

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

May 2014 issued July 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](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](http://bbc.co.uk/bbctrust) or is available from:

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

# Rejected Appeals

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

## Complaint regarding contributor to BBC Scotland

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 originally contacted the BBC in June 2013 to raise his concerns about a contributor to BBC Scotland with whom he had a longstanding dispute. He did not consider this contributor to be a suitable person to feature in BBC programmes and set out his objections.

There were several exchanges of correspondence. It was explained that the BBC was not in a position to respond to any of the charges the complainant made and it was suggested the complainant pursue them with the person and the charity concerned, or with the Scottish charity regulator.

On 20 February 2014, the Head of Public Policy & Corporate Affairs, BBC Scotland, stated that BBC Scotland had no more to add to earlier correspondence and that if the complainant wished to pursue his complaint he should write to the BBC Trust.

### Appeal

The complainant said he was not satisfied with BBC Scotland's failure to address his concerns. He believed that the alleged conduct of the person at the centre of his complaint should be made known to viewers and listeners who would then be in a position to reach an informed decision on the matter.

### 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.

The Adviser noted that the complainant's objections to the contributor in question were based on what appeared to be a personal dispute with her. She acknowledged the complainant's view that this dispute was of great relevance to the BBC's decision on whether this particular contributor was a suitable person to feature in BBC programmes. However, she noted the response of the Head of Public Policy & Corporate Affairs, BBC Scotland, who stated that the contributor's input to BBC Scotland was in her charitable role and was based on the experience and expertise which she was able to bring to discussion.

The Adviser considered that the choice of which contributors to use was an editorial one. She noted that the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. "The direction of the BBC's

editorial and creative output" was specifically defined in the Charter (article 38, (1) (b)) as a duty that was the responsibility of the Executive Board, and one in which the Trust did not get involved unless, for example, it related to a breach of the BBC's editorial standards which did not apply in this case.

The Adviser did not consider that the appeal had any reasonable prospect of success. She considered that decisions relating to whether particular contributors should be invited to appear on BBC programmes fell within the "editorial and creative output" of the BBC and were the responsibility of the BBC Executive. Therefore the Adviser did not consider that it would be appropriate for Trustees to consider this appeal and she did not propose to put it before them for consideration.

### **Request for review by Trustees**

The complainant asked that Trustees review the decision of the Senior Complaints Adviser that the appeal should not proceed. In his email of 17 April 2014, the complainant objected to his concerns about the contributor being termed a "long standing dispute".

The complainant was not content that BBC Scotland had provided the contributor with a platform and invited BBC Scotland to facilitate an on-air discussion between the complainant and the contributor.

The complainant made a separate point about the quality of BBC Scotland's news and current affairs output, noting

"A strong vein of misandry [hatred of men] runs through and corrupts this output".

### **The Panel's decision**

The Panel was given 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 as a result of his dealings with the contributor, the complainant did not consider her to be a suitable person to feature in BBC output. The Panel noted the strength of the complainant's feelings.

The Panel understood that the contributor's appearances on BBC Scotland output were difficult for the complainant and that he was not objecting to the contributor's expertise but to his perception of her conduct. However, the Panel agreed with the Senior Complaints Adviser that the complainant's issues with the contributor were personal.

The Panel agreed with the Senior Complaints Adviser that decisions relating to the choice of contributors fell within the category of editorial and creative output and were the responsibility of the BBC Executive.

The Panel noted that the complaint about the quality of BBC Scotland's news and current affairs output in general, included in his request to Trustees to review the Senior Complaints Adviser's decision, was not part of the complainant's original appeal to the Trust and therefore would not be considered.

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

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

## Choice of contributor in forthcoming output

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

### Complaint

The complainant first contacted the BBC on 30 October 2013 raising concerns that a man had been taken: "to Mexico to make a documentary about different fish markets around the world". He commented upon his past and stated that the man had been convicted three times for selling fish that was unfit for human consumption. He said:

"This venture, which is happening right now, should be stopped immediately. It is morally wrong. The BBC should have done their homework on [the contributor] before employing his services. He should pay back whatever the BBC has paid him."

The complainant was sent a substantive Stage 1 response on 19 December 2013 which stated:

"You are correct that the BBC is currently in the process of filming with [the contributor] and I have spoken to the BBC Commissioning Editor about your complaints.

As you're aware, [the contributor] was a star in the Billingsgate programme and we decided that it would be fascinating to take him, with his expertise, to other markets (not just fish) in other parts of the world to explore how they function and what they reveal about the cities they are in.

We are aware of the fine imposed on [the contributor] in his civil case in 2013. This is no secret and it has been the subject of newspaper stories. However, as you're also aware [the contributor] has been allowed to continue trading and is the subject of regular checks. As [the contributor] remains an experienced market trader and an interesting character it was felt that he would make an ideal candidate for our series."

The complainant made a Freedom of Information request to access information concerning the BBC's payments to the contributor but this was not granted.

The complainant escalated his complaint to Stage 2. He was sent a final response on 3 March 2014 by the Head of Complaints Management & Editorial Training, BBC TV, which supported the responses the complainant had already been sent. It stated:

"...the choice of contributors is a matter of legitimate editorial discretion for programme-makers. The issues you refer to, which the programme-makers were aware of, do not preclude them from engaging [the contributor] as a contributor. I recognise, however, that you strongly disagree."

The complaint was not upheld.

## Appeal

The complainant appealed on 3 March 2014 against this decision. He made the following points:

- Through his convictions for selling fish unfit for human consumption, the contributor in question had shown a total disregard for the health and safety of the general public.
- He was being paid indirectly by the general public through the licence fee and it was morally wrong for the BBC to financially reward someone of such dubious character.
- He had raised the matter with his local MP and Margaret Hodge MP.
- He was very unhappy that his FOI request was denied. He felt that licence fee payers had a right to know how and where their money was being spent.

## 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 that all BBC output was required to meet the values and standards set out in the Editorial Guidelines. However, she also noted that the complaints procedure was intended to consider complaints about BBC output after transmission (or publication, in the case of online output).

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.

She considered this was an important point because the BBC's editorial independence was of great value to licence fee payers generally.

The Adviser considered that decisions relating to the employment of programme contributors were editorial and creative ones that rested with the BBC Executive. She noted that the Executive had acknowledged the points raised by the complainant about the contributor – but had felt that it was content he was an appropriate choice to take part in the series.

The Adviser acknowledged the complainant's concern about the BBC's decision not to grant his FOI request, but she could only reiterate the reply sent to him by the Trust Unit on 21 February 2014 which explained that it is not within the Trust's remit to direct the BBC management in its interpretation of the Freedom of Information Act. She noted that the Trust Unit had included details of how to appeal on this aspect of the complaint via the Information Commissioner.

The Adviser noted that, once the programme had been transmitted, if the complainant felt it was in breach of the Editorial Guidelines, it was open to him to make a complaint



about it within thirty working days of broadcast – in line with the Complaints Framework. However, she did not consider it would be appropriate for Trustees to consider his complaint prior to transmission and therefore she did not propose to put it before the Panel.

