

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

October & November 2015 issued January 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. The duties of the CAB are conducted by Panels of the Board consisting of at least two Trustees, including the Chairman of the CAB and other Trustees as required. The Board is advised and supported by the Trust Unit.

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

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

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

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

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

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

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

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

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

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

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

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

Summary of findings

Television Licensing Appeal: Handling of a complaint about a TV Licensing Officer's visit to an unlicensed property – TVL 0074

The Panel decided that one element of this appeal qualified for consideration. This element is reflected under Appeal Findings. The Panel decided that the remainder of the appeal did not qualify to proceed for consideration. The elements of the appeal which were not considered can be found under 'Requests to review the Trust Unit's decisions on Television Licensing appeals'.

Summary of finding

This appeal is about the handling of a complaint regarding a TV Licensing Officer's visit to an unlicensed property in October 2014.

The complainant's points, in summary were:

- Point (A): The complainant considered that the complaint had not been dealt with appropriately at any stage; and
- Point (B): The complainant considered that the compensation offered to date by the Executive was inadequate.

The Trust's role:

- The BBC Trust has a specific function under the BBC's Royal Charter to ensure that arrangements for the collection of the licence fee by the BBC are efficient, appropriate and proportionate.
- The Panel considered the complaint handling aspect of the complaint. The Panel also considered the point of the appeal around whether the compensation offered to date by the Executive was inadequate.

The Panel concluded in relation to Point (A) that there had been a number of failures throughout the passage of this complaint through the complaints system. Because of a cumulative series of failures which had led to a negative experience, overall the complaint had not been well handled.

Finding on Point A: Upheld

The Panel concluded in relation to Point (B) that the two payments offered had been fair and reasonable in the circumstances.

Finding on Point B: Not upheld

Overall finding: Partially upheld

Handling of a complaint about phone calls received from TV Licensing – TVL0077

The Panel decided that one element of this appeal qualified for consideration. This element is reflected under Appeal Findings. The Panel decided that the remainder of the appeal did not qualify to proceed for consideration. The elements of the appeal which were not considered can be found under 'Requests to review the Trust Unit's decisions on Television Licensing appeals'.

Summary of finding

This appeal is about the handling of a complaint about phone calls received from TV Licensing.

The complainant's points, in summary were:

- Point A: His mother had still not received a letter of apology written to her from anyone in TV Licensing
- Point B: The goodwill cheque for £15 promised in April 2014 was only received in March 2015
- Point C: The complainant had received responses to his complaints from a number of different people, which he believed amounted to a lack of ownership and accountability
- Point D: The Stage 3 response was delayed by three months due to another administrative error, which was only identified when the complainant chased his response.

The Trust's role:

- The BBC Trust has a specific function under the BBC's Royal Charter to ensure that arrangements for the collection of the licence fee by the BBC are efficient, appropriate and proportionate.

The Panel concluded in relation to Point A that there was nothing to suggest that the original letter of apology had not been sent though it had not been received and had presumably been lost in the post. It was possible that the letter from the TV Licensing's Operations Director which had been sent in 2014 and, it would appear, again a year later in 2015 did not include the enclosed letter of apology due to an administrative error which was repeated when the same letter was printed out and resent on a second occasion. This was a regrettable sequence of events; however, an apology by the BBC's Managing Director, Finance and Operations resolved this matter.

Finding on Point A: Resolved

The Panel concluded in relation to Point B that: it was regrettable that the complainant and some other licence fee payers had experienced poor service in the issuing of goodwill cheques. In this case the apology by the BBC's Managing Director, Finance and Operations (and the further goodwill payment) resolved this matter.

Finding on Point B: Resolved

The Panel concluded in relation to Point C that:

- it was reasonable that different people were involved in the different stages of the complaints process: such a system was more likely to result in each of the individuals involved analysing the complaint independently before reaching their own decision. This would, however, inevitably result in different people responding at the different stages of the complaints process; and
- it was reasonable, and indeed in the interests of complainants, for members of staff, where appropriate, to respond to complaints in the absence of colleagues in order to progress a complaint as quickly as possible.

