

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

November, issued January 2017

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Remit of the Complaints and Appeals Board

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The complaint concerned changes to the presenters of the series *Top Gear* and also filming for the series that took place in the area around the Cenotaph. The complainant made the following points:

- He did not like the changes which had been made to the presenting team since the departure of Jeremy Clarkson.
- He liked the presenting team when it consisted of Jeremy Clarkson, James May, Richard Hammond and Sabine Schmitz.
- He felt that Chris Evans and Matt LeBlanc were too loud, they shouted too much and it was not possible to understand what they were saying.
- The stunt around the Cenotaph had been very hurtful and upsetting.
- Letters from the BBC were unsigned and were therefore not legal.

BBC Audience Services responded to his complaint and made the following points:

- The BBC believed Chris and Matt had successfully kicked off a whole new era in style but appreciated that the complainant might disagree. Since the complainant had first expressed his concerns about Chris Evans, he had stepped down from his duties as presenter of *Top Gear*.
- The BBC wanted to make it absolutely clear that the *Top Gear* team had the utmost respect for the Cenotaph, what it stood for, and those heroic individuals whose memory it served so fittingly. The Cenotaph was at no point intended to feature in the programme and did not appear in the final film.
- The driver of the car was briefed prior to filming as to where to drive and to not do any manoeuvres close to the monument, an instruction which he had adhered to. The producers were aware of how some of the images in the press looked and Chris Evans apologised for this at the time.

Audience Services said they had nothing further to add and that they did not believe the complaint had raised an issue that justified further investigation.

Appeal

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

- He felt the Cenotaph stunt should never have been done.
- He would like Jeremy Clarkson to be brought back as a presenter, alongside Richard Hammond, James May and Sabine Schmitz.
- He would have liked his feedback on what could be done to make *Top Gear* better to have been more positively received. If he had a good idea for *Top Gear*, he did not feel he should have to write to the Trust about it.

Decision of the Trust Adviser

The Trust Adviser (the Adviser) decided that the point she should consider was whether the complainant's appeal against the decision of Audience Services not to correspond further had a reasonable prospect of success. She decided that it did not.

The Adviser understood that the complainant was unhappy about two issues: firstly, the choice of presenters and secondly, the filming that had taken place around the Cenotaph.

The Adviser noted that decisions about who should present programmes were operational ones that rested with the BBC; the Trust did not have a role to intervene in those decisions. She appreciated that the complainant's suggestions were intended to make *Top Gear* better, and she acknowledged his view that his suggestions could have been better received, and ideally, acted upon. She noted that Audience Services had apologised for the fact that the complainant had found one agent's response hurtful and they had explained that the agent was just trying to answer the points made by the complainant.

With regard to the filming around the Cenotaph, she acknowledged the significance of the Cenotaph to the British public and the sacrifice it represented. She noted that the BBC had published an apology for the filming that had taken place and that the presenter, Chris Evans, had also apologised and indicated his own concern about the event.

However, the Adviser noted that the Royal Charter and 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" and "the operational management of the BBC" were defined as duties that were the responsibility of the Executive Board under Article 38, (1)(b) and (1)(c) of the Charter. The Adviser noted that all BBC output was required to meet the standards set out in the Editorial Guidelines. She considered that the choice of locations for filmed sequences in *Top Gear* were editorial and operational decisions that rested with the BBC. She noted that the BBC had explained that the Cenotaph was never intended to feature in the filming and it had not appeared in the final film.

The Adviser noted that the complaints system was funded through the licence fee and that it was required to be efficient, in the interests of all licence fee payers. She appreciated that the complainant had been unhappy that letters addressed to him from Audience Services Complaints Advisors did not include a signature. However, she noted that Audience Services had explained that the letters did have a typed name attributed to them and were sent in that way for reasons of efficiency. She did not consider there was any indication that the responses were not sincere. She noted the complainant's comments querying the legality of sending letters without a written signature but noted that the letters were not of a contractual nature and she did not consider this element of complaint raised an issue which Trustees would be likely to uphold.

