

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

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Remit of the Complaints and Appeals Board

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Summary of finding

Television Licensing TVL0047

This complaint was about the level of goodwill payment which TV Licensing (TVL) had offered to the complainant to recognise the fact that her property had been visited by TVL officers despite the complainant having withdrawn TV Licensing's implied right of access. TVL accepted that two unauthorised visits had occurred, but maintained that it did not have a record of a third visit which the complainant alleged had taken place.

The complainant had also made a request under the Freedom of Information Act (FOIA) for details of when TVL employees had visited her street. The FOIA response from the BBC Executive contradicted information previously given by TVL to the complainant.

The Panel concluded that:

- general information about the time taken to process correspondence should be made clear on the TVL website.
- the two accounts regarding the third alleged visit appeared contradictory, but it had no definitive reason to doubt either position, and, on the basis of the evidence available, the Panel was not in a position to judge whether or not a third visit had taken place.
- the Executive should be asked to reconsider the compensation offer which had been made to the complainant, taking into account the fact that the responses the complainant had received to her requests for information, some under FOIA, had been contradictory and that the goodwill payment offer had been made before the Executive was aware of the contradiction.
- the Executive ought to bring this matter to a quick resolution and give the complainant further assurances that there would be no further unauthorised visits to her property.

The complaint was upheld in part.

For the finding in full see pages 4 to 7.

Appeal Finding

Television Licensing TVL0047

Background

The appeal to the BBC Trust was about the amount of the “goodwill” payment of compensation offered by TV Licensing (TVL). The complainant also felt she had been “harassed” by TVL.

The complainant had issued notices withdrawing TVL’s implied right of access to her property on in October 2011 and October 2012, in respect of two different addresses. The complainant alleged that, in breach of these notices, she had subsequently received visits from TVL employees in October 2011, December 2011 and November 2012.

TVL conceded that the October 2011 and November 2012 visits should not have occurred but stated that it did not have a record of the visit alleged to have taken place in December 2011. Further, the BBC's Head of Revenue Management, in a detailed response to the complainant dated 14 February 2013, observed that the October 2011 visit took place two days after the complainant had informed TVL that their right of access had been withdrawn, which was within the period of the working days within which TVL aims to respond to emails.

The complainant also alleged that, during the November 2012 visit, a TVL enforcement officer was “quite confrontational” and threatened her with the police and a search warrant.

The Complaint

The complainant felt that she had been harassed by TVL and asked it to compensate her £200 for its administrative errors and for three visits that she argued should not have taken place. She stated that TVL had consistently been late in responding to her enquiries. She stated that “they consistently fail to carry out their administrating, updating records or replying to enquiries in a timely manner and does not give me any guarantee that they will continue to uphold [my notice] as stated. I therefore anticipate further problems with TVL in the future”. She also stated that she believed she had a case under the Protection from Harassment Act 1997 (the “PFHA”) and informed TVL that she may increase the amount of compensation she is requesting and had considered court action.

TVL initially offered her a goodwill payment of £30, which it later increased to £75. After escalating her complaint to the BBC Executive, she was offered £100.

The Executive Board member responsible for licence fee collection did not accept the complainant’s request to be compensated £200 and, in their response of 12 March 2013:

- Recognised that TVL did not take action to prevent the 26 November 2012 visit and apologised for any distress caused.
- Noted that TVL had not responded appropriately to the complainant's requests for information under the FOIA.

- Recognised that the service the complainant received fell short of TVL's usual standards, but maintained that the offer of £100 was appropriate and proportionate and was intended as a gesture of goodwill.
- Confirmed that TVL's records had been updated to prevent the complainant from receiving further visits from TVL representatives.
- Apologised that she perceived the visits to her home address as harassment, but argued that it was never the intention of TVL to harass her.
- With regards to the specific actions of the TVL officer who visited the complainant in November 2012, stated that the officer is no longer a TVL employee and that the Executive is therefore unable to investigate the matter further.

Appeal to the Trust

The complainant was not satisfied with the Executive's response and appealed to the BBC Trust on 16 March 2013. She made the following points:

- That TVL had visited her property on three occasions despite her informing them that they did not have her permission to do so;
- That she suffers from "mental health problems" and has no need for a TV licence;
- That TVL's target of three working days for responding to correspondence should apply solely to emails and not to registering notices withdrawing rights of access; or, alternatively, that TVL's automated response should make clear that such notices will not be processed immediately, thus giving individuals an opportunity to take other measures to protect their privacy; and
- That she has received belated and inconsistent responses to her complaints from TVL and that she feels that she has been "harassed" by TVL.

She requested £200 in compensation for TVL's "administrative errors", her "time in pursuing this complaint (which has been lengthy)" and the "stress and inconvenience suffered in the process".

The complainant also asserted that TVL purposefully gave her false information about the December 2011 visit to her property in response to a request that she had made in December 2011 under the Freedom of Information Act 2000 (the "FOIA") for details of when TVL employees had visited her street. This was not an allegation which had previously been put to the BBC Executive. The BBC Trust therefore asked the BBC Executive to respond to the complainant on this point. Once the Executive had done this, the complainant confirmed that she wanted this element of the complaint to be included in the appeal.

In a response of 6 August 2013 an Executive Board member explained that while visits to the complainant's postcode were made by TVL on 1 December 2011 (as detailed in the complainant's FOI response), no officer was asked to call at the complainant's address on that date and there was no record of a TVL visit being made. The BBC Executive informed the Trust Unit that it recognised that TVL did not reply to an email from the complainant of 27 October 2012 and that TVL provided a late response to the complainant's emails of 29 November 2012 and 29 December 2012.

The response to this additional element of the appeal post-dated the BBC Executive Board member's stage 3 letter of 12 March 2013 to the complainant which had been sent in response to the earlier elements of the complaint and contained the offer of £100.

The Panel's Decision

The Panel was provided with copies of the following documents:

- Complaint to Head of Revenue Management, BBC Executive, dated 29 January 2013
- Response from Head of Revenue Management, BBC Executive, dated 14 February 2013
- Complainant's response, dated 15 February 2013
- Response to FOI request from BBC's TVL Management Team , dated 27 February 2013
- Response from Executive Board member responsible licence fee collection, sent 12 March 2013
- Appeal to the BBC Trust, dated 16 March 2013
- Response from BBC Executive, dated 6 August 2013
- Email from complainant clarifying some of the points of her appeal, dated 23 August 2013

The Panel noted that:

- The complainant's case related to unauthorised visits to her properties and to alleged harassment and that she wanted monetary compensation of £200. The Executive disputed the number of visits alleged to have taken place, did not agree the case amounted to harassment and had offered £100. The Panel was asked to consider whether £100 was sufficient and noted that the offer of £100 was made before the BBC Executive's letter of 6 August 2013, which was in response to the additional point the complainant raised regarding alleged contradictory information which had been provided in a FOIA response.
- The complainant had asked that it be brought to the Panel's attention that she had mental health issues and had lost confidence in the BBC Executive's procedures and the ability of the Executive to prevent further visits to her address in the future.

The Panel recognised that the BBC Executive had acknowledged where it had not provided responses or responded late to correspondence. The Panel was however concerned by the delay in accepting and remedying these mistakes.

The Panel noted that, under the PFHA, harassment is not exhaustively defined but involves a course of conduct that is generally regarded as improper, oppressive and unreasonable, aimed at an individual and designed to cause alarm or distress. The Panel did not consider that the circumstances of the case amounted to harassment.

The Panel noted that TVL had now updated their records to ensure the complainant's current address would not be visited again.

The Panel noted that the acknowledgements individuals are sent in response to email correspondence to TVL, while stating that it can take 3 working days for a response to be sent, do not say that it could take up to 3 working days to update records as a result of the correspondence. The Panel was of the view that it should be made clear in acknowledgments to correspondence that it takes time to process emails and for records to be updated. The Panel considered that general information about the time taken to process correspondence should be made clear on the TVL website. The Panel therefore resolved to ask the Executive to consider this issue and make any necessary changes.

The Panel noted that there was a dispute as to whether the alleged visit on 1st December 2011 had taken place. The Panel noted that the complainant asserted that her housemate had told her that a TVL representative had called at their address on 1st December 2011. The Panel also noted that the BBC Executive have always asserted, and most recently in August 2013, that "no officer was asked to call at [the complainant's] address on that date and there is no record held by TV Licensing of a visit being made." The Panel concluded that although the two accounts appeared contradictory, it had no definitive reason to doubt either position, and, on the basis of the evidence available, the Panel was not in a position to judge whether or not a third visit had taken place.