Finding on Point C: Not Upheld

The Panel concluded in relation to Point D that taking into account:

- the fact that the complainant had not directly contacted the Head of Revenue Management in order to escalate his complaint
- there had been a delay in passing the complaint to the BBC's Managing Director, Finance and Operations
- the time allowed in the complaints procedure was unrealistic
- the BBC's Managing Director, Finance and Operations had apologised and also made a further goodwill gesture to the complainant's mother

This aspect of the complaint was resolved.

Finding on Point D: Resolved

Overall Finding: Resolved and not upheld

Refund of domestic TV licences purchased unnecessarily – TVL0071

Summary of finding

This appeal is about the refund of domestic TV licences purchased unnecessarily.

The complainant's points, in summary were:

- Point (A) The complainant considered he was entitled to a refund of six years' worth of domestic TV licences
- Point (B) The complainant considered that the goodwill payment offered by the BBC was insufficient
- Point (C) The complainant considered that the complaint was mishandled

The Trust's role:

- The BBC Trust has a specific function under the BBC's Royal Charter to ensure that arrangements for the collection of the licence fee by the BBC are efficient, appropriate and proportionate.

The Panel concluded in relation to Point (A) that the complainant's purchases of separate domestic TV licences for his domestic premises and holiday letting premises were attributable to his own error: TV Licensing (TVL) had adequately provided the public with information about the availability of Hotel Licence concessions for holiday lets; and the onus was on the complainant to establish which type of TV licence/s he might need when he began his holiday letting business.

The Panel also concluded that it did not think there were specific circumstances to this case which exceptionally affected the way the Refund Policy should have been applied. Trustees concluded that the Refund Policy had been correctly applied (taking into account the interest of all licence fee payers).

Finding on Point A: Not upheld

The Panel concluded in relation to Point (B) that the goodwill payment offered by the BBC had been fair and reasonable in the circumstances.

Finding on Point B: Not upheld

The Panel noted in relation to Point (C) the target timescales laid out in the Complaints Framework for responses had not been met on all occasions at Stage 2 and 3. However, the Panel did agree that this case was complex and so a longer timescale did apply and because there had been an apology by the Managing Director, Finance and Operations the Panel concluded that this resolved this aspect of the complaint.

The Panel noted that the previous Panel of the Complaints and Appeals Board had taken the view that it would be appropriate to review the timescales laid out in the television licensing complaints and appeals procedure so that realistic timescales were provided.

TVL had given the complainant incorrect information about eligibility of a refund at Stage 1. However, as this was rectified at Stage 2 of the complaints process the Panel considered this matter was also resolved.

Finding on Point C: Resolved

Overall Finding: Resolved and not upheld

Appeal Findings

Handling of a complaint about a TV Licensing Officer's visit to an unlicensed property – TVL0074

The Panel decided that one element of this appeal qualified for consideration. This element is reflected below. The Panel decided that the remainder of the appeal did not qualify to proceed for consideration. The elements of the appeal which were not considered can be found under 'requests to review the Trust Unit's decisions on Television Licensing appeals'.

Background

This appeal is about the handling of a complaint regarding a TV Licensing Officer's visit to an unlicensed property in October 2014.

Relevant extracts from the BBC complaints framework

The Television Licensing complaints procedure has four main stages¹:

- Stage 1 – TV Licensing responds to the complainant in the first instance, with the option of a second Stage 1 response from the Operations Director whose role is to review the response and ensure the matter has been investigated appropriately
- Stage 2 – The complainant can ask for their complaint to be forwarded to the BBC Executive for a further review and response from the BBC's Head of Revenue Management
- Stage 3 – The BBC Executive Board member responsible for TV Licensing can consider an appeal against a Stage 2 decision
- Stage 4 – In certain cases a complainant may appeal to the BBC Trust for a final decision

Below is a section of the Television Licensing complaints and appeals procedures which is relevant to this complaint²:

Clause 2.3 (Stage 3)

- If you are dissatisfied with the BBC's response at Stage 2, you may appeal to the BBC's Executive Board member responsible for licence fee collection.
- The Executive Board member aims to respond to you within 10 working days of receipt of your complaint, though complex cases may take longer.

