

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

October 2016 and January 2017, issued March 2017

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Remit of the Complaints and Appeals Board

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

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

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

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

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

- raise a matter of substance – in particular, that there is sufficient evidence to suggest that the complaint has a reasonable prospect of success and there is a case for the BBC Executive to answer
- have already been considered by the BBC Executive under Stage 1 or under Stage 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

Requests to review the Trust Unit's decisions on appeals

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

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

Comedy dining events: unlicensed use of BBC trademark

The complainant was the Managing Director of a comedy entertainment company specialising in parody dining events ('X Ltd'). She considered that the BBC was taking action against X Ltd's unlicensed use of a BBC trademark, but failing to prevent X Ltd's competitors from doing the same, to X Ltd's commercial disadvantage.

The complainant made the following points:

- The BBC was not treating providers of parody comedy events equally or impartially.
- The BBC had a duty to consider the market effect of its activities, which were providing an unfair advantage to certain other suppliers of unlicensed BBC-trademarked dining events.
- The BBC was well aware that such suppliers were benefitting from the commercial value of BBC trademarks such as Fawlty Towers ('the sitcom') by selling BBC-trademarked dining events without paying for a licence.
- One such supplier ('Y Ltd') had reportedly been working with the BBC, and had been marketing a BBC-trademarked dining event in the UK since 2008.
- Y Ltd had registered the trademark of that dining event in Australia, and had registered it as Y Ltd's brand. The complainant did not know whether, or how, this had been agreed with the BBC. In any event, the BBC had not objected, and it was inconceivable that the BBC would not have informed the sitcom's author or his agent.
- Y Ltd had also registered its BBC-trademarked dining event as a UK limited company.
- Y Ltd had also reportedly used or adapted material from the sitcom and had until recently marketed this as an "immersive piece of theatre". Y Ltd was reputed to have offered payments to the agent of the sitcom's author, and the author's public statements appeared to corroborate this.
- The author's agent's company ('Z Ltd') had considerable commercial influence, producing large-scale theatrical entertainments in Australia. Y Ltd were advertising their BBC-trademarked dining event in Australia.
- Despite being informed that X Ltd performed only original work, the complainant believed that Z Ltd had been contacting X Ltd's venues, who had cancelled or stopped booking X Ltd.
- The Complainant believed that Z Ltd was claiming to venues that it was the exclusive licensee of the right to present live performances based on the sitcom. This claim was "exceedingly misleading and disingenuous", as Z Ltd's licence was

limited to “the exclusive right to adapt the scripts of a BBC television series for performance of [*sic*] the live theatrical stage”. This was a far narrower right than that which Z Ltd purported to have, being in effect a licence to use and adapt literary copyright.

- Such “apparently misleading and disingenuous trading activities” were not conducive to a “fair playing field” for creative artists; nor were they acceptable to the public or licence fee payers.
- The Complainant asserted that the BBC was well aware of the commercial value of its trademark to unlicensed suppliers and that the Corporation appeared to have been party to a campaign that gave significant commercial benefits to a few such suppliers. The BBC appeared to have intended to limit venue and consumer choice to those suppliers, without publicly explaining its policy or reasons.
- This was in effect creating an oligopoly market, in which a few unlicensed suppliers commercially exploited a large customer base without paying for the privilege. It created an artificial and higher charging/price-structure for a limited number of suppliers. This was evidently in the commercial interests of those suppliers, but was not in the interests of the paying public/consumer.
- The Complainant asserted that the BBC must recognise that venues would be far more likely to book the supplier of a BBC-trademarked dining event than the supplier of a parody event that did not enjoy such commercial privileges. Some venues were replacing X Ltd’s events with unlicensed BBC-trademarked events.
- Such trading activities were incongruous with the significant contractual obligations that the BBC placed on suppliers who paid for the privilege of using BBC trademarks to sell their goods/services. The BBC knew that unlicensed suppliers were free from such obligations.
- It was “totally unacceptable and unreasonable” to expect the public to know that a venue advertising a BBC-trademarked dining event was unlicensed. According to BBC guidelines, such advertising was likely to misrepresent the event to the public.
- The BBC knew that Y Ltd had contacted venues, claiming rights to the brand This was “extremely misleading and disingenuous”.
- The BBC appeared to be complicit with unlicensed suppliers and their activities. The BBC must explain its policy and the reasons for its commercial arrangements with such suppliers.
- This was wholly inconsistent with the BBC’s trademark licence arrangements, as set out in its guidelines.
- The BBC was clearly abrogating responsibility for competition rules/standards, trademark standards and BBC guidelines.

In his Stage 2 response, the Head of the BBC’s Intellectual Property Department made the following points:

- There were no Royal Charter guidelines that obliged the BBC to take legal proceedings against trademark infringers.
- The BBC took action where it believed it was proportionate to do so, considering the nature of the infringement and the best and most effective use of the licence fee.
- The UK parody market was well-established and extensive, and the BBC did not have the resources to commence costly legal proceedings against multiple operators in circumstances where operators may choose to ignore the BBC’s letters.
- The public had become increasingly educated as to the existence of tribute and parody in music, comedy and entertainment, and were aware that tribute shows were not necessarily endorsed by the original rights holders, which lessened the impact on the BBC.