The Panel noted that the complainant had sought from TVL details of the alleged visit to her property on 1st December 2011, including the name and ID of the TVL representative, for her own records. TVL had replied on the same day, stating that it had investigated the matter and that it could confirm the person who visited the address was not a TVL employee. The complainant then made several requests, starting in December 2011, some under FOIA, for details of when TVL representatives visited properties on her road. The Panel noted that TVL originally asserted on 15 December 2011 that "I have double checked for you and I can confirm that the last recorded visit to any address in your [complainant's] postcode was the 19 October 2011". TVL later confirmed in its formal FOIA response in February 2013 that TVL conducted visits to addresses in the complainant's postcode area on 1st December 2011. The Panel noted that the information in the FOIA response contradicted information previously given by TVL to the complainant.

The Panel resolved to ask the Executive to reconsider the compensation offer which had been made to the complainant, taking into account the fact that the responses the complainant had received to her requests for information, some under FOIA, had been contradictory and that the offer of £100 was made before the Executive was aware that information it had provided on 15th December 2011 was contradicted by the later response of February 2013.

The Panel also determined that the Executive ought to bring this matter to a quick resolution and give the complainant further assurances that there would be no further unauthorised visits to her property.

Finding: Upheld in part.

Rejected Appeals

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

Scheduling of Politics Scotland, 28 March 2013

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

Background

The complainant first contacted the BBC on 28 March 2013 about that day's edition of *Politics Scotland*, which had not been broadcast.

The complainant received two responses from the Head of News, via BBC Complaints, at Stage 1 of the complaints process, which stated that the programme was not shown because of "technical and resource issues", as a result of industrial action.

At Stage 2, the complainant asked whether it had been possible for BBC Parliament to have been shown on BBC Two Scotland and, if not, why viewers were not advised by BBC Two Scotland that they could tune to BBC Parliament to see First Minister's Questions. The complainant received a response from BBC Scotland's Head of Public Policy on 9 August which stated that a combination of resource and technical issues meant it was not possible to broadcast advertised programmes, and neither was BBC Scotland able to provide information on where viewers could have been able to access coverage of First Minister's Questions.

Appeal

The complainant appealed to the BBC Trust on 16 August 2013, stating that BBC viewers in Scotland were given a misleading impression when, on 28 March 2013, *Politics Scotland* was not broadcast due to industrial action. The complainant stated that viewers would have believed, wrongly, that coverage of First Minister's Questions was not being broadcast on the BBC at all.

Decision of the Senior Editorial Complaints Adviser

The Senior Editorial 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 the responses that had already been sent to the complainant, in particular the Stage 2 response from the Head of Public Policy which had stated:

"...the start point of First Minister's Questions that afternoon coincided with the point at which NUJ and BECTU members began industrial action. Consequently, with a very limited number of Presentation staff available to us at that time to work across all of our services, disruptions to our normal TV service meant that we were able neither to bring to screen the advertised programme nor to provide information for viewers on where, alternatively, they might have been able to access coverage of First Minister's Questions on the BBC's networks."

The Adviser considered Trustees would be likely to conclude that the complainant had received a full and reasonable response to his complaint at Stage 2 which set out why *Politics Scotland* had not been broadcast and why it had not been possible to advise viewers how they might follow First Minister's Questions.

The Adviser also noted that decisions relating to schedule changes during industrial action were day-to-day matters for the Executive.

The Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. "The direction of the BBC's editorial and creative output" was specifically defined in the Charter (article 38 (1) (b)) as a duty that was the responsibility of the Executive Board. Likewise, the "operational management of the BBC" was defined in the Charter (article 38, (1) (c)) as a duty that was the responsibility of the Executive Board, and one in which the Trust would not usually get involved unless, for example, they raised broader issues such as a breach of a station's Service Licence or of the BBC's Editorial Guidelines. The Senior Editorial Complaints Adviser considered there was no evidence that the Service Licence had been breached.

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

Request for review by Trustees

The complainant asked Trustees to review the decision of the Senior Editorial Complaints Adviser not to proceed with the appeal. His view was that the lack of signposting to BBC Parliament's coverage was a result of ineptitude, and queried whether the industrial action had been launched without prior notice.

The Panel's decision

The Panel was given the complainant's appeal to the Trust, the reply from the Senior Editorial Complaints Adviser, and the challenge to her decision.

The Panel was mindful of the division of responsibility between the BBC Executive and the BBC Trust, and that the Trust does not generally become involved in the operational management of the BBC. The Panel agreed that the management of *Politics Scotland's* scheduling and the presentational issues around it in the event of strike action was just such an operational matter. The Panel noted that the complainant had been presented with the opportunity to escalate his complaint to the BBC Trust, and it agreed that this had been correct because the ultimate decision as to whether or not a matter is for the Trust to consider on appeal is for Trustees.

As this complaint related to an operational matter and as there was no evidence of any breach of standards or guidelines, the Panel agreed with the Trust Unit that there was no reasonable prospect of success for an appeal to the Trust.

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

Removal of BBC radio programmes from Radio Downloader

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

Background

The complainant contacted the BBC on 30 June 2013 to register his concerns over the removal of BBC programmes from Radio Downloader, which is a service available via a computer program on a website that enables users of the service to download radio programmes produced by individual broadcasters, thereby providing users with a "listen again" service in the style of podcasts. Audience Services issued a response on 4 July 2013 from BBC Future Media which explained that the BBC had requested that the website remove BBC radio programmes from its Radio Downloader application because their availability breached the BBC's Terms of Use.

The response added that, separately, the BBC Trust recently approved proposals from the BBC Executive to enable listeners to download their favourite BBC radio programmes via BBC iPlayer Radio and keep to listen to for up to 30 days, from 2014.

The complainant was dissatisfied and, on 8 August 2013, he was sent a response at Stage 2 of the complaints process, which referred back to the information he had already been sent and advised him he could appeal to the Trust if he remained unhappy.

Appeal

The complainant escalated his complaint to the BBC Trust on 22 August 2013 as he felt the Stage 2 response he had received from the BBC about the removal of the Radio Downloader service did not resolve his complaint. He argued that the download service had been a "benevolent endeavour to increase BBC Radio audiences" and that the BBC iPlayer Radio service referred to by the Executive would not be an adequate substitute because programmes would only be available for a limited period of 30 days. He disputed whether the service had breached copyright laws.

Decision of the Senior Editorial Complaints Adviser

The Senior Editorial Complaints Adviser ("the Adviser") carefully read the correspondence that had passed between the complainant and the BBC, and she acknowledged that the complainant felt strongly that the BBC had reduced the quality of his listening experience by removing the Radio Downloader service. She also acknowledged the complainant's suggestion that more Radio 4 speech broadcasts could be made available as podcast, though noted that this was an operational decision which was a matter for the BBC Executive rather than the Trust.

The Adviser noted too that BBC activity in this area was also governed by the Trust's on-demand syndication policy.¹

The Adviser noted that the on-demand syndication policy acknowledged the value to listeners of being able to have access to a range of BBC output through a variety of means, it stated:

¹ http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/our_work/on_demand/2012/on_demand_syndication.pdf

The Trust considers that there is generally public value in syndication and that it is in the interests of licence fee payers that they can access BBC on-demand content from as many platforms and devices as possible, consistent with this policy.

However, the Adviser also noted that the policy took account of other considerations too – for example, the commercial impact of BBC output being made available, and the requirement that the BBC should be able to take down output if legal reasons emerged that required that course of action.

The Adviser acknowledged that the complainant did not consider that the new service being introduced in 2014 via BBC iPlayer Radio would be a satisfactory replacement for the Radio Downloader service which was removed in June 2013. 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 operational management of the BBC” is specifically defined in the Charter (article 38 (1) (c)) as a duty that is the responsibility of the Executive Board, and one in which the Trust does not usually get involved unless, for example, it raised broader issues such as a breach of a station’s Service Licence.