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

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with his appeal. He felt the new *Top Gear* should not have been made and that he was entitled to write with his opinions to BBC Audience Services without being closed down. He considered he had been denied a service which he should have received and that he had been discriminated against (directly and indirectly) on the basis that he may have a protected characteristic and was associated with someone with a protected characteristic. He cited the Equality Act and the Human Rights Act (Articles 3,7,10 and 13).

The Panel's decision

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

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

- The Royal Charter sets out a division of responsibility between the BBC Executive and the BBC Trust. "The editorial and creative direction of the BBC" was defined as a duty that was the responsibility of the Executive Board under article 38, (1) (b). The responsibility for the selection of stories, the prominence given to them and the manner in which they were presented rested with the programme makers rather than the Trust.
- The complainant had received a reasonable and reasoned response from BBC Audience Services.
- The complainant was entitled to write to Audience Services again in the future but not on this subject which was now closed.
- There was no evidence to suggest he had been discriminated against because he had a protected characteristic or was associated with someone with a protected characteristic. The same procedure was applied to all complainants where their complaint did not raise a possible breach of Editorial Standards or other policy or raise a significant matter of general importance.

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

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

Decision of BBC Audience Services not to respond further to a complaint about Match of the Day 2: Extra

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

The complaint

The complaint concerned the number of women pundits talking about men's football. The complainant made the following points:

- He said that two out of the four presenters on the programme were women and he did not feel this was appropriate.
- He said he had noted that the BBC had not repeated having a woman commentating on a men's football game on BBC One's *Match of the Day* which in his view did not work.
- In the case of men's football, it was not appropriate for a woman to deliver her "expert" opinion. If it was a programme about women's football or even mixed football, then it would be fair enough, but he felt it was not appropriate for a woman to comment on men's football in which no female footballers took part.

BBC Audience Services made the following points:

- Programme contributors were appointed on the basis of their experience and talent, but judgements were often subjective and the BBC would never expect everyone to agree with every choice it made.
- The BBC was committed to equal opportunities for all, irrespective of ethnic or national origins, gender, marital status, sexuality, disability or age. In selecting presenters, actors, and other contributors the BBC aimed to employ those with the most suitable talents for the role.
- Jacqui Oatley was the first female commentator on BBC One's *Match of the Day* and had commentated on matches on that show many times since. She had also presented *Match of the Day* in March 2015, was the first female presenter of the sports news radio show, *Sportsworld*, on BBC Radio 5 Live, and had presented *Final Score* and *The Football League Show* as well. An FA qualified football coach and a director of Women in Football, Ms Oatley was appointed Member of the Order of the British Empire (MBE) in the 2016 New Year Honours for services to broadcasting and diversity in sport. It was not correct to say her commentary had not worked and that she was not being featured again.

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

Appeal

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

He made the following points:

- He did not think he had received sufficient explanation as to why there was a female pundit on a TV show talking about men's football. Audience Services had given a reason for the female presenter, which he fully agreed with, but not a female pundit. He said the pundits were supposed to be experts in the field of

whatever the programme they were presenting; in this case it was a men only sport and no female football was discussed in the programme.

The Panel's decision

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

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

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

- The Royal Charter set out a division of responsibility between the BBC Executive and the BBC Trust and drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. The "direction of the BBC's editorial and creative output" and "the operational management" of the BBC were specifically defined in Article 38, (1) (b) and (c) as duties which were the responsibility of the Executive Board. The Royal Charter also explained that the Trust must not exercise or seek to exercise the functions of the Executive Board. (Article 9, (3)).
- Trustees considered that decisions about who to employ as a sports presenter, match commentator or pundit were part of the editorial and operational responsibilities of BBC Sport.
- The complainant had received a reasoned and reasonable reply. BBC Audience Services had explained to the complainant that the BBC was committed to equal opportunities for all and chose presenters based on their talent and experience, but would not expect everyone to agree with every choice made.