### **Request for review by Trustees**

The complainant asked that the complaint be provided to Trustees. The complainant said the Senior Complaints Adviser, had given no reasons for the decision. The complainant believes that the Trustees would be sympathetic to the points he raised. The complainant also noted his dissatisfaction that his Freedom of Information request was not fulfilled.

### **The Panel's decision**

The Panel considered the complainant's appeal to the BBC Trust, the reply from the Senior Complaints Adviser and the request to review the Senior Complaints Adviser's decision. The complainant's previous correspondence was made available to the Panel.

The Panel noted the complainant's concerns about the background and past involvement in court proceedings of the man selected as a contributor on a programme yet to be broadcast.

The Panel noted the response from Audience Services with input from the BBC Commissioning Editor on 19 December 2013 which stated:

"As you're aware, [the contributor] was a star in the Billingsgate programme and we decided that it would be fascinating to take him, with his expertise, to other markets (not just fish) in other parts of the world to explore how they function and what they reveal about the cities they are in."

The response also acknowledged the production team's awareness of the contributor's previous involvement in court proceedings.

The Panel agreed with both the Senior Complaints Adviser and the Head of Complaints Management & Editorial Training, BBC TV, in his response of 3 March 2014, that the choice of contributors fell within the category of editorial and creative output and was therefore the responsibility of the BBC Executive.

The Panel noted the complainant's frustration regarding the outcome of his Freedom of Information request but also noted that the Senior Complaints Adviser had provided him with details of how to pursue this matter further.

The Panel noted that the complainant could make a specific complaint within 30 days of transmission if he felt there had been a breach of the Editorial Guidelines.

The Panel decided that the BBC had responded as fully as possible and provided editorial reasoning with regard to the choice of contributor. The Panel agreed there was no reasonable prospect of success for an appeal.

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

## Decision of BBC Audience Services not to respond further regarding BBC Online articles about Australia

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 24 July 2013 regarding the index that directed users of BBC Online to articles about Australia. He considered that Australia had been "lumped in" with Asia and wrote:

"For Australian Stories one has to click on Asia – however Australia is not in Asia. It would seem appropriate to have a separate tab for Australia & New Zealand. Australia is not part of Asia so it's wrong & confusing to mix the two together."

The complainant received a response on 2 September. This apologised for the delay that he had experienced and noted that the changes to the indexing had taken place more than two years previously. It referred him to a blog that had been written about the changes. The full text of the blog can be found here:

[http://www.bbc.co.uk/blogs/theeditors/2011/11/asia\\_news\\_on\\_the\\_website.html](http://www.bbc.co.uk/blogs/theeditors/2011/11/asia_news_on_the_website.html)

It included the following information:

"Australia and New Zealand are not part of the Asian continent, but they are part of the Pacific region and increasingly look towards Asia. We think, therefore, this is the best regional index for stories from the two countries."

The complainant remained dissatisfied and renewed his complaint on 10 September. He considered the labelling was misleading and considered an accompanying map was also misleading.

Audience Services responded on 18 October and stated:

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

The complainant was informed he could appeal against this decision to the BBC Trust. He appealed to the BBC Trust on 7 November 2013.

### Appeal

The complainant appealed on the basis of the substance of his complaint (namely, the decision to index articles about Australia under the tab for Asia). He complained about that decision and also the decision to include a map of Australia under the tab for Asia. The relevant web pages that his complaint refers to can be found here:

<http://www.bbc.co.uk/news/world/> and <http://www.bbc.co.uk/news/world/asia/>

He considered the decision to index the articles and map relating to Australia under the tab for Asia was inaccurate and misleading and considered it a breach of the Editorial Guidelines. He considered this was an editorial matter and that Audience Services were wrong to say this was not a breach of the Editorial Guidelines.

## 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 about this matter.

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

She noted that Audience Services had referred the complainant to an explanation for the changes in the indexing system that had been written by BBC News Online's World Editor. In addition to explaining why Australia had been included under the tab for Asia (referred to above) the blog explained the general thinking behind the changes.

"Until now, our coverage of the region has been split into two: Asia Pacific and South Asia. However many users have told us that they do not understand these labels and do not always know where to go for news they want from the region.

We think we will be better serving audiences in the UK and elsewhere with a single Asia index – a home for news stories from and about the region as well as features and analysis from our correspondents and content from some of our unrivalled language services.

For those who want specific news and analysis from the world's two most populous countries, we will also create named country pages: first China and, later in the month, India.

The change in layout is accompanied by increased coverage in the region as a whole, allowing us to report even more stories from a region that stretches from Afghanistan to Japan and Pakistan to Australia.

We will be able to bring you more of the news as it breaks in the region, with greater speed and in greater depth than ever before."

The Adviser noted that the complainant believed it would be both accurate and clearer for there to be a separate category for stories from Australia. However, she noted that other news organisations had adopted a range of approaches in incorporating stories about Australia within their global news. While some, including ITN, had a page specifically for Australia, others, such as the New York Times and the Guardian indexed stories about Australia within the "Asia-Pacific" countries or region. She also noted that stories about Australia could be searched for within the BBC's online report – and considered it likely that those people particularly interested in stories about Australia would be likely to search for them directly. Overall, she considered that people using the website would be familiar with the use of indexes to group countries with similar interests.

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 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 usually get involved.

The Adviser noted that the complainant considered the matter related to the BBC's editorial output. However, she did not consider that how the BBC indexed its online articles was a point of editorial content. She noted that other news organisations used a variety of ways of grouping their coverage of Australia.

She considered that this was an operational matter that rested with the BBC and it would not be appropriate for Trustees to consider the underlying complaint. As she considered this was an operational – rather than editorial – decision, she considered Trustees would be likely to conclude that Audience Services had acted appropriately in declining to correspond further on this point. Therefore she 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 requested that Trustees review the decision at Stage 1 of the BBC's complaints process not to engage in any further correspondence with the complainant on the same issue. In his email of 15 May 2014, the complainant listed his objections which included:

- Clicking on the Asia tab to access news about Australia
- The map showing Australia as being in Asia
- Australian news being grouped and labelled as news from Asia
- His complaint not being categorised as raising an editorial issue when he believed several editorial guidelines to have been breached
- The concerns in his letter of 20 February 2014 not being addressed
- The definition of the word 'operational'

### **The Panel's decision**

The Panel considered the complainant's appeal to the BBC Trust, the reply from the Senior Complaints Adviser and the request to review the Senior Complaints Adviser's decision. The complainant's previous correspondence was made available to the Panel.

The Panel noted the information supplied to the Panel in the complainant's request to review the decision of Audience Services not to proceed with his complaint. The Panel noted the strength of the complainant's feelings on this issue.

The Panel agreed with the Senior Complaints Adviser that the matter of indexing country information was an operational rather than editorial issue and therefore fell under the remit of the BBC Executive.

The Panel noted the complainant's email of 20 February 2014 in which he requested clarification on a range of issues. The Panel noted the response from the Head of Editorial Standards. The Panel agreed that sufficient information had been supplied in response to the complainant's request at Stage 1.

