

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

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

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

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

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

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

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

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

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

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

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

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

It is published at [bbc.co.uk/bbctrust](http://bbc.co.uk/bbctrust) or is available from:

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

# Rejected Appeals

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

## Cancellation of appearance on *Dragons' Den*

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.

### Background

The complainant and her husband had applied to be contestants on *Dragons' Den* and the complainant originally contacted BBC Audience Services on 27 April 2013 because her husband had been told in a phone call from the production team that their anticipated appearance on the programme had been cancelled due to contestant "over-booking". (In subsequent correspondence she said that she had tried to contact the production team to discuss this further but had been unable to get a response over the weekend, so she contacted Audience Services instead). She said that she and her husband had been through a selection process to appear on *Dragons' Den*. This began with an interview on 10 April 2013 which was followed up with a telephone call on 17 April telling the complainant that they had been selected to attend the studio recording on 3 May 2013. She and her husband made plans to attend on this date, but she was contacted on 26 April by the BBC to say that the production team had over-booked and their appearance would be cancelled. She said that no other explanation was given.

The complainant followed up her initial contact with another phone call to Audience Services two days later on 29 April, following a phone call from a member of the production team on that day, and said she would like to lodge an official complaint about her experience. The production team had again told her that she could not be in the show because contestants had been over-booked, but also told her that someone would be in touch with her the following day. No-one telephoned her the following day, but she received an email containing all the instructions for the recording day on 3 May 2013 and the email also contained details of a hotel room booking in her name for 2 May 2013. The complainant thought the production had had a change of heart and she prepared to travel to the recording. However, she received another phone call from the logistics team on 2 May 2013, the day she was due to travel to the hotel, prior to the recording on the following day, telling her that the email had been sent in error.

### Appeal

The complainant escalated her complaint to the BBC Trust on 25 June 2013, asking for confirmation that she had been treated correctly, and asking the Trust to confirm that it agreed with the policy, set out to her by the Series Producer of *Dragons' Den*, that the BBC could stand down the complainant from the programme at any time.

### Decision of the Senior Editorial Strategy Adviser

The Senior Editorial Strategy 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 arising from her experience as a potential contestant on *Dragons' Den*.

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

The Adviser noted that the complainant felt she had been badly let down by the production team as a result of the management of the *Dragons' Den* contestant selection process, and noted the complainant's concerns about the way her complaint had been handled by the BBC Executive.

The Adviser noted the *Dragons' Den* casting policy as referred to in the Series Producer's responses of 13 May and 23 May 2013:

"During the casting process you were also made aware that the producer's decision is final and any place you are offered in the den can be withdrawn at any time."

The Adviser noted that the complainant understood this to have been applicable up to the point of final selection for a place in the studio recording but, having been told she had passed her interview and been selected for a place, she considered that she and the BBC had responsibilities to each other. Although the Adviser appreciated that the complainant was very disappointed with the producer's decision, she did not consider that Trustees would be of the view that any evidence had been presented which contradicted the statement of the Series Producer that the complainant had been made aware that any place offered could be withdrawn at any time.

The Adviser noted that the complainant felt that the offer of a place on the programme had been withdrawn for "no reason at all". She noted that in phone calls dating from 26 April 2013, members of the production team had given "over booking" as the reason why the offer of a place on the programme was withdrawn from the complainant. She also noted that the Series Producer had offered a more detailed explanation of the consequences of the over-booking in his response of 13 May 2013:

"My reason for withdrawing the offer was to mitigate the risk of you coming to Manchester and going home without being filmed. I have no control over how long the Dragons talk to each entrepreneur and with roll overs already happening the chance of you making it in to Den is now very slim. I am confident that our team informed you of this with plenty of time to amend your plans."

The Adviser thought the Trustees would consider that the complainant had received a reasoned and reasonable response as to why the offer of a place had been withdrawn, though it was regrettable that this had occurred so close to the date of recording.

The Adviser noted that there had been a misunderstanding with regard to an email sent in error from a member of the production team to the complainant containing a confirmation of a hotel booking in her name together with joining instructions for the studio recording, and that the resulting disappointment arising from this error had been very distressing. This disappointment had apparently been compounded by the poor manner in which the complainant felt her concerns had been dealt with by members of the production team, including the Series Producer.

The Adviser noted that in his response of 23 May 2013, the Series Producer apologised to the complainant:

"I apologise if my email came across to you as patronising and arrogant, this was not my intention.

I appreciate your disappointment at not making it into the Den. In my first email I did explain why this decision was made and it is very unfortunate that not every entrepreneur makes it into the Den, even when they have excellent products.

At your initial audition in London we recorded you agreeing to a checklist, where one of the main points states: The BBC has no obligation to use my contribution and has the right to stand me down at any time.

I am sorry that you were stood down on this occasion and I wish you all the best with your business in the future."

The Adviser considered that the Trustees would be of the view that as the complainant had received an apology from the Series Producer this element of the complaint had been resolved, though she appreciated that the experience had been very disappointing and distressing for the complainant.

However, the Adviser did not believe that any elements of the complaint raised such serious issues that further action would be required. She therefore decided the appeal did not have a reasonable prospect of success and did not propose to put it before Trustees.

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

The complainant asked Trustees to review the decision of the Senior Editorial Strategy Adviser not to proceed with the appeal. She reiterated that she did not think the apology from the Series Producer was sufficient.

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

The Panel was given the complainant's appeal to the Trust, the reply from the Senior Editorial Strategy Adviser, and the challenge to the Head of Editorial Standards' decision.

The Panel had sympathy with the complainant's position. The Panel agreed that the mistakenly emailed hotel booking which led to the final confirmation that the complainant had been stood down on the morning of the day she was due to travel had been confusing and upsetting for her. This matter had not been well handled. The Panel noted however that potential contestants were informed that some of them might not make it into the final programme, and agreed with the Adviser that it is an operational decision

for the BBC to stand down potential participants when they believe that there is a risk of over-booking.

The Panel was satisfied that an apology had been given to the complainant both for the email sent in error and for the fact that the complainant felt patronised at the tone of the BBC's responses, and that there was no further action to be taken in this particular instance. The Panel would, however, write to the BBC Executive to ask if there were any lessons that could be learned from the complainant's experience.

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



## Lack of coverage by BBC News of a medical case involving alleged NHS negligence

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.

### Appeal

The complainant contacted the BBC Trust to complain that BBC News refused to report his son's experiences with the NHS unless they had his son's permission. The complainant said that he was not able to contact his son to obtain his consent, but that at the time of his son's treatment he was the main carer and had documentation to support this. The complainant stated that the story would not be about his son *per se* but about his (the complainant's) own experiences as a father.

The complainant had previously received responses on this matter from the Head of Editorial Compliance and Accountability, BBC News, at Stage 2 of the BBC's complaints process.

### Decision of the Senior Editorial Strategy Adviser

The relevant correspondence was reviewed by the Trust Unit including the Senior Editorial Strategy Adviser ("the Adviser") and an independent editorial adviser.

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

When looking into the relevant correspondence, the Adviser bore in mind the BBC's Editorial Guidelines. In this case, the particular section dealing with the principles of Fairness, Contributors and Consent was applicable as well as the specific guideline on Contributors and Informed Consent.

#### *Section 6: Fairness, Contributors and Consent*

The Adviser noted that BBC News had considered whether the complainant's allegations about the NHS in relation to his son's treatment could be reported. They had contacted some of the relevant parties involved and had come "*to the initial conclusion*" that under the BBC's Editorial Guidelines they "*could not proceed without first hearing from your son, who is, after all, central to the narrative.*" BBC News had noted that the complainant had suggested that the coverage could be about his own story, as the father of the patient involved. However, they had concluded that "*there would be no story without your son*" and for this reason it would not be possible to proceed without at least getting permission from his son to have his picture and details of his case made public. On this point, the Adviser considered Trustees would be likely to be of the view that BBC News had fully taken into account the requirements of the relevant Editorial Guidelines in reaching their decision. For this reason, she decided it was not appropriate to refer this appeal to the Complaints and Appeals Board.

The Adviser noted that BBC News had stated in their Stage 2 response to the complainant that "*if your son does want us to feature the case or talk to us, BBC South East would still be interested in covering the story*". This, however, would be a decision for BBC News and not the Trust.

The Adviser explained that the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. "The direction of the BBC's editorial and creative output" was specifically defined in the Charter (paragraph 38, (1) (b)) as a duty that was the responsibility of the Executive Board, and one in which the Trust did not get involved unless, for example, it related to a breach of the BBC's editorial standards which did not apply in this case. Decisions relating to the editorial judgement of BBC News on whether to investigate a news story fell within the "editorial and creative output" of the BBC and were the responsibility of the BBC Executive.

It followed from this that, while she was sympathetic to the complainant's situation and the frustrations he had experienced during the care for his son, she did not consider the appeal had a reasonable prospect of success. She therefore decided that it should not be put before Trustees.

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

The complainant asked Trustees to review the decision of the Senior Editorial Strategy Adviser not to proceed with the appeal. He reiterated why he thought that this was an important story and the BBC should report on this in the public interest.

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

The Panel was given the complainant's appeal to the Trust, the reply from the Senior Editorial Strategy Adviser, and the challenge to the Head of Editorial Standards' decision.