Decisions relating to the operation of services subject to the BBC Terms of Use (www.bbc.co.uk/terms) are day-to-day operational matters and are the responsibility of the BBC Executive. The Adviser noted that the complainant found the responses to his concerns disappointing. However, she considered that Trustees would be of the view that BBC Future Media had provided a reasonable response, via Audience Services which explained that the Radio Downloader service had been removed because it was in breach of the BBC Terms of Use.

The Adviser concluded that the appeal did not have a reasonable prospect of success and she did not consider that it should be placed before Trustees.

Request for review by Trustees

The complainant asked Trustees to review the decision of the Senior Editorial Complaints Adviser not to proceed with the appeal. He questioned the description of the Radio Downloader as a service, saying that users are accessing streamed DRM-free content directly from bbc.co.uk. The complainant reiterated his view that, since 1988, UK licence fee payers have had the right to time-shift BBC broadcasts using the technology available at the time. The complainant noted that wider availability of radio podcasts would end his complaint and remove the motivation for licence fee payers to use workarounds.

Lastly, the complainant noted the Adviser’s comments regarding the distinction between matters for the Executive and those for the Trust. The complainant highlighted that he had been directed to the BBC Trust to escalate his complaint.

The Panel’s decision

The Panel was given the complainant’s appeal to the Trust, the reply from the Senior Editorial Complaints Adviser, and the challenge to her decision.

The Panel noted the complainant’s point about the Adviser’s description of Radio Downloader as a service. Trustees considered that the terminology used was not material to the decision before it, which was whether the complaint had a reasonable prospect of success on appeal.

The Panel accepted that it was a desire to listen to BBC radio content at a time other than when it was broadcast which motivated the complainant's use of the Radio Downloader. The Panel considered, however, that it was for the BBC Executive to set the Terms of Use for its streamed content, and the complainant had received reasonable responses from the BBC in this regard.

The Panel agreed that the decision to enforce the Terms of Use was a matter of the operational management of the BBC and as such was not something in which the Trust should intervene. The Panel sympathised with the complainant's frustration at having been directed to the Trust with a complaint about an operational matter; however, it considered that this was the correct procedure as the Trust is the final arbiter in questions of whether a matter is for the Trust or not.

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

BBC Red Button service

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

Background

The complainant first contacted the BBC in February 2013, following some changes to the BBC's Red Button service, to complain that Cheshire did not appear on Red Button weather pages. He had a similar concern regarding news coverage, but was ultimately satisfied with a response he received from the Controller, English Regions, on 19 July 2013.

He received an apology from Audience Services on 22 February 2013 for the disruption to digital text services and an assurance that the problem was being worked on. He also received some information regarding changes to the pages offered by the new service. He was told that full details of the changes were listed on the Red Button service on p998.

The complainant did not feel his question as to why Cheshire was missing from the weather pages had been answered. In a phone call to Audience Services on 25 February 2013 he said the information he had been given only related to what was happening outside his own area. In particular he objected to the weather information on p400. He said that Cheshire did not appear on it and that the nearest city on which weather information was available was Liverpool which was 45 miles away and was not useful. He said he was paying for a service that he could not use and wanted to have a rebate of his TV licence fee.

The complainant telephoned Audience Services on 8 April 2013 to say that he had not received a response to his complaint.

Audience Services responded on 9 April 2013, apologising if the complainant was dissatisfied with their initial response and for the delay in replying. They explained that the BBC could not support all locations and make them available via Red Button; with regard to weather information, a representative set of locations would be used to show expected weather trends over a large geographic region from Liverpool and Manchester in the North West, to Newcastle and Carlisle near the Scottish borders.

The complainant was not satisfied with this response.

Following further correspondence the complainant was advised by Audience Services (letter dated 7 May 2013) to contact the Senior Product Manager, BBC Future Media Weather. With regard to his complaint about the licence fee, Audience Services advised him that the government sets the cost of the licence and directed him to the *Inside the BBC* website for more information.

The complainant escalated his complaint on 9 May 2013 but received no response from the Senior Product Manager, BBC Future Media Weather. He wrote to the BBC Trust Unit asking them to advise him.

Stage 2

The Trust Unit wrote to the complainant regarding the complainant's Stage 2 correspondence, explaining that the Senior Product Manager had said that he had not

received the complainant's letter and so the Trust Unit had forwarded the complainant's correspondence to the Senior Product Manager for a response.

The Senior Product Manager, BBC Future Media Weather wrote to the complainant. He apologised for not initially receiving the complainant's letter and explained that there had never been a dedicated Cheshire forecast on Red Button and as Red Button weather covered a very large area it was not possible to give that amount of detail. He explained that the representative towns and cities were chosen for their appropriateness in displaying weather trends for the day, and also for being far enough apart that the weather icon could be displayed on the map without overlapping and causing confusion. He stated that the BBC did its best to cover Cheshire weather in the most effective way it could – using various online sites, regional forecast videos, broadcast and radio output. He said that the BBC was unable to invest in further development of the existing Red Button system and was looking at alternatives for the future which would enable searching for specific locations.

The complainant was not satisfied with the response of the Senior Product Manager, to whom he addressed a further complaint on 23 July 2013. He did not feel that he had received a full and considered response to his concerns. He said that the region chosen by the Red Button service to represent Cheshire was not an appropriate choice in terms of weather patterns and suggested that a weather page representing Northern Ireland and Wales reflected Cheshire's weather patterns better. He said that it was irrelevant to point out that Cheshire had never had a dedicated weather page because he had been led to believe that the BBC had improved the Red Button service, though this was not apparent on the weather pages. He disagreed with the Senior Product Manager's comments about the selection of larger population areas in the North on page 4023 and requested figures to verify this statement. He also noted that 18% of the population did not have access to the internet and could not access information online.

The Senior Product Manager responded again to the complainant on 2 August 2013 with further comments on Red Button's choice of towns and cities chosen to represent geographical areas. He explained that comparing the population of a city in Cheshire with Carlisle or Thirsk was not appropriate as they were in a different part of the country and removing them would leave those regions without any weather representation. He said that population was only one of many factors in the selection, and reiterated the problem of avoiding the clashing of weather icons. He pointed out the difficulty of providing a service which had to work with both new technical devices on the market and older ones, which meant there was a very limited amount that could be done to modify the service. He said there were no plans to change the weather service on the current Red Button service.

Appeal

The complainant appealed to the Trust in a letter dated 13 August 2013. He said that the Stage 2 response from the Senior Product Manager, BBC Future Media Weather, with regard to the weather service on Red Button, offered him no hope for a weather report relevant to the Cheshire region either currently or in the future. He said that a large amount of licence fee payers' money was going to the BBC from households in Cheshire for a partial service for weather reports. He thought it was unacceptable in the 21st century to say that, because there never had been a Cheshire weather report on the old Ceefax service, there could not be one on the improved Red Button service either now or in the future.

Decision of the Senior Editorial Complaints Adviser

The Senior Editorial Complaints Adviser (the Adviser) carefully read the correspondence that had passed between the complainant and the BBC, and she acknowledged the strength of the complainant's feelings. She also acknowledged the length of time it had taken for the complainant to receive responses at various stages of the complaints process.

The Adviser noted that although there had been long delays in answering some of the complainant's correspondence, the eventual response from the BBC Executive had apologised for the delays the complainant had experienced.

With regard to the Red Button weather information for the Cheshire region, the Adviser noted that the complainant remained dissatisfied with the responses of the Senior Product Manager, BBC Future Media. In his final response of 2 August 2013, the Senior Product Manager had stated:

"We have limitations in terms of the amount of data we can push through the Red button service and the technical representation of items such as weather maps, due to the crude nature of the image overlaying and positioning available within the set top box technology..."

The Adviser acknowledged the complainant's disappointment that there appeared to be no likelihood of Cheshire having its own weather report on the BBC Red Button service.

However, the Adviser also noted that decisions relating to information provided on Red Button pages were day-to-day matters for the Executive. The Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. The "direction of the BBC's editorial and creative output" was specifically defined in the Charter (article 38 (1) (b)) as a duty that was the responsibility of the Executive Board. Likewise, the "operational management of the BBC" was defined in the Charter (article 38, (1) (c)) as a duty that was the responsibility of the Executive Board, and one in which the Trust would not usually get involved unless, for example, they raised broader issues such as a breach of a station's Service Licence or of the BBC's Editorial Guidelines.