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

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

## Decision of BBC Audience Services not to respond further regarding a tweet by Lord Sugar

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 22 January 2014 in relation to a comment that had been tweeted by Lord Sugar. Lord Sugar had directed a tweet to a man pictured with a friend of the man on Twitter. The man had previously sent a critical tweet to Lord Sugar. The complainant commented on Lord Sugar's response and stated:

"Alan Sugar recently tweeted 'When are you 2 coming out?' as a response to a photo and tweet calling him thick."

The complainant considered this was homophobic and that the BBC should not use Lord Sugar.

Audience Services' response on 26 January 2014 included the following:

"Lord Sugar isn't a BBC employee, he was using his personal twitter account and we don't comment on tweets that aren't in connection with the BBC."

The complainant contacted Audience Services again on the same day. He said that Lord Sugar was used by the BBC as a "figurehead for the Apprentice" and was seen as a BBC presenter. He reiterated his complaint.

Audience Services responded on 3 February 2014 with the following:

"While we understand you feel strongly on this matter, as we previously stated this isn't a BBC matter and falls outside our complaints process so we will not be responding any further on this matter."

Audience Services included details of how the complainant could appeal to the BBC Trust against this decision if he wished.

### Appeal

The complainant appealed to the BBC Trust, saying that he was unhappy with the response received from Audience Services and appealing on the substance of the complaint.

The complainant made it clear that he took strong exception to Lord Sugar's tweet, and did not accept that this was "nothing to do with the BBC". He noted "...he is broadcast on your channels and is seen by the public as a BBC figure."

### Decision of the Senior Complaints Adviser

The Senior Complaints 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, set out above. 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 BBC Audience Services had based its decision not to correspond further at Stage 1 on two factors:

- (A) That Lord Sugar was not a BBC employee
- (B) That the tweet in question came from Lord Sugar's personal Twitter account.

BBC Audience Services explained that as this was not expressly a BBC matter, it fell outside the scope of the BBC's complaints process. In this case, the Adviser noted, the relevant complaints process was the Editorial complaints and appeals procedure, which stated the following:

1.1 You can complain to the BBC if you consider that any BBC content has failed to follow the BBC's Editorial Guidelines. This is called an 'editorial complaint'. 'BBC content' means something that has been broadcast on a BBC radio or television service or published on a BBC website or in a BBC owned magazine, for which the BBC is responsible...

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

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

The Adviser also noted the BBC's Editorial Guidelines included the following statement:

The external activities of BBC editorial staff, reporters and presenters should not undermine the public's perception of the impartiality, integrity or independence of BBC output. External activities should not bring the BBC into disrepute. It is also important that off-air activities do not undermine the on-air role of regular presenters.

The degree to which external activities are constrained will depend on the nature of both the output and the individual's role. Heads of department must judge what is appropriate.

The Adviser looked first at whether it was reasonable for the BBC to have asserted that Lord Sugar was not a BBC employee. She also considered whether the comments raised an issue of substance in relation to the Editorial Guidelines.

The Adviser considered:

- Lord Sugar was a high-profile figure in a number of areas and was not solely identified with The Apprentice or other BBC programmes. He had first become involved with The Apprentice because of his background as a business person and entrepreneur, best known for his former company Amstrad.
- The Sunday Times "Rich List" calculated his wealth in 2013 as £860m, making him the 98<sup>th</sup> wealthiest person in Britain. The list cites the source of his wealth as "electrical goods". The details of Lord Sugar's contract with the BBC were confidential, but the



Adviser thought it unlikely that his BBC remuneration would contribute significantly to his personal wealth.

- Other areas for which he was known included: his role as a member of the House of Lords; his job as Enterprise Champion during Gordon Brown's premiership; his former chairmanship of Tottenham Hotspur; and his philanthropy.
- Lord Sugar's Twitter feed was not linked in any way to the BBC but carried pictorial references to his books and business background.

Additionally, the Adviser noted that the BBC Trustees had already considered Lord Sugar's employment status in an Appeal in 2009:

[http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc\\_bulletins/2009/sugar\\_apprentice.pdf](http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc_bulletins/2009/sugar_apprentice.pdf). The 2009 case had involved a very different set of considerations concerning Lord Sugar's then role as a Labour peer and whether it compromised the BBC's impartiality. Nevertheless, the Trustees had, in passing, noted that Lord Sugar was "the star of a factual entertainment programme and not a member of staff".

The Adviser then turned to BBC Audience Services' second reason for not continuing the correspondence - that the tweet in question came from Lord Sugar's personal Twitter account and was therefore not BBC "content" as required by the editorial complaints and appeals procedures.

The Adviser viewed the exchange for herself and it seemed a matter of fact to her that the tweet was sent from Lord Sugar's personal account. It had not been unreasonable, therefore, for the BBC to have pointed this out, she thought. She could not see that the exchange in any way constituted "BBC content" as required by the editorial complaints and appeals procedures, and she thought the Trustees would be likely to come to the same conclusion.

The Adviser appreciated that Lord Sugar's views and behaviour on certain occasions were not to everyone's taste, and the complainant had clearly found the exchange above distasteful. Nevertheless, it was important to remember, she thought, that it was for the BBC to choose its presenters, stars and other "talent", and unless there was a breach of the Editorial Guidelines, this was not an area where the BBC Trust could interfere.

This principle is set out in the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC: a distinction is drawn 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 engagement of stars such as Lord Sugar fell within the "editorial and creative output" of the BBC and were the responsibility of the BBC Executive.

The Adviser considered Trustees would be likely to conclude that Lord Sugar was not a BBC employee and that he had a significant public profile in his own right that was separate from his work with the BBC and had tweeted in his private capacity unrelated to his work for the BBC. She therefore considered that Trustees would be likely to conclude Audience Services were right to state that he was not a member of the BBC's staff and that comments he made on Twitter were not a matter for the BBC. She also considered Trustees would be likely to conclude that Lord Sugar's profile was sufficiently well established – and sufficiently separate from the BBC – that Twitter comments did not raise an issue under the Editorial Guidelines.



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

### **Response to the Trust Unit's decision by the complainant**

The complainant considered the reply indicated the BBC supported homophobia.

### **The Panel's decision**

The Panel considered the complainant's appeal to the BBC Trust, the reply from the Senior Complaints Adviser and the complainant's reply. The complainant's previous correspondence was made available to the Panel.

The Panel noted the response from Audience Services on 26 January 2014 stating:

"Lord Sugar isn't a BBC employee, he was using his personal twitter account and we don't comment on tweets that aren't in connection with the BBC."

The Panel agreed with the Senior Complaints Adviser that Lord Sugar had a substantial reputation outside his association with the BBC.

The Panel agreed that the conduct of Lord Sugar on his personal Twitter account was a matter for Lord Sugar and not the BBC. It was not BBC content or about BBC content and was not subject to the BBC's Editorial Guidelines, nor would the comments concerned bring the BBC itself into disrepute.

The Panel agreed with the Senior Complaints Adviser that decisions relating to whom to employ to present BBC programmes fell within the category of editorial and creative output and were therefore the responsibility of the BBC Executive.

