

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

October, issued December 2016

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Remit of the Complaints and Appeals Board

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Summary of findings

Information provided about payment options in initial TV Licensing renewal letters and when someone takes out their first TV Licence

Summary of finding

The complainant contacted the BBC about Television Licensing correspondence. He said that information about all payment options, including the cash payment scheme, should be included in all TV Licensing renewal letters and when someone takes out their first TV Licence.

The Panel agreed that for the purposes of this appeal it would regard a senior citizen as someone of 60 years old, and older. Since persons aged 75 years and older do not have to pay the TV Licence fee, the relevant age group Trustees would consider for the purposes of this appeal was 60-75 years.

Having initially reviewed the information that had been provided to it, the Panel was of the opinion that there was insufficient information to enable Trustees to uphold or reject the appeal as it stood (and that it would be inappropriate for Trustees to do so).

Trustees decided to direct the BBC to specifically consider the question of whether or not the methods and processes for payment of the TV Licence (including the information which is provided on payment options) are accessible, appropriate and not discriminatory in further detail, and to report back to the Panel on its findings within three months.

Having received the requested report from the Executive, the Panel concluded that:

- the Executive's analysis of the impact of Television Licensing's (TVL) approach to providing information on payment options to those aged between 60-75 was appropriate and proportionate in the circumstances.
- it was possible that there were some individuals with disabilities who renewed their licence after the first reminder who would be helped by a cash scheme; but the Panel accepted TVL's evidence and analysis which indicated that the potential number of such individuals was low and that overall it was proportionate and not discriminatory to withhold details of that scheme in the first two letters.
- while it was ultimately a matter for the courts as to whether the BBC's TVL administration policies were discriminatory under the Equality Act, the evidence provided by the Executive in support of its position that TVL's approach was "accessible, appropriate and not discriminatory" did not suggest that there was any breach of the general law.
- it was satisfied with the evidence provided within the Executive's Equality Impact Assessment which suggested that, in fact, there was a very low risk of discrimination against those with a disability and that the BBC's overall approach was proportionate. As there was no evidence to suggest that the Executive's policy had been discriminatory in practice and that it was a proportionate approach to take, the Panel declined to uphold this aspect of the complaint.

- it was appropriate and proportionate for TVL to wait until the evidence suggested that a cash payment scheme might be needed first (via the first and second renewal letters), before offering this option in the third letter.

The complaint was not upheld.

Reception Advice call handling

The complainant appealed to the BBC Trust about the way in which his contact with BBC Reception Advice service had been handled.

The Panel concluded that:

- the complainant's concern that his calls had been recorded without due notification had been addressed. There had been a technical fault in the announcements presented for reception enquiries. The BBC had fixed the problem. Trustees considered it unfortunate that this technical fault had existed for a substantial period but were pleased it was now corrected.
- the Trust could not rule definitively on whether or not the BBC had broken the law in this respect with regard to the data protection act, that the appropriate appeal body in this case was the Information Commissioner, and that it was open to the complainant to pursue a complaint via this route.
- it was disappointing that a Reception Advice agent did not close down the complaint when requested to do so by the complainant. The agent appeared to be still trying to resolve the issues, and apparently misread the complainant's requests to relay his views to the specialist analysts¹ as a request to continue the contact despite the clear request in the final call to "close it off". This was very frustrating for the complainant who continued to receive correspondence from the BBC against his wishes and against his understanding of what had occurred. The BBC had apologised at Stage 1 and had acknowledged at Stage 2 that it would use this complaint as part of a review to determine when it was appropriate to step out of the normal processes and directly contact an audience member. Trustees considered this point of complaint to be resolved by the apology and by the follow-up action.
- the Trust was not in a position to judge whether this was a one-off error of miscommunication, or a more systemic issue. Trustees asked the BBC to report back to the Complaints and Appeals Board on the oversight methods employed to ensure that the issues of inaccurate note-taking evident in this case were not common. Trustees also asked the BBC to report back on the progress of their review in order to understand how the Reception Advice team would identify those occasions on which they would respond outside the normal processes.
- while the BBC had apologised at Stage 1 and said it had "never been our wish to antagonise", the Panel decided that two responses to the complainant were not consistent with the BBC's guidelines on Accountability which state that "enquiries are dealt with ... courteously and with respect". They therefore decided to uphold this part of the complaint.

This complaint was partially upheld.

¹ Most Reception Advice queries are handled by a front line team of agents. Where further analysis is required, the queries are passed to a small team of specialist analysts.

