaint.

As that deadline for that particular complaint has now elapsed by more than two years, I am afraid the Trust is not in a position to look into its handling again, however, if there are instances in the future where you feel the BBC had not met expected standards then you can of course raise your concerns using the revised complaints process.”

The Adviser considered Trustees would be likely to conclude that it was not in the interests of licence fee payers in general for the BBC to allocate resources to the re-opening of historic complaints after revised handling procedures were introduced.

It followed from this that she did not consider the Trust should review the complainant’s previous correspondence more than three years after it had initially considered the

matters he raised. She did not consider his appeal had a reasonable prospect of success and she did not propose to put it before Trustees.

The Adviser acknowledged the complainant's general dissatisfaction with the way in which the BBC conducted investigations into complaints and his view that the BBC operated a policy of the "3 Ds": "Delay, Deny, Do Nothing".

The Adviser hoped she could reassure the complainant about the Trust's determination for there to be greater transparency in the complaints process. She noted that the BBC published statements where it acknowledged it had got something wrong – for example, as it had done after viewers complained about the sound levels on the drama series *Jamaica Inn*. The BBC also published information about serious complaints that had been upheld at stage two. The Trust was the third and final stage of the complaints process and it considered complaints about editorial output in the Editorial Standards Committee and other general complaints in the Complaints and Appeals Board. It published information about the complaints that were considered by those committees, whether or not they were upheld.

She noted that the complainant had previously been sent a copy of the latest Complaints Framework, but she was enclosing another one, together with a report summarising the results of a "mystery shopping exercise" which the Trust had conducted in 2013 to test how well the revised Complaints Framework was working.

She hoped the complainant would find this interesting – she noted that it indicated that complainants who complained by phone felt they had received a better response than those who had complained online. She noted the complainant had written that when he complained by phone he felt the members of Audience Services staff who replied had been very helpful – but that he had been dissatisfied with the written responses he had received. She thought he would be interested to see that Trustees had tasked the Executive with looking again at the written responses it sent out and agreed that audience feedback was valuable information which could be used to help the BBC improve the service it offered.

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 objected to being given a deadline to lodge an appeal, as, unlike the Trust, he did not have an office to support his complaint correspondence. He pointed out that no response had been sent to his complaint letter of 23 March 2014, and felt that the issue of a "negative, defensive" culture in BBC's complaints handling had not been addressed.

He wanted the panel to consider the following:

1. Why did the BBC feel unable to use 'WMD' in the 'Chemical Ali' trial?
2. Why was a pejorative Manga animation of Gordon Brown permitted in the run-up to an election?

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 noted that the complainant's complaint re Weapons of Mass Destruction/the trial of 'Chemical Ali' and a Manga animation re Gordon Brown had previously been submitted to the Trust. The Head of Editorial Standards wrote to him on 3 February 2011 to inform him of the decision not to put his appeal to Trustees as it was out of time. Following a challenge to this decision, the complainant's request for an appeal went before Trustees at the Editorial Standards Committee on 5 May 2011, who upheld the decision not to proceed with the appeal.

The Panel did not consider there was any reason for the Trust to reopen these matters. There was no reasonable prospect of success for the appeal.

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

Coverage of news from the Republic of Ireland

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 2 March 2014 to complain about BBC NI's news coverage of stories from the Republic of Ireland. He said there was a "repeated agenda with the Northern Irish news section of the BBC to carry stories relating to Republic of Ireland issues". He gave the examples of Veronica Guerin and John Gilligan who did not come from Northern Ireland, and yet their respective murder and attempted murder were widely reported by BBC Northern Ireland.

He said that BBC NI did not report on murders in Glasgow, Liverpool or Cardiff, so the affairs of Dublin, a foreign state, should not be covered in Northern Irish news.

The complaint was responded to by the Editor, Radio News & News Online – BBC NI and, following its escalation to stage 1b, by the Head of Corporate & Community Affairs – BBC NI, who did not believe there were grounds to uphold the complaint, and did not believe it was a matter which the Editorial Complaints Unit would consider. He suggested that the substantive policy issue which had been raised by the complainant about BBC NI's coverage of Republic of Ireland stories was something the complainant might wish to take up with the BBC Trust.

Appeal

The complainant escalated his complaint to the BBC Trust, outlining the areas of his concern:

- The complaints online facility for follow up to initial complaints. He had tried to use it a number of times inputting the original complaint reference number but was not able to go any further; he had to make a new complaint with a new reference number and paste in the original reference number. He said that seemed like a process that did not work as it was intended to.
- He requested an examination of why news stories from the Republic of Ireland were being included in Northern Irish News when the stories had no apparent link to Northern Ireland. He said he had given two examples: the shooting of a drug dealer suspected of arranging the death of a journalist and a youth rugby player who sustained a head injury.
- The current policy struck him as political in outlook. He said it if was truly about societal links, as indicated in the responses he had received from the BBC Executive, then why was there no coverage of events in Poland, Lithuania and Portugal given the large migrant populations now in Northern Ireland from those countries?
- He questioned whether it was in the BBC's best interests to use limited resources reporting on stories from a neighbouring state with such regularity when no link to Northern Ireland or Great British interests were mentioned.

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 decided that the complainant's appeal did not have a reasonable prospect of success.

The Adviser noted that the substantive complaint had initially been responded to by the Editor, Radio News & News Online – BBC NI who stated:

"Since the BBC News website was established in the late 1990s, BBC NI has had its own index on the site. From the outset, we have carried stories from the Republic of Ireland. Under the BBC's Public Purposes, BBC NI is committed to reflecting the differing communities and cultural identities which exist here. Politicians from north and south of the Irish border sit on intergovernmental committees and bodies, there are historic ties of family and community which have led to cross-border movement over decades, many people living in Northern Ireland hold Irish passports either exclusively or alongside British passports and many people consider themselves to be Irish rather than British or Northern Irish.

"We are satisfied that our coverage is appropriate, given the ties which exist between Northern Ireland and the Republic of Ireland. With regards to the particular story, John Gilligan will be a familiar name to many of our audience, considering his notoriety, previous criminal convictions and his acquittal for the murder of journalist Veronica Guerin."

The Adviser noted that the complainant did not agree with the view put forward by BBC NI that "the ties which exist between Northern Ireland and the Republic of Ireland" were sufficient to justify coverage of a story which the complainant felt did not have major relevance outside the Republic of Ireland.

The Adviser acknowledged the complainant's view but noted that the murder of Veronica Guerin in 1996 was an international news story and became the subject of a Hollywood film released in 2003. Her murder was widely reported across the whole of Britain as well as the Republic of Ireland. The shooting of a prime suspect in her murder, John Gilligan, was similarly national news across the whole of Britain, not just Northern Ireland:

<http://www.bbc.co.uk/news/world-europe-26407544>
<http://www.theguardian.com/world/2014/mar/02/veronica-guerin-suspect-shot>
<http://www.dailymail.co.uk/news/article-2586763/The-downfall-gangster-Notorious-Dublin-criminal-John-Gilligan-flees-Ireland-seeks-refuge-UK-two-assassination-attempts.html>

With regard to the other example which the complainant mentioned in his appeal: the head injury of a young rugby player, the Adviser could not find any reference to the details of this example in the correspondence between the complainant and BBC Northern Ireland in relation to this complaint.