With regard to the complainant's dissatisfaction about having to pay a full TV licence fee for what he considered a "partial service", the Adviser noted that the government sets the cost of the licence as part of the BBC's Royal Charter and there was no entitlement for any licence fee payer to receive a full or partial refund for any individual station or service which they did not access.

The Adviser noted the points the complainant made regarding the delays he had experienced in making his complaint. She noted that the BBC Executive had accepted its errors at both Stages 1 and 2 and had apologised for them. She was sure the Trustees would wish her to add her apologies too. She noted that where the Executive accepted it was in error and apologised, the Trustees normally considered the matter resolved, unless there were features to the error which were so serious that it meant further action might be necessary. The Adviser did not believe that this matter raised such serious issues that further action would be required. She therefore decided the appeal did not have a reasonable prospect of success as it had been resolved.

The Senior Editorial Complaints Adviser hoped that the complainant's concerns would be addressed in some measure by the fact that complaints handling is a matter that the Trust keeps under close review. The Complaints Framework was revised the previous year (http://www.bbc.co.uk/bbctrust/governance/complaints_framework/framework.html) and

a "mystery shopping" exercise was conducted in 2013 to look at how the new framework was working. The results of this exercise were currently being analysed.

Therefore, for the reasons set out above, the Adviser considered Trustees would be likely to conclude that the complainant had received reasoned and reasonable responses to his complaints.

She considered that decisions relating to the provision of weather reports on Red Button services were operational matters and therefore it would not be appropriate for Trustees to consider an appeal on operational matters.

Therefore the Adviser did not believe that the appeal had a reasonable prospect of success and did not propose to place it before Trustees.

Request for review by Trustees

The complainant asked Trustees to review the decision of the Senior Editorial Complaints Adviser not to proceed with the appeal. He reiterated his disagreement with the Senior Product Manager with regard to the provision of Cheshire weather on the Red Button service, and he contrasted the Senior Product Manager's responses with those from the Controller of English Regions about his complaint regarding news coverage. The complainant referred to the television weather reports, which he said also neglected Cheshire in favour of Scotland, Ireland and Wales.

The Panel's decision

The Panel was given the complainant's appeal to the Trust, the reply from the Senior Editorial Complaints Adviser, and the challenge to her decision.

The Panel considered that, apart from the errors in handling, which had been acknowledged and apologised for, the responses from the BBC had been reasonable and appropriate. The Panel noted the complainant's assertion regarding television broadcasts but also observed that, in accordance with the Complaints Framework, the Trust cannot determine complaints in the first instance; the Panel agreed that this issue had not been raised at previous stages of the complaints process and that therefore it was not a matter the Trust could examine at this stage. However, the Panel agreed that the presentation of the weather via the Red Button or in television news bulletins was largely an operational matter for the BBC Executive rather than the BBC Trust. The Panel noted the complainant's views but did not consider that the complaint had raised any issues which would warrant the BBC Trust intervening in an operational matter.

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

University Challenge, BBC Two, policy on teams

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

Background

The complainant first contacted the BBC on 19 July 2013. He was concerned that Oxford and Cambridge Universities were allowed to enter separate teams from each of their constituent colleges for *University Challenge*. He believed this was unfair and it was unacceptable for this practice to continue. He believed that Oxford University and Cambridge University should only be allowed to enter one team each. He said that every other university was represented by one team and to allow Oxford and Cambridge to enter more than one team showed bias in their favour.

The complainant was later concerned to hear an edition of *University Challenge* broadcast on 5 August 2013 which he thought might have contained possible references to his complaint. He accepted that this may have been coincidental, but as BBC Audience Services had stated that his comments would be passed on to the production team, he wondered if the comments were in answer to his specific complaint. He pointed out that if that was the case, it was not part of the published BBC complaints procedure. As a result of watching the programme he concluded that the BBC was saying that the presence of Oxbridge colleges in the programme was justifiable because they teach and other university colleges not represented on the programme do not. He said that was irrelevant to his complaint. He said he had been prepared to wait for a further response to his complaint but in light of what he had heard on the programme, he felt compelled to draw it to the BBC's attention before receiving a further response.

On 31 August 2013 Audience Services responded to his formal complaint with comments from the Executive Producer who confirmed that

"... the Universities of London, Cambridge and Oxford enter teams for their constituent colleges because those colleges operate as broadly autonomous teaching institutions. Students apply to be taught by a specific college within the Universities and generally take all their lectures, tutorials and seminars at that college.

"The same rule formerly applied to the University of Wales which, until relatively recently, operated a federal structure. The programme applies this rule not to favour London, Oxford and Cambridge, but to reflect the reality of the University teaching system as it is experienced by students.

"A university such as Durham also operates a collegiate system but this is largely a matter of student welfare and accommodation, not teaching, hence that university applies as a single entity. This is the point that Jeremy [Paxman, the presenter] explained in the introduction to the episode broadcast on 5 August.

"It does not stand that collegiate universities have an unfair advantage under the current system of selection. In fact, one could make an opposing case based on the fact that the colleges have a demonstrably smaller pool of students from which to select their team compared to larger universities which don't operate under the collegiate system.

“That point notwithstanding, we are satisfied that the contest is conducted in a fair and transparent manner from beginning to end, in accordance with the BBC’s Editorial Guidelines.”

Appeal

The complainant appealed to the BBC Trust on 12 September 2013 as he did not consider that the BBC had addressed his complaint. He did not accept the explanation that Oxford and Cambridge were entitled to greater representation because they had their own teaching colleges, and he argued that many other universities had larger student populations than the Oxbridge universities. He felt that the programme’s rules meant that Oxford and Cambridge were over-represented in the competition and the odds of winning were unfairly stacked in their favour.

Decision of the Senior Editorial Complaints Adviser

The Senior Editorial 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 acknowledged the complainant’s concerns about the overall number of Oxbridge contestants compared with contestants from other universities. However, she also noted that decisions relating to programme formats and conditions of programme contestant entry were day-to-day matters for the BBC Executive. The Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. The “direction of the BBC’s editorial and creative output” was specifically defined in the Charter (article 38 (1) (b)) as a duty that was the responsibility of the Executive Board. Likewise, the “operational management of the BBC” was defined in the Charter (article 38 (1) (c)) as a duty that was the responsibility of the Executive Board, and ones in which the Trust would not usually get involved unless, for example, they raised broader issues such as a breach of a station’s Service Licence or of the BBC’s Editorial Guidelines. The Adviser did not believe that Trustees would be likely to conclude that evidence had been presented which suggested a possible breach of standards in this instance and she did not consider that the appeal had any reasonable prospect of success.

The Adviser acknowledged that the complainant did not agree with the response he had received explaining that the Oxbridge colleges functioned as “broadly autonomous teaching institutions” within their respective universities, and were therefore eligible to enter separate teams from those colleges.

The Adviser noted the complainant’s concerns that his specific complaint might have formed the basis for comment on the 5 August 2013 broadcast of *University Challenge*. She listened to the broadcast and noted the context of remarks made by the presenter at the beginning of the programme when he introduced the opposing teams from the University of Durham and Queens’ College, Cambridge. He mentioned a few historical facts about each team. He explained that Durham was the third oldest university after Oxford and Cambridge and then said that

“It’s run on collegiate lines but because the majority of colleges don’t offer formal teaching – instead concerning themselves with student welfare and accommodation – the university enters this contest as a single entity.”

She considered that it was likely the presenter was mindful of a possible general audience perception of an anomaly between Durham and Queens' College, Cambridge along the lines suggested by the complainant, but she did not believe this was evidence that he was responding to the complainant's specific complaint.

As was stated at Stage 1, audience feedback is passed to production teams and it was likely that other members of the audience may also have wondered why Durham colleges did not enter separate teams in the same way as Oxford, Cambridge and London. She did not believe that Trustees would be likely to conclude that Jeremy Paxman's statement provided evidence of any deviation from the published complaints process.

The Adviser acknowledged the complainant's request for a change in policy by the programme to allow just one team from Cambridge and Oxford universities to enter the contest. However, changes to the format of the programme did not fall within the remit of the Trust and were a matter for the BBC Executive.

The Adviser believed that the Trustees would be likely to conclude that Audience Services, in consultation with the Executive Producer, had provided a reasoned and reasonable response to the complaint. She also considered that Trustees would be likely to agree with their view that *University Challenge* was a contest which was conducted in a "fair and transparent manner in accordance with the BBC's Editorial Guidelines".