The complaint

The complainant complained to TV Licensing about the handling of a complaint regarding a TV Licensing Officer's visit to his sister's unlicensed property in October 2014. The

¹ Details of these stages are on the TV Licensing website at <http://www.tvlicensing.co.uk/about/making-a-complaint-AB7>

² The full document is available online at

http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2014/complaints_fr_work_tv_licensing.pdf

complainant claimed that the officer had not completed the Record of Interview³ documentation correctly and had not made clear to his sister that she was being formally cautioned for watching live television without a licence. The complainant stated that his sister had believed she was merely signing a form to give permission for the officer to set up a TV licence at her property. The complainant stated his sister only realised after the officer had left the property that she had been formally cautioned for evading the licence. The complainant and his sister also submitted a Subject Access Request to the BBC under the Data Protection Act. This has been dealt with separately by the BBC.

Appeal

The complainant made his complaint to the BBC Trust by a letter received in July 2015.

The Trust Adviser considered the points made by the complainant in his appeal and decided that the substantive issue which prompted the original complaint (i.e. the TV Licensing officer's conduct during his visit in October 2014) did not have a reasonable prospect of success. She therefore considered that it would not be proportionate or cost-effective for the complaint to be put before Trustees. The complainant challenged this decision and this challenge was put before a Panel of the Trust's Complaints and Appeals Board (CAB) on 24 September 2015 and that finding is published separately.

The Trust Adviser considered that the handling of the complaint at various stages raised a matter of substance.

Point (A): The complainant considered that the complaint had not been dealt with appropriately at any stage

In his appeal to the Trust the complainant said the complaint had not been dealt with appropriately at any stage, from the various contacts he and his father had had (on behalf of his sister) with TV Licensing since October 2014, through to the responses from the BBC's Head of Revenue Management at Stage 2, and the BBC's Managing Director, Finance and Operations at Stage 3.

Point (B): The complainant considered that the compensation offered to date by the Executive was inadequate

The Panel's decision

The Panel noted the following specific events regarding how the complaint was dealt with at the various stages of the complaints process:

TV Licensing:

The complainant said a commitment by TV Licensing was made in a telephone call in October 2014 to call back to explain the position regarding the caution but no call was made.

The complainant also said there were inconsistencies and misinformation in the subsequent telephone exchanges between him and various TV Licensing personnel in November 2014 about what would happen next and his right (on behalf of his sister) to compensation. This was acknowledged by the BBC's Head of Revenue Management in a letter of January 2015 from her to the complainant's MP (see below) and a £40 goodwill payment made in her subsequent response of March 2015 in recognition of this.

³ The Record of Interview is a form filled out by a TV Licensing officer in circumstances where an individual is found to be watching a television without a TV licence. It is signed by the interviewee and the TV Licensing officer.

In her Stage 1 response of December 2014, TV Licensing's Operations Director did not i) explain the next stage in the complaints process if the complainant was still not happy; and ii) explain fully how to make a Subject Access Request to the BBC under the Data Protection Act. This led to both a delay in the complainant's complaint being escalated to Stage 2 and a protracted delay in the complainant successfully making a Subject Access Request and resulted in a further lengthy correspondence with TV Licensing (running from January to June 2015).

TV Licensing's Operations Director had decided in her response of December 2014 that the circumstances did not justify compensation.

There was a delay in acknowledging the complainant's email of December 2014 requesting that his complaint be escalated to Stage 2. An acknowledgement was provided when the complainant chased this in January 2015.

BBC's Head of Revenue Management:

The complainant asked TV Licensing to escalate his complaint to Stage 2 in December 2014 and this was passed to the BBC's Head of Revenue Management for response. However, the complainant's MP also wrote to the BBC's Head of Revenue Management on his behalf to make a Stage 2 complaint in December 2014. The BBC's Head of Revenue Management responded to the complainant's MP in January 2015 (12 working days from receipt). The complainant did not receive a copy of this Stage 2 response until it was forwarded to him by his MP's office in mid-February. Meanwhile there were further email exchanges between the complainant and TVL during January/February 2015, as the complainant had not received a response to his complaint from the BBC's Head of Revenue Management.