With regard to the response of the Editor, Radio News and News Online, which outlined the editorial policy relating to BBC NI's coverage of Republic of Ireland news stories, the Adviser acknowledged that the complainant did not accept that "a policy beginning in the previous century" had relevance in 2014. However, she agreed with the Head of Corporate & Community Affairs – BBC NI that Northern Ireland news coverage was intended to reflect the BBC's:

"...assessment of audience needs and expectations and the distinctive circumstances in which we operate. Which news stories are covered, and to what extent and with how much prominence, is a matter of editorial judgment for the BBC. Everything that we do in this area is informed by the BBC's Charter and Agreement, with specific (but not exclusive) reference to the BBC's role in 'Sustaining citizenship and civil society'. All of our output must also take account of the BBC's Editorial Guidelines, and it is felt-breaches of the latter that must provide the basis of actionable complaints.

"I do not feel that the inclusion of stories from/about Republic of Ireland contravenes the BBC's Editorial Guidelines. The selection, framing and coverage of such stories relative to other (more local) developments will always be a matter of professional judgement of BBC staff and within the context of BBC Service Licence and relevant other considerations as these apply to BBCNI's output."

The Adviser noted 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 (paragraph 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 stories within BBC regional news fell within the "editorial and creative output" of the BBC and were the responsibility of the BBC Executive. The Adviser believed that Trustees would be likely to conclude that decisions about which stories should be featured in BBC Northern Ireland News programmes were the responsibility of the BBC Northern Ireland News editorial team.

The Trust regularly reviews BBC services and last conducted a review of BBC Northern Ireland in 2012/13. The results of this review, which will help to shape future policies on BBC NI news programming can be found at http://www.bbc.co.uk/bbctrust/who_we_are/audience_councils/northern_ireland/annual_review.html

The Adviser noted that part of the complainant's appeal concerned the difficulty he had experienced in making an online follow-up complaint. She saw that he had raised this with BBC NI - "I have been unable to use the correct facility to express my unhappiness with the previous reply" - on 3 March 2014 but this aspect of the complaint did not appear to have been addressed by Audience Services who look after the running of the computerised logging system. She advised the complainant to make a separate complaint to Audience Services detailing the issues he was having with the computer system, as these would need to be addressed by Audience Services at Stage 1 before the Trust could consider whether possible further action was needed at Stage 3.

The Trust hoped the complainant's concerns about the complaints system would be addressed in some measure by the fact that complaints handling is a matter that the Trust keeps under close review. The Complaints Framework was revised in 2012 and earlier this year the Trust published a report following a 'Mystery Shopping' exercise which it conducted throughout 2013 to establish how well the new framework was working. This can be found at http://www.bbc.co.uk/bbctrust/news/press_releases/2014/mystery_shopping_2014.html

The Adviser did not believe that the appeal had any reasonable prospect of success and therefore she decided 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 expressed his sadness at the length of time taken to process his complaint, only for it to be dismissed. He questioned whether the appeals process merely approves the Senior Complaints Adviser's decision, rather than inspect or investigate it. He felt the crux of the complaint had been missed. He questioned the wisdom of using the BBC NI website to report stories purely relating to the Republic of Ireland.

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 agreed with the Senior Complaints Adviser that the selection of stories for publication on the BBC NI website, is an editorial decision. The Panel noted that the Royal Charter (article 38, (1) (b)) 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 was concerned that the Trust Unit's Senior Complaints Adviser decides what complaints should be admitted to the Trust and that the process might simply approve her decision. However, it noted that: firstly, the Trust Unit is not subject to nor does it act for the BBC Executive Board (Royal Charter Article 43 (3)) ; secondly, in any event the final decision to admit or reject an appeal rests with Trustees (Agreement between the Secretary of State for Culture, Media and Sport and the BBC 89 (4)(b)); and, thirdly, Trustees had in practice over-ruled the decisions of the Adviser whenever they had judged it appropriate to do so.

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

BBC News coverage, 2 February 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 wrote to the BBC on 5 February 2014 to raise his concern about the level of BBC News coverage dedicated to former BBC Director-General Mark Thompson speaking about the failure of the Digital Media Initiative when he appeared before the Public Accounts Select Committee on 2 February 2014. He believed that a low level of news coverage on the matter suggested a lack of transparency by the BBC.

The complaint was investigated at Stage 2 by the Head of Accountability, BBC News but was not upheld.

Appeal

The complainant appealed to the BBC Trust on 30 April 2014. He made the following points:

- As a publicly funded body, the BBC has a duty to report its own scandals in the same way it reports on others.
- He disagreed with the editorial decision made by BBC News not to use comments made by Dominic Coles on the issue.
- He questioned the comment made by the Head of Accountability, BBC News in her Stage 2 response that "BBC television bulletins are not journals of record". He said that if she was correct, then it was perfectly acceptable for the BBC to spend hours on the death of Peaches Geldof or the sacking of David Moyes and not mention other relevant information.
- The Political Correspondent should have been given a chance to comment on the story rather than leaving it to the Media and Arts Correspondent.

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 Adviser decided that the appeal did not have a reasonable prospect of success.

She acknowledged that the complainant did not agree with the editorial decisions made by BBC News regarding coverage of Mark Thompson's appearance before the Public Accounts Select Committee to speak about the failure of the BBC's Digital Media Initiative.

However, she believed that the complainant had received comprehensive replies at Stage 1 and Stage 2 giving sound editorial reasons for the way the story was covered, including reasons for why Dominic Coles' comments were not considered particularly newsworthy.

She noted that at Stage 1 the complainant had been sent two responses. The first contained links to six online items about the subject, the second stated:

"The hearing of 2nd February with Mark Thompson was covered by BBC TV and radio news. The apology was broadcast in a live 2 way with David Sillito on the BBC News Channel at 16 40 with long clips from Mark Thompson and John Linwood. David also reported on the apology for 5 Live. There was a bulletin piece filed for BBC radio summaries and also for the 1800 radio news. It was the decision of the output editor of the Six O'clock News to not run anything on the main bulletin, they felt the main story that the BBC had made a mistake, lost a serious amount of money and apologised had been covered at length and repeatedly over recent months. On a busy news day – another apology from a former BBC DG was not considered one of the 10 most important or interesting stories of the day. We agreed with the conclusion.

"On the topic of 'Dan Coles' – we assume the inquiry is about Dominic Coles the new Director of Operations for the BBC. Mr Coles was the only person on the panel with no responsibility for the failure of DMI. It was felt his contribution was interesting but not particularly news worthy given that most of the questions he addressed were about the problems with the BBC's Infax archive information service. It's a matter of concern for those of us trying to lay our hands on archive material but perhaps not a central issue for our audience.

"The story of the 2nd was the personal apology from Mark Thompson about DMI. This has followed an apology from James Purnell on behalf of the BBC on 24th May 2013 – and a second apology from Director General Tony Hall – both of which were broadcast on BBC TV News.

The issue of the failure of DMI has been covered at length on BBC TV News. The cancellation was featured on the main Ten O'clock News on 24th May 2013. The issue that Mark Thompson faced questions over DMI was also featured in an item on TV News in September 2013. The BBC has also broadcast reports by David Sillito on the National Audit Office's critical report in to DMI on 28th January 2014 and numerous BBC online reports including a second critical report by PricewaterhouseCoopers. The appearance on 2nd February revealed a degree of disagreement amongst BBC managers but even the chair of the Select Committee expressed the view that it has not been particularly illuminating and she hoped this was the end of the matter."