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

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

## Decision of BBC Audience Services not to respond further regarding clarity of speech on *What the Papers Say*

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 5 January 2014 to complain about BBC Radio 4's *What the Papers Say* of 5 January 2014. She was concerned that the programme's presenter did not possess sufficient clarity of diction to enable her to be understood.

Audience Services responded on 13 January, acknowledging the complainant's concerns and explaining that the diversity of the BBC's audience made it inevitable that some listeners would dislike certain contributors. Their response stated:

"It's a very rare radio personality who meets with everyone's approval, and it's clear that opinions on individual presenters can vary considerably. [name] was appointed on the basis of her experience and talent, but opinions on contributors to our programmes are often subjective and we would never expect everyone to agree with every choice we make."

The complainant was dissatisfied with this response and contacted Audience Services again on 15 January 2014. She said that whether she liked the presenter or not was irrelevant, and considered that the presenter did:

"...not have an audible speaking voice. And all the talent in the world will not make up for the fact that her diction is dreadful. Her function is to broadcast clearly and the programme about which I am complaining was not good."

Audience Services sent a further response on 15 January 2014. They said that they could not engage in any further correspondence about this complaint as they did not consider the points raised suggested a possible breach of standards and they had nothing further to add to their previous response. They advised the complainant she could appeal against this decision.

### Appeal

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

The complainant appealed on the substance of her complaint about the programme presenter's poor quality of speech, but also made a broader point in her appeal, referring not just to the presenter of *What the Papers Say*, broadcast on 5 January 2014, but to the diction of Radio 4 presenters in general.

She considered the complaints procedure she had been referred to was not comprehensible and wanted an answer to her complaint.

### Decision of the Senior Complaints Adviser

The Senior Complaints Adviser (the Adviser) carefully read the correspondence that had passed between the complainant and the BBC, and listened to the programme in question. She acknowledged the strength of the complainant's feelings.

The complainant had appealed on the substance of her complaint which was that the presenter of *What the Papers Say* on 5 January 2014 was not a suitable choice because of the poor quality of her diction in the broadcast. The Adviser noted, however, that BBC Audience Services had ceased handling this complaint at Stage 1 and that the complaint had not gone to stage 2. She therefore decided that the point she should consider was whether an appeal against the decision of BBC Audience Services not to correspond further with the complainant had a reasonable prospect of success.

The Adviser noted that, in her appeal, the complainant had been unhappy about the references to "all kind of guidelines [complaints procedure] ...incomprehensible to a layman" made by Audience Services. . The Adviser noted that Audience Services had provided a link to the BBC website where the Guidelines for the BBC Complaints Procedure could be found ([www.bbc.co.uk/bbctrust/governance/complaints\\_framework/](http://www.bbc.co.uk/bbctrust/governance/complaints_framework/)).

She appreciated that this was a lengthy and formal document and hoped she could clarify the situation. Under the complaints framework, all complaints about BBC output had to be answered by the BBC in the first instance. The BBC had a two-stage approach for responding to complaints. Complaints were answered at Stage 1 by Audience Services. If a complainant remained dissatisfied, a complaint could be escalated to the next tier, Stage 2 – where the complaint would be addressed in more detail either by a senior manager or by the Editorial Complaints Unit. If complainants remained unhappy they could appeal to the Trust against the BBC's decision. However, the Complaints Framework included the following statement:

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

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

This meant that complaints did not have to proceed to Stage 2, and the BBC could decide at Stage 1 that it had finished responding to the complaint. This was in the interests of best use of the licence fee. However, complainants could appeal against that decision to the BBC Trust. This was the position the complainant was in. Audience Services had closed down the complaint as they considered it did not raise an issue under the Editorial Guidelines. If the Trustees agreed with the complainant, they could refer the complaint back to the BBC and it would then give a further substantive response. If the complainant remained unhappy with this further response, she would then be able to appeal on the substance of the complaint to the BBC Trust.

The Adviser noted that in her appeal, the complainant stated:

"...someone with any kind of speech impairment, who has no concept of clear articulation (and I am not talking about people with speech defects) is just quite unsuitable for the job of communicating."

The Adviser also noted the appeal referred more generally to Radio 4 presenters whom the complainant considered were not able to articulate clearly, not just the presenter of *What the Papers Say* on 5 January 2014. However, as this was not a point which had been raised previously in the correspondence, it was not appropriate for it to be addressed in this appeal.

The Adviser acknowledged the complainant's concerns; however, she noted that the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. "The direction of the BBC's editorial and creative output" was specifically defined in the Charter (article 38, (1) (b)) as a duty that was the responsibility of the Executive Board, and one in which the Trust did not get involved unless, for example, it related to a breach of the BBC's editorial standards which did not apply in this case.

Decisions relating to the choice of programme presenters fell within the "editorial and creative output" of the BBC and were the responsibility of the BBC Executive.

The Adviser noted that *What the Papers Say* was presented by journalists with a background in newspapers and, in this instance, by a writer for *The Guardian*. The Adviser listened to part of the programme and accepted that the presenting style was different from that of an experienced broadcaster; however, the Adviser did not consider her voice was difficult to understand. She noted that Audience Services had already advised the complainant that the writer had been invited to present the programme because of her "experience and talent" and had acknowledged that presenters would not be popular with the entire audience.

The Adviser considered that Trustees would be likely to conclude that Audience Services had provided a reasoned and reasonable response to the complainant's concerns. She therefore considered it was reasonable for Audience Services to say they would not investigate this complaint further, and to decline to engage in further correspondence on the issue. 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 reiterated her view that there is "no space in broadcasting for poor diction and poor sound". She referred to complaints received by the BBC over the poor sound quality of the television drama *Jamaica Inn*.

### **The Panel's decision**

The Panel considered the complainant's appeal to the BBC Trust, the reply from the Senior Complaints Adviser and the request to review the Senior Complaints Adviser's decision. The complainant's previous correspondence was made available to the Panel.

The Panel noted the complainant's concern that the presenter of BBC Radio 4's *What the Papers Say* broadcast on 5 January 2014 did not speak clearly enough.

The Panel noted the response from Audience Services acknowledging that not every radio presenter meets with universal approval, adding that the presenter qualified for the role on the basis of her journalistic experience.

The Panel agreed with the Senior Complaints Adviser that decisions relating to the choice of presenters fell within the category of editorial and creative output and were the responsibility of the BBC Executive and not the Trust.

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

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

## Decision of BBC Audience Services not to respond further regarding the voting system on *Strictly Come Dancing*

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 8 December 2013 to raise his concern about the voting system used on *Strictly Come Dancing*. He felt there was a lack of transparency about the system and did not understand how someone at the top of the leader board could be in the elimination zone.

Audience Services responded on 23 December 2013. They acknowledged the complainant's dissatisfaction with the voting system but stated:

"Strictly Come Dancing is a family entertainment show and one of the reasons it is such a success is the fact that the audience can participate and help save their favourite couple. So while we understand you disagree with the result of the public vote, it is just that, and we have no control over the outcome, nor do we have any input into the judges' decision in the dance off.