- While the BBC did not approve of the use of its trademarks without permission and would prefer that this did not happen, for the above reasons the BBC did not intend to commence legal proceedings against all those who were doing so at this time.
- However, it was for parody operators to ensure that there was no suggestion that their shows were endorsed by or commercially associated with the BBC or the programmes on which the shows were based. The BBC would be communicating the importance of this to the parody operators identified by the complainant.

Appeal

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

Decision of the Trust Adviser

The Trust Adviser ('the Adviser') noted all the points raised by the complainant and the BBC.

The Adviser decided that the point she should consider was whether the complainant's appeal against the decision of the Head of the BBC's Intellectual Property Department not to uphold her complaint had a reasonable prospect of success. She decided that it did not.

The Adviser noted that the Royal Charter and accompanying Agreement between the Secretary of State and the BBC draw a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. Under Article 38(1)(c) of the BBC's Royal Charter, "the operational management of the BBC" is the responsibility of the Executive Board, not the Trust. This entitles the Executive to make operational decisions without interference from the Trust, which will only have a role if the BBC is potentially in breach of any of its other obligations – such as those set out in the Fair Trading Guidelines ('the Guidelines').

In the Adviser's view, decisions concerning the protection of the BBC's intellectual property rights and the enforcement of BBC trademarks were operational decisions and, as such, were beyond the Trust's remit.

The Adviser then considered whether any potential breach of the Guidelines had arisen.

The Adviser noted that, according to Guideline 2.1, the BBC's activities can be divided into two broad categories – "Public Service Activities" and "Commercial Activities" – to which different considerations apply. The Adviser considered each category in turn.

The Adviser noted that the Guidelines define "Public Service Activities" as:

"the activities undertaken by the BBC's licence fee funded Groups and Grant-in-Aid funded Group (e.g. production of radio programmes by BBC World Service, provision of content on bbc.co.uk)".

The Adviser noted that, under Guideline 1.8, all of the BBC's Public Service Activities are subject to the "Competitive Impact Principle" ('CIP'). This principle requires the Executive "to endeavour to minimise its negative competitive impacts on the wider market whilst always ensuring it fulfils its Public Purposes and takes into account its other obligations in the Charter and the Agreement".

In the Adviser's view, the BBC's activity in relation to the protection of its intellectual property rights did not constitute a Public Service Activity within the meaning of the

Guidelines. The CIP did not therefore apply to the BBC's operational decisions in relation to the enforcement of trademarks.

The Adviser noted that, under the Guidelines, "Commercial Activities" is the collective term for Commercial Services and Commercial Trading Activities. The Guidelines define "Commercial Services" as:

"the activities undertaken by the BBC's Commercial Subsidiaries (e.g. the exploitation of rights by BBC Worldwide)"

and "Commercial Trading Activities" as

"the commercial activities undertaken by the BBC's Public Service Groups (e.g. the sale of secondary rights in TV programmes by BBC Vision)."

The Adviser noted that, under Guideline 2.4, any Commercial Activity must comply with certain specified criteria, known as the "4 Commercial Criteria" and:

- "fit with the BBC's Public Purposes;"
- not jeopardise the good reputation of the BBC or the value of the BBC Brand;
- exhibit commercial efficiency; and
- comply with the Trust's Fair Trading Policy, the BBC's Fair Trading Guidelines and, in particular, avoid distorting the market.

In the Adviser's view, the exploitation by the BBC of its intellectual property via its commercial subsidiaries did constitute a commercial activity, but that the BBC legal department's trademark enforcement strategy was an entirely separate and secondary matter as it was not undertaken with a view to making a profit. Therefore, none of these "4 Commercial Criteria" applied, nor was the BBC obliged to adopt a particular intellectual property enforcement strategy. The Adviser agreed with the Head of the BBC's Intellectual Property Department that there was nothing in the Guidelines that required the BBC to take legal action against every unauthorised use of its brand by a third party. Indeed, were it otherwise, the BBC's operational discretion in this regard would be completely fettered, which was against the spirit of the Guidelines. The Adviser accepted that the BBC simply did not have the funds to go after each and every trademark infringer and it was up to the BBC to decide on the most effective enforcement strategy for its limited resources.

The Adviser noted that Guideline 4.29 states:

"Third parties may be eager to associate themselves, or their goods or services, with the BBC and its brands, in order to better promote themselves and their products. This may not be appropriate since it could imply that the BBC is endorsing their activities or it could potentially undermine the BBC's editorial integrity. However, there will be some legitimate situations when it may be acceptable to allow third parties to reference their relationship with the BBC."

The Adviser noted that, according to the Head of the BBC's Intellectual Property Department, the BBC would be contacting the operators identified by the complainant and communicating to them the importance of ensuring that there was no suggestion that their shows were endorsed by or commercially associated with the BBC or the programmes on which the shows were based. In the Adviser's view, this action fully accorded with the provisions of Guideline 4.29.

The Adviser concluded that that this was, in essence, a legal dispute concerning the alleged misuse of BBC trademarks and, as such, was not a matter that fell within the Trust's remit.