The Senior Complaints Adviser noted that, at Stage 2, the Head of Accountability had explained that:

"Editors constantly have to decide on priorities for coverage. Decisions on what is reported when and where, and in what depth or breadth, boil down to editorial judgement. Considerations include what else is on the news agenda and what sort of balance there is to be struck in each bulletin between light and shade, global and domestic etc. Clearly, broadcast news is not an exact science, with a formula for determining what should be covered, when and on which outlet!"

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 (paragraph 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 she believed Trustees would conclude did not apply in this case.

Decisions relating to the reporting of news stories 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 was intended to protect the BBC’s editorial independence – which was highly valued by licence fee payers. She considered that Trustees would be likely to conclude there was no indication that the BBC had not met the requirements of the Editorial Guidelines and that matters about what stories to feature in its news coverage rested with the Executive. 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.

In his letter of 7 July 2014, the complainant set out his reasons for his request. He argued that the Adviser’s decision was flawed. He complained that the BBC Executive was solely responsible for whether or not to report an issue, who should do the interview, on what station and at what time it was on and at what depth. In his view if the BBC decided on levels and tone of coverage, then it gave the BBC Executive effective censorship over reports of BBC problems.

He considered that the Trust should approach the Secretary of State to change [the Charter] to enable the Trust to cover this situation.

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 agreed with the Adviser that the complainant’s concerns had received a comprehensive response at Stages 1 and 2 from the Executive.

The Panel also recognised that decisions concerning which news stories to cover were 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.

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

Decision of BBC Audience Services not to respond further regarding complaint about bad language 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 to raise concerns about, what he considered to be, bad language used by callers on phone-in programmes on BBC Radio 5 live. He asked whether such language could be eradicated by a delay system which has been used on some live radio broadcasts previously. The complainant did not identify a specific example of bad language that he was complaining about.

Audience Services responded on 7 February 2014 and stated:

The main difficulty for broadcasters is that people have different personal definitions of acceptable language and there is no single set of standards in this area on which the whole of society can agree. We have issued detailed guidelines to programme makers in order to try to reduce the risk of gratuitous offence, but our public service role requires us to reflect the world as it really is.

Phone-in programmes are carefully supervised to ensure callers can express their viewpoints appropriately. While occasional expletives may occur, we will continue to monitor these programmes to minimise such cases.

The complainant was not satisfied with this response and made a follow-up complaint expressing his concern that the BBC would not introduce a delay on live phone-ins to eliminate bad language, and arguing that the BBC should seek to educate people not to use such language rather than "reflect the world as it really is".

Audience Services issued a further response on 26 February 2014, making the following points:

- The BBC did not feel it would represent best use of the licence fee to introduce "sweeping changes to a live network for the relatively infrequent times when bad language is used by callers or guests".
- Guests on programmes were briefed in advance of their contributions about the restrictions on language, but it remained the case that it was difficult to pre-empt use of bad language by members of the public during phone-ins.
- Language was already something which was heavily monitored on Radio 5 live, and callers who used bad language were warned and cut off the line if they persisted.

The complainant was informed that BBC Audience Services would not respond further in this matter as they did not consider the points he raised suggested a possible breach of standards and they had nothing to add to their previous response. The complainant was advised he could appeal against this decision.

Appeal

The complainant appealed to the BBC Trust as he was not satisfied with the response received at Stage 1b from BBC Audience Services.

The complainant appealed on the substance of his complaint which was about bad language on Radio 5 live phone-in programmes, and his request for a time delay to be introduced for live broadcasts so that bad language could be detected and prevented from being broadcast. He said he did not believe it would cost very much and felt it would enhance the BBC's reputation.

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 about the broadcast of bad language. 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 the Audience Services explanations of 7 February and 26 February 2014.

The Adviser was aware that the BBC's Editorial Guidelines included detailed information to programme makers and output producers about the broadcast of strong language. However, the Adviser noted that the complainant had not included specific examples of occasions when strong language had been broadcast, but had expressed his strong general concern that some language used by callers during live phone-in programmes was offensive. She noted that Audience Services had acknowledged in their letter of 7 February 2014 that occasional expletives did occur but had explained the safeguards that were in place to minimise such instances.

The Adviser noted that the complainant had requested the use of a time delay in the broadcast of output. However, she also 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" was 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 get involved.

The Adviser considered that it would therefore not be appropriate for Trustees to consider the complainant's view that Radio 5 live should use a time delay when broadcasting phone-in programmes.

The Adviser considered that overall, Trustees would be of the view that Audience Services had provided an informative and helpful response to the complainant's concerns. She considered it was reasonable for the BBC to decline to engage in further correspondence on this issue. It followed from this that she did not consider the appeal was likely to succeed and she did not therefore 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 letter of 12 May 2014, the complainant reasserted his wish for a delay in broadcast in order to eradicate bad language.

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 noted that BBC Audience Services had explained that it would be disproportionate to impose a significant time delay on a live radio station to avoid broadcasting bad language. The Panel noted that such a decision would be for the Executive in any event. As the Royal Charter (article 38, (1) (c) set out "The operational management of the BBC" was specifically defined in the Charter as a duty of the Executive Board, and one in which the Trust did not get involved.

The Panel agreed this was not a matter for the Trust. Trustees further agreed with the Adviser that it would be likely to conclude that BBC Audience Services had provided a reasoned and reasonable response to the complainant's concerns. Accordingly, 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 the presence of newsreader Huw Edwards in Kiev

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 4 March 2014 to raise his concerns about the BBC's decision to send Huw Edwards to Kiev to present news programmes on 3 and 4 March 2014. He felt that such an expense was a waste of money when there were already competent BBC correspondents based in Ukraine to report on the situation.

BBC Audience Services responded on 14 March 2014, stating:

This was and continues to be a very big story, one where the possibility of conflict breaking out is real and developing very quickly.

We have a huge audience to serve across all platforms and the number of BBC reporters in Kiev at the time was insufficient to serve all audiences across Radio, TV and online platforms. We sent Huw Edwards because when there is an important story, it's important that our presenter is there.

Our presenters are also experienced journalists, who have, and continue to provide reporting insight into our programmes. Often, when much of the programme is on one story, and coming from one place, we ask a presenter to anchor the show from that location. Large parts of the News at Six and Ten programmes on 3 and 4 March were related to the situation in Ukraine and we believe Huw's presence in Kiev added insight and impact to our coverage, with Huw bringing his wealth of journalistic experience to the story.

We believe it is legitimate for our presenters to be at the centre of the year's biggest stories, however please be assured that value for licence fee payers' money is always a key consideration when making such decisions.

The complainant was unhappy with this response and sent a follow-up complaint on 14 March which repeated his concern that this was an unnecessary expense.

Audience Services responded at Stage 1b on 22 March 2014. In answer to the complainant's request for details of the cost involved in sending Huw Edwards to Kiev, they explained that supplying such information was not a service they provided under the BBC complaints process. They said they had nothing further to add to their previous response on the substantive complaint and could not engage in further correspondence on the issue as they did not consider the points raised by the complainant suggested a possible breach of standards.

Appeal

The complainant escalated his complaint to the BBC Trust on 23 March 2014, saying that he was unhappy with the response received at Stage 1b from Audience Services. He repeated his concerns about the cost of sending Huw Edwards to Kiev to present news programmes; he felt this was unnecessary as other BBC reporters were already in Kiev reporting the situation in Ukraine.