Sometimes it's not just the best dancers that capture the public's hearts, but those who entertain. For more details on the voting system please visit the Strictly website: <http://www.bbc.co.uk/programmes/b006m8dq/features/about>"

The complainant said this did not answer his question. He wanted to know the exact detailed process by which public voting operated and how this translated into the result announced on screen and how the judges' votes played into this.

Audience Services sent a holding letter to the complainant on 14 January 2014. They sent a further letter on 21 January 2014 stating that they felt they had responded as fully as they could in their original response and did not have any more to add.

### Appeal

The complainant appealed to the BBC Trust as he was not satisfied with the response received at Stage 1b from BBC Audience Services who stated that they could not engage in any further correspondence about this complaint 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 appealed on the substance of his complaint which was about the voting system on *Strictly Come Dancing*. He made the following points:

- He noted that in their original response of 23 December 2013, Audience Services suggested he disagreed with the public vote. He did not feel this was an accurate summary of his complaint. He said he could neither agree nor disagree with the vote because he had no idea what the public vote was, and he believed that was the crux of the problem. He said the programme never announced the actual result of the public vote and that was where he felt there was a complete lack of transparency.

- On certain occasions, particularly when there were only a few couples left in the competition, some of the outcomes could not, in his opinion, have legitimately occurred. He said that if he was required to give an example, please could the BBC advise him how, in the last series, it arrived at the result it did when only six couples were left in the competition.
- He wondered what the BBC was hiding by not making the voting results more transparent to the viewers. He said it would be sensible if the BBC fully explained the voting system to the viewers, with the necessary evidence, to ensure they knew and understood that the overall results were completely foolproof.
- He asked for a copy of the voting rules and also a copy of the BBC Complaints Procedure.

The complainant also expressed concern in his appeal letter about the way his complaint had been handled. He pointed out that Audience Services had acknowledged his concern about the voting system in their original response. Then, in response to his follow-up complaint, Audience Services sent him a letter on 14 January stating that it could take longer than 20 working days to investigate his complaint. This had indicated to him that they were investigating his complaint further, but then they sent him another letter, just 7 days later, which said they would not be investigating his complaint further and they could not engage in further correspondence on the 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, and she acknowledged the strength of the complainant's feelings.

The Adviser noted that the complainant had appealed on the substance of his complaint which concerned his query about the voting procedure for *Strictly Come Dancing*. 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 complainant's concern that the voting system was not transparent and his request to know more about the procedure used on the programme. She noted that in their first response of 23 December 2013, Audience Services had included the link to the programme's website which they suggested as a source of further information for the complainant to read about the voting procedure.

Information from this site was provided to the complainant e.g.:

"The Strictly Come Dancing scoring system combines judges and viewers votes. No couple is guaranteed to be safe on judges' votes alone however, and the viewers' votes can always influence the outcome. This means each week any couple can face or be saved from the dance off with the public vote. In the event of a tie, the viewers' votes will take precedence over the judges' scoring.

After all couples have performed, the judges' scores will be added together and the couples will be ranked according to the scores received. The couple ranked the highest will be awarded a number of points equal to the number of couples competing that evening. So, for example, if seven couples are competing, the



points awarded to the highest ranked couple (based on the judges total score) will be 7, the couple with the second highest score from the judges will receive 6 points and so on in the same downward sequential order.

In the event of a tie, where two or more couples obtain the same number of points, the couple below those in the tie will be awarded one point below the points awarded to each of the tied couples. So, for example, if two couples obtain the same rank and obtain 7 points each, the couple immediately below them will be awarded 6 points. The scoring of all other couples underneath will follow in the same descending order.

After the ranking and points based on the judges' scores have been announced, the viewers will be given the opportunity to vote by calling the numbers announced for each couple or online..."

The Adviser was not able to answer the complainant's query concerning the example he gave from the last series when six contestants were left in the competition. She noted his statement that it "didn't take a mathematical genius to realise that something was amiss", but did not give any specific information about the problem he perceived. However, the Adviser hoped that the information about the voting procedure, as published on the website, would be useful to the complainant and, in particular, would explain why the voting figures are not published.

The Adviser further noted that frequently asked questions about the voting are also published on the website, and although these are not set out in full here, the Adviser noted that one of them is:

### **Why are Voting Figures for Strictly not published?**

#### **Answer:**

We invite you to vote for the dancers that you liked best, based on their performance in each show and during the series. Releasing voting figures could affect the way that people vote, and also have an impact on the participants. We therefore do not disclose the exact voting figures.

For completeness, 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 operational management of the BBC" is specifically defined in the Charter (article 38, (1) (c)) as a duty that is the responsibility of the Executive Board, and one in which the Trust does not usually get involved unless, for example, it raised broader issues such as a breach of a station's Service Licence. Decisions relating to voting procedures within programmes are day to day operational matters and are the responsibility of the BBC Executive.

The Adviser noted the complainant's comments about the handling of his complaint by Audience Services. In particular, she noted that the complainant did not feel that his concerns had been properly acknowledged or fully investigated. She hoped that the complainant would be reassured to know that the Trust kept complaints handling under close review. and had carried out a 'mystery shopping exercise' in the summer of 2013 to test Stage 1 responses and the results of that exercise were recently published on the Trust's website and could be found at:

[http://www.bbc.co.uk/bbctrust/news/press\\_releases/2014/mystery\\_shopping\\_2014.html](http://www.bbc.co.uk/bbctrust/news/press_releases/2014/mystery_shopping_2014.html)



Overall, the Adviser considered that Trustees would be of the view that Audience Services provided a reasoned and reasonable response to the complainant's concerns. She thought it would have been more helpful if the BBC had supplied the information from the website in hard-copy, rather than via an online link – but hoped that the complainant found the information from the site useful. 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 it should not therefore be put before Trustees.

### **Request for review by Trustees**

The complainant wrote to the BBC Trust on 25 April 2014. He expressed dissatisfaction with the responses he had received so far. He pointed out that his perception that the voting system in *Strictly Come Dancing* is flawed, should qualify as a 'matter of substance' and therefore be taken up on appeal. He considered that unless the public had the voting information results could be manipulated by the BBC.

The complainant reiterated his concern that the instance he cited from the last series was not addressed and that no reason had been given as to why the outcome of the public vote is not shared with viewers.

### **The Panel's decision**

The Panel considered the complainant's appeal to the BBC Trust, the reply from the Senior Complaints Adviser and the request to review the Senior Complaints Adviser's decision. The complainant's previous correspondence was made available to the Panel.

The Panel noted the complainant's concern about a lack of transparency in the voting system used on *Strictly Come Dancing*, specifically how someone at the top of the leader board could end up in the elimination zone.

The Panel noted that the complainant wanted more information on:

- How the voting system worked and why it was not more transparent;
- An instance in the last series, when only six couples were left in the competition, and he felt something in the voting was amiss; and
- Why the results of the public vote were not shared.