The second Stage 2 response was provided in line with the timelines set out in the complaints procedure.

There was a delay in sending the £40 cheque offered by the BBC's Head of Revenue Management for the poor handling of telephone calls in her second Stage 2 response; the complainant chased this and was told later in March that this had just been authorised and would be with him in a few days.

The complainant's subsequent response of April 2015 requesting that his complaint be escalated to Stage 3 was not acknowledged on receipt by the BBC's Head of Revenue Management's office. The complainant followed up in June 2015 and was told at that point that it had been passed to the BBC's Managing Director, Finance and Operations, for a Stage 3 response. The complainant complained that this acknowledgement referred to it as "his" case rather than his sister's, and that "a bit of attention to detail also goes a long way". The office also did not update the complainant on the progress of his complaint at Stage 3 as had been promised in an email in June 2015.

BBC's Managing Director, Finance and Operations:

Handling of the complaint at Stage 3 was delayed and took considerably longer than the target of 10 working days outlined in the procedure. The Stage 3 reply was sent 40 days after the complainant's request that the complaint be escalated was received. A typo in the postcode (one character was missing) meant that the complainant did not receive this and a further copy had to be sent electronically later in the month.

The BBC's Managing Director, Finance and Operations agreed a further goodwill payment of £40 which she believed "to be a fair and reasonable amount to cover the cost of your

[the complainant's] letters and phone calls." The complainant noted that the cheque was going to be sent in his name and not to his sister until he intervened.

A previous case

A Panel of the CAB had agreed, in relation to another case heard in July 2015, that it was difficult to review a case and provide a full reply at Stage 3 within the 10 working days currently set down in the complaints framework. The Panel concluded that it would be appropriate to review the timescales laid out in the Television Licensing complaints and appeals procedure so that realistic timescales are provided.⁴

Point (A): The complainant considered that the complaint had not been dealt with appropriately at any stage

Trustees concluded that there had been a number of failures throughout the passage of this complaint through the complaints system.

Trustees accepted that any complaints system may be subject to delay for a variety of reasons, some of which were avoidable such as human error, and some unavoidable such as unexpected pressure on the complaints system. In general, 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 Panel noted that the timescales laid out in the Complaints Framework for responses had not been met on all occasions. The Panel also agreed that it would have been helpful if the BBC had proactively informed the complainant about delays during the complaints process.

The Panel noted that a previous Panel of the CAB had recognised the difficulties in reviewing a case and providing a full reply at Stage 3 within 10 working days. The Panel noted that the previous Panel of the CAB had taken the view that it would be appropriate to review the timescales laid out in the television licensing complaints and appeals procedure so that realistic timescales were provided.

Nonetheless, because of a cumulative series of failures which had led to a negative experience, the Trustees considered that overall the complaint had not been well handled.

Finding on Point A: Upheld

Point (B): The complainant considered that the compensation offered to date by the Executive was inadequate

Trustees noted that compensation had not been offered at Stage 1 of the complaint but that at both Stages 2 and 3 of the complaint payments of £40 each had been made. Trustees also noted that award decisions were made on a case-by-case basis in respect of compensation arrangements for TV Licensing complainants. Awards in the region of £25 to £40 by TV Licensing and/or the BBC were typical in these types of complaints.

One of the functions of the BBC Trust is "ensuring that arrangements for the collection of the licence fee are efficient, appropriate and proportionate"⁵. The Panel noted that a previous Panel of the CAB had in the past recommended an amount for the Executive to offer as compensation in relation to a TVL case involving different circumstances. A Panel

⁴ See full finding at http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/appeals/cab/sep_15.pdf

⁵ BBC Charter, Clause 24 (2) m

of the CAB considered in January 2014 a complaint about the amount of the “goodwill” payment of compensation offered by TV Licensing. In that case the Panel noted that

“as the sovereign body of the BBC and as the final arbiter of whether an appeal is for the Trust to determine or not, and as to the substance of any appeal, the Trust could decide whether a complainant should be given compensation, and whether any sum already offered by the Executive was appropriate. The Panel considered this was a power to be exercised sparingly, however.”