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 acknowledged the complainant's concern about the need to spend the licence fee wisely and noted his belief that the BBC already had sufficient reporters in Kiev to report on the story. She noted that these points had been addressed by Audience Services, who had said that the number of reporters in Kiev had not been adequate to properly cover such a significant story for the BBC's different audiences across radio, television and online. Audience Services had also informed the complainant that the costs of such a decision were borne in mind and that it was not the BBC's policy to disclose costs of each foreign travel made by its journalists.

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. Likewise, the "operational management of the BBC" was defined in the Charter (article 38, (1) (c)) as a duty that was the responsibility of the Executive Board, and ones in which the Trust would not usually get involved unless, for example, they raised broader issues such as a breach of a station's Service Licence or of the BBC's Editorial Guidelines – which the Adviser did not consider was the case in this instance.

The Adviser believed that Trustees would consider that decisions relating to how news bulletins were presented, the staffing of news teams, and costs relating to the management of production budgets, were the responsibility of the BBC Executive and not a matter for the Trust.

She considered that Trustees would be of the view that Audience Services had provided a reasoned and reasonable response to the complainant's concerns. She considered it was reasonable for the BBC to decline to engage in further correspondence on this 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 maintained that the reporters in Kiev were capable of reporting the situation in Ukraine, without the additional presence of Huw Edwards.

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 agreed with the Adviser that the complainant's concerns – that the BBC must spend the licence fee wisely and that the BBC already had sufficient reporters in Kiev to report on the story – had received a reasoned and reasonable response from BBC Audience Services. Accordingly, Trustees agreed that the complainant's appeal against the decision of BBC Audience Services not to correspond further did not have reasonable prospects of success.

The Panel also noted that a decision as to whether to send a presenter to cover a story would be for the Executive alone. 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.

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

Decision of BBC Audience Services not to respond further regarding complaints about Top Gear, Click, SMS and iPlayer

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

Click – the complainant first raised his concerns with Audience Services on 24 January 2014, and in a subsequent complaint on 27 January.

In his 24 January complaint, the complainant said he could not hear properly what the presenters were saying; he felt they were trying to condense too much information into half an hour and stated that one of the presenters had a speech impediment which made the situation more difficult. He also felt the background music added to the problem. He tried to combat this by switching on the subtitles but considered they were never in sync with the people speaking. He felt that as the programme was pre-recorded the subtitles could be written from a transcript and therefore there was no reason for them to be out of sync.

In his 27 January complaint, the complainant also mentioned his concerns about the subtitling, and also complained that a contributor to the programme based in Tokyo was not named and all the other contributors were.

The complainant was unhappy with the first response from Audience Services on 5 February 2014 which sought to address the issues raised about the presenter's method of delivery, background music and subtitles. Audience Services said the programme had been reviewed and it had been established that the Japanese contributor's details did appear on screen. In terms of subtitling errors, it stated that some programmes had subtitles added as they were broadcast and continued:

"This is a demanding task so you may notice occasional spelling mistakes or the text may stay on the screen for too long or not long enough. Subtitlers often have to contend with fast dialogue or a number of speakers, but they have to keep up as the programme continues and make sure that the subtitles are readable. Again, we try to achieve a balance as other viewers sometimes feel they appear too quickly or too slowly; it is hard to please all viewers equally. Your own comments are welcome, of course."

The complainant renewed his complaint on 6 February reiterating his concerns. He also objected to the reference in the response to the presenter Spencer Kelly, as this was not the presenter he had been referring to, whom he named in his follow-up complaint as Dan Simmons. He did not accept the reasoning given for spelling mistakes in subtitles; he said *Click* was recorded so far in advance there was plenty of time to get the subtitling right.

In addition, the complainant raised a complaint on 27 January about the Audience Services agent who handled his call. He said:

"I'm very unhappy about how I was treated on the phone by the agent that took my call. She said that she had other calls queuing and rushed me to try to get me off the phone quicker and I don't appreciate that. I had to try and find the incident

time so was scrolling through the programme to find it but it was taking too long according to the agent and she had to move on. She was very rude and unprofessional."

The Audience Services log indicates that the complainant was phoned back following his complaint about the phone agent and the matter was resolved.

Audience Services sent a stage 1b response to the complainant's initial complaint of 24 January on 12 February 2014 apologising for having assumed the complainant was referring to the main presenter Spencer Kelly.

Audience Services said it was unable to enter into further correspondence on the complaint as they felt they had responded as fully as they could.

SMS Alerts – On 10 February 2014 the complainant made a request for the BBC to operate an SMS service which would alert viewers when certain genres of programmes are going to be broadcast, as he kept missing documentaries on BBC Three and BBC Four which he would have liked to have watched. He said that such an SMS service should also include schedule information for repeated programmes as well.

On 17 February Audience Services issued a first response to the SMS complaint explaining that while BBC News offered an SMS facility, schedulers had identified programme trails and online listings as effective methods of communication.

The complainant made a follow-up complaint on 20 February saying that the response was not comprehensive enough.

On 5 March 2014 Audience Services issued a longer response explaining that managing a database was very expensive and time-consuming and sending text messages themselves involved further cost. They said they were not proposing to introduce a text messaging system for TV programme schedules but would continue to monitor technical developments.

On 6 March and 9 March the complainant made further complaints as he did not feel his concerns were being taken seriously. He asked for an explanation of why the SMS service he had suggested could not be trialled as he felt it would be self-funding if a charge per text was applied.

On 10 March 2014 Audience Services sent a 1b response closing down the correspondence as they felt they had nothing further to add and the points raised did not suggest a possible breach of standards.

iPlayer – The complainant complained to Audience Services on 13 February 2014 that when pausing a programme on iPlayer, the screen was reduced top and bottom, which obscured any text. He also complained that the scroll bar jumped forward in minutes rather than seconds. He wondered if that was a design fault and said he had been unable to find any information on the website to address his concerns. He said he needed advice on how to fix the problem and requested a phone call. He said he could not use the webform to make complaints because it always timed out.

Audience Services responded on 27 February 2014, explaining that the iPlayer issue raised by the complainant about the reduction in screen size was "...expected behaviour. The transport controls will appear on the top and bottom of the screen for several seconds. Once you press play they will disappear. The scrolling behaviour is also what is expected."

The complainant made a follow-up complaint on this issue on 6 March 2014 as he said the response did not address his concerns.

On 9 March Audience Services wrote a further response which acknowledged the complainant's concerns about iPlayer and the SMS service and assured him his feedback had been placed on the audience log for the consideration of senior management, and would also be included in feedback reports available to personnel responsible for maintaining and improving the BBC iPlayer service.

Top Gear – The complainant raised an enquiry with Audience Services on 1 February 2014.

He said that Jeremy Clarkson was “pronouncing Nissan Qashqai as Nissan Cumquat and [he] would like to know why”. He said he had a car of this type himself and no-one on the programme had explained why they were not saying the name correctly.

Audience Services responded on 6 February 2014 explaining that ‘Cumquat’ was a nickname Jeremy had given the car, and had referred to the Nissan Cumquat for quite a few seasons.

The complainant was unhappy with this response as firstly, his question as to why the car was given the nickname ‘Cumquat’ had not been answered, and secondly, he said he had raised an enquiry on the matter rather than a complaint. He felt that his enquiry had not been answered properly due to laziness on the part of Audience Services.

On 28 February Audience Services sent a stage 1b response closing down the correspondence on this issue as they did not consider the points raised by the complainant suggested a possible breach of standards and they had nothing further to add to their previous response.