While Trustees were saddened by the complainant's circumstances, they agreed that the BBC programme makers had to make decisions as to how to correctly apply the BBC Editorial Guidelines covering consent in making content. In this case the BBC had decided they required the explicit permission of his son to run the story. The Panel was mindful that it is important for the BBC to respect the right of individuals to privacy.

The Panel noted that BBC News considered that "there would be no story without [the complainant's] son". The Panel agreed that decisions relating to what stories to cover are editorial matters and are therefore a matter for the BBC Executive and not for 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.**

## **Midweek, BBC Radio 4**

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.

### **Background**

The complainant wrote to the producer of *Midweek* on 23 January 2013 requesting that she consider having him as a guest on the programme. He explained that he is a botanist and author with a special interest in great tree species of the world.

The complainant's request was turned down by the programme producer in a letter dated 23 April 2013. She said that, although the complainant's story was interesting, it was too similar to others which had recently been featured on the programme.

There followed an exchange of correspondence in which the complainant alleged that the decision not to use him as a guest was based on his lack of celebrity status. This culminated in the Controller of Radio 4 responding at Stage 2 of the complaints process. She did not accept that the complainant was rejected as a guest on *Midweek* on the basis of an absence of celebrity status or a major publisher for his book. Neither did she accept that this was a breach of the BBC's obligations on impartiality. She stated that in her view, *Midweek* had a very broad range of speakers with a variety of opinions and backgrounds.

### **Appeal**

The complainant appealed to the BBC Trust, saying that he was dismayed by the responses he had received so far. He summarised his concerns as being that the producer of *Midweek*:

*"...chose to have BBC celebrity guests rather than myself, even though my storylines were more original and of better quality than those of the celebrities. I believe she did this as she thought it would result in more listeners to Midweek."*

The complainant considered that such a policy was detrimental to the interests of the BBC and its listeners.

He said that in their previous responses to him, the BBC had not made any attempt to answer the four questions he had put to them, and said he requested and required answers to them. He said these were:

1. Had his name been Monty Don, with the same suggested storyline, he would have been invited on the programme.
2. That his storylines were not in any way similar to those of the "celebrity botanists" appearing on *Midweek*.
3. That his three suggested storylines were of better "quality and original content" (Radio 4's published policy) than those of the botanists who did appear on *Midweek*.
4. That Sir David Attenborough was on the programme solely because of his celebrity and BBC status.

The complainant added that the argument that the programme did often include non-celebrity guests and therefore the programme could not be accused of bias was "clearly nonsensical, demonstrably illogical and would not stand up to any serious scrutiny."

He said the matter could be resolved if the producer were to invite him to appear on the programme at a future date.

### **Decision of the Senior Editorial Strategy Adviser**

The Senior Editorial Strategy Adviser (the Adviser) carefully read the correspondence that had passed between the complainant and the BBC, and acknowledged the strength of the complainant's feelings.

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

The Adviser noted the complainant's allegation that not inviting him to take part in the programme was "*a serious transgression of the principal and most binding of the BBC's tenets, that of impartiality*".

She noted that all BBC output was expected to meet the values and standards set out in the Editorial Guidelines. For completeness, the Editorial Guidelines can be found in full here: [www.bbc.co.uk/editorialguidelines](http://www.bbc.co.uk/editorialguidelines); however the relevant section relating to Impartiality stated:

*Impartiality lies at the heart of public service and is the core of the BBC's commitment to its audiences. It applies to all our output and services - television, radio, online, and in our international services and commercial magazines. We must be inclusive, considering the broad perspective and ensuring the existence of a range of views is appropriately reflected.*

The Adviser appreciated that the complainant felt very strongly that his lack of celebrity status had precluded him from taking part in the programme, and that he believed his view was supported by the fact that his own ideas, submitted on 23 January 2013, were similar to ideas presented on the programme well after the date that his own ideas had been rejected.

With regard to the complainant's concern that his storylines were similar to those later presented on the programme by other botanists, the Adviser did not believe that Trustees would consider the alleged similarity of programme ideas submitted by the complainant to those of other more famous botanists to be evidence of a lack of impartiality on the BBC's part. The Adviser noted that the producer had sought to reassure the complainant in her response of 13 May 2013 that she had not adapted or passed on any of his story ideas.

The Adviser noted that in her stage 2 response of 25 June 2013, the Controller of Radio 4 explained that achieving the right blend of speakers and subjects for the programme took account of a range of considerations and was far from an exact science; inevitably, opinions in matters of editorial judgment would differ. The Adviser believed that Trustees

would be like to conclude that there was no evidence to suggest that the Controller of Radio 4 was incorrect in stating that *Midweek* did have a broad range of speakers with a variety of opinions and backgrounds, in accordance with the BBC's impartiality guidelines.

She noted the examples given by the programme producer in her response of 13 May 2013:

*"Midweek frequently features guest who are not well-known and who are invited to take part in the programme because they have a compelling story to tell. In recent weeks we have heard from a range of people with different experiences including Gladys Hudgell and Eva Rodwell, who remembered their days working in the sugar factories of East London; Ruth Brooks, an amateur scientist who came to science after a career as a teacher; tax inspector Kieran Holmes; artist Simone Sandelson, whose friendship with a Death Row prisoner inspired her work and young Welsh brewer Ffion Jones."*

The Adviser understood that the complainant felt that his direct questions to the BBC Executive had not been answered in a way which was satisfactory to him, but these were questions about editorial and creative output which were matters for the BBC Executive rather than the Trust. However, she noted that the complainant had received responses from the producer and the Controller of Radio 4 which did address the subject of celebrity.

With regard to the complainant's view that the content of his own storylines was more original and of better quality than that of the botanists who did appear on the programme, the Adviser noted that an assessment of the quality of a particular storyline was an editorial decision. Such decisions relating to editorial and creative output were inevitably subjective, and not for the Trust to adjudicate.

The Adviser did not believe that Trustees would be of the view that the complainant had presented evidence which would lead them to conclude there had been a breach of the guidelines on impartiality. Therefore she considered that on this point, the appeal did not have a realistic prospect of success and should not be put before Trustees.

In the absence of any evidence that there had been a breach of the Editorial Guidelines, the Adviser considered that, as set out above, decisions about which guests should be invited on to a programme were matters of "editorial and creative output" and, as such, were decisions which rested with the BBC and not the Trust. Therefore, she considered that it would not be appropriate for Trustees to consider this point and did not propose to put it before the Committee.

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

The complainant asked Trustees to review the decision of the Senior Editorial Strategy Adviser not to proceed with the appeal. He said that he considered that there had been a breach of the Editorial Guidelines. He said that neither the BBC nor the Trust Unit had explained why the stories of the "celebrity botanists" who had appeared on the programme were better than his.

The complainant argued that the evidence he had submitted would have resulted in judgment in his favour if it had been put before an English court.

The complainant criticised the Adviser's statement that the choice of guests was an editorial decision, saying that this meant his only source of redress was via the staff of BBC Radio, who he had approached already.

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

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

The Panel agreed that the choice of guests in BBC content was entirely a matter for the producers of that content and, ultimately, BBC senior management unless there had been a breach of the Editorial Guidelines. The Panel was satisfied that there was no evidence to suggest that in this case the Editorial Guidelines had been breached by not selecting the complainant as guest. The Panel could understand the complainant's disappointment at not being selected but it did not consider that it was reasonable to expect the BBC to engage in detailed argument to justify its programme making choices. Nevertheless, the Panel noted that the BBC had gone to some lengths to explain the rationale behind its choices.

The Panel was mindful of role of the Trust as distinct from that of the BBC Executive, and the importance of the Trust not interfering in the day-to-day programme making activities of the BBC. The Panel agreed that the matters raised by this complaint were about just such an activity, and it would therefore not be appropriate for this complaint to be considered by the Trust on appeal.

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

## ***Read Hear, Digital Red Button***

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

### **Appeal**

The complainant first contacted the BBC at Stage 1 to complain about the decision by the BBC to withdraw Read Hear on Digital Red Button on Ceefax. She stated that it was "a vital way" for disabled and/or elderly people such as herself who did not have access to the Internet, to keep up to date with relevant news and events.

The BBC wrote to the complainant explaining that as part of Digital Switchover the services provided by Ceefax had been completely reorganised and due to limitations on capacity and financial considerations some parts of the service had been discontinued. Unfortunately Read Hear was among the pages which had been discontinued. The BBC added that information of relevance to disabled people could be found instead on the News Website, and that they were in discussions with the providers Read Hear to see if they could transfer their contributions to News Online.

The complainant responded to the BBC stating that the response she had received did not address her concerns. She reiterated that Read Hear provided information to disabled people, accessed by people like her, who cannot access the internet. She said it was a vital way for her to keep up to date with relevant news and events. She did not understand why it had been withdrawn without assessing the impact on its users.

The Editor, BBC News Online responded that he had nothing further to add to his previous response and referred the complainant to the BBC Trust.

The complainant wrote to the BBC Trust on 4 July 2013. She asked to be informed what impact assessment, if any, had been undertaken prior to withdrawal of Read Hear and how it had been justified whereas services which had been retained "by and large" replicated news and entertainment available on other mainstream media and would be accessed by those able to access such information and entertainment by other means.