The Panel also agreed in that case that “it would not always be right for the Trust to consider substituting a different amount [to the total goodwill gesture proposed by the Executive]”, but they went on in that case to request an amount for the Executive to offer as total compensation⁶.

Trustees were not persuaded by the facts of the case that, on this occasion, they should consider substituting a different amount to the total goodwill gesture of £80 offered by the BBC. Trustees agreed that the two payments offered had been fair and reasonable in the circumstances.

Finding on Point B: Not upheld

Overall Finding: Partially upheld

⁶ http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/appeals/cab/jan_2014.pdf

Handling of a complaint about phone calls received from TV Licensing – TVL0077

The Panel decided that one element of this appeal qualified for consideration. This element is reflected below. The Panel decided that the remainder of the appeal did not qualify to proceed for consideration. The elements of the appeal which were not considered can be found under 'requests to review the Trust Unit's decisions on Television Licensing appeals'.

Background

This appeal is about the handling of a complaint about phone calls received from TV Licensing⁷.

Relevant extracts from the BBC complaints framework

The Television Licensing complaints procedure has four main stages⁸:

- Stage 1 – TV Licensing responds to the complainant in the first instance, with the option of a second Stage 1 response from the Operations Director whose role is to review the response and ensure the matter has been investigated appropriately
- Stage 2 – The complainant can ask for their complaint to be forwarded to the BBC Executive for a further review and response from the BBC's Head of Revenue Management
- Stage 3 – The BBC Executive Board member responsible for TV Licensing can consider an appeal against a Stage 2 decision
- Stage 4 – In certain cases a complainant may appeal to the BBC Trust for a final decision

Below is a section of the Television Licensing complaints and appeals procedures which was considered particularly relevant to this complaint⁹:

Clause 2.3 (Stage 3)

- If you are dissatisfied with the BBC's response at Stage 2, you may appeal to the BBC's Executive Board member responsible for licence fee collection.
- The Executive Board member aims to respond to you within 10 working days of receipt of your complaint, though complex cases may take longer.

The complaint

The complainant complained to TV Licensing regarding a phone call received by his mother in March 2014 about the expiry of her television licence. The call had been received only nine hours after her licence had expired. The call was intended to be a courtesy call (in accordance with an established TVL practice), explaining that the licence had expired and providing an opportunity to pay for a new one. The complainant

⁷ The substantive issue which prompted the original complaint (i.e. the telephone calls received from TV Licensing) is dealt with under separate cover.

⁸ Details of these stages are on the TV Licensing website at <http://www.tvlicensing.co.uk/about/making-a-complaint-AB7>

⁹ The full document is available online at

http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2014/complaints_fr_work_tv_licensing.pdf

complained that the tone of the TV Licensing caller had been inappropriate and that the caller had misinformed his mother about cheque clearance times and not being able to use the television in the interim. The complainant later added to his complaint that his father had received a similar call in March 2015 (two days after a new licence had been purchased), in which he alleged that the caller had hung up on his father.

The complainant asked for a written and signed letter of apology to his mother to be sent by the call handler who called his mother in March 2014. This was in addition to any compensation to be awarded.

During Stages 1 to 3 of the complaints process, the following took place:

- a) TV Licensing sent a letter of apology to the complainant's mother from a member of the Customer Relations team, in March 2014. The complainant said this was not received by his mother.
- b) In her response to the complainant at Stage 1 in April 2014, TV Licensing's Operations Director apologised that the letter had not been received; she noted that she was enclosing a further copy of the apology letter and a goodwill cheque for £15. The complainant said he did not receive this copy of the apology letter, nor the enclosed cheque.
- c) The BBC's Head of Revenue Management also apologised to the complainant at Stage 2 in June 2014, noting that his mother had not received the apology sent in March 2014 and that TV Licensing's Operations Director had said that she was enclosing a copy in her letter to the complainant.
- d) The complainant wrote to BBC Complaints in November 2014 and January 2015 in respect of the complaint made in March 2014. BBC Complaints wrote to the complainant in March 2015 and explained that the complainant needed to contact TV Licensing. At around the same time, the complainant's father received a call in March 2015 which was similar to the call his mother had received in March 2014. The complainant's mother first contacted TV Licensing in respect of the March 2015 phone call.
- e) A member of TV Licensing's Customer Specialist team promised the complainant's mother in a phone call in March 2015 that she would receive a letter of apology for the call received the previous day within 10 working days, and that a copy of the original letter of apology that she had not received would be included with that. A letter was sent to the complainant's mother from a member of the Customer Relations team in March 2015, acknowledging that the complainant's mother was unhappy about the way the adviser had handled the original call but concluding that the person who made the call had performed correctly to TV Licensing's customer services standards. It also noted that a copy of the original apology would be sent again, although the complainant said this copy of the original apology was not subsequently received.
- f) There was some correspondence concerning an undated letter apparently received by the complainant from TVL's Operations Director in March 2015 (TVL subsequently confirmed it had no record of this letter but believed it to have been a copy of the Stage 1 response from TVL's Operations Director in April 2014 - see (b) above). The complainant said this letter also referred to a copy of the letter of apology to his mother being enclosed, as well as a £15 cheque (the complainant said neither was in fact enclosed). The Executive offered to confirm, in the Director of Finance and Operations' Stage 3 response, the nature of this letter if the complainant could provide a copy of it but no copy was provided.

- g) In her Stage 3 response of June 2015, the BBC's Managing Director, Finance and Operations said that she had been assured by TV Licensing that the complainant's mother had been sent a letter of apology in March 2014 and was sorry that this had not been received.
- h) The Stage 3 response from the BBC's Managing Director, Finance and Operations said that she understood that the cheque authorised by TV Licensing's Operations Director in April 2014 was not issued then and TV Licensing had now sent this to the complainant. She hoped that the complainant had received this and would accept her apologies that TV Licensing had not provided it to him the previous year. (She also said that she had asked TV Licensing to make a further goodwill payment of £25 to the complainant's mother which would be sent under separate cover.)
- i) In his appeal to the BBC Trust in July 2015, the complainant referred to his mother having received the cheque for £15 in March 2015, and the £25 cheque "last month" (i.e. June 2015).

The complainant was also dissatisfied that during the course of making his complaint he had received complaints responses from a number of different people, which he believed amounted to a lack of ownership and accountability and that the Stage 3 response was delayed by three months.

During Stages 1 to 3 of the complaints process, specifically in regard to the request for a written letter of apology and request for compensation, the following took place:

- a) The initial responses to the complaint in March 2014 were prepared by a member of TV Licensing's Customer Relations team.
- b) TV Licensing's Operations Director provided a Stage 1 response in April 2014, in accordance with stages set out in the Television Licensing complaints and appeals procedure.
- c) As the complainant was still not happy, the BBC's Head of Revenue Management provided a further response (Stage 2) in June 2014, in accordance with the stages set out in the Television Licensing complaints and appeals procedure. This included information on how the complainant could escalate his complaint further if he remained dissatisfied.
- d) The complainant entered into correspondence with BBC Complaints in November 2014 and again in January 2015 regarding the handling of his complaint and received a referral to TV Licensing in March 2015.
- e) The complainant liaised further with TV Licensing's Operations Director in March 2015 concerning the undated letter he had apparently received, and received an acknowledgement from TV Licensing's Customer Relations team.
- f) The complainant also corresponded with the BBC Trust in March 2015 and was informed the complaint had been forwarded to the Executive for a Stage 3 response. There was a delay in the complainant receiving a response from the BBC Trust Unit due to an administrative oversight, for which an apology was given.
- g) In accordance with the stages set out in the Television Licensing complaints and appeals procedure, the complainant was provided with a Stage 3 response from the BBC's Managing Director, Finance and Operations, the Executive Board member responsible for licence fee collection. There were delays in providing the

Stage 3 response. As a result, the complainant liaised further with the BBC Trust again in May, June and July 2015 regarding an update on progress.

Appeal to the Trust

The complainant appealed to the Trust in July 2015 as he considered that the complaint had not been dealt with appropriately. The complainant highlighted that:

- Point A: His mother had still not received a letter of apology written to her from anyone in TV Licensing
- Point B: The goodwill cheque for £15 promised in April 2014 was only received in March 2015
- Point C: The complainant had received responses to his complaints from a number of different people, which he believed amounted to a lack of ownership and accountability
- Point D: The Stage 3 response was delayed by three months due to another administrative error, which was only identified when the complainant chased his response.