The Panel noted the complainant's concern that someone who was at the top of the leader board ended up in the elimination zone. The Panel noted that the BBC published the voting procedure on its website. The Panel noted that this information had been sent to the complainant by the Senior Complaints Adviser.

The Panel noted that the programme published information about why the results of the public vote were not shared, explaining that divulging this information could affect the way that people voted and also have an impact on the participants.

The Panel agreed with the Senior Complaints Adviser that decisions relating to the way in which competitions are run fell under the operational management of the BBC and were therefore the responsibility of the Executive Board.

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

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

## Decision of BBC Audience Services not to respond further regarding the scheduling of the EastEnders omnibus after the 2012 Olympics

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

### Complaint

The complainant first contacted the BBC on 6 January 2014 to complain about the scheduling of the *EastEnders* omnibus which had been moved to a late Friday night slot from its previous slot on Sunday afternoons. He stated:

"...now it is on during the middle of the night on a Friday Night through to Saturday morning. I can't stay up this late to watch it and I don't have a computer for recording equipment to watch it. I want it back to a Sunday afternoon so I can watch it as I am a licence fee payer."

Audience Services responded on 15 January 2014. Their response acknowledged the complainant's concern at the schedule change but noted that, in trying to provide output for millions of people, it was inevitable that changes would not please all viewers. Their response went on to state:

"The omnibus edition of 'EastEnders' switched to a Friday evening timeslot on Friday 6 April 2012. This slot is closer to the original individual episode transmissions and will be more consistent as it will not need to be moved for sporting commitments on a Sunday afternoon.

If you've access to the BBC iPlayer then you can catch up with the episodes at your own convenience for up to 7 days after the initial broadcast and 'EastEnders' is also repeated on BBC3 at 22:00 after each broadcast. For scheduling and iPlayer information please see the 'EastEnders' website:

<http://www.bbc.co.uk/programmes/b007sh7m>"

The complainant made a follow-up complaint on 17 January 2014, and stated:

"The BBC promised that Eastenders would return to its usual slot after the 2012 Olympics. ... It must be put back to Sunday night."

Audience Services responded again on 30 January 2014. They said they felt they had responded as fully as they could and were not able to engage in further correspondence on the issue as they did not have any more to add, and did not consider the points raised by the complainant suggested a possible breach of standards.

Further correspondence followed and Audience Services repeated the information given in their previous response about how to appeal to the BBC Trust against their decision to discontinue correspondence on the issue.

## Appeal

The complainant appealed on the substance of his complaint. In addition in discussing this and another matter he said he was unhappy that:

1. The letters he had received used the wording "we have nothing further to add".
2. The letters did not appear to indicate which of his complaints they were addressing.
3. The letters were often not signed by anyone, just 'BBC Complaints'.
4. He felt the standard wording of the letters should be changed as it did not reflect the nature of his complaint.
5. He felt the responses from Audience Services were disrespectful and the Complaints Department was letting down the rest of the BBC. He stated: "You don't say that to a customer....you say 'I'm very sorry, I'll investigate and come back to you...'"

## Decision of the Senior Complaints Adviser

The Senior Complaints Adviser (the Adviser) carefully read the correspondence that had passed between the complainant and the BBC. She acknowledged the strength of the complainant's feelings and agreed that it could be very frustrating when the transmission time of a favourite programme was changed.

The complainant had appealed on the substance of his complaint which was about the scheduling of the *EastEnders* omnibus. He wished it to be moved from a late Friday evening slot back to Sunday afternoons. The Adviser noted, however, that BBC Audience Services had ceased handling this complaint at Stage 1 and that the complaint had not gone to Stage 2. She therefore decided that the point she should consider was whether an appeal against the decision of BBC Audience Services not to correspond further with the complainant had a reasonable prospect of success.

The Adviser noted that under the Complaints Framework, the BBC could decide not to investigate complaints. The Framework stated:

### Complaints that the BBC may not investigate

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

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

The Adviser noted that the BBC received around a million complaints and contacts each year and it was expected to respond to complaints appropriately, in the interests of all licence fee payers.

The Adviser noted that the complainant had received several responses from Audience Services explaining that they would not engage in further correspondence on the points because they did not consider his complaint related to a possible breach of the BBC's editorial standards and because they had nothing to add to the information they had already sent him. BBC Audience Services had informed the complainant that he could appeal against this decision to the BBC Trust.

However, the complainant had repeatedly returned to Audience Services, wishing to have a further substantive response to his complaint about the scheduling of the *EastEnders* omnibus and to his concern that he believed he had been lied to by the BBC when the programme had moved during the coverage of the Olympics in 2012.

She noted that the BBC Executive had explained, through Audience Services, in their letter of 15 January 2014, that one reason for moving the *EastEnders* omnibus from a regular Sunday afternoon slot was that other sporting events often disrupted its regular scheduling on Sunday afternoons:

“The omnibus edition of ‘EastEnders’ switched to a Friday evening timeslot on Friday 6 April 2012. This slot is closer to the original individual episode transmissions and will be more consistent as it will not need to be moved for sporting commitments on a Sunday afternoon.”

The Adviser considered Trustees would be likely to conclude that Audience Services had provided a reasonable and reasoned response to the complainant’s points about the scheduling of the *EastEnders* omnibus, even though it did not contain as much detail as he wanted. She considered that the appeal did not therefore have a reasonable prospect of success and she did not propose to put the appeal before Trustees.

For completeness, she noted that the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. “The operational management of the BBC” is specifically defined in the Charter (article 38, (1) (c)) as a duty that is the responsibility of the Executive Board, and one in which the Trust does not usually get involved unless, for example, it raised broader issues such as a breach of a station’s Service Licence.

The Service Licence for BBC One can be found here:  
[http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory\\_framework/service\\_licences/tv/2013/bbc\\_one.pdf](http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/service_licences/tv/2013/bbc_one.pdf)

The Adviser noted that the Service Licence made the following provision with regard to live sporting, cultural or entertainment events:

BBC One should lead the BBC’s coverage of major events from across the genres. It should be the place where large audiences come together to share in national and international events, including sporting, cultural and musical occasions. Major national and international sporting events should continue to play a major role on BBC One, rights permitting.

She considered that Trustees would be likely to conclude that a large number of viewers wanted to see sporting output on BBC1 and that it was within BBC1’s Service Licence to respond to that demand. The Adviser acknowledged the complainant’s disappointment with the BBC’s decision to continue scheduling the *EastEnders* omnibus on a Friday night, but she considered that trying to schedule a wide range of output was, regrettably, going to lead to some viewers being disappointed and she noted that Audience Services had attempted to explain this in their first response of 15 January 2014.

The Adviser considered that decisions relating to schedule changes were operational ones that rested with the BBC Executive and that it would not be appropriate for Trustees to consider this element of the complaint.