The Adviser considered that the appeal had no reasonable prospect of success and should not be placed before Trustees.

Request for review by Trustees

The complainant asked Trustees to review the decision of the Senior Editorial Complaints Adviser not to proceed with the appeal. He repeated his view that the rules of *University Challenge* were discriminatory and favoured Oxford and Cambridge Universities. He questioned why the BBC had created a complaints procedure which terminated at the Trust when he was told that his complaint was not within the remit of the Trust.

The Panel's decision

The Panel was given the complainant's appeal to the Trust, the reply from the Senior Editorial Complaints Adviser, and the challenge to her decision.

The Panel agreed that the question of a change to the format of *University Challenge* was a matter of the creative and editorial direction of the BBC and was therefore not within the Trust's remit as set out in the Royal Charter. The Panel noted the complainant's view that the rules were discriminatory to non-Oxbridge universities but it did not agree that there was any evidence that the BBC's Editorial Guidelines were breached. The Panel agreed with the decision of the Adviser that there was no reasonable prospect that such a complaint would be successfully appealed to the Trust.

The Panel noted that the complainant had questioned why the complaints process ended with the Trust when he had been told that his complaint was not within its remit. The Panel was mindful that the general appeals procedure is clear in stating that the Trust does not consider all appeals brought to it. The Panel noted that, in the case of appeals concerning day-to-day operational issues, the Trust would not ordinarily consider the appeal unless it raised significant issues of general importance. The Panel sympathised with the complainant's frustration at having been directed to the Trust with a complaint about an operational matter; however, it considered that this was the correct procedure as the Trust is the final arbiter in questions of whether a matter is for the Trust or not.

The Panel did agree to give further consideration to ways in which future complainants who wished to appeal to the Trust could be made more fully aware that complaints about operational decisions by the BBC Executive would be unlikely to be entertained on appeal unless they raised significant issues of general importance.

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

BBC Radio Foyle, treatment of caller

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

Background

The complainant contacted BBC Audience Services on 16 July 2013 because he felt he had been treated rudely when he contacted the Sean Coyle radio show on 5 July 2013.

He received a response from the Editor, BBC Radio Foyle on 16 July 2013, which set out the Editor's understanding of what had happened. The complainant felt that this response was not an accurate record of what had occurred. He contacted Audience Services on 8 August 2013 to ask for a further response.

The Head of Radio, BBC Northern Ireland, sent a Stage 2 response to the complainant on 23 August 2013.

Appeal

The complainant appealed to the BBC Trust in a letter received on 9 September 2013, saying that he had been badly treated by the Radio Foyle Assistant in question. He said that he had had a meeting with the Radio Foyle Editor but that it seemed to him to be one-sided. Referring to the letter he had received from the Head of Radio, BBC Northern Ireland, the complainant said that there had not been a misunderstanding; the Radio Assistant had been rude to him. He asked the Trust to investigate his concerns.

Decision of the Senior Editorial Complaints Adviser

The Senior Editorial Complaints Adviser (the Adviser) carefully read the correspondence that had passed between the complainant and the BBC, and she acknowledged that the complainant felt very strongly that he had been badly treated and that the Radio Assistant had been rude to him.

The Adviser noted that the complaint seemed to have originated when the complainant was invited to speak live on air during the Sean Coyle show on 5 July 2013, but his planned contribution was dropped because Sean Coyle had decided not to take on-air callers that day. It appeared that the complainant was not informed of this change of plan and had been expecting a call back from the production team. When this did not happen, the complainant contacted Radio Foyle and spoke to the Radio Assistant.

The Adviser acknowledged that not being informed of the change of plan must have been frustrating for the complainant. She noted that the complainant had not provided specific details of what had occurred during his phone conversation with the Radio Assistant which had led to him feeling that she had been rude to him.

The Adviser noted that in his response of 16 July 2013, the Editor had apologised to the complainant and set out his understanding of what had occurred. The Adviser noted the Editor referred to this as a "misunderstanding" – and also noted the complainant did not agree with this analysis. She also noted that the Editor had held a meeting with the complainant to discuss his concerns, but the complainant felt the meeting was one-sided. However, she noted that the complainant did not present any specific examples of why he considered it to be one-sided.

The Adviser noted the response of the Head of Radio, BBC Northern Ireland who had stated that they “treat accusations of rude behaviour from BBC staff very seriously”. The response also confirmed that the Studio Assistant had been spoken to about the incident and, while she did not agree that she had been rude, she accepted that there had been a misunderstanding and she had been informed that the complainant considered that she had been rude to him. The Adviser noted the statement in the Editor’s letter to the complainant of 16 July 2013 that “the studio assistant apologised for the change of plan and for any misunderstanding”.

The Adviser noted that the Editor had stated that he was sorry that the complainant felt he had been treated rudely, and he had set up a meeting with the complainant to discuss his concerns. She believed that Trustees would consider that this was evidence that the production team took the complainant’s allegations seriously and had made efforts to resolve his concerns.

Although she acknowledged that the complainant did not consider that there had been any misunderstanding, and believed the outcome of the meeting between himself and the Editor to be one-sided, the Adviser believed that the Trustees would be of the view that reasonable steps had been taken to investigate the complaint and resolve the matter. The Adviser noted that the Executive had apologised for the complainant’s poor experience. She was sure the Trustees would also wish her to add her apologies too. She considered that, in the light of the apologies that had been given, the Trustees would be likely to conclude the complaint had been resolved. The Adviser therefore decided the complainant’s appeal did not have a reasonable prospect of success and did not propose to put it before Trustees.

With regard to the complainant’s planned contribution to the programme, and the decision to withdraw the invitation, the Adviser noted that the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. The “direction of the BBC’s editorial and creative output” was specifically defined in the Charter (article 38, (1) (b)) as a duty that was the responsibility of the Executive Board, and one in which the Trust did not get involved unless, for example, it related to a breach of the BBC’s editorial standards which did not apply in this case. Decisions relating to which contributors should have been invited onto a programme fell within the “editorial and creative output” of the BBC and were the responsibility of the BBC Executive.

The Adviser considered that Trustees would be of the view that the BBC Executive had provided a reasoned and reasonable response to the complainant’s concerns and that no evidence had been presented which would require further action. 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 asked Trustees to review the decision of the Senior Editorial Complaints Adviser not to proceed with the appeal.

The Panel’s decision

The Panel was given the complainant’s appeal to the Trust, the reply from the Senior Editorial Complaints Adviser, and the challenge to her decision.

The Panel agreed that the decision to withdraw the complainant's planned contribution to the programme was an operational matter which fell outside the remit of the BBC Trust, and the Senior Editorial Complaints Adviser had been correct to say that there was no reasonable prospect of success for an appeal on that aspect of the complaint.

With regard to the alleged rudeness of the assistant, the Panel considered that there was a difference in recollections of what had occurred which it would not be able to resolve. The Panel noted that the Editor had arranged to meet the complainant, and it agreed that this indicated that the production team had taken the complainant's allegations seriously and had tried to resolve them. The Panel was sorry if the complainant felt that he had been mistreated but it agreed that there would be nothing further to be gained from an investigation of this complaint on appeal. Given the action that had already been taken and the apologies the complainant had already received, the Panel agreed that any further escalation of this complaint would be disproportionate.

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 the standards of presentation on the BBC

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

Background

The complainant first contacted the BBC on 21 July 2013. He considered the standards of presentation had fallen and that news presenters in particular spoke too quickly. He considered this might be related to inexperience and suggested that some reporters appeared to be "in awe" of their interviewees. He felt that shortcomings were apparent in both studio reports and in live, external interviews and they made the reports difficult to understand. In particular he referred to the presenting style of a BBC presenter, whom he considered had a strong accent and nasal voice. He suggested that weather presenters too were increasingly talking too quickly.

On 28 July the complainant was sent a response from BBC Audience Services, which stated:

"Presenters often cover considerable detail during broadcast reports. They aim to present relevant information clearly, however we acknowledge you find these reports are rushed.

"Presenters are expected to have a good command of Standard English, but it's also important they come across as approachable and easy for viewers to identify with. In such contexts it may be considered appropriate for them to speaking 'colloquially' rather than formally.