Taking all the above into account, the Adviser considered that the appeal did not raise a matter of substance as, in the Adviser's view, there was no reasonable prospect that the appeal would be upheld as amounting to a breach of the Fair Trading Policies and Framework. The Adviser therefore did not propose to put it before Trustees.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with her appeal.

The Panel's decision

A panel of the Complaints and Appeals Board considered the points made by the complainant, the BBC and the Trust Adviser.

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

- Trustees were satisfied that the complaint did not raise a potential breach of the Fair Trading Guidelines:
 - Firstly, the BBC's legal strategy in relation to the protection of its intellectual property rights did not constitute a 'Public Service Activity' within the meaning of the Guidelines. It was merely a secondary activity designed to ensure the good reputation of the BBC and the value of its brand were not undermined. The CIP did not therefore apply to the BBC's operational decisions in relation to the enforcement of trademarks. In any event, the Panel did not consider that the BBC objecting to the unlicensed use of its registered trademark would constitute a 'negative competitive impact' that might undermine fair and effective competition in the parody tribute act market.
 - Secondly, the Panel considered that the BBC legal department's trademark enforcement strategy was neither a 'commercial activity' nor a 'commercial trading activity' as it was not undertaken with a view to making a profit. Again, it was secondary to such activities. Therefore, none of the "4 Commercial Criteria" in the Fair Trading Guidelines applied.
 - Thirdly, the BBC was perfectly entitled to take steps to protect the value of its brand and this was consistent with Part 4 of the Fair Trading Guidelines. The Panel considered that there was nothing in the Guidelines that required the BBC to adopt a particular enforcement strategy or to take legal action against every unauthorised use of its brand by a third party. The Panel did not believe there was any evidence to suggest that the BBC was using a differential enforcement policy in order to distort the market and therefore there was no reason to doubt that enforcement decisions were taken objectively and on the basis of proportionality. The BBC had stated that it would be contacting the suppliers identified by the complainant and communicating to them the importance of ensuring that there was no suggestion that their shows were endorsed by or commercially associated with the BBC or the programmes on which the shows were based. Trustees had not seen evidence to contradict the BBC's implicit assertion that those suppliers were acting without the BBC's

consent. The fact that other companies might also be making unlicensed use of BBC trademarks did not entitle X Ltd to do so.

- The Royal Charter 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 Article 38, (1)(c) as a duty which was the responsibility of the Executive Board. The Royal Charter also explained that the Trust must not exercise or seek to exercise the functions of the Executive Board. (Article 9, (3)). In the absence of a breach of the Guidelines, Trustees concluded that the manner in which the BBC decided to protect its intellectual property rights was an operational matter beyond the Trust’s remit.

Trustees concluded that it was not appropriate, proportionate or cost-effective to proceed with the appeal as it did not have a reasonable prospect of success.

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

Complaint about casting

The complainant made a number of points but essentially he objected to the repeated broadcasting of the BBC over four years of programmes in which black actors and actresses are used to portray ‘white’ characters. He argued this was an example of ‘racial bias’. He also said that his complaint was totally about white actors and white actresses not being permitted to play ‘black’ parts and the racial inequality of such a stance. White culture was not been treated in the same way as black culture. This was offensive.

BBC Audience Services explained that actors were chosen for their acting skills. Racism and bias did not play a part in the BBC’s decisions or programme output.

Appeals

The complainant appealed to the BBC Trust. He said he had not received a proper response as to why black actors can play white parts but not vice versa. If the BBC did not think this exhibited a racial bias, could it explain why. He referred to former Culture Secretary John Whittingdale’s recent White Paper which stated that “the BBC should accurately and authentically represent and portray the lives of people across the UK”. He said that as culture was a major part of an individual’s life, surely that meant that in future the BBC would have to accurately and authentically represent and portray white culture.

Decision of the Trust Adviser

The Trust Adviser (the Adviser) decided that the point she should consider was whether the complainants’ appeals against the decision of Audience Services to cease handling the complaints at Stage 1 had a reasonable prospect of success. She decided they did not.

The Adviser noted that all BBC output was required to meet the standards set out in the Editorial Guidelines, which include sections on Accuracy, Impartiality and Harm and Offence. She noted that all output was required to meet the standard of “due” accuracy and impartiality, which was defined as follows:

“The term ‘due’ means that the accuracy/impartiality must be adequate and appropriate to the output, taking account of the subject and nature of the content, the likely audience expectation and any signposting that may influence that expectation.”

She noted that this meant the requirements varied depending on the output and considered that this was broadly understood by audiences. She noted the following advice, from the Guidelines, about how this worked in practice.

“The due accuracy required of, for example, drama, entertainment and comedy, will not usually be the same as for factual content. The requirements may even vary within a genre, so the due accuracy required of factual content may differ depending on whether it is, for example, factual entertainment, historical documentary, current affairs or news.”

In terms of the Guidelines on Harm and Offence, the Adviser noted that all BBC output was required to meet “generally accepted standards”. These were intended to provide “adequate protection for members of the public from the inclusion of offensive and harmful material”, and that any decision about what was generally acceptable was a matter of editorial judgement, taking into account “content, the context in which it appears and editorial justification”.

She noted that, under the terms of the Royal Charter, decisions relating to dramatic content were matters of editorial judgement that rested with the Executive Board as part of the editorial and creative direction of the BBC, as long as they met these editorial standards.