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

Decision of BBC Audience Services not to respond further to a complaint about regional accents in BBC output

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

The complaint

The complaint concerned presenters and correspondents who spoke with regional accents. The complainant made the following points:

- He considered that the increasing use of regional accents in BBC output had led to lazy pronunciation such as "gunna", "wanna" and it was becoming more common for the "g" to be missed off words ending "ing". Having an accent was not an excuse for speaking badly and lazily.
- He felt that a disproportionate number of Scottish people were employed in presenting and correspondent roles by BBC News.
- He felt Audience Services had not addressed his concerns at Stage 1. He said the BBC's policy of recruiting people with regional accents had no bearing on his personal view of any particular BBC employee.
- He was concerned by the BBC's apparent decision not to uphold a decent standard of language by its presenters and correspondents, together with bias in favour of Scottish presenters.
- He agreed that the BBC had a duty to represent the whole of the UK, but a central point of his complaint was that the BBC was failing to do this by employing so many Scottish presenters.

BBC Audience Services made the following points:

- The range of tastes and opinions held by the audience was so diverse that it was inevitable some viewers would dislike or disapprove of certain presenters. Opinions were subjective and the BBC would never expect everyone to agree with every choice made.
- All presenters were appointed on the basis of their experience and talent. The BBC regretted any occasion where anyone was disappointed in standards of presentation and they were sorry to learn that the complainant found that overall the tone and consistency had worsened.
- The BBC was committed to equal opportunities irrespective of national origins.
- The BBC had an obligation to reflect the whole of UK society which included the many accents and cultures that made up the population.

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

Appeal

The complainant appealed to the BBC Trust on the substance of his complaint. He did not feel that he had received a satisfactory response to his concern that there were too many Scottish correspondents working in BBC News. He felt the Scots were disproportionately represented in terms of the UK population as a whole.

The Panel's decision

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

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

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

- The Royal Charter set out a division of responsibility between the BBC Executive and the BBC Trust and drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. The “direction of the BBC’s editorial and creative output” and “the operational management” of the BBC were specifically defined in Article 38, (1) (b) and (c) as duties which were the responsibility of the Executive Board. The Royal Charter also explained that the Trust must not exercise or seek to exercise the functions of the Executive Board. (Article 9, (3)).
- Trustees considered that decisions about who to employ as a correspondent, news reader or presenter were part of the editorial and operational responsibilities of BBC News.
- The complainant had received a reasoned and reasonable reply. BBC Audience Services had explained to the complainant that the selection of presenters was based on talent and experience, and that the BBC had an obligation to reflect the diversity of UK society which included the many accents and cultures that made up the population.

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

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

The complaint concerned the BBC's statement regarding its coverage of the allegations against Sir Cliff Richard.

The complainant made the following points:

- In 2015, an independent investigation concluded that South Yorkshire Police should not have released "highly confidential" information to the BBC about the planned search of Cliff Richard's property.
- How could an innocent man having his house searched be a "significant news story"?
- How could the BBC therefore defend its actions to broadcast that investigation, and go on to defend the reasons for doing so, especially as the BBC was a public broadcaster and supposedly acting in the public interest?

BBC Audience Services made the following points:

- The police investigation into allegations against Sir Cliff Richard was clearly a significant news story, which was covered extensively, not just by BBC News but also by the wider media.
- At the time, the Home Affairs Select Committee said that the BBC acted "perfectly properly" in its handling of this story.
- The BBC followed normal journalistic practices when reporting the investigation, and its news coverage always reflected Sir Cliff Richard's denials of the allegations.
- BBC News continued to report on the story as it developed, including giving prominent coverage to the decision of the Crown Prosecution Service (CPS) not to press charges.

Audience Services said they had nothing further to add and that they did not believe the complaint had raised an issue that justified further investigation.