Programme contributors are appointed on the basis of their experience and talent, but judgements are often subjective and we would never expect everyone to agree with every choice we make. We don't engage any producer, presenter, interviewer or reporter unless we believe they're competent and can meet the specific demands required of them."

The complainant was dissatisfied with the response and renewed his complaint on 3 August, referring to the high speed of delivery, unsuitable presentation manner and strong regional accent. The complainant also noted that he had not expressed a view on the clothes worn by the presenter – although this had been a point referred to by Audience Services.

The complainant was sent a further response on 15 August. This included an apology that his earlier reply had referred to the clothes worn by the presenter when this had not been the subject of his complaint.

The complainant remained dissatisfied and complained again on 17 August.

The complainant received a final response on 19 August which went on to state that BBC Audience Services would not correspond further on this matter.

The complainant was advised that he could appeal to the Trust against this decision.

Appeal

The complainant appealed to the Trust on 23 August 2013. He did not consider the responses he had been given were adequate – and considered that the first response, which referred to a point he had not made – was evidence that careful thought had not been given to his concerns. He wrote: “Having taken the time to draw attention to this, I had expected such to be treated with the respect, with an accurate and appropriate appraisal.” He felt this had not been forthcoming. With regard to the presenter he had referred to by name, he stated:

“I would point out that I have indicated that the lowering of clarity is not confined on one individual, but is common with the less experienced presenters.”

Decision of the Senior Editorial Complaints Adviser

The Senior Editorial Complaints Adviser (the Adviser) carefully read the correspondence that had passed between the complainant and the BBC. She noted that the complainant wished to appeal on the basis of his original complaint – about the general standards of presentation on the BBC. The Adviser noted, however, that BBC Audience Services had ceased handling this complaint at Stage 1 and that the complaint had not gone to Stage 2. She therefore decided that the point she should consider was whether an appeal against the decision of BBC Audience Services not to correspond further with the complainant had a reasonable prospect of success.

The Adviser acknowledged the strength of the complainant’s feelings on this subject. However, she noted that, under the Complaints Framework, complainants were advised to refer to the specific date and time of output that was the subject of a complaint and what service it was on. She considered that, in the absence of that information, BBC Audience Services had given a general response that had sought to explain what was required of broadcasters when they were recruited (that is: “We don’t engage any producer, presenter, interviewer or reporter unless we believe they’re competent and can meet the specific demands required of them.”) The Adviser considered that it was a key requirement of a broadcaster that they could be understood and this was implicit in the response.

She noted that the complainant had referred to one presenter by name but had not identified any specific output that he had found difficult to follow. Again, she considered Trustees would be likely to conclude that BBC Audience Services had given a reasonable response in a situation where no particular output had been identified as hard to understand.

She noted that the complainant had suggested inexperience might be an issue; however, again she noted that no presenters or reporters had been identified who were particularly inexperienced. She noted the only presenter who had been identified had had an on-screen role for more than two years and worked for the BBC for more than a decade.

The Adviser acknowledged that the first response sent to the complainant by BBC Audience Services had responded to a point that he had not made and the complainant considered this suggested his complaint had not been considered carefully. She noted that the subsequent response he had been sent had apologised for this mistake and she was sure Trustees would wish her to extend her apologies too on their behalf. The Adviser considered that where the BBC acknowledged it had made a mistake and apologised, Trustees generally considered the matter resolved and therefore she did not consider this point of appeal would have a reasonable prospect of success were it to be put before Trustees.

Therefore, the Senior Editorial Complaints Adviser considered that Trustees would be likely to conclude that Audience Services provided a reasoned and reasonable response to the complainant's concerns. She considered it was reasonable for the BBC to decline to engage in further correspondence on this issue. It followed from this that she did not consider the appeal had a reasonable prospect of success and it should not therefore be put before Trustees.

In terms of the employment of presenters generally, 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 unless, for example, it raised broader issues such as a breach of a station's Service Licence. Decisions relating to who should be employed as presenters were operational matters that were the responsibility of the BBC Executive.

Request for review by Trustees

The complainant asked Trustees to review the decision of the Senior Editorial Complaints Adviser not to proceed with the appeal. He said he remained unconvinced that the complaint had been dealt with in a reasonable manner, and said that the apology for the error in the first response was insufficient. The complainant also said that he did not expect to have to provide specific times and dates of content, as he was making a general complaint. He cited an article as evidence that he was not alone in his views on a particular presenter's manner of presentation.

The Panel's decision

The Panel was given the complainant's appeal to the Trust, the reply from the Senior Editorial Complaints Adviser, the challenge to her decision and the correspondence between the complainant and the BBC.

The Panel noted that the substance of the complaint was a matter about which the complainant felt strongly. It noted that the BBC had provided the complainant with a number of considered responses, notwithstanding an error in the first response, for which an apology had been given. The Panel was mindful of the large volume of correspondence received by the BBC and agreed that, taking into account the substance of the complaint, the BBC appeared to have acted reasonably in deciding that there was nothing further it could add to the replies that had already been given. The Panel agreed that it was unlikely to uphold an appeal against the decision of the BBC to cease correspondence on this matter.

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 Rip Off Britain's decision not to investigate a matter raised by the complainant

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

Background

The complainant had written to the makers of *Rip Off Britain* in relation to the death of his wife while in hospital. The complainant alleged that there had been a cover-up at the hospital and believed that the programme should investigate his story.

The *Rip Off Britain* programme team responded with a letter which informed the complainant that the programme team valued the letters they received but were not able to use every idea that was suggested.

Following further correspondence the complainant wrote to BBC Audience Services, complaining about a perceived cover-up in this case and claiming damages. He alleged that the programme makers had originally offered to investigate his case but had since reneged on their promise.

On 14 August 2013, the complainant received a response from BBC Audience Services. This informed the complainant of the basis on which the BBC could refuse to continue to correspond on a matter. It referred to 1.7-1.9 of the General Complaints Procedure.

The letter went on to state:

"We have spoken to the Rip Off Britain production team and have read the correspondence that you forwarded to this department. We are satisfied that no undertaking was ever given by the production team to investigate your concerns in relation to {name] Hospital and that they have responded to your correspondence in an entirely reasonable manner. We consider that the production team has no case to answer."

Appeal

The complainant remained dissatisfied and on 21 August appealed to the BBC Trust.

He considered the BBC had made a binding agreement to investigate his story.

Decision of the Senior Editorial Complaints Adviser

The Senior Editorial Complaints Adviser (the Adviser) carefully read the correspondence in this case.

The Adviser was very sorry to read about the death of the complainant's wife. She saw that the complainant had been married for a long time and she appreciated how very upsetting it must have been when she died.

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.

In reviewing the correspondence, the Adviser considered the programme team had explained to the complainant that it could not feature every story that was brought to its attention – and that the complainant had been advised to contact the hospital's own complaints department if he had concerns about the treatment that had been given to his wife.

The Adviser also noted that decisions relating to what items to feature on a programme were day-to-day matters for the Executive. 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. That meant it was a duty that the Trust would not usually get involved in.

The Adviser considered Trustees would be likely to conclude that the programme team had given reasonable responses to the complainant which had explained why it could not feature every story that was offered and had asked the complainant to stop using BBC logos in his letters to other people. 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 asked Trustees to review the decision of the Senior Editorial Complaints Adviser not to proceed with the appeal.

The Panel's decision

The Panel was given the complainant's appeal to the Trust, the reply from the Senior Editorial Complaints Adviser, the challenge to her decision and the correspondence between the complainant and the BBC.

The Panel noted the complainant's very strong feelings but agreed that the programme team had given reasonable responses to the complainant which had explained why they could not feature every story that was offered. The Panel agreed that it appeared to be reasonable for the BBC to decline to engage in further correspondence on this issue, given that there was nothing further it could add to the responses it had given. The Panel agreed that it was unlikely to uphold an appeal against the BBC's decision to cease correspondence.

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 various issues

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

Background

The complainant had written a series of extended letters to the BBC and the Dame Janet Smith Review dating from November 2012. These raised a wide variety of issues – ranging from his concerns in the light of Jimmy Savile revelations to the introduction of HD television – and copies of the letters were sent to various people within the BBC.