In terms of the other points raised by the complainant on appeal, the Adviser regretted that the complainant was unhappy with the form of words “we have nothing further to add” but considered the phrase was used in responses that were consistent with the Complaints Framework. She considered the Trustees would understand the principal point of complaint was the rescheduling of the *EastEnders* omnibus which was an executive decision that rested with the BBC. She noted that the complainant was unhappy that letters were not always sent by a named individual, but by BBC Complaints. However, she noted there was no requirement for responses at Stage 1 to be sent from a named individual – although, in fact, of the four responses that had been sent to the complainant [in this matter], three had come from named individuals and only one from “BBC Complaints”. While she regretted that the complainant felt the responses he had been sent were disrespectful, she noted that the substantive response he had been sent had stated:

“We understand you’re unhappy the omnibus has now been moved to a Friday night slot.

We’re naturally very sorry when we hear that members of our audience don’t like our scheduling decisions.”

Overall, she considered that Trustees would be likely to conclude that Audience Services had provided a reasoned and reasonable response to the complainant’s main complaint about the rescheduling of the *EastEnders* omnibus and had attempted to do so in a tone that was suitably polite. She considered Trustees would be likely to conclude that the BBC had acted appropriately in declining to enter into further correspondence on this point. Therefore she did not consider the appeal had a reasonable prospect of success and she did not propose to put it before Trustees.

### **Request for review by Trustees**

The complainant noted that his complaint had been interpreted as a petition to return the *EastEnders* omnibus to its original slot. However, he said the key issue was that the BBC had not fulfilled its promise to do so, made by announcers who said that the *EastEnders* omnibus had been rescheduled to accommodate the 2012 Olympics and would return to its original Sunday afternoon slot thereafter.

He noted that nothing in his correspondence with the BBC suggested that anyone had listened to the announcement itself to confirm what he had said.

### **The Panel’s decision**

The Panel considered the complainant’s appeal to the BBC Trust, the reply from the Senior Complaints Adviser and the request to review the Senior Complaints Adviser’s decision. The complainant’s previous correspondence was made available to the Panel.

The Panel noted the complainant’s initial complaint to the BBC on 6 January 2014 seemed to focus on the scheduling of the *EastEnders* omnibus.

“...now it is on during the middle of the night on a Friday Night through to Saturday morning. I can’t stay up this late to watch it and I don’t have a computer for recording equipment to watch it. I want it back to a Sunday afternoon so I can watch it as I am a licence fee payer.”

The Panel noted that it was in a follow-up complaint on 17 January 2014 that the complainant introduced the issue of the statement made by the announcer that *EastEnders* would return to its previous slot.

The Panel noted the response from Audience Services focussed on the schedule change.

It noted that the complainant wanted the announcement listened to. However, the Panel noted that a complaint about on-air content should have been made nearer the time. That is, within thirty days for the announcement (or in this case, from the point at which – after the Olympics – it was apparent *EastEnders* was not returning to its pre-Olympic Sunday slot.)

The Panel agreed with the Senior Complaints Adviser that decisions relating to programme scheduling fell under the operational management of the BBC and were therefore the responsibility of the Executive Board.

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

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

# Handling of complaint at Stage 1

## **Decision of BBC Audience Services not to respond further following the application of the Expedited Procedure to a complainant who complained about pro-vivisection bias in BBC output**

### **Complaint**

The complainant made a number of Stage 1 complaints between 19 October 2013 and 8 February 2014 alleging that the BBC displayed a pro-vivisection bias across its output.

On 6 February 2014, BBC Audience Services wrote to the complainant, listing all the complaints they had received from him on the same issue since 19 October 2013. They explained that in the absence of any substantive evidence to suggest any breaches of BBC Guidelines, if the complainant continued to submit similar complaints, they might write formally to explain that they would not continue to respond to him.

They suggested in their letter that the complainant made his views known to his MP or to the Home Secretary because animal testing is governed by the Animals (Scientific Procedures) Act which is administered by the Home Office.

The complainant responded to Audience Services on 8 February 2014, saying that they had not answered any of his questions. He objected to the BBC interviewing people who supported animal testing stating:

“... why are vivisectionists allowed to state that the ‘law requires animal testing’ via your media?”

Audience Services responded to the complainant on 13 February 2014 and referred him back to their previous letter of 6 February about the significant number of complaints he had sent to the BBC on the same issue. They stated:

“We note that your most recent complaints are further examples of exactly the same point you have made on around a dozen previous occasions, and we have already explained our position clearly on this matter many times.”

“As you have submitted another similar complaint on this matter and as we have nothing to add to our previous detailed replies over several months, we are writing to advise that we will no longer be responding to any complaints you may submit on this matter for a defined period of two years from today's date, as set out within the BBC's published complaints process.”

They also explained in their letter that if the complainant felt their decision was wrong, or did not accord with the BBC's published complaints process, he could appeal to the BBC Trust within 20 working days of their letter.

### **Appeal**

The complainant wrote to the BBC Trust on 15 February 2014 as he was not happy with the response of Audience Services to what he considered “legitimate complaints” made over the previous few months. He appealed on the substance of his complaint, making the following points:



- Both sides of the vivisection issue should be given equal weight.
- The BBC's output was "a staunchly pro-vivisectionist stance, rebuttals to lies and deceit not allowed to be broadcast".
- He said examples of the bias to which he referred were contained in the correspondence he had previously submitted over the last few months.
- As an additional example of bias, he mentioned the thalidomide issue. He said he had never heard the BBC state that animal experimentation was responsible for thalidomide being passed as 'safe'. He said vivisection was "directly responsible for this disaster – again truth suppression and total blackout!"

### **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 which was his allegation that the BBC demonstrated a pro-vivisectionist bias in its output and his view that the BBC was responsible for a "total blackout" in terms of reporting the truth about the failures of vivisection. The Adviser noted, however, that BBC Audience Services had ceased handling all the complaints at Stage 1 and that the complaints 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 for a period of two years on the same substantive issue had a reasonable prospect of success.

The Adviser noted that Audience Services, in their letter of 13 February 2014 had implemented the Expedited Complaints Procedure, set out in Annex B of the BBC Complaints Framework. This can be read in full at [http://www.bbc.co.uk/bbctrust/governance/complaints\\_framework/](http://www.bbc.co.uk/bbctrust/governance/complaints_framework/)

The Adviser noted the list of communications from the complainant between 19 October 2013 and 28 January 2014 which had been logged by Audience Services and included in their letter of 6 February 2014 as follows:

- Your telephone call to our department on 19 October 2013 (our ref: CAS-2368281-17MP68)
- Your subsequent letter dated 2 November 2013 (our ref: CAS-2400501-M3084G)
- Your subsequent further letter dated 5 November 2013 (our ref: CAS-2400495-WG2NKQ)
- Your letter dated 13 November 2013 (our ref: CAS-2413905-0PS1BV);
- Your letter to the BBC Trust dated 20 November 2013 (their ref: CAS-2425984-5Q7SB7)
- Your letter dated 23 November 2013 (our ref: CAS-2433551-9SR2WJ)
- Your subsequent letter dated 6 December 2013 (our ref: CAS-2456777-NF0Y3V)
- Your further letter to the BBC Trust dated 8 December 2013 (their ref: CAS-2460224-DCHFBSB)
- Your letter dated 10 December 2013 (our ref: CAS-2469258-3DDDCM)
- Your further letter dated 24 December 2013 (our ref: CAS-2490200-QJBN6Q)

- Your subsequent further letter dated 29 December 2013 (our ref: CAS-2494718-28DX5N)
- Your further letter dated 11 January 2014 (our ref: CAS-2512381-T09R5D)
- Your further letter dated 16 January 2014 (our ref: CAS-2546778-902339)
- Your further letter dated 28 January 2014 (our ref: CAS-2542152-TM0YL9).