On 3 March the complainant contacted Audience Services objecting to the response which only referred to a complaint case number and did not specify which complaint was the subject of the response. He said he wanted a further response which detailed what the original complaint was about and a proper detailed answer to it.

Audience Services sent a further response on 10 March 2014 explaining that the response had been to his complaint about *Top Gear* and the Nissan Qashqai, pronounced as Nissan Kumquat. They stated:

“You contacted us by telephone on the evening of 01/02/2014 (our ref CAS-2544413-N4XVN4) regarding that day's Top Gear broadcast on BBC Three and you said you were unhappy that the Nissan Qashqai was referred to as the Nissan Kumquat. We replied by letter to explain that it's simply a nickname for the vehicle, a play on words. Obviously the two words share a phonetic syllable similarity thus like Jeremy does with literally countless car names, he jokingly substituted one with the other, the kumquat of course being an exotic fruit.

“You phoned us back at lunchtime on 08/02/2014 (our ref: CAS-2555833-3W2GKC) to complain that we had not answered your question about where the nickname Kumquat came from, and we subsequently replied by letter dated 28 February explaining that as the matter is of no consequence we would not be responding further.”

On 12 March 2014 the complainant contacted Audience Services saying that he was not happy with the responses he had received and he wanted to talk about the issue with a supervisor. He said the responses he had received were repetitive and had not answered his complaint properly.

On 8 April the Head of Communications and Complaints, BBC Audience Services, wrote to the complainant about "the high number and length of calls you recently made to our Contact Centre".

He made the following points:

- The complainant's calls engaged agents in prolonged discussion for up to 18 minutes. This could not continue because it made it difficult for agents to give time to other callers.
- He noted the occasion on which an agent, after speaking to the complainant for many minutes, became frustrated when he was asked to summarise the full call for the complainant. The Head of Communications and Complaints apologised for this.
- He said that Audience Services could provide the same service for the complainant as they did for all callers: to summarise and report comments and complaints but not normally reply in writing. He asked the complainant to therefore keep any telephone comment or complaint to the point, and not to debate or discuss in detail with agents or raise other points. This would ensure the complainant could access the service and that his feedback would be circulated promptly to producers. If there were significant issues that needed further investigation or response they would be dealt with in line with the BBC Trust's complaints process.

In summary, he explained that Audience Services does not normally reply in writing to telephone calls and could not provide the length of telephone calls which the complainant would like. He did not consider that the calls had raised significant editorial or other issues needing further investigation or response or suggested breaches of standards. He regretted therefore that he had no more to add to the previous replies sent to the complainant about the *Top Gear* issue.

Appeal

The complainant appealed to the BBC Trust on 10 April 2014. He said he was very dissatisfied with the responses he had received to his previous complaints.

His main concern was with the BBC telephone complaints system. He said the letters he had received from Audience Services in response to his telephone complaints either missed the point he was making, or did not refer to his grievance.

The complainant stated that he found it hard to type or write, and therefore preferred to engage with the complaints process on the telephone.

He made the following points in his telephone appeal:

- Audience Services appears to be under pressure to deal with callers quickly and could not cope with more complex complaints. Notes of the calls were taken but when asked to read them to the complainant as a summary of what was said during the call, Audience Services could not seem to access them in the system.

- The letter responses did not adequately address the complaints because there seemed to be a breakdown in communication between the person taking a note of the call on the phone, and the person responding to the complaint by letter. He gave two examples from recent complaints:
 - 1) When he made a complaint about a presenter with a speech impediment, Audience Services had assumed he meant one presenter when in fact he was talking about a different one.
 - 2) Re. his complaint about the iPlayer control bar – the letter from Audience Services said that it was 'expected behaviour'. He said he knew that, but what he was saying was that the BBC should do better.
- He wished that complainants were not steered towards email. One example was that iPlayer complaints have to be submitted online, not by phone. The last time the complainant tried to do this the system timed out on him.

The complainant made other points which had not been made in his stage 1 complaints:

- iPlayer should not have a time limit, programmes should be available indefinitely. He understood there could be Rights issues but with BBC owned programmes such as Horizon he could not understand why the full archive should not be available.
- The BBC takes too long to make changes. For example, he complained for years about BBC Click constantly being interrupted every time a major news story happened, and it was only recently that the BBC made the changes he had requested, providing Click with a proper scheduled slot.

Decision of the Senior Complaints Adviser

The relevant correspondence was reviewed by the Trust Unit, and the Senior Complaints Adviser (the Adviser) carefully read the correspondence that had passed between the complainant and the BBC. The Adviser acknowledged the strength of the complainant's feelings.

The complainant had appealed on the complaints handling aspect of his complaints. The Adviser noted that BBC Audience Services had ceased handling his complaints at stage 1 and that the complaints had not gone to stage 2. She considered whether an appeal against the decision of BBC Audience Services not to correspond further with the complainant had a reasonable prospect of success and whether his complaint about complaint handling had a reasonable prospect of success.

She noted that the complainant preferred to make his complaints by telephone and wished to have a summary of his phone calls read out to him over the telephone at the end of his call. She noted that he had been disappointed with some of the responses he had received from telephone agents. He had repeatedly stated that the responses he had been given had not addressed the points he had made and that he wished to have a response from senior management.

The Adviser noted that the Head of Communications and Complaints, BBC Audience Services, had reviewed the calls made by the complainant in terms of their volume and duration. He had explained the strain that lengthy phone calls put on the BBC's Complaints service. He also explained that Audience Services could not offer written replies to the complainant's telephone calls; nor could they engage with the complainant in telephone calls of the duration that the complainant wanted.

He had also explained that he did not consider that any of the complainant's calls had raised significant editorial or other issues needing further investigation.

The Adviser noted that at all stages of this Procedure, a complaint may not be investigated if it:

- 1.7.1 fails to raise an issue of breach of the Editorial Guidelines
- 1.7.2 is trivial, misconceived, hypothetical, repetitious or otherwise vexatious.

She noted that the Head of Communications and Complaints did not consider that the underlying complaints made by the complainant, to which this appeal related, raised an issue of breach of the Editorial Guidelines. She believed that Trustees would be of this view also.

The Adviser acknowledged that the complainant felt that Audience Services were under pressure to deal with complaints quickly and could not cope with more complex complaints. She appreciated that it was frustrating for the complainant not to be given as much time as he wanted to make his points and discuss them on the telephone, and also appreciated that it must be frustrating when he felt that his points had not been summarised correctly, leading to written responses which he felt did not address his concerns adequately.

However, she noted that the BBC received around a million contacts and complaints each year and was required to have a system in place that allowed them to respond appropriately in the interests of all licence fee payers.

She noted that the Head of Communications and Complaints had requested that the complainant should reduce the amount of time in which he engaged agents in telephone calls – this was in the interests of providing an efficient service to all licence fee payers. He had also explained that, in common with other users of the service, Audience Services could not continue to offer written responses to the complainant in response to his telephone complaints. The Adviser also noted that the Head of Communications and Complaints had additionally advised the complainant to keep to the main points he wished to make, which would help in the detailing of an accurate summary of the call.

The Adviser noted that the complainant had raised points in his telephone appeal of 10 April 2014 which he had not raised at stage 1: in particular the point about the time limit for iPlayer programme availability to be extended. These points would not be addressed here as the Complaints Procedure specifies:

- 2.7 The BBC may not consider new or different points after Stage 1a of the Procedure has concluded.