On 25 July 2013 Audience Services notified the complainant of their decision not to engage in further correspondence with him because they felt they had responded on the matters he raised as fully as they could and did not have more to add. The complainant escalated his complaint to the BBC Trust on 8 August 2013 as he was unhappy with this decision.

In his 83-page letter of appeal regarding the structure of the BBC and its policies, the complainant said he had much more information still to give about the BBC and he believed it would be to the BBC's benefit to have sight of that information. He also believed that BBC Audience Services had not dealt with all the information he had already submitted.

The complainant listed 50 suggestions about the ways in which the BBC could save money on staff costs and services, and also commented on and asked questions regarding the report on impartiality produced for the BBC by Stuart Prebble.

The complainant also requested a formal answer to his question about a BBC announcement on 16 July 2013 that Channels CBBC, BBC Three and BBC Four would become HD. One of the complainant's substantive concerns was the BBC's handling of matters relating to Jimmy Savile. In his appeal letter, he asked a number of questions.

The complainant then set out his objections to letters he had received from Audience Services.

The complainant then set out his comments on the final letter he had received from Audience Services dated 25 July 2013. He referred to the statement in this letter that:

“Unfortunately, this large volume of [your] correspondence with various copies to many different parties is causing us some administrative difficulties.”

The complainant apologised for this and said that had not been his intention, but he said “surely a few letters can't be causing the BBC that much of a problem?”

The complainant said he did not understand why there seemed to be no appetite on the part of the BBC to explore the further issues he had yet to write about.

Decision of the Senior Editorial Complaints Adviser

The Senior Editorial Complaints Adviser (“the Adviser”) noted that the complainant had raised a great number of issues of concern to him. She noted also that BBC Audience Services had ceased handling the complaint at Stage 1 and that the complaint had not

gone to Stage 2. She therefore decided that rather than addressing all the points of the substantive complaint, the point she should consider was whether an appeal against the decision of BBC Audience Services not to correspond further with the complainant had a reasonable prospect of success.

The Adviser acknowledged the strength of the complainant's feelings on many issues of concern to him, but noted that the BBC's General Complaints Framework stated:

At all stages of this Procedure, your complaint may not be investigated if it...is trivial, misconceived, hypothetical, repetitious or otherwise vexatious.

The Adviser observed that the letter submitted to the Trust by the complainant was extremely long and repetitious. She noted that the complainant had previously received detailed responses to his complaints from the Complaints Adviser, BBC Audience Services, who had responded with courtesy, explaining that he could not comment

"...on various historical matters which you mention because clearly times and people and management and cultures and practices have long-since changed, thus there is nothing I can usefully say on some points here other than to reflect the current situation."

The Adviser was sorry to learn of the complainant's poor health and noted that the complainant did not consider he had been shown any sympathy or concern by the BBC, but she considered that the Complaints Adviser had responded reasonably.

The Adviser noted that the complainant had been told by the BBC Investigations Unit, that if he had any evidence of criminality his concerns would be investigated.

The Adviser considered that Trustees would be likely to conclude that the appeal did not raise any operational policy issues or any breaches of the editorial guidelines. She also considered that Trustees would be of the view that Audience Services had provided a reasoned and reasonable response to the complainant's concerns. She considered it was reasonable for the BBC to decline to engage in further correspondence on this issue. It followed from this that she did not consider the appeal had a reasonable prospect of success and it should not therefore be put before Trustees.

Request for review by Trustees

The complainant asked Trustees to review the decision of the Senior Editorial Complaints Adviser not to proceed with the appeal. His 34-page response largely reiterated the points he had previously made.

The Panel's decision

The Panel was given the complainant's appeal to the Trust, the reply from the Senior Editorial Complaints Adviser, the challenge to her decision and the correspondence between the complainant and the BBC.

The Panel noted that the complainant had asked some questions about the Trust's Breadth of Opinion impartiality review, and agreed that where possible these questions should be answered in a reply to the complainant from the Trust Unit.

The Panel considered the issues raised by the complainant and the responses that had been provided to him by the BBC at Stage 1 of the complaints process. The Panel agreed that the complainant had not raised any significant operational policy issue or any

breaches of the Editorial Guidelines. The Panel noted that where appropriate the complainant's concerns had been forwarded to the Dame Janet Smith Review team.

The Panel agreed that it was likely to conclude that the BBC had responded appropriately to the issues raised by the complainant and that it was not likely to uphold an appeal against the BBC's decision to cease correspondence on these matters.

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 coverage of “nonfeasance, misfeasance and malfeasance”

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

Background

The complainant complained to the BBC on 3 July 2013. He considered the BBC had failed to report on issues of misconduct in public office. He stated:

“I have been trying for some years now for the BBC to expose Criminal Misconduct (a) misfeasance (B) nonfeasance (c) Malfeasance”

In particular, he stated that a reporter on *Panorama* he had been in contact with “was told not to do a story” and he observed that one person each week died in police custody.

The complainant received a response on 22 July 2013. This explained that his correspondence was being dealt with according to the BBC’s complaints process and went on to state:

“We understand you feel ‘Panorama’ was told not to do a story about people dying in police custody.

“We have little to add to previous correspondence [the reporter] from ‘Panorama’ has had with you on this matter. We also strongly reject any suggestion that ‘Panorama’ were told not to pursue this story as you suggest. The programme did not look into this matter further because of editorial reasons alone.”

The complainant remained dissatisfied and renewed his complaint. Following a number of chasing emails and phone calls, and holding emails from the BBC, the complainant was sent a further response from BBC Complaints on 5 September. This stated:

“Firstly, please accept our sincere apologies for the delay in responding to your correspondence. We appreciate that you felt strongly enough to contact us again and have noted your points.

“Again, we would like to emphasise that ‘Panorama’ receives many programme suggestions on a very regular basis. It’s simply the case that not all suggestions can be feasibly considered. This is for a range of editorial reasons. That said, the programme has investigated many of the stories you cite.”

The letter gave examples about broadcast investigations by *Panorama* into police misconduct and informed the complainant that BBC Complaints had nothing further to add and would not correspond further on this matter. The complainant was advised that he could appeal to the Trust if he was unhappy with that decision.

On 6 September the complainant wrote again and stated:

“The whole essence of my complaint is about nonfeasance, misfeasance and malfeasance (These are explained in my original email). My point against the

whole BBC not just Panorama they don't explain what criminal misconduct in public office is ..."

Appeal

The complainant contacted the BBC Trust by phone twice in September to pursue his complaint.

The Senior Editorial Complaints Adviser (the Adviser) carefully read the correspondence that had passed between the complainant and the BBC. She noted that the complainant wished to escalate the substance of his complaint – about the BBC's coverage of matters of misconduct in public office. The Adviser noted, however, that BBC Audience Services had ceased handling this complaint at Stage 1 and that the complaint had not gone to Stage 2. She therefore decided that the point she should consider was whether an appeal against the decision of BBC Audience Services not to correspond further with the complainant had a reasonable prospect of success.

The Adviser acknowledged that this was a subject that the complainant felt very strongly about and had been involved in over a number of years.

She noted that the complainant had stated that the responses he had had to date were related to *Panorama* – whereas he had intended his complaint to be about the BBC's output as a whole.

Re-reading the correspondence, the Adviser considered that Trustees would be likely to conclude that while the complainant had referred to the BBC's output as a whole, he had also drawn particular attention to the output of *Panorama*, both at Stage 1 and in his dealings with the Trust. She therefore considered Trustees would conclude the BBC had acted reasonably in responding the way it had done – by giving the correspondent details of a number of editions of *Panorama* which had dealt with the subject of misconduct in public office.

She noted that the complainant considered the BBC had failed to cover matters of misconduct in public office, but considered she had not seen evidence that supported that complaint.

Therefore she considered Trustees would be likely to conclude the BBC had responded reasonably to the complaint that had been made and had behaved appropriately in closing down the correspondence. Therefore she did not consider the appeal had a reasonable prospect of success and did not intend to put it before Trustees.

The Adviser was mindful too 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 what subjects to cover in an investigative series fell within the "editorial and creative output" of the BBC and were the responsibility of the BBC Executive.

The Senior Editorial Complaints Adviser decided that the complainant's appeal did not have a reasonable prospect of success and it should not, therefore, be put before Trustees.

Request for review by Trustees

The complainant asked Trustees to review the decision of the Senior Editorial Complaints Adviser not to proceed with the appeal. He cited a number of alleged cases of misconduct in public office which he said the BBC had not adequately covered.