Television Licensing Appeal Finding

Information provided about payment options in initial TV Licensing renewal letters and when someone takes out their first TV Licence

The complaint

The complainant said that information about all payment options, including the cash payment scheme (accessible by obtaining a cash payment card), should be included in all TV Licensing renewal letters and when someone takes out their first TV Licence. At present the first letter of renewal does not include information about the cash payment scheme, although the information is available on the TV Licensing website or by telephone and it is included in subsequent renewal letters (in instances where subsequent renewal letters are sent).

Background

The cash payment scheme, or cash instalment scheme, is the method by which people can pay for their TV Licence with cash and by instalments on a weekly, fortnightly or monthly basis. All other methods of payment can only be arranged on a monthly, quarterly or annual basis.

Customers are given a smart card (at no extra cost) called a “payment card”, which enables them to join the scheme and records all payments they make. They normally pay for their first licence six months in advance, then they can pay for the next one over the following 12 months, that is, six months in advance then six months in arrears. They may elect to terminate the scheme after the first six months leaving them six months free of payment then recommence a new scheme thereafter and therefore pay for the next licence over a six month period, and so on. They can also use the card with online or telephone payments using credit/debit cards.

Appeal to the Trust

The complainant considered the present situation whereby the first letter of renewal does not include information about the cash payment scheme, to be discriminatory against vulnerable people, those without internet access and senior citizens.

In his letter of appeal to the BBC Trust the complainant said that all payment options, including the cash payment scheme, should be communicated when someone takes out their first TV Licence.

The Panel's decision

The Panel considered the content of the following set of information that was provided to it:

- Correspondence Timeline

- Copy of information sheet sent to renewal customers
- Example Mailings: Homemover 1, 2 and 3
- A copy of the TV Licensing webpage referencing the cash payment option
- A copy of the BBC TV Licensing's Equality and Diversity Action Plan April 2015-March 2016
- Previous correspondence
- Confidential and legally privileged note

The Panel agreed that for the purposes of this appeal it would regard a senior citizen as someone of 60 years old, and older. Since persons aged 75 years and older do not have to pay the TV Licence fee, the relevant age group Trustees would consider for the purposes of this appeal was 60-75 years. The Panel wanted to assure the complainant that the BBC and the BBC Trust take complaints regarding discrimination very seriously. The Panel wished to thank the complainant for bringing the complaint to its attention.

Having reviewed the information that had been provided to it, and having taken its own legal advice on the more technical/legal aspects of the appeal, the Panel was of the opinion that there was insufficient information to enable Trustees to uphold or reject the appeal as it stands (and that it would be inappropriate for Trustees to do so).

Trustees decided to direct the BBC to specifically consider the question of whether or not the methods and processes for payment of the TV Licence (including the information which is provided on payment options) are accessible, appropriate and not discriminatory in further detail, and to report back to the Panel on its findings within three months. Its report would be shared with the complainant, who would be given the opportunity to make any further representations before the Trustees make a final decision on the appeal.

FINDING: BBC Executive to consider the matter further

The Executive duly provided the Trust with its response, which took the form of an Equality Impact Assessment ("EIA") and which was shared with the complainant before the Panel considered the complaint again at its meeting of October 2016. The Panel noted that "age" and "disability" were "protected characteristics" under the Equality Act.

The Panel noted the Executive's view that:

- Its approach is "justified and not discriminatory" because the payment behaviour of the vast majority of recipients of the first and second letters indicates that they either do not need to be on a cash payment scheme or they would be unsuitable for one.
 - The Executive submitted figures from TV Licensing (TVL) that showed 72.7% of customers receiving first reminder letters renewed before receiving a further reminder and 92.5% had responded by the third reminder.
 - The figures also "over-indexed" on age groups from 51-55 through to 66-70, suggesting they were less likely to need and to take up cash payment schemes.

- It had a responsibility to maximise licence fee revenue and keep administrative costs as low as possible and considered its approach to be proportionate, given that the cost of administering cash payment schemes was significantly higher than other methods and its analysis (based on the above factors) suggested its policy was appropriate and proportionate.

The Panel noted that the complainant maintained the position that TVL's approach was discriminatory against senior citizens as well as the disabled and vulnerable:

- The complainant disagreed with the Executive's arguments around cost; arguing that the cost of making changes was not high and that if all payment options were offered in the first letter, renewals would be higher and thus costs would be saved in this way.
- The complainant asserted that the public had a right to decide how to pay and information about all payment methods should be supplied in every piece of correspondence from TVL.
- The complainant also noted that the Executive had not supplied figures on disability and he expressed doubt that the BBC had given the matter as a whole proper consideration as it had only provided the EIA at this late stage in the process.