The Adviser considered that Trustees would be likely to conclude that the BBC was entitled to cast the actors who, in their creative opinion, were the best performers for each role and would not consider there was evidence to show that their casting decisions breached any employment regulations or engaged BBC Editorial Guidelines either in terms of harm and offence, due accuracy or due impartiality.

While acknowledging his general concern, she noted that in future, any complaints about BBC content should be made, in the first instance, to Audience Services so that the Executive could respond at Stage 1 and that it was open to the complainant to renew his complaint with the BBC within the set time frames if he remained dissatisfied with the BBC’s response.

Taking this into account the Adviser considered Trustees would be likely to conclude that BBC Audience Services had given a reasoned and reasonable response to the complaints and had acted appropriately in declining to enter into further correspondence. She therefore did not consider it was appropriate, proportionate or cost-effective to proceed with the appeals as they did not have a reasonable prospect of success. The Adviser did not propose to put them before Trustees.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with his appeal. He said that:

- Black actors play white parts whilst it is apparently unacceptable for black actors to play white parts. This was the crux of his complaint
- There did not appear to be an example of a white actor portraying a black character.

- The white population of the UK was entitled to a culture of its own.
- Black actors had more opportunity for work at the BBC than white actors.
- The BBC considered cultural appropriation of white culture by the black community acceptable.
- He would not have made this complaint if the BBC had also used white actors to portray black characters; it was the inequality and bias based on ethnicity that he objected to.

He also complained about the complaints process and the handling of his complaint:

- He asked Audience Services, the BBC Trust and the Director-General to pass his complaint to someone who could deal with it; his requests were ignored.
- He had been trying to make this complaint for two years.
- He was entitled to a Stage 2 response which had not been given.
- The Trust Adviser ignored the key points of his complaint.

The Panel's decision

A panel of the Complaints and Appeals Board considered the points made by the complainant, the BBC and the Adviser.

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

Trustees noted that he wanted the general point he had made addressed.

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

- Casting decisions are matters of editorial judgment for the BBC Executive. As the Royal Charter (article 38 (1) (b)) sets out, "the direction of the BBC's editorial and creative output" is specifically defined as a duty of the Executive Board and one in which the Trust does not get involved.
- The BBC was entitled to choose the best actors for a role regardless of race.
- Complainants were entitled to make general complaints however it was likely that without specific examples only a general answer could be given
- The complainant had received reasoned and reasonable replies on this occasion in accordance with the general complaints procedure. The assurance that racism and bias did not play a part in the BBC's decisions had been given. It had also been explained that actors were chosen for their acting skills.

Trustees decided not to take the appeal, on the basis that it would not be appropriate, proportionate or cost-effective since there was no reasonable prospect of the appeal succeeding.

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

Appeals against the decision of BBC Audience Services not to correspond further with the complainant

The BBC's General Complaints and Appeals Procedure has three stages: the first two stages with the BBC; the third and final stage an appeal to the Trust.

Complaints are answered at Stage 1 by the BBC – usually by BBC Audience Services but sometimes directly by a content area. Where complainants remain dissatisfied after a Stage 1 response, they can request a further response at Stage 1. If they are still dissatisfied they may escalate their complaint to Stage 2. Complaints at Stage 2 are considered by a senior manager in the BBC Division responsible for the matter being complained about.

However, under the Complaints Framework, it is open to the BBC to close down correspondence – this means the BBC notifies the complainant that it does not wish to respond further. The complainant can appeal to the Trust if they consider the BBC is wrong to close down the correspondence. This is the procedure the BBC followed in the following cases. Where a complainant appeals to the Trust in these circumstances, if Trustees uphold the appeal, the complaint is sent back to the BBC for a further response.

The General Complaints and Appeals Procedure explains that, at all stages of this procedure, a complaint may not be investigated if it "is trivial, misconceived, hypothetical, repetitious or otherwise vexatious".

In the following cases the correspondence was reviewed by a senior member of the Trust Unit who advises Trustees on Editorial Standards. The complainants had appealed on the substance of their complaints but as the BBC had ceased handling the complaints at Stage 1 the point the Adviser considered was whether an appeal against the decision of the BBC not to correspond further with the complainants had a reasonable prospect of success.

Decision of BBC Audience Services not to respond further to a complaint about BBC Radio Devon not being available via the Mendip transmitter

The complainant requested that BBC Radio Devon be made available on Freeview via the Mendip transmitter. He made the following suggestions:

- BBC Radio Devon could be broadcast on channels 720, 726, 729 or 733.
- Radio Dorset/Solent could be removed from the Mendip transmitter and replaced with Radio Devon.