She also asked whether it was taken into account that this "niche service" was one which the BBC had "an explicit and implicit duty to provide according to varied need", and stated that the BBC was not entitled to just "follow the money".

She asked for her letter of complaint to be treated as a request to reinstate Read Hear.

### **Decision of the Head of Editorial Standards**

The relevant correspondence was reviewed by the Head of Editorial Standards and an independent editorial adviser.

Following receipt of the complaint, the Trust Unit wrote to the Editor, News Online requesting further details of the context in which Read Hear had been withdrawn as a result of Digital Switchover. The Editor wrote to them explaining that Read Hear consisted of a number of pages within the Red Button service's section devoted to volunteering and community news, and they were withdrawn from the service as part of the scaling back of the service for technical and efficiency reasons. Whilst the Read Hear segment of the Ceefax Red Button service had been terminated, he said,

“we considered alternative options for providing a regular feature for the deaf community with short news updates relating to deaf issues. We have pursued this idea editorially and are currently planning to publish such a regular feature on the BBC News website, where we can publish efficiently, there are no technical constraints on the number of pages, and where we have a blog devoted to disability issues.”

The Head of Editorial Standards hoped that this additional background information would be helpful to the complainant in understanding the reasoning behind the decision and News Online’s future plans to serve the deaf community. She also noted that, an Equality Assessment was not required for the removal of the Read Hear pages on Digital Red Button.

The Head of Editorial Standards did however appreciate that this particular complainant had stated that she had no access to the internet, and that the complainant had argued that there were many other disabled and/or elderly people who would be in a similar situation. She noted that the complaint’s local library offered free access to computer which might be of interest to the complainant.

The Head of Editorial Standards considered the complaint against the Trust’s Complaints Framework.

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 (paragraph 38, (1) (c)) as a duty that is the responsibility of the Executive Board, and one in which the Trust does not usually get involved unless, for example, it raises broader issues such as a breach of a station’s Service Licence.

In her view the decision about what parts of the Ceefax service to retain following digital switchover was an operational matter and therefore this was the responsibility of the BBC Executive and was not a matter for the Trust.

The Head of Editorial Standards therefore concluded that the complainant’s appeal to the Trust 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 Head of Editorial Standards not to proceed with the appeal. She said that her point had been misunderstood and that the issue was not that she did not have access to a computer but that the nature of her disability meant that she could not use a computer and was therefore unable to access content available only on the Internet. She also said that because of her cognitive impairment she was unable to learn about and use new technologies.

She stated that, while she had been told that the content had been subsumed into other output, this was not delivered in a manner that she was able to access and understand. She said that a decision had been taken to remove a valuable resource from an already disadvantaged minority while retaining many pages (such as news and sport) which were available to mainstream audiences in many other formats.



The complainant wanted it to be noted that the English used in her complaint and correspondence was not indicative of her use of English or language as it was written by a BSL interpreter to support her in making these points.

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

The Panel was given the complainant's appeal to the Trust, the reply from the Head of Editorial Standards, and the challenge to the Head of Editorial Standards' decision.

The Panel noted the complainant's clarification of her situation with regard to access to a computer, and that her issue was with the ability to use a computer rather than access.

The Panel noted that the Trust Unit had consulted Action on Hearing Loss (formerly known as the RNID) and with the complainant's permission could pass on to the complainant details of a local support group who could help her access the information previously provided by Read Hear in other ways.

The Panel agreed that the Trust's Adviser had correctly concluded that the decision to remove the Read Hear pages from the Red Button was an operational matter for the BBC Executive and as such fell outside the Trust's remit. The Panel noted that the Read Hear content was clearly of great value to the complainant and it understood her reasons for considering that it should have been continued on the Red Button service in preference to some of the other content that remained. The Panel agreed, however, that it was not appropriate for Trustees to become involved in the Executive's decision with regard to what content was carried on the Red Button service.

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

## ***The Papers*, BBC News Channel, 25 March 2013**

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

### **Background**

The complainant contacted the BBC on 28 March 2013 to complain about Kelvin MacKenzie's appearance as a guest broadcaster *The Papers*, on the BBC News Channel. In the complainant's view Mr MacKenzie lacked journalistic credibility and should not have been used.

Following responses from BBC Audience Services, the complainant escalated his complaint to the Head of Editorial Compliance and Accountability for BBC News at Stage 2 of the process.

The Head of Editorial Compliance and Accountability stated that

"The Papers seeks to show a wide range of voices and opinions from those with knowledge of the media and current affairs. Guests are booked on that basis, and are paired with others who have different perspectives. As previously stated, Kelvin MacKenzie is a well-known radio broadcaster and columnist. We feel for these reasons, his inclusion is appropriate."

She explained that contributors to news programmes were chosen to

"...reflect the many and varied views fairly, accurately and impartially. 'The Papers' seeks to show a wide range of voices and opinions from those with knowledge of the media and current affairs and reviewers are paired with others who have different perspectives."

"Editors are well aware that using Mr MacKenzie provokes strong views such as yours. However, for BBC News, just because some in the audience disagree with or dislike a pundit or commentator it is not a reason to bar him or her from contributing when editorially appropriate – particularly if, as is the case with Kelvin MacKenzie, many find him illuminating about politics and enjoy the fact that he makes waves and provokes argument. You may believe he is a failure; others will disagree. BBC editors must use their editorial judgement about which contributors to use and when, and they strive to do so judiciously."

She also explained that the format of the programme meant that a wide range of contributors had been tried on air, with viewer feedback, both positive and negative, being taken into account when planning future bookings.

### **Appeal**

The complainant escalated his complaint to the BBC Trust, and stated the main points of his complaint, asking whether Kelvin MacKenzie's career history showed the mark of a good journalist. He cited Mr MacKenzie's former record as editor of *The Sun* newspaper, as a columnist for *The Daily Telegraph*, and his evidence to the Leveson enquiry.

### **Decision of the Head of Editorial Standards**

The Head of Editorial Standards carefully read the correspondence that had passed between the complainant and the BBC, and she acknowledged the strength of the complainant's feelings.

She noted that the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. "The direction of the BBC's editorial and creative output" was specifically defined in the Charter (paragraph 38, (1) (b)) as a duty that was the responsibility of the Executive Board, and one in which the Trust did not get involved unless, for example, it related to a breach of the BBC's editorial standards which the Head of Editorial Standards believed Trustees would conclude did not apply in this case. Decisions relating to the choice of 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 Head of Editorial Standards noted that the relevant Editorial Guidelines in relation to this appeal were those on Impartiality and these had been referred to in the response of the Head of Editorial Compliance and Accountability, BBC News:

We seek to provide a broad range of subject matter and perspectives over an appropriate timeframe across our output as a whole.

We are committed to reflecting a wide range of opinion across our output as a whole and over an appropriate timeframe so that no significant strand of thought is knowingly unreflected or under-represented.

We exercise our editorial freedom to produce content about any subject, at any point on the spectrum of debate, as long as there are good editorial reasons for doing so.

She considered that the complainant had received a reasoned response to his complaint from the Head of Editorial Compliance and Accountability, BBC News, who had explained that:

"BBC editors must use their editorial judgement about which contributors to use and when, and they strive to do so judiciously.

The BBC's Editorial Guidelines and the BBC's Charter make it clear that it is the BBC's role to portray the widest possible range of views and perspectives – even those that may be unpalatable to some – so that audiences are exposed to a gamut of opinion and can form their own judgements about what is going on in the world."

The Head of Editorial Standards appreciated that the complainant did not feel that Kelvin MacKenzie was a suitable contributor to *News 24* and that, by choosing him to appear on air, the complainant believed that the BBC's standards were getting lower because he did not consider Mr MacKenzie to be a credible journalist. The complainant's view had been fed back to the producers as stated by the Head of Editorial Compliance and Accountability, BBC News:

"As you know, the editor of 'The Papers' was made aware of your concerns about the use of Mr MacKenzie and it was explained to you that the format of the show means a wide range of contributors have been tried on air, with feedback from viewers, both positive and negative, being taken into account when planning future bookings."

The Head of Editorial Standards noted that the complainant wanted an answer to his question as to whether the BBC considered that Mr MacKenzie's career history was that of a good journalist. As the Head of Editorial Standards has already noted, decisions relating to programme contributors fall into the category of "editorial and creative output". Mr MacKenzie's career as a journalist was well known and it was an Executive decision as to whether they wished to use him.

Having considered the responses already received by the complainant, the Head of Editorial Standards believed that Trustees would be of the view that the complainant had not made a case for the Executive to answer, and would consider that the complainant had received a reasoned and reasonable response to his concerns. It followed from this that the Head of Editorial Standards did not consider that the appeal had a reasonable prospect of success and she did not propose to put it before Trustees.

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

The complainant asked Trustees to review the decision of the Head of Editorial Standards not to proceed with the appeal. He reiterated his view that Mr MacKenzie was not suitable for use in the BBC's news and current affairs programmes and made comparisons with decisions that had been taken with regard to Jonathan Ross and Russell Brand.

The complainant also stated his view that appeals should not have to have a reasonable prospect of success in order to be considered by the Trust as "standards should be questioned and brought to the attention of those in authority, regardless of their possible success or failure."