The Panel turned first to the Executive's analysis of the impact on those aged 60+. The Panel reviewed the analysis supplied by TVL on payment behaviour which suggested that those in the age groups 61-65 and 66-70 are over-represented in the group of customers that typically renews straight away, suggesting that they are not in need of a cash payment scheme. The Panel also noted TVL's explanation that while it could be argued that those who were older were less likely to access the internet (and therefore become aware of the cash payment option), its research had showed that 45% of those aged 60 and older accessed the internet daily. In any event it considered the risk of potential disadvantage to be minor, as its payment data showed that this age group was less likely to need the cash payment scheme and that, if an individual was struggling to pay, they would receive the third letter, which did include this option. The Panel accepted the Executive's assertion that its approach was appropriate and proportionate in the circumstances.

The Panel noted that TVL did not collect a great deal of information on disability; however, it accepted that there were valid reasons for this. This information was personal data that was not generally needed for the purposes of administering the licence fee, so was only available to them if a customer chose to volunteer it. However, the Panel also noted that for some disabilities a cash payment scheme would be likely to be more onerous than other payment options. It was possible that there may be some individuals in the group that renews after the first reminder who would be helped by a cash scheme; but the Panel accepted TVL's evidence and analysis that indicated that the potential number of such individuals is low and that overall it is proportionate and not discriminatory to withhold details of that scheme in the first two letters. Further, the Panel noted that the "safety net" of the third reminder (which does bring up the possibility of cash schemes) is in place and is sent within six weeks of the licence expiring.

The Panel noted that ultimately it was a matter for the Courts as to whether the BBC's TVL administration policies were discriminatory under the Equality Act. However, the Panel considered that the evidence provided by the Executive in support of its position that TVL's approach was "accessible, appropriate and not discriminatory" did not suggest

that there was any breach of the general law. The Panel noted that the EIA was a document requested by the Trust². It indicated that the Executive had not given the detail of this matter formal thought before. However, the Panel was satisfied with the evidence provided within that suggested that, in fact, there was a very low risk of discrimination against those with a disability and that the BBC's overall approach was proportionate. As there was no evidence to suggest that the Executive's policy had been discriminatory in practice and that it was a proportionate approach to take, the Panel declined to uphold this aspect of the complaint.

In terms of the Trust's Charter function to ensure that the arrangements for the collection of the licence fee were efficient, appropriate and proportionate, the Panel noted the high administrative cost of the cash payment scheme and the fact that half of customers on this scheme are eventually removed from it as they do not maintain the payments. The Panel considered that it was appropriate and proportionate for TVL to wait until the evidence suggested that a cash payment scheme might be needed first (via the first and second renewal letters), before offering this option in the third letter.

NOT UPHELD.

² The new document was in response to the points which the previous Panel had asked the Executive to consider. The Executive advised that previous EIAs in respect of TV Licensing communications had been much more high level.

Appeal Finding

Reception Advice call handling

Background

In October 2015 the complainant telephoned BBC Reception Advice to complain about the problems he was experiencing with a poor television signal. Most Reception Advice queries are handled by a front line team of agents. Where further analysis is required, the queries are passed to a small team of specialist analysts. These analysts provide a response to the front line team who, in turn, respond to the public by email. The BBC's Head of Spectrum & Investigation, BBC Distribution & Business Development, has explained the process as follows:

"With the large volumes of contacts we receive this normally works efficiently. Any deeper analysis is provided by a very small team of analysts. For reception queries this team is not directly customer facing as it would quickly become overwhelmed. To manage this, our front line teams act as a conduit between the public and the analysts. As we are mainly an advice service there is rarely a requirement for dialogue which would require direct contact."

Between 8 October and 20 November 2015 the complainant contacted the BBC six times by telephone and received six replies by email. During his calls the complainant explained that he had two aerials: a high-gain one pointed at a local transmitter in North West Norfolk and a second aerial pointed at the Belmont transmitter across the Wash. He said that he often experienced problems with the BBC One signal but recently it had been affecting other channels, though diagnostics on his TV showed a full signal. The BBC made a number of suggestions as to the cause of the problem, and potential remedies. The remedies included eliminating causes of electrical interference, ensuring all channels were pointed at the same transmitter and checking with neighbours to see if they were experiencing the same problems at the same time.

When it became apparent that the complainant's issue was poor reception of BBC One (East) regional programmes, rather than BBC reception in general, the BBC said that historically it had been problematic for broadcasters to provide the correct regional programmes to North West Norfolk because of the area's topography and a lack of interference-free frequencies. For this reason they suggested having two aerials, one pointed at Belmont, one at King's Lynn; or to have the two sets of signals mixed together down one cable. They also advised checking that channels were tuned to the correct transmitter and suggested that free-to-air satellite might provide an alternative solution.