BBC Audience Services made the following points:

- Radio Devon did not cover the Bristol area and there was only a limited amount of spectrum (digital space) on the transmitter multiplexes (muxes), so the BBC chose the radio stations most relevant to each area as shown:
<http://downloads.bbc.co.uk/reception/pdfs/Freeviewlocalradio1.pdf>
- The capacity available to provide local radio services on Freeview was limited to a maximum of five services for each TV region. In most cases five services per TV region offered comprehensive coverage for all BBC local radio services. Where there were more contenders than the capacity could accommodate difficult choices had to be made.
- The Mendip transmitter had DTT coverage over more than five local radio service areas to differing degrees. To determine the most appropriate configuration of services the BBC had to take into consideration the population served within a local radio station's editorial region overlaid by the Mendip TV transmitter.
- The Mendip transmitter carried Radios Somerset, Bristol, Wiltshire and Gloucestershire at present and the BBC was unlikely to add Radio Devon.
- Radio Devon was available online via Radio iPlayer:
<http://www.bbc.co.uk/radiodevon/programmes/schedules>
- Radio Devon could also be accessed via internet radio.

Appeal

The complainant appealed to the BBC Trust on the substance of his complaint. He felt that the situation could be resolved if the BBC took up one of the two solutions he had suggested.

Decision of the Trust Adviser

The Trust Adviser (the Adviser) read the correspondence between the complainant and the BBC. She noted BBC Audience Services had decided to cease handling this complaint at Stage 1. She decided that the point she should consider was whether the complainant's appeal against the decision of Audience Services not to correspond further had a reasonable prospect of success. She decided it did not.

She acknowledged that the complainant would like to be able to receive BBC Radio Devon via the Mendip transmitter and that he felt he had offered an acceptable solution that would see Radio Devon either transmitted on a spare EPG, or it could be transmitted in place of Radio Dorset.

The Adviser noted that the Royal Charter drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. "The operational

management of the BBC” was defined as a duty that was the responsibility of the Executive Board under Article 38, (1)(c). She considered that decisions concerning which BBC radio stations were available via the Mendip transmitter were operational ones that rested with the BBC Executive; the Trust would not have a role in those decisions unless a potential breach, such as a failure to meet the terms of a BBC Service Licence, had been identified, which the Adviser did not believe Trustees would consider to be the case in this instance.

She believed Trustees would consider that the complainant had received well-reasoned responses to his complaint, and that the BBC had set out clearly why Radio Devon was unlikely to be added to the list of stations currently available via the Mendip transmitter.

Taking this into account the Adviser considered Trustees would be likely to conclude that BBC Audience Services had given a reasoned and reasonable response to the complaint and had acted appropriately in declining to enter into further correspondence. She therefore did not consider it was appropriate, proportionate or cost-effective to proceed with the appeal as it did not have a reasonable prospect of success. She did not propose to put it before Trustees.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with his appeal.

The Panel’s decision

A panel of the Complaints and Appeals Board considered the points made by the complainant, the BBC and the Adviser.

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

- “The operational management of the BBC” was defined as a duty that was the responsibility of the Executive Board under Article 38, (1)(c) of the Royal Charter. The Trust did not have a role in BBC operational decisions unless a potential breach of standards was identified. Trustees considered that decisions concerning which BBC radio stations were available via the Mendip transmitter were operational ones that rested with the BBC Executive.
- They considered that the complainant had received a reasoned and reasonable response to his complaint, and they believed that the BBC had set out clearly why Radio Devon was unlikely to be added to the list of stations currently available via the Mendip transmitter.

Trustees concluded that it was not appropriate, proportionate or cost-effective to proceed with the appeal as it did not have a reasonable prospect of success.

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

Decision of BBC Audience Services not to respond further to a complaint about coverage of the Lyme Disease Survey

The complainant asked the Complaints and Appeals Board to review the decision of the BBC not to respond further to his complaint at Stage 1b.

The complaint

The complaint concerned a scientific study carried out by a scientific collective campaigning against Lyme disease. Following an appearance on BBC Breakfast News, the complainant said the collective had been asked to contact the BBC again following the publication of the results of their research into Lyme disease. The complainant contacted the BBC as planned following the issue of a press release about the study but was unhappy to find that the BBC did not appear inclined to cover the story further. He felt that the collective had wasted its time doing the study and believed that the BBC should report on it.

The complainant also felt that the BBC had handled his complaint poorly by being dismissive of his concerns and was unhappy that his phone calls to individual members of BBC staff had not been responded to.

BBC Audience Services made the following points in response to the complaint:

- They advised the complainant about the procedure for submitting story ideas to BBC News and explained that the BBC would contact him if they were interested in covering the issue further.
- They understood from their discussions with BBC News that the topic would not be covered at present because there was no specific new angle on the story to warrant a further report as it was already known that the disease was difficult to diagnose.
- BBC News understood that the scientific study referred to by the complainant involved self-selecting respondents, and therefore was not the type of formal, scientifically based published research paper of the type BBC News would generally refer to.
- The BBC was not obliged to use story ideas submitted for consideration and could not guarantee to do so. News Editors made their own professional judgments on all story ideas based on their own further research and evaluation together with assessments of newsworthiness and audience interest as a whole.
- With regard to the complainant's phone calls to BBC staff, Audience Services said they were unable to make specific members of staff available or facilitate immediate call-backs or responses. They explained that one of the key reasons they asked for all story ideas to be submitted centrally via the BBC dedicated web page (www.bbc.co.uk/news/10725415) - *How to share your stories, pictures and videos with BBC News* was because, by definition, reporters and editors would be out on jobs researching and filming, away from their desks, in meetings or on conference calls, or otherwise busy working on existing matters they had already been assigned by their editors.
- They had spoken with senior members of BBC News about this complaint and said that whilst they were sorry to learn that the complainant felt he had been treated dismissively, the reality of news reporting was that all team members were very busy working on any number of items that required their immediate attention for imminent broadcast.