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

The Panel was given the complainant's appeal to the Trust, the reply from the Head of Editorial Standards, and the challenge to the Head of Editorial Standards' decision.

The Panel noted the complainant's view that Mr MacKenzie was of an insufficient standard to be used in BBC news and current affairs programmes. The Panel agreed, however, that the Head of Editorial Standards was correct to conclude that this is an editorial decision for the BBC Executive and as such fell outside the Trust's remit.

The Panel noted the complainant's view that standards matters should be brought to the attention of those in authority regardless of the possible success or failure. In this case, Trustees were mindful that the relevant authority was not the Trustees but the Director of BBC News, represented by the Head of Editorial Compliance and Accountability. Trustees noted that the complainant's views had been given consideration at that level and that he had been provided with the BBC's response. Given that this editorial decision was an operational matter, there was nowhere further for this to be taken within the BBC's complaint process.

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

## BBC News Online article last updated 10 February 2005

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 contacted the BBC in March 2013 in relation to an online article that had been published in 2005 about a civil case the complainant had been involved in relating to his earlier criminal conviction.

The complainant had contacted the BBC a number of times requesting that the article be removed because, he stated, it contained inaccuracies, was having a negative impact on his health and ability to find work and related to a historic offence. He also stated the article was inaccurate as the crime of stalking did not exist in law at the time the article was written. The complainant wrote:

"As the law now stands, it is no longer sufficiently fair or accurate to use a colloquial term relating to 'stalking', an entirely separate offence, to describe a case of harassment. It is now legally recognised and enshrined in statute that stalking is a more serious offence than harassment due to the additional requirements necessary to prove liability, thus this description of me is both misleading and legally incorrect.

Kindly note all issues are some 15 years old now and long since spent. I pray now to be allowed to get on with my life, owing to my unusual surname this is presently impossible".

The complainant was sent a response on 19 April 2013 from BBC Complaints which included the following statement from BBC News Online:

*"Our policy is that we don't remove or amend archive material unless there is an inaccuracy in it because we treat our stories in the same way a newspaper would treat its archive material in a library - as a permanent record. At the time of publication the terminology we used was an appropriate way of describing crimes for which you were imprisoned, notwithstanding a more recent legal definition. In addition, the story is clearly date stamped. We are sorry if that is disappointing to you."*

The complainant remained dissatisfied and renewed his complaint on 15 May 2013. He argued the article gave an inaccurate figure for the amount of damages he had sued the police for. He also referred to a previous article which he said had erroneously stated he had been imprisoned for three years. He received a response from BBC Complaints noting that his case had been considered a number of times and the decision not to take down the article remained the same. The complainant remained dissatisfied and was sent a further response from the Head of Accountability, BBC News. This stated:

"... I can only endorse the replies that have previously sent you and we do not plan to take down the report. The BBC considers each individual case carefully but has a very high threshold for agreeing to the removal of content relating to a formal public process which is on the record because of the value we place on BBC independence and trustworthiness; if we remove or alter content we effectively

censor the past. This is a view we take in general and I can assure you that it is not about targeting or persecuting you personally."

## **Appeal**

The complainant appealed against this decision to the BBC Trust on 16 July 2013. He stated that the article was having a damaging effect on his ability to find work, his private and family life, and his mental health. He also stated that it contained inaccuracies, he stated that he "was never a stalker" – as the offence of "stalking" had only been introduced in 2012 – and the report was not a fair and accurate description of the offence of "harassment" for which he had been convicted. The complainant said that he would now like to be allowed to rebuild his life. He therefore asked for the article to be removed from the BBC's website.

## **Decision of the Senior Editorial Complaints Adviser**

The Senior Editorial Complaints Adviser (the Adviser) carefully read the correspondence which had passed between the complainant and the BBC, and she acknowledged the strength of the complainant's feelings. However, she noted the response given by the BBC Executive, in particular:

- BBC News has a policy of not removing or amending archive material and it is regarded – as a newspaper would its archive – as a permanent record.
- The BBC has a very high threshold for agreeing to remove content relating to a formal public process which is on the record because of the value it placed on the BBC's independence and trustworthiness.
- At the time of publication, the terminology used in the article had been appropriate – notwithstanding a more recent legal definition – and the article is clearly date stamped to show when it had been published.

The Adviser accepted that the existence of the article could well have a damaging effect on the complainant but considered that Trustees would be likely to conclude that the Executive had made a reasonable case for not agreeing to the complainant's request to remove it.

The Adviser also noted that the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. "The direction of the BBC's editorial and creative output" was specifically defined in the Charter (paragraph 38, (1) (b)) as a duty that was the responsibility of the Executive Board, and one in which the Trust did not get involved unless, for example, it related to a breach of the BBC's editorial standards which did not apply in this case. Decisions relating to whether or not to remove or amend online content fell within the "editorial and creative output" of the BBC and were the responsibility of the BBC Executive.

The Adviser therefore considered that Trustees would conclude the Executive had provided a reasoned and reasonable response to the complainant's concerns. She did not consider the appeal had a reasonable prospect of success and did not propose to put it before Trustees.

## **Request for review by Trustees**

The complainant asked Trustees to review the decision of the Senior Editorial Complaints Adviser not to proceed with the appeal. He repeated his argument with regard to the description of him as a stalker, and in particular that such an offence did not exist at the time the article was first authored. He referred to the previous inaccuracy in connection with the length of his sentence, and stated the article continued to inaccurately report the sum for which he had attempted to sue the police. The complainant said that for these reasons alone the article should be deleted.

The complainant went on to argue further for the removal of the article, stating his belief that the original case had been a miscarriage of justice and that the BBC would lose nothing in removing the article.

### **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 the Senior Editorial Complaints Adviser's decision.

The Panel noted the complainant's argument, and the material he had provided in support of his view that the original case had been flawed. The Panel agreed, however, that there was no evidence to suggest that the basis of the report and, in particular, the description of the complainant as a stalker, had been inaccurate at the time it was published.

The Panel noted that an inaccuracy regarding the length of the complainant's sentence in another article had been corrected, although the complainant did not accept the BBC's apology. The Panel also noted that the complainant had raised the question of the accuracy of the article's reference to the sum for which the complainant had attempted to sue the police. The Panel noted that it could not see in the correspondence any answer to this point from the BBC and it agreed that, as this was a first-party complaint about a published story, there is no time limit for considering a complaint of this nature. The Panel agreed that this element should be returned to the relevant stage of the complaints process for a BBC response.

Notwithstanding the accuracy point which remained to be resolved, the Panel agreed that the principle of treating the BBC's published material as an online archive was an operational matter for the BBC Executive and, as such, fell outside the Trust's remit.

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

## Listener request features on BBC Radio Stoke

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 contacted the BBC about Radio Stoke's Saturday morning output on 30 May 2013. He described how the morning programme had been taken over by David Smith from its previous presenter Stuart George. He noted that Mr Smith had said he would continue all the regular features of the show and that the complainant had submitted a musical feature idea for the station. The complainant stated:

*He [Mr Smith] also acknowledged - on-air - an e-mail passed onto him (by Stuart George) which contained a highly-original suggestion for the show's "Six Songs In Six Seconds" feature. But this idea was not used on that particular weekend. However, around a month later, a suspiciously-similar item was aired, but with all my musical content changed. NO mention of my name was ever made; similarly, NO credit was ever given for my original creative contribution, and listeners were given the distinct impression Mr.Smith had devised it all.*

*The feature often relies upon a link - either between all 6 song titles, or some song titles, and some artists. As I had made my link all six ARTISTS, it was unique (this NEVER having been done before).*

He also complained that, despite the initial assurance that established features would remain, request slots had been removed from the programme.

The complainant received a response from BBC Audience Services on 5 June 2013. This set out that the complainant had previously contacted BBC Radio Stoke directly, but the station had not been able to establish exactly what output his complaint referred to. It noted that the idea to play six linked pieces of music within a six seconds had been a well-established feature on the station, and that the complainant's suggestion was 'a twist' to that idea. It also acknowledged the station had used the premise of the complainant's suggestion – albeit with different pieces of music – and stated:

*"David Smith did indeed have an idea passed to him via Stuart George, as you say, but as it turned out he couldn't get hold of the specific songs suggested therein so instead he altered the idea to use a few weeks later with songs he could actually get hold of and which worked in the slot. When doing so, he simply forgot to credit and thank you for the original idea submission. ...it was nothing more than a genuine, and of course unfortunate and regrettable, oversight for which the station offers its apologies here. BBC Radio Stoke do wish to thank you for your contribution here, but at the time of broadcast it was simply that some time had elapsed in the meantime meaning it had slipped David's mind by the time the feature was transmitted on the show, that's all."*

The complainant remained dissatisfied – he considered the pieces of music he had suggested were not obscure and should have been easy to obtain and he questioned the honesty of the response. He also considered he had been treated in a 'shoddy' manner by BBC Radio Stoke. He was sent a further response by BBC Audience Services on 13 June 2013 which stated:



*... in essence we've agreed with your complaint that you should have been credited and admitted that it was our fault that you weren't here and explained how it all came about and we have formally apologised, thus we're not sure what more you are expecting us to be able to say here.*

*In light of the above, we can only apologise again for the oversight in not appropriately crediting you with regards to the idea for the segment.*

The complainant remained dissatisfied about the treatment his programme idea had had. He noted that he was a long-time listener to and supporter of BBC radio and regretted the need to make the complaint. He escalated his complaint to the Head of Regional and Local Programme, BBC Midlands, who wrote repeating the apology that the complainant had not been correctly credited on air and hoping that he would feel his concerns had been listened to.