The complaint

The complainant said that over the previous two months he had received six lengthy emails from the BBC. He said the one-way communication system was unsatisfactory. He had twice asked the BBC not to reply to his calls but he had continued to receive emails in response. He said that two of these replies were hectoring in tone.

The BBC said it had become clear from the letter of complaint that the complainant's concern all along was that reception of local TV programming on Freeview was difficult, despite much effort to achieve reliable results, and that local installers were aware of this issue. The BBC said:

"It was regrettable that our communication does not seem to have aided mutual understanding. It has certainly never been our wish to antagonise. Rather, our overall aim is always to try to give as much advice as possible to help a viewer receive our services, especially where, due to their location, reception is more challenging. We are sorry it has not been more successful and can only advise that you consider returning to Freesat, at least for local programmes, given that there is nothing else the BBC can do to improve Freeview reception of East Anglia programmes at your location."

The complainant appealed to the Trust saying:

"My complaint had been about the abrasive style, and unaccountable demands made by your experts, their incorrect assumptions, and the asymmetric communication system. None of these subjects was addressed in the reply which I received, which dealt only with reception issues which I had accepted as being unresolvable at an early stage in this correspondence."

The Trust Unit decided that the appeal had no reasonable prospect of success. The complainant requested that Trustees review the decision not to proceed with his appeal and disagreed with the description of his phone calls to the BBC in the Adviser's letter to him. It did not match his recollection. Trustees decided to return the matter to the BBC Executive for a further response.

On 9 June 2016 the BBC's Head of Spectrum & Investigation, BBC Distribution & Business Development, wrote to the complainant. He had reviewed the correspondence and said that the first three responses were appropriate but thereafter more information came to light with each contact and it became apparent that the case was becoming a dialogue. He said:

"At this point, it would have been appropriate to move away from our process of supplying a response to our front line support and instead have an analyst contact you direct by phone. As we are mainly an advice service there is rarely a requirement for dialogue which would require direct contact, which works well the majority of the time. That would have avoided the asymmetric conversation and we will use this case to review and improve the current processes and determine when it is appropriate to step out of the normal processes and directly contact an audience member."

He noted that the complainant had said he had continued to receive responses after asking communication to cease. He said:

"From listening to the phone conversations, your frustration with the process is evident but the agents did not interpret this frustration as a direct request not to have a response. Therefore, such a request was not captured in the case notes. The agents and the analysts are always keen to try and help, which is why you continued to receive responses from my team."

In summary, I believe my team did supply suitable advice and guidance based on the information they had and followed the current process. However we will learn from this and review our process to identify when it becomes an appropriate course of action to directly contact audience members. On the point of continuing to respond, I hope you will agree that this was an innocent miscommunication.

I hope this clarifies the situation and assures you that I do take quality issues very seriously and I am implementing process changes to reduce the possibility of this

happening again.”

Appeal to the Trust

The complainant said he found the system of speaking to a call centre (rather than directly to an analyst) unhelpful because the agent took notes which were not a “true, complete and accurate record” of what he said. In particular, the complainant said that he twice asked for the correspondence to cease but he continued to receive replies which he felt were rude and abrasive in tone.

During his appeal the complainant was told that his telephone calls had been recorded. He expressed his concern and said that he was not aware that the recordings were being made. He was concerned that it was a breach of the first principle of the data protection act to make recordings without due notification.

He said that his complaints would have been briefer and more concise if provided in writing.

Applicable Editorial Guidelines

The BBC’s guidelines on accountability are applicable to this case:

Accountability 19.4.1 Feedback and Complaints

The full guidelines can be found here:

<http://www.bbc.co.uk/editorialguidelines/>

The Complaints and Appeals Board’s decision

In reaching its decision the Complaints and Appeals Board (the CAB) took full account of all the available evidence, including (but not limited to) the Independent Adviser’s report.

Data protection with regard to the telephone calls

The CAB noted that the Executive explained that there had been a technical fault in the logic sequencing the announcements presented for reception enquiries; they were grateful to the complainant for bringing this to their attention and the problem had now been fixed. The CAB considered it unfortunate that this technical fault had existed for a substantial period. Trustees were pleased it was now corrected.

Trustees noted the advice of the Information Commissioner (the data protection regulator) that “individuals should generally expect that an organisation will keep a record of the call. This could be by recording the call itself or by making notes³”. They therefore concluded that the evidence did not suggest that the Executive had breached the law relating to data protection. However, the CAB noted that the Trust could not rule definitively on whether or not the BBC had broken the law, that the appropriate appeal body in this case was the Information Commissioner, and that it was open to the complainant to pursue a complaint via this route.