The Panel's decision

The Panel was given the complainant's appeal to the Trust, the reply from the Senior Editorial Complaints Adviser, the challenge to her decision and the correspondence between the complainant and the BBC.

The Panel agreed that, while the complainant had referred to the BBC's output as a whole, he had also drawn particular attention to the output of *Panorama*, both at Stage 1 and in his dealings with the Trust. The Panel agreed that the BBC had acted reasonably in giving the correspondent the details of a number of editions of *Panorama* which had dealt with the subject of misconduct in public office.

The Panel noted that, in any case, the question of what subjects to cover in output was a matter of the legitimate editorial discretion of the programme makers. Given this, the Panel agreed that the responses which the BBC had given to the complainant were appropriate. The Panel agreed that it was not likely to uphold an appeal against the BBC's decision to cease correspondence with the complainant on this matter.

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

Television Licensing

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

Complaint and Appeal

The complainant appealed to the Trust by a letter dated 2 April 2013, having received a letter dated 25 March 2013 from the BBC's Chief Financial Officer, rejecting his complaint.

The complainant had first contacted the BBC in 2007 outlining his concerns regarding the application and enforcement of the TV Licensing system and citizen rights. Throughout his correspondence with TV Licensing and the BBC over subsequent years he put forward a number of arguments to suggest that the BBC is misunderstanding and misrepresenting the law. He broadly disputed the status of the BBC as a public service, the fairness of the licence fee, the BBC's attitudes and approach to "Legally Licence Free people" and the fairness and lawfulness of the treatment of evasion suspects. He raised a number of issues with the BBC's process for licence fee enforcement, including its contact strategy for people who do not respond to letters, the authority under which the BBC visits addresses, conducts searches and interviews potential evaders and the BBC's prosecution policy. He referenced existing anti-harassment legislation and the Human Rights Act 1998, and asserted that the regime the BBC has created is "unlawful".

The BBC provided a series of responses to the complainant. The BBC Executive explained that they were not able to engage into lengthy debate about their application of the law because they received legal advice on their conduct of TV licensing which they were not able to share with the complainant because it had to remain confidential and was legally privileged. However, they addressed the substance of the issues he raised. They disputed the complainant's allegations that the system for administering and enforcing the TV licensing regime is "misguided" and that "offences are being committed in both the day-to-day operation of 'TVL' and in the determination of its policies". The Executive responded to all of the complainant's detailed points, explaining that the TV licensing system is set out in legislation and that its operation did not breach human rights laws. On escalation, the Chief Financial Officer informed the complainant that she was "satisfied that the BBC and its agents are fully compliant with all relevant legislation". She also added that "the complaints process does not oblige [the BBC] to enter into any lengthy legal debate around current legislation".

In making his appeal to the Trust the complainant summed up his argument as follows:

1. There is no basis in UK law or culture for the door-to-door investigatory and/or accusatory activities undertaken by TV Licensing
2. TV Licensing requires innocent citizens to prove their innocence in the absence of prior suspicion
3. The BBC has failed to consider the substance of the complaint because it has declined to respond with relevant, professional legal analysis to the points raised in the original complaint which cited a number of pieces of current legislation and legal precedent.

Decision of the Senior Editorial Strategy Adviser

The Senior Editorial Strategy Adviser (“the Adviser”) noted that the Charter requires the Trust to play a role as final arbiter in the case of appropriate complaints. Under the Agreement, the Trust must ensure that all appeals that raise a matter of substance are subject to a right of appeal to the Trust, and that the Trust is final arbiter if any question arises as to whether or not an appeal is for the Trust. More generally, the Trust must hold the BBC Executive to account for its compliance with regulatory requirements and the general law (although the Trust cannot rule definitively on the meaning of legislation, as a court can). The Trust must also ensure that arrangements for the collection of the licence fee are efficient, appropriate and proportionate.

The Adviser considered the correspondence from 2007 onwards from the complainant, TV Licensing, the Licence Fee Unit and the Chief Financial Officer and took legal advice (which Trustees noted is confidential and legally privileged).

The Adviser wrote to the complainant to explain that the Trust Unit had taken its own legal advice on his complaint. While that advice remained confidential and privileged, she provided a broad outline of the advice which confirmed that his arguments did not give the Trust cause for concern about the legality of the conduct and practices of TV Licensing.

The Adviser concluded that it was not appropriate, proportionate and cost-effective for Trustees to consider the aspects of the complainant’s appeal which related to the legality of BBC actions in collecting the TV licence fee. She emphasised that the Trust is not a court and cannot give definitive rulings on questions of law. Even if it attempted to do that, it could not publish a finding that gave details of the BBC’s legal arguments, over which the BBC is entitled to (and does) maintain confidentiality and legal privilege. However, she noted the Trust’s specific responsibility under the Charter for ensuring that arrangements for the collection of the licence fee are efficient, appropriate and proportionate. The Adviser therefore agreed to ask Trustees to consider raising two points which the complainant had made in his appeal (concerning an allegation of a material shortfall between TVL practice and the requirements of the Police and Criminal Evidence Act 1984, Code B; and relating to and the rights of suspects after the Scottish case of *Akram*²) with the BBC Executive.

The Adviser also outlined her view that the complaint that the Executive had failed to consider the substance of the complaint because it had declined to respond with relevant, professional legal analysis to the points raised should also not be put in front of Trustees. She explained that she was satisfied that the Executive had given due consideration to the substance of the complaint and given a reasonably complete account of their conclusions, even though, in giving their reasons, they could not share their legal advice. In the Adviser’s view, they were justified in taking that approach because of the need to maintain the confidentiality of, and legal privilege in, the BBC’s legal advice.

Therefore the Adviser considered the case (aside from the two points mentioned above) did not have a reasonable prospect of success as it did not raise a matter of substance and (aside from the two points mentioned above) should not be put before Trustees.

The complainant welcomed the Adviser’s decision to raise the two points with the BBC Executive. However, he requested that Trustees review the decision of the Adviser not to put the remaining points in front of Trustees. The complainant said that the Adviser’s view that the legality of BBC/TV Licensing’s operations was not a matter of substance was “perverse in the extreme”. He said he found the Adviser’s position “irrational and not conducive to the broader public good”. He responded with detailed points on all of the

² *PF Glasgow v Parveen Akram* (2011, unreported).

issues he raised on appeal. He also said it would “simplify matters considerably” if the generality of the BBC’s legal advice could be brought into the public domain so that it could be assessed against statute and precedent.

The Panel’s decision

The Panel was given the complainant’s appeal to the Trust, the reply from the Trust’s Senior Editorial Strategy Adviser, the challenge to her decision, and confidential and legally privileged legal advice.

The Panel agreed with the Senior Editorial Strategy Adviser that the first two grounds of this appeal should not proceed – first, because the complainant’s legal arguments in the main lack merit (and so do not have a reasonable prospect of success or raise a “matter of substance”), and second, because the subject-matter is inappropriate: the Trust is not a court and cannot rule definitively on questions of law, so its view would be no more than one opinion of what the law requires. Even if it attempted to do so, it could not publish details of its legal arguments because that would deprive its advice of legal privilege, and could prejudice the BBC’s position in any litigation.

The Panel also agreed that the third ground – that the Executive has failed to consider the substance of his complaint – should not proceed. The Panel was satisfied that the Executive gave due consideration to the complaint, and gave a reasonably complete account of their conclusions, even though, in giving their reasons, they could not share their legal advice, for the same reasons as the Trust is unable to share its advice. This, the Panel thought, was apparent from the replies from the BBC’s Head of Revenue Management and from the Chief Financial Officer.

The Panel did, however, agree that, pursuant to the Trust’s specific responsibility under the Charter for ensuring that arrangements for the collection of the licence fee are efficient, appropriate and proportionate, the Trust Unit should seek a further explanation from the Executive as to the points concerning the Scottish case of *Akram* and as to the applicability of the PACE Code B. They asked that the Executive’s response be reported for noting to the CAB but that the Trust Finance Committee should be invited to give substantive consideration to it, because that Committee’s terms of reference cover TV licence fee collection arrangements. They also asked that the outcome be shared, as far as appropriate (e.g. consistent with maintaining confidentiality and legal privilege), with the complainant.

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