The Head of Regional and Local Programming, BBC Midlands, wrote to the complainant on 20 June 2013 and stated:

*"I'm sure you remember we met... We had a wide ranging conversation about BBC Stoke and I tried to address some of your concerns at that time.*

*In response to your most recent email it is clear that the central point is that you feel you submitted an idea and that the presenter didn't credit you on air. The presenter mistakenly didn't credit you and we have apologised for that.*

*I do hope that you feel that I have listened to you and considered your concerns over a period of time. "*

## **Appeal to the Trust**

The complainant remained dissatisfied and on 17 July 2013 appealed to the Trust saying that the station had not treated him - or the listenership in general - honestly. He considered that, over the previous 12 months, all listener request features had been abolished without any credible explanation or acceptable replacement. The complainant did not accept the station's explanation that the failure to credit the complainant was a genuine oversight. He believed that the station had deliberately tried to make it appear as though the feature was its own work.

## **Decision of the Senior Editorial Complaints Adviser**

The Senior Editorial Complaints Adviser had carefully read the correspondence which had passed between the complainant and the BBC, and she acknowledged the strength of the complainant's feelings and the thought he had put into his original feature idea. However, she noted the response from the BBC Executive, in particular:

- The station had apologised to the complainant for what it said was "a genuine, and of course unfortunate and regrettable, oversight" in not crediting him for the idea he had submitted and which had been used in an amended form.
- The station had given an explanation as to how the mix-up had happened – that the complainant's suggestion had been passed to the new presenter but he had been unable to locate the specific songs which the complainant had proposed using. He therefore altered the idea to use a few weeks later with songs which he

could get hold off and which he felt worked in the slot, however, because of the time which had elapsed, he forgot to credit the complainant.

- Programmes and formats were bound to change over time for various reasons including changes in audience tastes and the need to make cost savings. The BBC listened to audience views but it could not possibly meet every individual listener's personal preferences. Nonetheless, the BBC hoped that audiences generally were happy with its general approach.
- The BBC had to retain editorial control over its output. While the BBC could work with a listener suggestion, and should credit the listener, it could amend the idea.

The Senior Editorial Complaints Adviser considered that Trustees would be likely to conclude the complainant had been given a reasonable explanation setting out what had happened to his feature proposal and that, in the light of the station's explanation and unequivocal apology, Trustees would consider the matter of the complainant not being credited for his idea had been resolved.

The Adviser noted that the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. "The direction of the BBC's editorial and creative output" was specifically defined in the Charter (paragraph 38, (1) (b)) as a duty that was the responsibility of the Executive Board, and one in which the Trust did not get involved unless, for example, it related to a breach of the BBC's editorial standards which did not apply in this case. Decisions relating to changes in programme format and the use of listener request features fell within the "editorial and creative output" of the BBC and were the responsibility of the BBC Executive.

Therefore the Adviser considered it would not be appropriate for Trustees to consider the complainant's point relating to the loss of listener request features, as this was a decision which rested with the Executive rather than the Trust.

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

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

The complainant asked Trustees to review the decision of the Senior Editorial Complaints Adviser not to proceed with the appeal. He stated his view that that, in not being credited for the idea, he had not been treated with fairness and impartiality.

The complainant noted that, after contacting various members of staff at Radio Stoke, he had been asked by BBC Audience Services not to contact any individuals by email elsewhere across the BBC. The complainant said that this effectively prevented him from taking part in any further programmes.

The complainant also argued against the reduction of listener request features at Radio Stoke, citing audience dissatisfaction and suggesting that this risked breaching editorial standards.

### **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 the Senior Editorial Complaints Adviser's decision.

The Panel agreed that the complainant had been given a reasonable explanation setting out what had happened to his feature proposal and that, in the light of the station's explanation and apology, the matter of the complainant not being credited for his idea had been resolved.

The Panel noted the complainant's view that he was barred from participating in programmes. Trustees regretted that this was the meaning the complainant took from the email from BBC Audience Services but considered that it was more likely that the correspondence being referred to was that relating to this complaint rather than more generally.

With regard to the reduction in listener requests, the Panel agreed that this was a matter of the creative direction of the BBC, which is a matter for the BBC Executive rather than 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.**

## **Scheduling of *Jerusalem: An Archaeological Mystery Story***

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 contacted the BBC after it decided to withdraw the programme *Jerusalem: An Archaeological Mystery* from broadcast. He had sought information about the editorial reasoning for not broadcasting the programme and who had taken the decision.

When the complainant pressed for further information, he was told:

"...we are not in a position to discuss the specific details at present. As we have said, we are talking to the director about future plans for the film and we will publish the outcome on our FAQ website at <http://faq.external.bbc.co.uk/> once these plans are decided. In the meantime we regret there is no more we can add."

The complainant had initially escalated his complaint to the BBC Trust on 3 June 2013. The Trust Unit considered that BBC Audience Services ought to give more information and, on 18 July, he was sent the following response:

"Ilan Ziv's film about the archaeology and history of Jerusalem and surrounding areas was acquired by the BBC for transmission during a BBC Four archaeology season. It was found during the re-versioning of the film to 60 minutes in length that it covered broader issues and for that reason, it was decided to withdraw it from this particular season. The BBC is now working with the film maker on a new version of the film and will issue a further statement once that process is complete."

### **Appeal**

The complainant remained dissatisfied. He appealed to the Trust and stated:

"...the circumstances surrounding the original axing need to be adequately explained. And of course, the more the BBC Executive procrastinates, the greater the impression they have something to hide. To re-iterate: I am seeking a full explanation of what was meant by the phrase "does not fit editorially". This will obviously entail reference to the specific editorial criteria that the programme was considered against, and the reasons why these criteria were not considered to have been met. I think it would also be useful to know HOW these decisions were made, and by WHOM."

### **Decision of the Senior Editorial Complaints Adviser**

The Senior Editorial Complaints Adviser (the Adviser) carefully read the correspondence which had passed between the complainant and the BBC, and she acknowledged the strength of the complainant's feelings. She noted that the Executive said that the programme had been acquired to supplement BBC Four's season exploring the history of archaeology. She noted that the most recent response from the BBC had elaborated on its first reply and had explained that it was only when the film was being shortened prior

to transmission that it emerged the film covered broader issues than had initially been understood and it was subsequently withdrawn from the series about archaeology.

The Adviser noted that the complainant had been told the film would be shown at a later point and had been given a webpage that would be updated once a new date had been confirmed. The Adviser considered Trustees would be likely to conclude that the complainant had been given a reasoned and reasonable response on this point and did not believe it had a reasonable prospect of success, therefore she did not consider it should be put before Trustees.

The Senior Editorial Complaints Adviser understood that the complainant felt frustrated that the BBC had not given further details about the decision. However, she considered there was no obligation on the BBC to do this. She noted that the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. "The direction of the BBC's editorial and creative output" was specifically defined in the Charter (paragraph 38, (1) (b)) as a duty that was the responsibility of the Executive Board, and one in which the Trust did not get involved unless, for example, it related to a breach of the BBC's editorial standards which did not apply in this case. Decisions relating to what programmes to include within a themed series fell within the "editorial and creative output" of the BBC and were the responsibility of the BBC Executive. The issue of how much detail to provide about the reasons for such decisions was also a matter for the Executive.

Therefore the Adviser considered that it was not appropriate for the appeal to be put before Trustees on this point.

Therefore the Adviser considered the appeal did not have a reasonable prospect of success and should not 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 complainant said that the response from BBC Audience Services had not directly addressed his concerns. The complainant said that he was looking for an explanation of why the programme did not fit editorially, and this was not provided by the BBC's response that the programme was withdrawn from BBC Four's archaeology season because it covered broader issues.

The complainant said that by asking Audience Services to provide more information, the BBC Trust had accepted that it had jurisdiction.

### **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 the Senior Editorial Complaints Adviser's decision.

The Panel agreed with the Adviser that decisions relating to scheduling are matters of the direction of the BBC's creative output and are therefore a matter for the BBC Executive and not the Trust. The Panel noted that the Trust Unit had asked the BBC to provide a further response to the complainant. The Panel was mindful that this was not a decision taken by Trustees and was separate from the question of whether the underlying complaint about the scheduling of this programme would be a matter for the Trust to

consider on appeal. The Panel noted that the BBC's complaints framework states "the Trust is the final arbiter if any question arises as to whether an appeal is for the Trust to determine or not." Consequently, Trustees did not agree that the Trust Unit's request that the BBC elaborate upon their previous responses at stage 1 could be construed as an assumption of jurisdiction by the Trustees themselves at the final stage of the complaints process.

Incidentally, the Panel noted that the BBC had confirmed that they plan to broadcast the programme in November 2013<sup>1</sup>.