Point (A)

³ <https://ico.org.uk/for-the-public/is-my-information-being-handled-correctly/>

The CAB noted the complainant's view that the system, in which a "note taker is interposed between the caller, and the team" was unhelpful because the notes were not a "true, complete and accurate record of what was said by the caller". In particular, the complainant said that he "most definitely asked on two occasions... that this correspondence should cease, and I said that I did not want any further reply". His view was that:

"The asymmetrical system gives dignity to the experts and leaves the complainant to fend for himself. Neither the recording nor the transcript is available to the complainant whilst the dispute continues, and responses must be made from memory over a very extended period whilst this lengthy procedure proceeds, whereas the BBC has access to all communications when considering responses."

He added that:

"[The BBC's] experts made no attempt to close the dialogue."

The CAB noted that in order to assess the accuracy of the notes taken by Capita's agents, an independent adviser listened to recordings of the telephone calls of 9, 13 and 20 November 2015 and provided information on those calls to the Trustees.

Trustees noted that the calls were lengthy (between nine and twelve minutes long) and the issues discussed were complex, whereas the written summaries made for the specialist analysts were brief. They noted the following inaccuracies in the notes of the calls:

- in the call of 9 November 2015, Capita's agent asked the complainant if he had two television aerials pointed at King's Lynn and the complainant began to reply but he did not complete his train of thought. This was summarised in the agent's notes as "I have two aerials pointing towards the Kings Lyn [sic] transmitter". While the complainant does have two aerials, he had previously explained that one of them was pointed towards Belmont, so this information was inaccurate. The agent already had the answer on file and this was reflected in the note of the original call (8 October 2015), which was appended to the latest contact: "we tune into one across the Wash"
- the summary of the call of 20 November 2015 was inaccurate in suggesting that the complainant had an aerial which diplexed two signals. The complainant actually said that the Reception Advice team had suggested this as a solution, but the complainant said that his local installer had said there was no such diplexer and he would never install an aerial pointing at Sandringham.

Trustees noted that the summary of the call of 13 November 2015 was brief but accurate.

Turning to the complainant's point that he had twice asked for correspondence to cease, Trustees noted:

- in the call of 9 November 2015 the complainant did not ask for the complaint to be discontinued but he did say he was not sure if it was worth going any further. The agent said that the Reception Advice team would look into his comments, so it appeared unlikely that she understood the complainant to be asking for the complaint to be discontinued
- in the call of 13 November 2015, the complainant said on three occasions there was "no point" continuing with the dialogue, but on each occasion, he went on to detail technical issues which the agent understood he wanted to raise with the analysts (the agent asked if these were issues "you'd like me to put across" and when the complainant said "yes", the agent said she would add them to his case)

- in the call of 20 November 2015 the complainant twice said that he didn't want another reply, and the agent asked "Do you want me to close the case off now?" The complainant said:

"I do yes. But I'd like you to tell him that it's not what he says, that there is no advice I can take. I've talked at length to an installer... who says the best option is to give up and use a satellite dish"

The complainant concluded:

"We should certainly close it off but I really would like you to say to him what I've just said to you."

The agent recorded this part of the conversation as "there's no point in him replying to me" and did not close down the complaint. The complainant went on to receive a further reply.

Trustees noted that the BBC's Head of Spectrum & Investigation, BBC Distribution & Business Development wrote to the complainant at Stage 2, stating that there had been an innocent miscommunication, in that the agents did not interpret the complainant's frustration as a direct request not to have a response. They also noted that the complainant considered these errors to be significant.

Trustees considered it disappointing that the agent did not close down the complaint when requested to do so. They accepted that the agent appeared to be still trying to resolve the issues, and apparently misread the complainant's requests to relay his views to the analysts as a request to continue the contact despite the clear request in the final call to "close it off". Trustees acknowledged that this was very frustrating for the complainant who continued to receive correspondence from the BBC against his wishes and against his understanding of what had occurred. Trustees noted that the BBC had apologised at Stage 1 and had acknowledged at Stage 2 that the BBC would use this complaint as part of a review to determine when it was appropriate to step out of the normal processes and directly contact an audience member. Trustees considered this point of complaint to be resolved by the apology and by the follow-up action.

Trustees considered that they were not in a position to judge whether this was a one-off error of miscommunication, or a more systemic issue. They understood the BBC's need to use licence fee resources efficiently by making best use of the analysts' time, but they noted that the reception issues raised by some callers would be technically complex and they appreciated the complainant's point that to him the system felt asymmetrical.

The CAB asked the BBC to report back to the CAB on the oversight methods they employed to ensure that the issues of inaccurate note-taking evident in this case was not common.

The CAB also asked the BBC to report back to the Trust on the progress of their review in order to understand how the Reception Advice team would identify those occasions on which they would respond outside the normal processes.