Appeal

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

It was a lack of journalistic standards to cover the police search of Sir Cliff Richard's home. The BBC, as a public broadcaster was supposed to act in the public interest. Why had it defended the coverage when an independent inquiry had criticised South Yorkshire Police for releasing personal information?

Decision of the Trust Adviser

The Trust Adviser (the Adviser) decided that the point she should consider was whether the complainant's appeal against the decision of Audience Services not to correspond further had a reasonable prospect of success. She decided that it did not.

The Adviser noted, in general, that the BBC regularly reported on ongoing police investigations and this was an important part of its work; for example, in transmitting appeals for information on *Crimewatch* and broadcasting reconstructions of crimes. She

noted too that one reason why suspects could be identified by police before charges were made was that the resulting publicity could enable victims or witnesses to come forward.

She accepted that there was a legitimate public debate about whether the law should be changed so that suspects could not be identified prior to being charged. However, she noted that the legal position at the moment was that suspects could be identified – not least for the reason set out above that it allowed other possible victims to come forward.

The Adviser noted that the police operation had been the subject of an investigation by the Home Affairs Committee. It had published its findings which included the following statement:

“Given that the BBC had information about the investigation and the timing and location of the execution of the search warrant, which was freely provided to them by South Yorkshire Police, we see nothing wrong in their decision to run the story.”

She noted that the Home Affairs Committee report had observed that the police force had not requested that the BBC should not run the story or raised concerns that its inquiries would be jeopardised. She noted too that the Home Affairs Committee had been given assurances by the Director-General that the BBC would take very seriously any such request from a police force.

The Adviser noted that BBC Trust Chairman Rona Fairhead, speaking on BBC Radio 4's *Today* programme on 24 October 2014, had been asked about the Home Affairs Committee's inquiry into the police operation and had stated:

“Clearly, I have huge sympathy for anyone, whether they are a celebrity or not, if they are known and publicised to be part of a police investigation, particularly if it doesn't lead to charges.

“But I have to say this is an editorial decision. It is a matter for the Executive and the Home Affairs Select Committee did say formally that the BBC was entirely appropriate in making this report.”

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 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.

The Adviser noted that the response from BBC Audience Services had explained that the decision to run the story had been an editorial decision made by BBC News editors. She acknowledged the complainant's personal view that it was not a “significant news story”, but she noted that the story was covered not just by BBC News but also by the wider media. Audience Services had explained that, at the time, the Home Affairs Select Committee said that the BBC acted “perfectly properly” in its handling of the story. She also noted that Audience Services had explained that BBC News followed normal journalistic practices when reporting the investigation and its coverage had always reflected Sir Cliff Richard's denials of the allegations against him. While aware that (subsequent to the Audience Services decision appealed against) Sir Cliff Richard had announced his intention to sue the BBC and South Yorkshire Police in connection with the raid and the BBC's coverage, the Adviser did not consider this fact to be relevant to her decision and clearly could express no views on the legal action itself.

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

Request for review by Trustees

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

The Panel's decision

A panel of the Complaints and Appeals Board considered the points made by the complainant, the BBC and the Adviser. Trustees agreed with the Adviser that Sir Cliff Richard's intention to sue the BBC and South Yorkshire Police was not relevant to this decision and (like the Adviser) expressed no views on the legal action itself.

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

- The Royal Charter sets out a division of responsibility between the BBC Executive and the BBC Trust. "The editorial and creative direction of the BBC" was defined as the responsibility of the Executive Board under article 38(1)(b). The responsibility for the selection of stories, the prominence given to them and the manner in which they were presented by BBC News rested with the programme makers rather than the Trust.
- BBC News had followed normal journalistic practices when reporting the investigation.
- The Home Affairs Select Committee had concluded that "we see nothing wrong in [the BBC's] decision to run the story".
- The complainant had received a reasonable and reasoned response from BBC Audience Services.

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

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