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

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<sup>1</sup> The programme was broadcast on BBC Four on Sunday 3 November 2013 with the title *Searching for Exile: Truth or Myth?*

## Decision of the BBC Executive that a complaint about Comic Relief in 2007 was out of time

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 raised his concerns about a video which was available on a charity's website. It had originally been broadcast during Comic Relief in 2007 on 10 July 2013. The complainant alleged that the video featured a recording of his voice and information about criminal action he faced.

Audience Services responded on 10 July 2013, explaining that although the video may have been shown as part of Comic Relief six years previously, the BBC was not responsible for the content of the video, or the fact that it was available to view on an external charity's website.

The complainant made further phone calls both to Comic Relief and Audience Services complaining about the delay in dealing with his complaint and also requesting information about payments made in connection with the making of the video.

The Complaints Management and Editorial Standards Manager, BBC Television responded to the complainant on 21 August 2013. He apologised for initial confusion in the way the complainant's complaints were processed and said the complaint should have been referred to someone senior in the BBC. He said he believed the complainant had been in contact with the charity directly and they had confirmed that the video clip had been removed from their website.

The Complaints Management and Editorial Standards Manager noted that Ofcom had decided not to entertain the complaint because it was not made in a reasonable timeframe. He stated:

"Similar to Ofcom, the BBC's complaints and appeals procedures also contain certain requirements with regards to time frames. [...] I am aware why your complaint has come to us so late, but I do not believe it merits an investigation about the original Comic Relief film, given that your complaint comes six-plus years after the original broadcast, and that the video has subsequently been removed [from the external site]."

There followed further correspondence between the complainant and the Complaints Management and Editorial Standards Manager in which the complainant said that, although it wasn't previously part of his complaint, he wished to add the disrespectful handling of his complaint to his list of concerns.

The Complaints Management and Editorial Standards Manager, BBC Television, concluded his correspondence with the complainant in a written response dated 23 September 2013 in which he referred him to the BBC Trust if he wished to take his concerns further. He also wrote:

"I do appreciate your frustration with the BBC's complaints system, and I tried to explain the matter in my email of 21 August 2013. I can only apologise to you for

the problems you initially experienced, as it was unclear who was responsible for the programme-related content on the [external] site that you brought to our attention.

I was able to advise that this content has now been removed, but our position still stands as regards your Comic Relief programme complaint. We have decided that it does not merit investigation as it was received some six years after broadcast.”

The complainant emailed the Trust on 23 September to appeal against the decision.

### **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 was very sorry to learn of the considerable distress suffered by the complainant.

The Adviser noted that the BBC was not responsible for the content of external websites but she was pleased to note that the video which had caused the complainant such concern had now been removed from the external website and would not be broadcast at any time by the BBC. She believed the Trustees would consider that part of the complaint resolved, and it was therefore not appropriate for that part of the appeal to proceed further.

With regard to the inclusion of the video in BBC Comic Relief 2007, the Adviser considered the Trustees would be likely to agree with the response of the Complaints Manager, BBC Television, who had stated that he did not believe that aspect of the complaint merited investigation as it had been made more than six years after the original broadcast, and the video had subsequently been removed. The Adviser noted that the Complaints Manager had also referred to Ofcom having reached a similar decision regarding the complaint. The Adviser noted that the Complaints Procedure included the following statement about time frames:

You should make your complaint within 30 working days of the date on which the content was broadcast or first published in a BBC owned magazine. If you write after that time, please explain why your complaint is late.

Exceptionally, the BBC Executive may still decide to consider your complaint, but only if it decides there was a good reason for the delay.

2.2 If you make a first party complaint about content currently published on a BBC website there is no time limit, but the BBC may decline to consider it if it is no longer practicable and cost-effective to investigate it and adjudicate upon it fairly.

The Adviser noted the complaint had come six years after the video had been shown on Comic Relief. She noted too that, although there was no time limit for complaints that related to first party complaints about output on a BBC website, this complaint related to the video when it had been embedded on an external website.

The Adviser considered the time limit existed for good reason – it was increasingly difficult to answer editorial queries with the passing of time and matters such as how specific information came to be in a video and who was responsible for commissioning or producing it years after it was shown would be disproportionately costly and difficult to answer.



Therefore the Adviser considered Trustees would be likely to conclude that it was reasonable for the BBC to decline to respond further on these aspects of the complaint.

With regard to the handling of the complaint, the Adviser considered the responses which the complainant had received since he first raised his concerns with the BBC.

The Adviser appreciated that the complainant had become very frustrated with the BBC complaints process and that this had added to his distress. The Adviser noted that the Complaints Manager, BBC Television, had acknowledged that the complainant's concerns should have been referred to someone senior at the BBC at an earlier stage, and had twice apologised for this. She was sure that the Trustees would wish her to apologise on their behalf also. The Adviser noted that where the BBC Executive accepted it had made a mistake and apologised, the Trustees usually considered the matter resolved. The Adviser considered that in this case, Trustees would be likely to conclude this element of the complaint had been resolved and therefore she considered it did not have a realistic prospect of success and should not proceed to appeal.

For the reasons above, the Adviser considered that Trustees would be of the view that the BBC Executive had provided reasoned and reasonable responses to the complainant's concerns. She did not consider the appeal had a reasonable prospect of success and did not propose to put it before Trustees.

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

The complainant asked Trustees to review the decision of the Senior Editorial Complaints Adviser not to proceed with the appeal. The complainant repeated his request for a full investigation into the making of the video.

### **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 the Senior Editorial Complaints Adviser's decision.

The Panel noted that the video in question had been removed from the external website and was not going to be shown again by the BBC.

With regard to the original Comic Relief broadcast, the Panel agreed that the time limit for investigating complaints about BBC content existed for good reasons, and that it would be likely to find that it was reasonable for the BBC to decline to respond further to complaints in relation to the making of the video which was broadcast in 2007.

The Panel also noted that the complainant had received apologies from the BBC for the initial confusion in the handling of his complaint. The Panel agreed that it would be likely to conclude that this aspect of the complaint had been resolved.

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

## Alleged copyright infringement

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 had been engaged in a dispute with the BBC and an independent production company about an alleged copyright infringement relating to a drama series submission, which the complainant said he had released to the BBC in good faith.

Following the outcome of a mediation meeting between the complainant and the BBC on 3 December 2012, the complainant wrote to the Chairman of the BBC Trust on 7 May 2013 about his continuing concerns. He received a response from the Trust Unit on 29 May 2013 which explained that it was open to him either to take legal action or to appeal to the Trust's Complaints and Appeals Board under the BBC's General Appeals procedure.

The complainant appealed to the BBC Trust on 20 June 2013, unhappy with the way in which the mediation meeting had been conducted and did not feel that his complaint had been fully investigated. The complainant requested that the BBC allow him to produce the series or another project. Alternatively, he requested that the BBC settle with him in recompense.

### Decision of the Senior Editorial Strategy Adviser

The Senior Editorial Strategy 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. However, she noted that the Complaints Framework stated that

"the Trust will not normally consider an appeal that is or has been the subject of legal correspondence with the BBC, or if legal proceedings have been issued, or if the appeal is appropriate for consideration by an external authority (such as the office of Fair Trading)."

The Adviser considered that Trustees would be of the view that the complainant had recourse to the law to pursue his complaint and that it was therefore outside the scope of the complaints framework.

The Adviser noted that the complainant had been in correspondence with a BBC solicitor about his complaint and that a mediation meeting had been held on 3 December 2012 to discuss the issue. Although she appreciated that the complainant was unhappy with the outcome of that meeting, the Adviser believed Trustees would consider that a re-submission of the complaint fell outside the scope of the Complaints Framework.

The Adviser also noted that the mediation meeting at the BBC took place on 3 December 2012 and she confirmed with the BBC Legal Department that there had not been any further correspondence with the complainant about the matter since that time. The Adviser concluded that the complaint had been submitted beyond the time limit set out in the Complaints Framework which states that complaints should be made to the Trust within 20 working days of the complainant's last correspondence with the BBC, and that

no good reason had been provided by the complainant for the delay in referring this matter to the Trust.

For these reasons the Adviser considered that there was no reasonable prospect of success for the appeal and decided that it should not proceed further.

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

The complainant asked Trustees to review the decision of the Senior Editorial Strategy 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 Strategy Adviser and the challenge to the Senior Editorial Strategy Adviser's decision and also the complainant's previous correspondence with the BBC.

The Panel was mindful that it first considered this matter at its meeting on 11 September 2013, when it decided that, with regard to the Adviser's point that there had been no communication between the complainant and the BBC Legal Department since 3 December 2012, the complainant had in fact written to the Trust on 7 May 2013 and received a response from the Trust Unit dated 29 May 2013. He then appealed to the Complaints and Appeal Board, as advised in the Trust Unit's letter, on 20 June 2013. Trustees therefore concluded at the September meeting that the complainant's request for an appeal was within the 20-working-day time limit as set out in the Complaints Framework. Accordingly, the Panel asked the Trust Unit at the September meeting to carry out further enquiries as he had been given to understand he could appeal to the Trust.

In considering the matter at its October meeting, the Panel was mindful that the BBC's Complaints Framework states:

For some categories of complaint there may be legal remedies available to complainants. [...]

If a complainant resubmits a complaint to the BBC after a legal complaint has been responded to by the BBC's Legal Department or legal proceedings have concluded, the BBC will not generally reconsider any aspects of complaints that have already been considered or adjudicated upon (including but not limited to by a Court or tribunal).