Point (A) finding: Resolved

Point (B)

Trustees noted that the complainant found the tone of the replies he received from BBC Reception Advice to be abrasive, rude and unhelpful.

In particular the complainant said:

“They made only general points, asked no questions, gave instructions as if I were an employee, and showed no consideration for the cost, complexity or practicability of their demands, whilst having no liability for the consequences if I had embarked on an expensive installation as a result of their instruction.”

Trustees noted that these points related to advice offered by the BBC over the course of the correspondence to eliminate sources of local interference, check with neighbours about their reception, acquire a second aerial or have two sets of signals diplexed together down one cable, and to consult a local installer.

Trustees noted an example given by the complainant of what he felt were inappropriate instructions based on inaccurate case notes:

“your case notes state you have not eliminated sources within your own home, please do this and ask your neighbour to do the same.”

The complainant said that he had not mentioned interference and so the case notes were wrong. Moreover his very elderly neighbour would not have the faintest idea of what this meant.

It was noted that the parties appeared to be at cross purposes about the nature of the complainant’s enquiry. During the complaints process, the complainant said he had contacted the BBC “puzzled about the poor provision for Freeview in this area and wondering whether they had anything to add”. It appeared from the correspondence that, for its part, the BBC viewed the enquiry as a question about recent problems with interference so it offered suggestions to identify the causes of the interference. In the third contact it became clear that the complaint was about reception of BBC regional news programmes rather than BBC services in general.

The CAB considered that the BBC was attempting to work its way through the issues raised by the complainant, and to suggest possible remedies but the misunderstanding about what the complaint was about combined with the summary note style used by the agents elongated the process and meant that actions were proposed which were not relevant to the complainant’s circumstances.

Trustees understood that the complainant had already carried out the relevant actions suggested by the Reception Advice team and he therefore found their suggested remedies unhelpful, but they noted that the BBC analysts was not fully aware of all of the actions taken by the complainant due to the summary note style. So analysts were using their best endeavours to help the complainant resolve his reception issues but were not in full possession of the facts.

The CAB turned to the two emails the complainant found to be rude in tone. The first (19 November 2015) said:

“In our previous replies we have explained what to do to try to improve this situation, though your recent communication gives no suggestion that you have followed this advice.”

Trustees noted that previous logs had recorded that the complainant had made efforts to follow the advice that he had been given – though not all of his efforts had been correctly recorded. They considered this tone would be exacerbating in the circumstances.

The second email (4 December 2015) said:

“I hope this sets out our position clearly. Your installer is welcome to contact us if he has measured evidence of a fault or local interference. However, please be advised that if you should contact us again on this matter, we regret that we cannot guarantee a reply.”

Trustees recognised that as the complainant had just asked for his case to be closed this email was particularly unfortunate in saying that the complainant was not guaranteed a response if he contacted the BBC again.

While Trustees acknowledged that the BBC had apologised at Stage 1 and said it had “never been our wish to antagonise”, the CAB decided that the two responses were not consistent with the BBC’s guidelines on Accountability which state that “enquiries are dealt with ... courteously and with respect”. They therefore decided to uphold this part of the complaint.

Point (B) finding: part upheld

Overall finding: part upheld

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

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

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

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

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

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

Decision of BBC Audience Services not to respond further to a complaint about Boy, BBC Radio 4, 2 July 2016

The complaint concerned the portrayal of Roald Dahl by the BBC in programmes celebrating his centenary. The complainant made the following points:

- Roald Dahl was being lionised by the BBC as “a British institution and cast in the role of a charming, kind elder statesman” despite the fact that he was a self-acknowledged anti-Semite⁴ and his views on Israel were well known.
- Roald Dahl had moved from being anti-Zionist to anti-Semitic and had stated, “Even a stinker like Hitler had to have some reason to pick on the Jews.”⁵
- It was wholly unacceptable for the BBC to ignore Roald Dahl’s “rank prejudice in favour of his ‘wonderful’ stories. Their promotion merely underscores your acceptance of his vile personality”.
- He queried whether the BBC would have taken the same approach if Roald Dahl had made similar comments about “people of colour or Muslims”.

BBC Audience Services made the following points:

- Steven Spielberg had commented on a similar issue ahead of the release of *The BFG*: <http://www.hollywoodreporter.com/news/cannes-steven-spielberg-addresses-bfg-894014>.
- Noting that Steven Spielberg’s emphasis was on the much-loved stories Roald Dahl wrote, not any of his personal views, they said that the BBC’s season on his fictional works took the same approach.
- They noted that there was an upcoming separate programme on the author himself (<http://www.bbc.co.uk/programmes/b07m8n2q>) and suggested the complainant might wish to view it and share his thoughts about it.
- With regards to creative works, the BBC always checked those for any content which might offend or upset listeners. The BBC’s general approach to avoiding harm was explained here in the editorial guidelines: (<http://www.bbc.co.uk/editorialguidelines/guidelines/harm-and-offence/principles>)
- The complainant’s concerns had been included in the overnight report which were widely read sources of feedback in the BBC and were seen daily by senior management and programme-making teams.