The Adviser noted that the Head of Communications and Complaints had apologised for the way in which an Audience Services agent had spoken to the complainant during one phone call when he was asked to summarise the content of the call.

The Adviser noted that the BBC Executive had accepted its error and apologised for it. She noted that where the Executive accepted it had made a mistake and apologised, the Trustees normally considered the matter resolved (unless there were features to the breach which suggest it was so serious that further action might be necessary). The Adviser did not believe that this matter raised such serious issues that further action would be required, and considered Trustees would be likely to conclude this element of the appeal had been resolved.

The Adviser sympathised with the frustrations experienced by the complainant when trying to use the webform. She understood that many people preferred to complain online and one benefit of it was that they were able to present their complaint in their own words – which removed the risk that their complaint might not be fully summarised by a member of Audience Services who answered by phone. She noted the complainant's concern that when he had used webform previously, it had timed out while he was writing his complaint. She thought it might be helpful for him to be aware that he could compose a complaint separately and then copy it into the online form – which would allow him to take as much time as he wished.

The Adviser thought the complainant might also be reassured to know that complaints handling was something which the BBC Trust kept under regular review – and in particular the Trust had required that the BBC should try to improve its responses to webmail complaints. The Trust published a report earlier this year into a 'mystery shopping' exercise of stage 1 of the complaints process.
http://www.bbc.co.uk/bbctrust/news/press_releases/2014/mystery_shopping_2014.html

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 (paragraph 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 use of a word play in how to describe a car, or which presenter should work on a programme were editorial and creative matters that rested with the BBC.

Similarly, "The operational management of the BBC" is specifically defined in the Charter (paragraph 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 – which did not apply in this instance. Decisions such as how subtitling should be provided were operational ones which also rested with the BBC.

Overall, the Adviser considered Audience Services had given reasoned and reasonable responses to the complainant – whether his underlying concerns related to editorial output or other operational matters. She therefore considered Trustees would be likely to conclude the BBC had acted reasonably in stating that it could not respond further to the complaint. In terms of complaints handling, she considered that, reviewing the correspondence, Audience Services had sought to provide a helpful and timely series of responses to the complainant; where a mistake had been identified (such as Audience Services identifying the wrong presenter on *Click* whom the complainant wished to complain about) it had gone on to give a further response in answer to the query. Where a shortfall in the service had been identified (such as one member of Audience Services not responding appropriately), the BBC had apologised. She noted the complainant's concern that, in its written responses, Audience Services had not identified the programme that was the subject of the complaint which had led to confusion. She agreed that it could be confusing where a complainant was pursuing a number of different complaints with the BBC; however, she did not consider Trustees would be likely to conclude that this amounted to a serious breach of the standards the BBC was expected to meet. She therefore did not believe the complainant's 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 telephoned the Trust Unit on 3 July 2014. He stated that his complaints had been misconstrued and that the complaints phone service was not “up to the job”.

The complainant said he felt that the quality of calls handling was adversely affected by the fact that one group of people dealt with calls made by a diverse population. He said he felt the call handlers were hostile and became irritated when asked to repeat a summary of a complaint. He said he felt that there was an overall problem with communication.

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.

However, overall, the Panel did not consider that the complainant’s appeal had raised a matter of substance. It was of the opinion that Audience Services had provided reasonable and proportionate responses to all of the complainant’s complaints, and noted that it was important for the BBC to act proportionately and in the best interests of all licence fee payers.

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

Decision of BBC Audience Services not to respond further regarding a complaint about news bulletin priorities

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 initially wrote to the Director-General of the BBC on 22 April 2014. He said the following:

"I was astonished a couple of weeks ago to see that the death of a minor 'celeb', Peaches Geldof, warranted first place on BBC television news and today on all broadcasts the first item is about the sacking of a football manager.

"What sort of audience do you think you have?"

BBC Audience Services responded to the complaint on 24 April 2014, saying that it had raised the complainant's concerns with the relevant editorial staff at BBC News. The comments that followed related specifically to the second part of the complaint, the sacking of David Moyes from his job as Manager of Manchester United.

The statement from BBC News explained why it had been considered that the story had been a significant one, including the size of the football club and its 660m global fan base, its poor performance and failure to qualify for the Champions League for the first time in two decades, its revenues in the previous year of £350m and the effect of Moyes' departure on Manchester United's share price.

The response to the complainant added that:

"As the story developed it was covered on various outlets alongside strong coverage of other ongoing stories including the situation in Ukraine, the NHS in England and Wales, and the death of a seven-year-old boy in Aberdeen."

The complainant was informed that his feedback was appreciated and that his concerns had been registered on the audience log which would be made available to BBC staff, including the news team and senior management.

The response constituted the conclusion of stage 1(a) of the BBC's complaints procedure.

The complainant addressed further correspondence to the BBC's Director-General on 24 April 2014. He considered the reply offensive and dismissive.

On 7 May 2014, the complainant contacted the BBC and repeated the points he had made in his stage 1(a) complaint. He said:

"Recent BBC News at 6.00pm broadcasts featured the death of a 'celeb', Peaches Geldof, and, a few weeks later, the sacking of a football manager respectively as the first item reported.

"These were not the most important news stories, however much verbiage is used to try and justify them as such."

On the same day Audience Services responded to the complainant, explaining that, in order to use licence fee resources appropriately, it would normally investigate only where evidence was provided to suggest a possible breach of the BBC's Editorial Guidelines, but not otherwise.

For the same reason, to conserve resources, observations or expressions of opinion were noted but not replied to in detail. Audience Services said the following:

"We appreciate that you felt strongly enough to contact us again and have noted your points. 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. We reported them to the BBC staff responsible but are not able to engage in more correspondence or address new complaints and questions at this stage of the BBC's complaints procedures."

The complainant was informed he could appeal to the BBC Trust against this decision.

Appeal

The complainant appealed to the BBC Trust on 7 May 2014. The complainant appealed on the substance of his complaint, concerning the BBC's news bulletin priorities. He said the following:

"I remain dissatisfied with the response I am getting on this matter.

"The essential fact is that an editor at BBC News decided, on two occasions recently, that the death of a 'celeb' (which incidentally was not even referred to in the reply I received) and the sacking of a football manager were respectively the most important news stories on those days and had each broadcast as the first item on the Six O'Clock News. To try to justify the Manchester United story as one about big business or that the club has nearly 600 million fans worldwide is unacceptable.

"The only possible conclusion is that we, your viewers, were also thought to want these stories to be given top billing. That is offensive and a dereliction of standards and demonstrates how far the BBC is removed from its audiences."

Decision of the Senior Complaints Adviser

The relevant correspondence was reviewed by the Trust Unit. The Senior Complaints Adviser carefully read the correspondence that had passed between the complainant and the BBC, as did an independent editorial adviser.

The Senior Complaints Adviser (Adviser) noted, however, that BBC Audience Services had ceased handling this complaint at Stage 1(b) 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 considered the appeal did not have a reasonable prospect of success.

She noted the complainant had first complained stating:

"I was astonished a couple of weeks ago to see that the death of a minor 'celeb', Peaches Geldof, warranted first place on BBC television news and today on all broadcasts the first item is about the sacking of a football manager."