And that the General Appeals Procedure says:

The Trust will not normally consider an appeal that is or has been the subject of legal correspondence with the BBC, or if legal proceedings have been issued...

The Panel noted the alleged similarities between the complainant's programme idea and a CBBC programme in question but did not consider that these were so marked as to suggest that the complaint could be judged by the Trust without a determination of questions of copyright law. The Panel agreed that as this complaint raised exclusively legal issues it was outside the scope of the BBC's Complaints Framework.

The Panel noted that the complainant had been given the option of appealing to the Trust in the letter from the Trust Unit dated 29 May 2013. The Panel agreed that it would have been more appropriate if the complainant had been advised to **request** an appeal to the Trust, which would then be subject to the usual admissibility test. The Panel wished to apologise to the complainant if he had been led to believe that the Trust was necessarily an appropriate route for his complaint.

**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 availability of *Golf: The Open 2013* on BBC iPlayer

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 contacted the BBC on 22 July 2013. He complained that he had been unable to access coverage of the final day's play of the 2013 Open golf tournament on an iPhone, iPad, Samsung smart television and BT vision box. He was concerned to be able to see the end of the tournament while he was still unaware of the results.

The complainant received a response on 26 July 2013 which stated:

This coverage was is only available on a limited number of platforms, BT Vision and Smart TV are not included in these.

You should be able to access this programme via your iOS devices for streaming, this content cannot be downloaded. You can also view the coverage via your PC on the link below:

[http://www.bbc.co.uk/iplayer/episode/b0371533/Golf\\_The\\_Open\\_2013\\_Day\\_4\\_Part\\_2/](http://www.bbc.co.uk/iplayer/episode/b0371533/Golf_The_Open_2013_Day_4_Part_2/)

We are unaware of any problems accessing this content on iOS devices, if you continue to experience this problem we suggest that you uninstall and reinstall the application to remove any glitches.

The complainant remained dissatisfied and renewed his complaint the same day. He considered the response he had received "lazy and unhelpful", he stated that all other episodes had been available on via the catch-up service on BT Vision. He considered the response was an attempt to delay responding until after the seven day period when the material would be available.

The complainant was sent a further response on 30 July which stated:

As was previously explained this coverage was only available on a limited number of platforms. We did not receive any further contacts suggesting there was an issue accessing this broadcast via iOS devices, I suggested that you uninstall and reinstall the application on your devices as this may have been the issue.

As this coverage is no longer available on the BBC iPlayer service we are unable to investigate further or indeed suggest an alternative method of catching up on this coverage.

I do hope that you were able to access the coverage before it expired...

### Appeal

The complainant appealed to the Trust on 26 July. His appeal renewed his complaint about the adequacy of the response initially received and added:

"he coverage of this is available on my vision box and my smart Samsung tv via iplayer app.

The one episode was not available and I was wanting this looked into.

It is now available three days late."

### **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 the strength of the complainant's feelings and acknowledged the frustration of being unable to catch up on a sporting event before becoming aware of the outcome of the event.

She noted the BBC's complaints process was a three-stage process and that the complainant had received two responses at stage one, but had not received a stage two response from the BBC. The Trust unit contacted BBC Audience Services to clarify whether the BBC had any further comments they wished to make to the complainant and was informed that the BBC had nothing it wished to add.

The Adviser regretted that Audience Services had not given information to the complainant either about how to escalate his complaint or notifying him that it was closing down the correspondence because it had nothing further to add. The Adviser considered Trustees would wish her to extend her apologies on their behalf for this. However, she decided that the point she should consider was whether an appeal against the decision of BBC Audience Services not to correspond further with the complainant had a reasonable prospect of success.

The Adviser noted that, while timeliness was a significant matter in terms of watching a sporting fixture, the timeframe set out in the Complaints Framework for an initial response was ten working days. The Adviser noted that the complainant had received a response well within the time set out and had been advised that coverage of the last day's play of the 2013 Open championship had only been available on a limited number of platforms. She further noted that Audience Services said they had received no similar complaints that the material would not play on iOS devices (which, in all likelihood, they would have done if this had been a widespread issue) and that the complainant had been given a link that would allow him to view the output on a PC.

The Adviser noted that BBC Audience Services received approximately a million contacts a year from viewers and listeners making comments and complaints. She appreciated that the use of standard paragraphs could be frustrating, but considered that the complaints process had been developed so that complaints could be answered properly in an efficient way. She did not consider Trustees would be likely to agree that the responses had been 'lazy and unhelpful'; she considered the responses had sought to answer the complainant's concern and given him a separate route to view the output if he remained unable to see it via an iOS device. Therefore she considered Trustees would be likely to conclude the responses sent by Audience Services had attempted to answer the questions posed in a reasoned and reasonable way.

The Adviser also noted that the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. "The operational management of the BBC" was specifically defined in the Charter (paragraph 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 (which did not apply in this case). The Adviser considered that decisions relating to the availability of output on iPlayer were day to day operational matters and were the responsibility of the BBC Executive.

Therefore, the Adviser considered the appeal did not have a reasonable prospect of success and should not proceed to be considered by Trustees. However, the Adviser considered Trustees would find it instructive to read of the complainant's experiences and proposed to put the correspondence before them for their information.

### **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 that the crux of the initial complaint had been missed. He reported an issue with online content and was told that the content was not available for rights reasons, which was not the issue.

### **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 the Senior Editorial Complaints Adviser's decision. The Panel was also provided with the correspondence between the complainant and the BBC.

The Panel agreed that the complainant had received a response within the time set out in the Complaints Framework. Trustees noted that the complainant had been told the material was not available on BT Vision and Smart TV when in fact the series had been shown on these platforms. Trustees regretted any error in stage 1 responses but noted that the responses had sought to answer the complainant's concern and given him a separate route to view the output if he remained unable to see it via an iOS device.

The Panel agreed that the responses sent by Audience Services had attempted to answer, in a reasoned and reasonable way, the questions posed, and it was reasonable for them to decide that there was nothing further they could add to the responses they had already given. The Panel noted that the Trust's Senior Editorial Complaints Adviser had apologised to the complainant for the fact that BBC Audience Services had not given information either about how to escalate his complaint or notifying him that it was closing down the correspondence because it had nothing further to add.

**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 amount of coverage given to a local political figure by BBC West Midlands

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, via the BBC Trust, on 10 June 2013. He was concerned about the amount of airtime given on BBC West Midlands (BBC WM) to a local historian who potentially had political ambitions who had a Sunday morning programme on BBC WM. The complainant considered BBC WM was being "used for political purposes" to promote the local figure. In support of his complaint, he referred to three specific broadcasts from BBC WM that were dated 3 February 2010, 6 June 2010 and 13 December 2010. He also referred to several local newspaper reports about the figure and his potential political interests – the most recent article referred to dated back to October 2011. The complainant considered this matter should be investigated. The complainant received a response from BBC Audience Services on 1 July 2013 which stated:

"Whilst we appreciate that you have clearly put a great deal of time and effort into the detail and content of your letter with enclosures, all the matters about which you complain are from many years ago. That being the case, we cannot accept your complaint into the BBC Complaints Process. The published BBC Complaints Framework document (available at [http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory\\_framework/protocols/2012/complaints\\_fr\\_work\\_ed\\_complaints.pdf](http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2012/complaints_fr_work_ed_complaints.pdf)) sets out in Section 2.1 that a complaint about any BBC matter should be submitted within 30 working days of the original transmission or publication.

As your points relate to matters as far back as 2008, clearly they are all well outside this published timeframe.

To explain, the BBC Complaints Framework sets out that in order to allow us to provide and administer a complaints process which is "appropriate, proportionate and cost effective, balancing the interests of all licence fee payers with the rights of individual complainants and the BBC", we have to impose service limits, one of which is a time frame in which we are able to entertain complaints."

### The Appeal

The complainant remained dissatisfied and contacted the BBC Trust on 3 July. He considered the Director-General should investigate the situation he had raised.

The Senior Editorial Complaints Adviser (the Adviser) carefully read the correspondence which had passed between the complainant and the BBC and she acknowledged the strength of the complainant's feelings.

However, she noted that in its response Audience Services made the point that all of the matters which the complainant was complaining about were from many years ago, some as far back as 2008 and had declined to correspond further as the complaint was out of time. She therefore decided that the point she should consider was whether an appeal



against the decision of BBC Audience Services not to consider the complaint because it was out of time had a reasonable prospect of success.

The Adviser noted the complaints process required that a complaint must be submitted within 30 working days of the original transmission. She considered the time frames had been introduced with good reason and were intended to ensure the complaints process worked efficiently and complaints could be answered in a timely way. She noted that the complaint was clearly well outside this time frame.

The Adviser believed that Trustees would agree that the approach taken by Audience Services was reasonable and proportionate. While the complainant had clearly taken considerable trouble to collect evidence, it was necessary to place a time limit on complaints in order to maintain a process which was cost effective taking account, not only of the rights of individual complainants, but also of the fact that the BBC was funded by the licence fee. For this reason she believed that the 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. The complainant reiterated his view that BBC West Midlands had breached the requirements of impartiality in its naming of a particular contributor prior to the vote on whether to have an elected mayor as a possible candidate for mayor. He provided further documentation, including transcripts of output, to support his view.