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

Appeal

The complainant appealed to the BBC Trust on the substance of his complaint. He said he remained unhappy with the week-long celebration of Roald Dahl’s centenary in view of his self-acknowledged anti-Semitism.

Decision of the Trust Adviser

⁴ “I’m certainly anti-Israel and I’ve become anti-Semitic inasmuch as that you get a Jewish person in another country like England strongly supporting Zionism,” interview with the Independent in 1990

⁵ Interview with the New Statesman 1983

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

The Adviser noted that all BBC output was required to meet "Generally Accepted Standards" in terms of the Editorial Guidelines on Harm and Offence which state:

"The Agreement accompanying the BBC Charter requires us to apply 'generally accepted standards so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material'. The understanding of what constitutes 'generally accepted standards' will evolve over time and will be informed by relevant research. Applying 'generally accepted standards' is a matter of judgement, taking account of the content, the context in which it appears and editorial justification."

The Adviser noted that, although *Boy* was not an autobiography, the complainant believed that this collection of dramatised "magical tales from the author's own childhood" was not an appropriate programme to broadcast because of the anti-Semitic views held by the author. She also noted that the complainant did not feel the entire week-long BBC season of Roald Dahl programmes, of which *Boy* was one, to celebrate the centenary of Dahl's birth was appropriate.

The Adviser noted that the BBC often broadcast seasons of dramatisations of fictional work by major authors and the Corporation did not align itself with any separate personal views that might be held by those authors.

The Adviser noted that the complainant had not raised a specific concern about any particular aspect of the programme itself, but objected to the fact that the BBC felt it was acceptable to celebrate the birthday of Roald Dahl and broadcast his work because of views he had expressed when he was alive. Having considered the context and content of the programme, she had not seen evidence likely to lead Trustees to regard the broadcast as having breached Editorial Guidelines on Harm and Offence. That being the case, she considered that responsibility for decisions about content broadcast to mark the centenary of Roald Dahl's birth lay with the BBC Executive rather than the Trust. In order to protect the BBC's editorial freedom and independence, the Royal Charter and accompanying Agreement between the Secretary of State and the BBC draw a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. "The direction of the BBC's editorial and creative output" is defined in the Charter as a duty that is the responsibility of the Executive Board.

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

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with his appeal. He felt his complaint had been "both ignored and misconstrued". He added that:

- he was advised to look at a broadcast by another organisation and that was ridiculous.

- his concern related to the lionisation of Dahl without qualification.
- he had not suggested that there should be no broadcast; he was concerned that the broadcasts took place in a vacuum.

The Panel's decision

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

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

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

- the complainant had not complained about offensive material broadcast by the BBC (but that the overall tone was to lionise the author and he wanted more context).
- however, the selection of a subject for a season of programmes and decisions about what content to broadcast are matters of editorial judgment for the BBC Executive. As the Royal Charter (article 38 (1) (b)) sets out, "the direction of the BBC's editorial and creative output" is specifically defined as a duty of the Executive Board and one in which the Trust does not get involved.
- Audience Services had pointed the complainant to an upcoming BBC programme which focused on the author rather than his creative work.

Trustees agreed that the complainant had received a reasoned and reasonable reply from Audience Services.

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

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

Decision of BBC Audience Services not to respond further to a complaint about ticket allocation for A Service of Thanksgiving for the Life and Work of Sir Terry Wogan

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

The complaint

The complainant had applied for a ticket for Sir Terry Wogan's memorial service and was taken to a screen which explained that ticketing was split 60% to those who lived in the Greater London area and 40% to those who did not. The complainant considered that the allocation of tickets for this event was unfairly operated and favoured the Greater London area.

The complainant made the following points:

- He felt that the BBC was offering tickets to people in the Greater London area in preference to people living elsewhere in the UK. He thought the BBC should be representing the whole of the UK.
- He felt that the response of Audience Services was unfair that someone from Scotland would not get tickets because they lived further away from London. He felt this was discriminatory.
- He asked whether 60% of the tickets were given to people from the Greater London area.
- He requested a response by telephone.
- He felt that there was an unacceptable delay in the BBC ringing him back. He had expected a response before the actual event took place.