She considered that the substance of the complaint related to the decision that David Moyes' departure from Manchester United was the lead item in that day's bulletins. While the complainant had also referred to the BBC's coverage "a couple of weeks ago" of the death of Peaches Geldof, the Adviser noted this was a vague reference and considered Audience Services had understood that it had provided context to the complainant's concerns about news judgment, rather than being a specific complaint about that decision. (She noted that complainants were advised in the Complaints Framework that complaints about specific output needed to be made separately and needed to state the date, time and service of the relevant output.)

The Adviser noted that BBC News had given a response to Audience Services which referred to the size of Manchester United's fanbase in the UK and abroad and which also referred to the financial significance of the club. The response also referred to other stories covered in the BBC's news output at the same time.

The Adviser considered Trustees would be likely to conclude that BBC Audience Services had given a reasoned and reasonable response to the complaint and had acted appropriately in declining to enter into further correspondence.

For completeness, the Adviser noted 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 (paragraph 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 to cover in news bulletins 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 was intended to protect the BBC's editorial independence – which was highly valued by licence fee payers. Therefore she considered that it would not be appropriate for Trustees to consider whether they agreed with the BBC's judgement about the running order for news items.

The Adviser considered that Audience Services had been correct when it had assessed that the complainant had not offered evidence that there had been a specific breach of the BBC's editorial standards. 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. He said he felt that the stories about Peaches Geldof and David Moyes should have been reported by the BBC, but that neither deserved 'top billing' in the Six O'Clock News. He said that this was a breach of editorial standards.

He added that, in his view, his complaint "should not [have been] adjudicated on by an employee of the BBC who finds for the BBC and in the process blocks [his] access to the BBC Trust".

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 noted that a decision as to what stories are selected to be covered on the news is for the Executive alone. As the Royal Charter (article 38, (1) (b)) sets out, "the direction of the BBC's editorial and creative output" and its "operational management" are specifically defined in the Charter as 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, which did not apply in this case.

The Panel noted that the Complainant objected to receiving a reply from the Trust Unit's Senior Complaints Adviser. However, they noted that: firstly, the Trust Unit is not subject to nor does it act for the BBC Executive Board (Royal Charter Article 43 (3)); and, secondly, in any event the final decision to admit or reject an appeal rests with Trustees (Agreement between the Secretary of State for Culture, Media and Sport and the BBC 89 (4)(b)).

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 Two Thousand Year Old Computer, BBC Four, 13 March 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 in January 2014 to complain about the clarity of the diction of a television news presenter. He received a response from Audience Services which stated that, while they accepted people had their own preferences, news readers were expected to speak clearly and they considered the presenter in question did this.

The complainant renewed his complaint on 14 March 2014 as he was dissatisfied with the response he had been sent. However, he made an additional complaint about the use of background music in a programme broadcast on BBC Four called *The Two-Thousand-Year-Old Computer*. Although he found it a fascinating programme, he said that "the concentration required to follow the story was made harder by the almost constant (J.S. Bach 5-finger exercise style) piano or guitar music being played whilst the experts involved were speaking – not all of them professional speakers, and some with heavy foreign accents which trebled the difficulty".

In renewing his complaint, the complainant gave a subject reference which related to a complaint **about the subject of background music** he had made three years earlier in 2011 and to which Audience Services had responded to on 23 March 2011.

In their response of 2011, Audience Services had stated:

"Different people can find background sound intrusive in different circumstances – there is no single experience therefore no single rule can be applied as a host of circumstances and experiences need to be considered.

The important point is that the BBC acknowledges that this is an issue for some sections of our audiences. We are continuing existing work in this area to raise programme makers' awareness of the different needs of our audiences.

It's worth adding that many televisions now have options whereby audio settings can be changed to a personal preference setting, or amended to suit the type of programme being viewed. There is usually a default setting for 'music or 'speech' which enables viewers to adjust their televisions to make speech clearer. Similarly, viewers with surround sound systems may be able to clarify speech by increasing the volume on the centre (dialogue) speaker whilst decreasing the volume on the surrounding channels (music and effects).

You may be interested to learn that in 2009 BBC Vision launched an extensive study into why some people were experiencing difficulties. This was a huge project involving a panel of 20,000 TV viewers from all ages and backgrounds and conducted in collaboration with the Voice of the Viewer and Listener, the Royal National Institute for Deaf People and Channel 4. As a result of this research we now have a 'best practice guide' which is available on the BBC Academy's College of Production website. This will provide programme makers with an overview of

the things they can do to make a difference to the audience's ability to hear and therefore enjoy our programmes to the fullest possible extent.

If you have access to the internet, the 'best practice guide' can be accessed via this link:

www.bbc.co.uk/academy/collegeofproduction/tv/sound_matters_cohen

There's also a blog by Danny Cohen, the Controller of BBC One, which you can read here:

www.bbc.co.uk/blogs/tv/2011/03/is-the-background-music-too-loud.shtml

Audience Services confirmed upon enquiry that they had nothing further to add to the information they had sent to the complainant about the use of background music in programmes.

Appeal

The complainant appealed to the BBC Trust on 13 April 2014. He appealed on the substance of his complaint, that the background music in *The Two-Thousand-Year-Old Computer* was intrusive and as a result, dialogue in the programme was difficult to hear clearly.

He said he had read the BBC Best Practice Guidance and in his opinion the programme as broadcast breached the Guidance.

He said he had asked previously why no-one had taken any notice of, and acted on, the widespread complaints about background music. He asked the Trust Unit to demand a reply from those most closely involved and relay it to him.

He also enclosed copies of his letters dating back to October 2002 on this issue.

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; however, the Adviser decided that the complainant's appeal did not have a reasonable prospect of success.

The Adviser had a good deal of sympathy with the complainant's concerns; she noted that complaints about background sound were amongst the most common complaints received by the BBC, and that a figure of nearly 60% was given in terms of the number of viewers who had some difficulty in hearing what was said in programmes.

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.

She noted that the complainant had originally complained about the diction of a television news reader and had introduced a new complaint about background music in this programme as he pursued that original complaint. She noted that, in renewing his

complaint about background music, the complainant had wished to raise correspondence he had had in 2011.

She noted that under the complaints framework, both the BBC and complainants were required to operate within specified time frames. She considered this was done with good reason as it became increasingly difficult to respond meaningfully to complaints as time passed. She also noted that the complaints framework specified that complainants could not introduce new elements to a complaint that was already being considered. Again, she considered this requirement was reasonable because it allowed complaints to be answered and kept track of in a way that was efficient.

She acknowledged that the complainant was unhappy about the music used in the programme *The Two-Thousand-Year-Old Computer*, and considered it “firmly breached” the standards set out in the Best Practice guide.

However, the Adviser noted that judgments on technical quality, and the extent and relevance of music content within programmes were operational and editorial decisions which were the responsibility of the BBC Executive. 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 (paragraph 38, (1) (b)) as a duty that was the responsibility of the Executive Board. Likewise, the “operational management of the BBC” was defined in the Charter (paragraph 38, (1) (c)) as a duty that was the responsibility of the Executive Board, and ones in which the Trust would not usually get involved unless, for example, they raised broader issues such as a breach of a station’s Service Licence or of the BBC’s Editorial Guidelines.

The Adviser believed that decisions relating to the level of music that should be used in programmes were editorial ones which rested with the BBC. Although she noted the complainant’s view that the programme had not met the standards set out in the Best Practice guide, she noted that this guide was intended to give practical advice to programme makers – it was not part of the Editorial Guidelines (which set the standards that all BBC output was required to reach).