### **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 the Senior Editorial Complaints Adviser's decision. The Panel was also provided with the correspondence between the complainant and the BBC.

The Panel noted that the matters which were complained about dated back to 2008, and fell well outside the 30 working days in which a complaint can be brought against BBC content. The Panel noted that the complainant had put considerable time and effort into constructing his case. Trustees also noted the significant time that had elapsed and the fact that, in the event, Birmingham had not voted to have an elected mayor. The Panel agreed that there were no exceptional circumstances to suggest that the time limit set out in the complaints procedure should not be applied in this case.

The Panel agreed that it was not likely to find that BBC Audience Services had acted unreasonably in deciding that the complaint was out of time.

**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 snooker coverage

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 raised his concerns by writing to Points of View on 30 April 2013. He was unhappy about changes to the BBC's snooker coverage which led to a greater reliance on showing repeats of shots. He considered the graphic curtains – used to sweep across the screen in advance of a repeat shot – disturbed his viewing.

The complainant contacted BBC Audience Services on 2 June 2013. He was sent a response on 17 June which stated:

"We're naturally very sorry when we hear that members of our audience do not like our programmes.

The BBC is a publicly-funded broadcaster serving the whole of the United Kingdom providing programming to a hugely diverse audience with differing tastes and preferences. There will always be aspects of some programmes that do not appeal to some people and this is the nature of broadcasting whereby we are serving many different people with different expectations. It is worth noting however, that many people enjoy the live action replays and find it improves viewing."

The complainant was dissatisfied with the response and was additionally unhappy that he had been addressed by his first name. On 19 July, the complainant received a further response from BBC Audience Services which apologised for addressing him inappropriately. In terms of the substance of the complaint, it stated:

"... your views do not appear to be shared, thus whilst we note your own personal viewpoints and preferences, you'll understand that we cannot possibly change our entire approach based on any one person's feedback and demands alone."

"...The idea is to re-show some of the more dramatic play to allow viewers to either simply see it again out of interest, or indeed to allow us to add value by showing the shot again but from a different perspective by virtue of a different camera angle. The wide shot off the entire snooker table from above is shown throughout our coverage, indeed it's the default camera position, thus allowing any viewers the opportunity to do precisely what you talk of – to judge the arrangement of balls and to consider the next potential move(s).

Replays are shown for some shots when felt relevant, and they are shown briefly before returning to the action from the main overhead camera position."

The complainant was advised that Audience Services would not correspond further on this matter as it had nothing to add to the comments it had already made.

The complainant appealed to the Trust on 1 August 2013. He remained unhappy with the responses he had been given. He stated: *"I am certain that there must be other people*

*who think like I do, but are not bothered to make a complaint or they are just putting up with it."*

### **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 the strength of the complainant's feelings and had a good deal of sympathy with them. She considered that as the complainant had himself been a keen snooker player during the war, and had watched the game on television over several decades, it was understandable that he would put himself in the shoes of the player he was watching and would try to anticipate what shots might be played next. She accepted too that, for the correspondent, this was a significant part of his enjoyment of the televised game.

However, she also noted the BBC's complaints process was a three stage process and that the complainant had received two responses at stage one, but had not received a stage two response from the BBC. The Adviser decided that the point she should consider was whether an appeal against the decision of BBC Audience Services not to correspond further with the complainant had a reasonable prospect of success.

The Adviser noted that the BBC received around a million comments and complaints each year and the complaints process was intended to ensure complaints were answered efficiently and properly – and that licence fee money was spent sensibly. In this instance, the complainant had been informed that there was nothing further the BBC wished to add to its correspondence.

Having read the correspondence she considered Audience Services had set out the rationale behind the use of different camera angles and repeat shots - and had also advised the complainant that it had no evidence that his opinions were shared by other viewers. While she noted the complainant felt that other viewers might be 'just putting up with it', she considered there was no evidence that the programme makers were seeking to do anything other than show the game in a way that made it engaging and enjoyable for a large proportion of their viewers – although she accepted the complainant did not enjoy the production techniques used.

The Adviser also noted that the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. "The direction of the BBC's editorial and creative output" was specifically defined in the Charter (paragraph 38, (1) (b)) as a duty that was the responsibility of the Executive Board, and one in which the Trust did not get involved unless, for example, it related to a breach of the BBC's editorial standards. Decisions relating to what camera angles to use in sports coverage were editorial decisions which properly rested with the BBC. The Adviser considered that in any event, it would not be appropriate for Trustees to consider this point.

The Adviser considered that overall, Trustees would be likely to conclude that Audience Services had acted reasonably in responding to the complainant's concerns and had given a helpful explanation about the editorial thinking in this area. While the Adviser regretted that the complainant did not enjoy the variety of camera angles and replays show, she considered the appeal did not have a reasonable prospect of success and should not 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 complainant reiterated and clarified his complaint, which was not about the repeats of some of the more dramatic shots but the repeats of "every shot" accompanied by on-screen graphics.

### **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 the Senior Editorial Complaints Adviser's decision, and also the complainant's previous correspondence with the BBC. The Panel noted that although the complainant doubted that those handling his complaint had viewed snooker in this case the Senior Editorial Adviser confirmed that she had reviewed snooker coverage.

The Panel appreciated that the complainant has watched snooker over many years and cares about the way it was covered. However, the Panel agreed that the BBC had provided considered responses to the complaint which attempted to explain the creative decision making behind the BBC's snooker coverage. The Panel agreed that it was likely to find that the BBC had addressed the complainant's concerns as fully as was appropriate, given the issues raised, and that there was no reasonable prospect of success for an appeal against the decision of Audience Services not to respond further.

**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 3 May, having received an email rejecting his complaint from the BBC's Chief Financial Officer dated 2 May 2013. The Trust noted that the appeal request was brought within the time-limits set out in the TV Licensing Complaints Procedure (i.e. within 20 working days of receiving a response at Stage 3).

The complainant had been sent two TV Licensing enquiry letters despite the fact he was fully licensed. The BBC Executive had explained that the reason he was sent these enquiry letters was because his address had been duplicated on TV Licensing's database and that the duplication had been created when TV Licensing processed a number of address changes automatically.

The BBC Executive informed the complainant that TV Licensing had now corrected the duplication and that it was in the process of correcting other records affected. He was also assured that TV Licensing was considering what changes could be made to its automated updates to prevent similar errors happening in the future.

As detailed in the email from the Chief Financial Officer to the complainant, she had asked a member of her team to listen to tapes of the telephone conversations the complainant had with members of staff from TV Licensing. They concluded from the conversations that the complainant had a poor customer experience and, as a result of this, the Chief Financial Officer had recommended that TV Licensing should offer a goodwill payment to the complainant of £100 and apologised for the level of service he had received.

The complainant stated that given the process had taken the best part of four months, time and effort which had greatly impacted on his business he was not able to accept the offer.

### 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 January 2013 onwards from the complainant, TV Licensing, the Licence Fee Unit and the Chief Financial Officer. She also listened to recordings of calls between the complainant and TV Licensing, some of which were not audible.

The Adviser concluded, first, that while the BBC Executive has acknowledged that TV Licensing had provided the complainant with poor customer service, she did not consider there to have been a poor response to the complaint by the BBC Executive. She noted that the BBC Executive had apologised and explained the reasons why the complainant had been sent enquiry letters despite him being fully licenced, that it apologised for the poor customer service he had received and that it recommended TV Licensing offered him a £100 goodwill payment in recognition of this.

The Adviser noted, in particular, that the level of goodwill payment offered by TV Licensing is an operational matter for the BBC and that the principles the BBC work to are that any amount offered should be determined on a case by case basis and is dependent upon the individual circumstances.

The Adviser was sure that Trustees would wish her to add their apologies to those already provided by the Executive for the poor customer service the complainant had received from TV Licensing. The Adviser noted the further delays which the complainant had experienced in making an appeal to the Trust (due to staffing changes and annual leave), apologised for this and agreed that Trustees would feel this fell short of the service the Trust usually seeks to offer to individuals. However, the Adviser explained that Trustees were not able to award financial compensation for delays in handling appeals by the Trust Unit.

For these reasons, the Adviser considered that the case did not have a reasonable prospect of success and should not be put before Trustees.

The complainant stated that the initial problem he complained of was of the BBC's own making and requested that Trustees review the decision of the Adviser that the appeal should not proceed.

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

The Panel was given the complainant's appeal to the Trust, the reply from the Trust's Adviser, the challenge to the Trust's Adviser's decision, a paper summarising further correspondence and also the complainant's previous correspondence with the BBC.

The Panel agreed that the level of goodwill payment offered by TV Licensing is an operational matter for the BBC. The Panel noted that the amount offered by the BBC was determined on a case by case basis and was dependent on individual circumstances.

The Panel noted the complainant's assertion that the process had been extremely lengthy to date and had greatly impacted on his business. The Panel expressed their sympathy. The Panel regretted that the delays which the complainant had experienced in his appeal fell below the level of service the Trust expected the Trust Unit to provide and apologised for this. However, they noted that they were not able to award financial compensation for delays in handling appeals.

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