The BBC confirmed to the Head of Editorial Standards, BBC Trust that it did not wish to add anything further to its letter to the complainant of 17 January 2017.

Appeal

The complainant submitted an appeal to the BBC Trust on the substance of his complaint.

Decision of the Head of Editorial Standards, BBC Trust (The Trust Adviser)

The Trust Adviser read the correspondence between the complainant and the BBC. She noted that BBC Audience Services had decided to cease handling this complaint at Stage 1. She decided that the point she should consider was whether the complainant's appeal against the decision of Audience Services not to correspond further had a reasonable prospect of success. She decided it did not.

In reaching her decision, the Trust Adviser took into account the letter in support of the study at the centre of the complaint which was written to the Chairman of the BBC Trust by Dr Chris Newton, Senior Scientist, Fight Lyme Now and Centre for Immuno-metabolism, Microbiome and Bio-Energetic Research (CIMMBER).

The Adviser explained that the Trust could not tell the BBC which editorial stories to cover. There were technical reasons for this. The Royal Charter drew a distinction between the role of the BBC Trust and that of the BBC Executive Board. "The direction of the BBC's editorial and creative output" and "The operational management of the BBC" were defined as duties that were the responsibility of the Executive Board under Article 38, (1)(b) and (1)(c). These paragraphs were important because they were intended to protect the BBC's editorial freedom and independence. They meant that the BBC was entitled to make editorial decisions without the Trust's intervention. Similarly, the BBC was entitled to make operational decisions without interference and the Trust would only have a role if the BBC was potentially in breach of any of its other commitments – for example, a Service Licence.

The Adviser had read about the survey with great interest. She noted that the Government was looking at diagnosis currently and acknowledged that it was an important subject. However, the decision to run a story on the survey was solely a matter for the programme makers. She said she was very sorry indeed that the complainant was unhappy with the way the various programme makers had responded to him. However, she noted that this was an operational matter and therefore also one in which the Trust would not interfere given that the complainant had received a reasonable explanation in the letter of 17 January 2017 from Audience Services.

Taking all this into account, the Adviser considered Trustees would be likely to conclude that it was not appropriate, proportionate or cost-effective to proceed with the appeal as it did not have a reasonable prospect of success.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with his appeal.

The Panel's decision

A panel of the Complaints and Appeals Board considered the points made by the complainant, the BBC and the Adviser.

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

- Although sympathetic to the substantive issue raised by the complainant, they considered that the choice of stories covered by BBC News was part of the editorial and creative direction, and operational management of the BBC. The Royal Charter drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. The “direction of the BBC’s editorial and creative output” and the “operational management” of the BBC were specifically defined in the Charter (Article 38, (1)(b) and (1)(c)) as responsibilities of the Executive Board.
- They considered that the complainant had been given reasoned and reasonable responses to his concerns.

Trustees concluded that it was not appropriate, proportionate or cost-effective to proceed with the appeal as it did not have a reasonable prospect of success.

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

Decision of BBC Audience Services not to respond further to a complaint about coverage of the US Presidential election

The complainant asked the Complaints and Appeals Board to review the decision of the BBC not to respond further to the complaint at Stage 1b.

The complaint

The complaint concerned changes to the advertised BBC broadcast schedule in order to provide extensive news coverage of the US presidential election.

The complainant made the following points:

- He felt there was too much US presidential election coverage and a simple five minute news bulletin announcing who had won and who had lost would have sufficed.
- He was unhappy that the coverage had interfered with the advertised programme schedule and felt that had been unnecessary as the election news coverage was just repeating the same things over and over again.
- Given that the BBC knew the election was happening, why were the schedules not planned to take account of this instead of implementing short notice schedule changes which interfered with people’s advance programme recording settings?
- This was not the only occasion when the BBC had made unnecessary changes to the programme schedule when reporting on breaking news stories or accommodating over-running sporting events. He suggested that the BBC use the BBC News Channel and leave BBC One alone.
- He thought that perhaps the BBC was trying to save money by effectively closing down BBC One for the day and wondered how much money had been spent in sending BBC staff to cover the US election. He felt they could have done just as good a job by covering it from Britain.

BBC Audience Services made the following points:

- The recent US presidential election had been one of the most extraordinary in history, and had generated huge public interest and media coverage globally. BBC News believed this was a significant news story, not just because of the nature of this particular campaign, but because the election of a new president in the USA has implications not just for America but for the United Kingdom, Europe and the whole world. The BBC believed its reporting of this event had been proportionate to its significance and it had continued to report on other significant national and international news stories during this period.
- The US Presidential Election was one of the most talked about ever and because of that, time had been built into the BBC Two daytime schedule to accommodate reaction to the results. This was always unpredictable given the time differences involved.
- When it transpired that Donald Trump had secured what most media outlets reported as a “shock victory” to become president-elect, the BBC took the decision to shift news coverage to BBC One.
- The BBC News Channel was covering the event, but BBC One was the flagship channel. It was part of BBC One’s role to cover momentous occasions such as the US presidential election result and it was always reactive to breaking news and live sporting events.
- The BBC had tried as best it could to navigate viewers in the midst of this rolling news story on the morning of the election result. Despite some earlier conflicting announcements the BBC was pleased to be able to bring *The People Remember* to BBC One viewers at the later time of 11.00am. The BBC believed this series was important to BBC One as each episode was scheduled to play on that channel throughout the week in the run-up to Remembrance Sunday.
- The schedule was again disrupted during the afternoon because media outlets were informed that Hillary Clinton would be making a speech at 2.30pm and BBC News was therefore extended after News at One. In the event, this speech was delayed until 4.40pm. However, by that stage, BBC One had committed to showing this speech live. To minimise any further disruption the BBC took the decision not to revert back to the billed BBC One schedule until *Pointless*.
- They hoped this explained some of the rationale behind the changes to the BBC One schedule on 9th November 2016.
- In terms of staffing – the BBC deployed nearly 20% fewer staff than the last US Election, with just 25 on-air journalists covering the BBC’s television, radio and online news services in 13 different languages including Welsh and Gaelic.
- BBC News was reducing deployments on big foreign stories for coverage across the UK to ensure best value.

Audience Services said they did not believe the complaint had raised a significant issue of general importance that might justify further investigation.

Appeal

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

The Panel’s decision

A panel of the Complaints and Appeals Board considered the points made by the complainant and the BBC.

Trustees noted that the issue in front of them was whether the decision by Audience Services to decline to enter into further correspondence was correct.

Trustees agreed that the matter was not admissible having concluded that:

- Audience Services had explained the rationale behind the editorial and scheduling decisions taken by the BBC in relation to the US presidential election coverage.
- The Royal Charter drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. The “direction of the BBC’s editorial and creative output” and “the operational management” of the BBC were specifically defined in Article 38, (1) (b) and (c) as duties which were the responsibility of the Executive Board. This meant that the BBC was entitled to make editorial and operational decisions without the Trust’s intervention unless a potential breach of editorial standards or operational commitments, such as a Service Licence, was identified. Trustees had not seen evidence of such a breach here.
- Trustees considered that decisions about the duration and content of BBC News programmes and scheduling changes in response to breaking news events were part of the editorial and operational responsibilities of BBC News and the BBC’s scheduling teams.
- They considered that Audience Services had responded fully and reasonably to the complainant’s concerns.

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

Decision of BBC Audience Services not to respond further to a complaint about Final Score, BBC One, 1 October 2016

The complainant asked the Complaints and Appeals Board to review the decision of the BBC not to respond further to the complaint at Stage 1b.

The complaint

The complaint concerned the on-screen shortening of the name Dunfermline Athletic to Dunfermline during the 5.00 p.m. football score report.

The complainant made the following points:

- He thanked the BBC for now providing football scores on screen from the top and for including all Scottish latest scores.
- He requested the BBC to put the full name, “Dunfermline Athletic”, on the screen. As Airbus UK Broughton and Haverfordwest County were written on the screen in full, he did not think that lack of space could be an issue.
- Following the first response from Audience Services, the complainant understood that the name would be listed in full in future as a result of his request. However, he said that two weeks later, this had not happened and therefore he contacted Audience Services again.
- He disagreed with the BBC’s second response. He acknowledged that DAFC did just state “Dunfermline” on fixtures on its website. However, he had looked at three clubs at random: Newcastle United, Tottenham Hotspur and Peterborough United. In each fixture listed, they only spelled out the name of the town they

were from, not the full club name. Therefore, he said, would the BBC please stop trying to find excuses not to do something which was very easy, namely showing Dunfermline Athletic or even Dunfermline Ath. on the 5pm Saturday football results programme.

BBC Audience Services made the following points:

- They agreed with the complainant that space could not be an issue as teams with longer names had them listed in full on the screen.
- They noted that giving Dunfermline Athletic's full name would bring it into line with BBC sports online coverage of the team.
- They thanked the complainant for his feedback which would be seen by the right people quickly via the overnight audience feedback report, and asked him to bear with them while this was looked into.
- Following a second contact about the issue, Audience Services investigated the issue further. They apologised for the fact that the complainant had had to come back to them and appreciated why he had done so. They said they always aimed to address the specific points raised by the audience and regretted any cases where they failed to do this.
- They noted that the first response had not addressed the issue appropriately and asked for their second response to be considered as a first response.
- They said that the shortening of the team name simply reflected the official Championship table at <http://spfl.co.uk/championship/table/>
- The DAFC website also listed the team in this shortened way (their fixtures were listed as Dunfermline v Opponents at <http://www.dafc.co.uk>, so the club themselves sometimes dropped the Athletic title).
- The BBC's longer team reports offered more variety in the wording (usually offering the Athletic too at some point), but this fixture/score/table issue was largely dependent on how the team was already represented elsewhere in the official statistics. The BBC pulled its information in from these external sources and they were in line with the SPFL.

Audience Services said they did not believe the complaint had raised a significant issue of general importance that might justify further investigation.