The Adviser noted that the letter also warned the complainant that if he continued to submit similar further complaints to the BBC they might write to him formally to explain they would not continue to reply to him. They gave a link in their letter to the complaints framework: [www.bbc.co.uk/bbctrust/governance/complaints\\_framework/](http://www.bbc.co.uk/bbctrust/governance/complaints_framework/).

They gave their reasons for not responding further on the issue raised by the complainant:

- The volume of similar complaints from the complainant had now made disproportionate demands on the BBC licence fee resources.
- The complainant's letters had not given any substantive evidence to suggest any breaches of BBC guidelines. All his letters, each within a few days of the last, were on exactly the same issue and/or had contained repeated demands for a particular person to be featured on BBC output, even after Audience Services had made the BBC's position clear.

The Adviser noted that the complainant had raised concerns that BBC output was not impartial.

The Adviser noted that the complainant had repeatedly alleged that the BBC was not impartial in its coverage of animal testing but had not presented substantive evidence relating to a specific programme which was within the time frame set out in the BBC Complaints process. She noted, for example, that in his letter of 11 January 2014, he had made specific points of complaint about an episode of the BBC One programme *Heart of the Matter* which was broadcast more than 18 years ago, on 9 July 1995. She therefore considered it was reasonable for Audience Services not to respond to the concerns he raised about that programme.

She noted that Audience Services had given detailed general responses on the issue, in particular, in their letter of 20 November 2013 which stated:

"Whilst we appreciate that you clearly have very strong personal views on animal testing, the BBC itself has no view on this or indeed any matter but we will report upon it as and when relevant or newsworthy and in a fair and balanced fashion including a range of views - we don't suppress or promote anything.

That said, when covering a subject matter we will often have a specific focus based on the specific circumstances involved at the time, and in any event it is not beholden upon us to discuss or debate every single facet of every single issue on every single occasion. For example, we may report a particular news story where animal testing is involved but in simply covering a story the BBC is not saying that animal testing itself is a good or bad thing, we are not expressing any view on its efficacy and thus by definition we are not required to undertake a forensic investigation or debate into the entire premise of animal testing on every single occasion it may be mentioned.

Of course the BBC has and will continue to fully reflect the ongoing public debate on this topic, but the bottom line is that the BBC has no actual obligations in this

area because the premise of animal testing is subject to statute thus anyone with any views whatsoever is at liberty to discuss them with their Member of Parliament or elected representative, or the relevant Government Minister."

The Adviser noted that the complainant made repeated requests for a particular spokesperson on the issue of vivisection to be allowed to feature on a BBC programme in order to "counter the thousands of hours of pro-vivisectionist propaganda pumped out by the BBC on a regular basis". She also noted that he disapproved of other spokespeople who had been featured, such as a vet who appeared on BBC Breakfast, in November 2013, the subject of another of the complainant's letters. He stated in his complaint of 19 December 2013:

"[name] was supposed to represent anti-vivisectionist but was a hand-picked safe vet, as she could only give a general view. She was not representative of the population or the medical profession that are against vivisection."

The Adviser noted that the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. "The direction of the BBC's editorial and creative output" was specifically defined in the Charter (article 38, (1) (b)) as a duty that was the responsibility of the Executive Board, and one in which the Trust did not get involved unless, for example, it related to a breach of the BBC's editorial standards which the Adviser believed Trustees would conclude did not apply in this case. Decisions relating to the choice of interviewees and spokespeople invited onto BBC programmes fell within the "editorial and creative output" of the BBC and were the responsibility of the BBC Executive.

The Adviser noted that at all stages of the Editorial Complaint and Appeals 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 considered that Trustees would be of the view that Audience Services had provided several detailed and reasoned responses to the complainant's repeatedly stated concerns and that it was reasonable for them to say they could not respond further on the same issue. 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**

In his letter to the BBC Trust of 11 April 2014, the complainant reiterated his view that the BBC is "staunchly pro-vivisection and continually disallows any medical or scientific rebuttals against it". He repeated his example of the Thalidomide disaster and the BBC's failure to report that vivisection was used to develop the drug. He highlighted this as evidence of a "truth blackout by the BBC when it comes to the issue of vivisection".

### **The Panel's decision**

The Panel considered the complainant's appeal to the BBC Trust, the reply from the Senior Complaints Adviser and the request to review the Senior Complaints Adviser's decision. The complainant's previous correspondence was made available to the Panel.

The Panel noted the number of times the complainant had been in touch with the BBC on the subject of vivisection. The Panel noted the strength of the complainant's feelings.

The Panel understood the complainant alleged that the BBC displayed a pro-vivisection bias across its output. The Panel noted that he had complained to the Trust about the substance of his complaints but that the decision it was considering was whether his appeal against the decision of Audience Services to apply the Expedited Procedure to his complaints had a reasonable prospect of success.

The procedure sets out that:

The BBC Executive ... may use this Procedure only where a complainant has a history of persistently or repeatedly making complaints which:

- (a) are trivial, misconceived, hypothetical, repetitious or otherwise vexatious;
- (b) fail to raise an issue of breach of ...the Editorial Guidelines ...
- (d) are shown on investigation to have no reasonable prospect of success; ...

The Panel noted that the complainant had been told by Audience Services that they would no longer respond to correspondence on this subject for a defined period of two years, as it was deemed an unreasonable use of the licence fee and that they had no more to add where no breach of the guidelines could be found.

Trustees noted that Audience Services had given reasons for not responding further on the issue raised by the complainant:

- The volume of similar complaints from the complainant had now made disproportionate demands on the BBC licence fee resources.
- The complainant's letters had not given any substantive evidence to suggest any breaches of BBC guidelines. All his letters, each within a few days of the last, were on exactly the same issue and/or had contained repeated demands for a particular person to be featured on BBC output, even after Audience Services had made the BBC's position clear.

The Panel also noted the communications from the complainant between 19 October 2013 and 28 January 2014 which had been provided to Trustees and which had been logged by Audience Services and included as a list in their letter of 6 February 2014.

The Panel noted that the Senior Complaints Adviser for the Trust had noted that the complainant had repeatedly alleged that the BBC was not impartial in its coverage of animal testing but had not presented substantive evidence relating to a specific programme within the time frame set out in the BBC Complaints process. His complaints had no reasonable prospect of success.

The Panel therefore agreed with the decision of the Senior Complaints Adviser that there were no reasonable prospects of successfully challenging the decision at Stage 1 to apply the Expedited Procedure on the basis that the complainant had been repetitious and failed to raise a breach of the Editorial Guidelines within the timeframes set out in the procedure.

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