She therefore considered that Trustees would be likely to conclude that Audience Services had previously addressed the complainant’s concerns reasonably, and that they had acted appropriately in deciding not to correspond further on this matter which introduced a new element of complaint into a separate matter they had responded to. She therefore considered the appeal did not have 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 felt that the Adviser’s reference to a previous complaint about a presenter’s diction was irrelevant. He said his complaint about background music was distinct, and unconnected to the diction complaint, but did follow several previous complaints about background music.

The complainant said that he had never received a direct reply from BBC Audience Services regarding this complaint about background music, and noted that Audience

Services' letters no longer contained a written reference to make clear the letter to which they were replying.

The complainant asked why he was directed by Audience Services to request a review by the BBC Trust if the Trust was not responsible for editorial issues.

The Panel's decision

The Panel decided to regard the complainant's complaint about background music as a new complaint, meaning that this was a fresh appeal.

However, the Panel agreed with the Senior Complaints Adviser that the choice and use of background music was a matter for the Executive, as the Royal Charter (article 38, (1) (b)) sets out that the direction of the BBC's "editorial and creative output" is a duty of the Executive Board and one in which the Trust does not get involved unless it raises a matter of breach of the BBC's standards. The Panel did not consider that there was anything to suggest that there had been a breach of the BBC's standards.

The Panel appreciated that it was frustrating for the complainant to be informed that this was an Executive matter after he had been invited to appeal to the Trust. However, the Agreement (clause 89 (4) (b): "...the Trust is the final arbiter if any question arises as to whether an appeal is for the Trust to determine or not") made it explicit that only the Trust could decide what appeals were matters for the Trust, which was why the Executive had informed the complainant that he could appeal. The Trust hoped that new wording now added to stage 1 letters would make these issues clearer for complainants.

The Panel 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 Radio Merseyside

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 BBC Audience Services on 18 March 2014 following his attempts over several months to interest the News Editors at BBC Radio Merseyside in a story about Merseyside Police. Radio Merseyside chose not to cover the story, which the complainant said he found alarming. He said that Radio Merseyside was ignoring the information he had sent, and as a result, he was now convinced that there was something which Radio Merseyside was concerned would be exposed if they carried out a journalistic investigation into the matters he raised.

Audience Services responded on 24 March 2014 stating:

"Radio Merseyside receives many story ideas and suggestions on a daily basis. It values and appreciates all of these and it never shies away from investigating serious allegations. However, it is not possible for every potential story to be explored. With those which it does pursue, it can take time to gather information and even then, there are a range of reasons why they ultimately may not be broadcast. For example, a lack of substantive evidence to support an allegation or allegations.

"We can also assure you that our presenters and journalists always seek to fully challenge interviewees. They are never afraid to ask tough questions of guests; from decision makers being held to account through to listeners who've called in to voice their opinion. With that in mind, whilst we appreciate your concerns, we would ask that you do not make unsubstantiated claims about the integrity of BBC Radio Merseyside."

The complainant was unhappy with this response and wrote a follow-up complaint on 1 April 2014. He reiterated his concern that News Editors at Radio Merseyside were "acting in a very questionable way" concerning the Merseyside Police and Police and Crime Commissioner. In his view the Force were blocking an investigation.

The complainant also said that the information he had submitted to Radio Merseyside contained "facts" not "allegations". He said he was willing to send the information which he had already submitted to Radio Merseyside, and which Audience Services had not asked to see, in order to aid a full investigation into the matter by the BBC.

Audience Services responded at Stage 1b on 8 April 2014 stating:

"It is not the role of BBC Audience Services to make editorial decisions, which is why no request was made for the information which you have provided to BBC Radio Merseyside. The decision on how to act upon such information lies with the local editorial team. It is also worth bearing in mind that editorial teams are not obliged to disclose at what stage they are regarding any investigation into a possible news story.

"We do appreciate the seriousness of what you have written but we do not consider the points you raised regarding any investigation by BBC Radio Merseyside into your allegations suggested a possible breach of standards. Therefore we are not able to engage in more correspondence or address new complaints and questions at this stage of the BBC's complaints procedures on this matter."

The complainant was informed he could appeal against this decision to the BBC Trust.

Appeal

The complainant appealed to the BBC Trust on 9 April 2014 against the decision by Audience Services not to engage in further correspondence on the issue because they did not consider the points he raised suggested a possible breach of standards.

- The complainant appealed on the substance of his complaint, that BBC Radio Merseyside was refusing to report on the allegations he had made against Merseyside Police.
- He expressed concern that the same member of BBC Audience Services staff responded at both stages 1a and 1b of his complaint. He found this unacceptable as his stage 1b complaint had contained comments about that member of staff not asking to see the information he had previously sent to Radio Merseyside to substantiate his allegations.
- He disputed the editorial priorities of Radio Merseyside as it had covered other stories of a much more trivial nature than the one he had submitted.

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 Adviser noted, however, that BBC Audience Services had ceased handling the 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 complainant had raised concerns about the editorial priorities of Radio Merseyside in choosing stories for inclusion in their news programmes. 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 (paragraph 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 news stories to include in BBC output fell within the "editorial and creative output" of the BBC and were the responsibility of the BBC Executive.

The Adviser acknowledged that the complainant did not agree that his suggestion for a news story contained unsubstantiated allegations rather than facts, but she believed that

Trustees would be of the view that editorial decisions of this nature were the responsibility of the BBC Executive and therefore it would not be appropriate for Trustees to address this point.

The Adviser did not think that any evidence had been presented to support the complainant's allegation. She noted and agreed with the statement that Audience Services had made:

"It is not the role of BBC Audience Services to make editorial decisions, which is why no request was made for the information which you have provided to BBC Radio Merseyside. The decision on how to act upon such information lies with the local editorial team. It is also worth bearing in mind that editorial teams are not obliged to disclose at what stage they are regarding any investigation into a possible news story."

The Adviser acknowledged that the complainant was not happy that the same Senior Complaints Adviser, Audience Services, had responded to both his stage 1a complaint and his stage 1b complaint. She noted that the complainant considered that as he had mentioned the Senior Complaints Adviser by name in his stage 1b complaint, and had expressed his dissatisfaction with the response he had received at stage 1a, he believed it was inappropriate for that same member of staff to reply to his stage 1b complaint.

The Adviser did not consider Trustees would be likely to conclude that the complaint had been handled inappropriately. She considered that Trustees would be likely to conclude that Audience Services had provided a reasoned and reasonable response to the complaint and it was appropriate for the Senior Complaints Adviser responding on behalf of the Audience Services team to state the decision of Audience Services not to enter into further correspondence on the issue. For these reasons the Adviser did not believe the complainant's appeal had a reasonable prospect of success and did not propose to place it before Trustees.

Request for review by Trustees

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

In his challenge of the Senior Complaints Adviser's decision, the complainant pointed to a recent online news article about Radio Merseyside, which he said confirmed his allegations.

The complainant asserted that the issues he had highlighted were factual, not allegations. He argued that the public was being deliberately misled.

The Panel's decision

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

The Panel noted the seriousness of the complainant's allegations, and suggested that, if the complainant had any evidence of crimes having been committed, he should inform the police straight away.

Nonetheless, the Panel noted that the decision concerning which news stories to cover 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 Radio Merseyside had breached the BBC’s standards, and therefore the Panel did not consider that his complaint raised a matter for the Trust.

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