Appeal

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

- His request for the BBC to spell out "Dunfermline Athletic", or even "Dunfermline Ath" on the 5pm football scores on Saturday evenings rather than just listing the club as "Dunfermline" had been dismissed and he wished the BBC to regard it now as a complaint.
- He said that no other Scottish football club had a name that was shortened in this way, and he felt the BBC was therefore discriminating against Dunfermline Athletic.

The Panel's decision

A panel of the Complaints and Appeals Board considered the points made by the complainant and the BBC.

Trustees noted that the issue in front of them was whether the decision by Audience Services to decline to enter into further correspondence was correct.

Trustees agreed that the matter was not admissible having concluded that:

- Audience Services had explained why the BBC considered the shortened name, “Dunfermline”, to be an appropriate description in football score reports. Trustees considered that the BBC had given a reasonable explanation for the shortening of the name and had not seen evidence that the BBC was discriminating against Dunfermline Athletic.
- The Royal Charter drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. The “direction of the BBC’s editorial and creative output” and “the operational management” of the BBC were specifically defined in Article 38, (1) (b) and (c) as duties which were the responsibility of the Executive Board. This meant that the BBC was entitled to make editorial and operational decisions without the Trust’s intervention unless a potential breach of editorial standards or operational commitments, such as a Service Licence, was identified. Trustees had not seen evidence of such a breach here.
- Trustees considered that decisions about how to refer to football teams on-screen were part of the editorial and operational responsibilities of BBC Sport.
- Audience Services had apologised for the fact that their first response did not address the issue appropriately.

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

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

The complainant asked the Complaints and Appeals Board to review the decision of the BBC not to respond further to the complaint at Stage 1b.

The complaint

The complaint concerned BBC weather forecasting for the Central Highlands of Scotland.

The complainant made the following points:

- She had come to the view that the BBC was discriminating against the Central Highlands because evening temperatures in the region did not appear on the weather map. However, in other parts of Britain, such as Birmingham, where the temperatures did not go very low, they did appear on the map.
- She said the low Central Highland temperatures might be mentioned verbally but they did not appear on-screen. She said that it was not always possible to hear everything the weather forecaster said if other people were speaking in the room.
- She said that people in the Central Highlands were living in the coldest part of Scotland and needed to know what the temperature was going to be because people needed to make night journeys; if it was too cold they could take the decision not to make a potentially dangerous journey. The night temperatures for Aviemore had never been given.

- She said the only time the focus changed was in summer when it was not important to know the temperature in the Central Highlands. In winter, it was essential to know the travel conditions and people did not always have time to check websites.
- She explained that the cold weather in the Central Highlands could be dangerous because people ventured out, unaware that temperatures were going to plunge so low. She said that people had died as a result of accidents, for example, having skidded on remote roads and having slid into gulleys where they froze to death before being found.

BBC Audience Services made the following points:

- BBC Weather national forecasts were quite short and tried to give the weather for a broad geographical spread for a useful time frame.
- Specific information was given for a range of areas and when weather was likely to be impactful BBC forecasts might focus more on a particular area.
- The local BBC Scotland forecast would provide more detail – this could be found on the BBC Weather website along with the data for each specific area.
- In their response to a follow-up complaint, they said it was not the case that the BBC never gives the night temperature for Aviemore or other Scottish Highlands locations. They attached a screengrab of a fairly typical graphic use in BBC weather reports, showing rural overnight temperatures, including a Scottish Highlands temperature of -4C. They said the BBC did this whenever they believed it was editorially relevant to show temperatures outside the larger populated areas, but said it was not always editorially justified to do this, as time was limited in the forecasts and the BBC believed it was generally understood that rural overnight temperatures were lower than in towns. However, Audience Services said they would remind the BBC Weather team of the usefulness of rural temperatures for a large part of the audience.

Audience Services said they did not believe the complaint had raised a significant issue of general importance that might justify further investigation.

Appeal

The complainant appealed to the BBC Trust on the substance of her complaint. She said that Audience Services had not addressed her concerns and the screen grab referred to in their response was the only graphic that had been shown for a long time. She said there had been no on-screen information given when temperatures in the Central Highlands dropped to -10 or below. She said that sometimes weather was even more severe than the weather forecasters mentioned verbally, but it was not reported by BBC Weather and she asked why this was.

The Panel's decision

A panel of the Complaints and Appeals Board considered the points made by the complainant and the BBC.

Trustees noted that the issue in front of them was whether the decision by Audience Services to decline to enter into further correspondence was correct.

Trustees agreed that the matter was not admissible having concluded that:

- The Royal Charter drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. The “direction of the BBC’s editorial and creative output” and “the operational management” of the BBC were specifically defined in Article 38, (1) (b) and (c) as duties which were the responsibility of the Executive Board. This meant that the BBC was entitled to make editorial and operational decisions without the Trust’s intervention unless a potential breach of editorial standards or operational commitments, such as a Service Licence, was identified. Trustees had not seen evidence that the BBC was discriminating against the Central Highlands by not regularly highlighting very low temperatures in this area by means of a printed temperature placed on the weather map.
- Trustees considered that decisions about how and when to refer to different regions of the United Kingdom during BBC national and regional weather broadcasts and online forecasts were part of the editorial and operational responsibilities of BBC Weather.
- They considered that Audience Services had given reasoned and reasonable responses to the complaint.

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