BBC Audience Services made the following points:

- In the past, the BBC had found that if tickets were issued to people who lived far away from an event, there was a high number of "no shows".
- On this occasion, the BBC had taken the decision to implement a regional weighting to ensure tickets were used and therefore spaces filled.
- It was not possible at the time they rang the complainant to predict how long the subsequent response would take. The BBC's target was to respond within two weeks.
- 90% of replies to complaints were within 10 working days, but this could not be guaranteed. It would also depend on what the complaint was about, how many others were being handled, and practical issues such as whether a production team was available for comment.
- They raised the complaint with Radio 2 who reiterated their initial response about the high number of "no shows" if they issued tickets to people who lived far away from an event.

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

Appeal

The complainant complained to the Trust about the substance and handling of his complaint. He made the following points:

- Ticketing was split 60% to those who lived in the Greater London area and 40% to those who did not. He and others who did not live in London were not given the same chance to get a ticket.
- He rang the BBC to complain that this was discriminatory. He was not complaining about not getting a ticket but about discrimination against those who did not live in London.
- He had listened to Sir Terry for twenty years; he was close to everyone's hearts and the memorial service was a very special event for Sir Terry's listeners.
- The complainant lived five hours away but would have travelled to London for the memorial service.
- If the BBC was really concerned that those who lived far away would not attend, then the service should have been held in a more central area of the country to be fair to the entire UK.

Decision of the Trust Adviser (by phone)

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

She noted that the Royal Charter drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. The operational management of the BBC was specifically defined in the Charter (Article 38, (1) (c)) as a duty that was the responsibility of the Executive Board, and one in which the Trust did not get involved unless, for example, it related to a breach of the BBC's editorial standards. She considered that the allocation of tickets for BBC organised events was a procedure that was part of the operational management of the BBC, and that responsibility for ticket allocation lay with the Radio 2 management team rather than the Trust.

She considered that Audience Services had given the complainant a reasonable explanation as to why Radio 2 weighted ticket distribution towards areas nearer to where the event was taking place, the reason being that they had more drop-out from people who lived further away.

The Adviser had considered whether this was discriminatory to people who lived further away from London but decided that it was not because the BBC applied the same logic to providing tickets to events that took part in other parts of the UK, e.g. in Wales.

The Adviser acknowledged the complainant's concerns about the way his complaint had been handled. She had contacted Audience Services to discuss this issue. The Complaints Manager expressed regret for the delay. He explained that the delay had been in his team as his team had been very busy and seriously under-staffed recently. They would reply as soon as possible. He asked the Adviser to convey his apologies to the complainant for the delay in issuing a further response to the complaint.

Request for review by Trustees

The complainant asked Trustees to review the substance and handling of his complaint. He made the following points:

- His request for a further response from Audience Services on his substantive complaint had met with unacceptable delay.
- Audience Services had not given him the reasons for the delay until these were established by the Trust Unit when he submitted his appeal.
- The second substantive response, when it finally came, was just a reiteration of what he had been told in the first response.
- He said he felt ignored and discriminated against.
- He would still like an answer to his question as to why the BBC thought it was OK to allocate tickets in the way they had.

The Panel's decision

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

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

Trustees agreed that the substantive complaint was not admissible having concluded that:

- The Royal Charter set out a division of responsibility between the BBC Executive and the BBC Trust and drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. The "operational management" of the BBC was specifically defined in Article 38, (1) (c) as a duty which was the responsibility of the Executive Board. The Royal Charter also explained that the Trust must not exercise or seek to exercise the functions of the Executive Board. (Article 9, (3)).
- the responsibility for operational decisions about ticket allocations for BBC events rested with the Executive, in this case the Radio 2 senior management team;
- the Radio 2 Executive had demonstrated their reasoning for weighting the ticket allocation towards Greater London. They had explained that when they issued tickets to people who lived far away from where the event concerned was taking place, there would usually be a high number of people who did not turn up on the day. They wanted to minimise the number of empty seats in the congregation attending the memorial service and felt that weighting the ticket allocation towards the Greater London area would achieve this.
- a reasoned and reasonable response had been provided to the complainant.

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

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

Trustees turned to the complaints handling element of the appeal, and agreed to uphold it⁶ having concluded that:

- any complaints system may be subject to delay for a variety of reasons; however, it was important to try and meet the published timetables so that the public had an understanding of what might be expected when a complaint was raised with the BBC;
- the delays the complainant had experienced were to be regretted;

⁶ Audience Services agreed that the complaint could proceed without further submissions from the BBC as a reasonable adjustment.

- Audience Services accepted responsibility for delays in answering the complaint which they said were due partly to pressure of work and staff shortages, as well as waiting for Radio 2 to issue a further response to the substantive complaint.
- an error by Audience Services led to it being overlooked that the complainant could only communicate by phone, and he was only provided with written details for the Trust, not a phone number.

The Panel upheld on complaints handling