Point (A): The complainant's mother had still not received a letter of apology written to her from anyone in TV Licensing

In his initial complaint in March 2014, the complainant asked for a written and signed letter of apology to his mother to be sent by the call handler who called her. In his appeal of July 2015 he said:

"The original purpose of my complaint was to ask for a written apology to my mother for the phone call she received in March [2014]. In 16 months, numerous communications and 3 levels of complaint my mother has still never received any letter of apology, written to her, from anyone within TV Licensing."

Point (B): The goodwill cheque for £15 promised in April 2014 was only received in March 2015

TV Licensing's Operations Director acknowledged in the Stage 1 response errors in the telephone call received by the complainant's mother in March 2014. She offered her apologies to the complainant's mother and said that she was enclosing a cheque for £15 as a gesture of goodwill.

The complainant said the cheque for £15 was received in March 2015.

Point (C): The complainant had received responses to his complaints from a number of different people, which he believed amounted to a lack of ownership and accountability

In his email of March 2015 to TV Licensing's Operations Director, the complainant said:

"Every communication we have received in respect of this complaint has been dealt with by a different person. This indicates a complete lack of ownership and unwillingness of anyone to take any responsibility."

He repeated this complaint in his appeal to the Trust of July 2015.

Point (D): The Stage 3 response was delayed by three months due to another administrative error, which was only identified when the complainant chased his response

In his appeal of July 2015, the complainant said that:

“...the complaint to [the Executive Board member responsible for licence fee collection] took 3 months to respond due to a ‘delay in the details being passed to her office’. i.e. it was only by me chasing the complaint that it was realised yet another administrative error had meant the complaint not being sent to her.”

The Trust Adviser considered the points made by the complainant in his appeal and decided that the substantive issue which prompted the original complaint (i.e. the telephone calls received from TV Licensing) did not have a reasonable prospect of success. She therefore considered that it would not be proportionate or cost-effective for the complaint to be put before Trustees. The complainant challenged this decision and this challenge included further points about part of the complaint which was being taken on appeal; complaints handling. The challenge was put before a Panel of Trustees on 24 September 2015 and that finding is separately published.

The Trust Adviser considered that the handling of the complaint at various stages raised a matter of substance which the Panel considered as an appeal.

The Panel’s decision

The Agreement between the Secretary of State for Culture, Media and Sport and the BBC states in Clause 90(4) that:

“The published [complaints] framework and procedures must give detailed information on how complainants can expect to be treated (including, for example, in terms of timescales).”

Point (A): The complainant’s mother had still not received a letter of apology written to her from anyone in TV Licensing

The Panel noted from the correspondence file that the complainant had said on several occasions that his mother had not received a letter of apology from TV Licensing. It also noted that TV Licensing and the BBC’s TV Licensing management team had said (apparently on three different occasions), that the apology had been sent.

The Panel noted that the original letter of apology had been drafted and was dated 10 March 2014. It had been provided to the Panel as it was saved on TVL’s computer system. The address had been checked by the Trust Unit and was accurate. The Panel agreed there was nothing to suggest that the original letter of apology had not been sent though it had not been received and had presumably been lost in the post. A copy would be sent directly by the Trust Unit to the complainant’s mother.

The Panel agreed that it was possible that the letter from the TV Licensing’s Operations Director which had been sent in 2014 and, it would appear, again a year later in 2015 did not include the enclosed letter of apology due to an administrative error which was repeated when the same letter was printed out and resent on a second occasion. There was no conclusive evidence to show this was the case but it seemed a possible explanation for the conflicting evidence. The fact that the cheque (which was also supposed to be enclosed on the first occasion) had not been received was suggestive of an administrative error. This was very regrettable. Apologies were an important way of rectifying errors.

The Panel noted that the BBC’s Managing Director, Finance and Operations had said that she had been assured by TV Licensing that the complainant’s mother had been sent a letter of apology in March 2014 and was sorry that this had not been received. A further goodwill payment had been made to the complainant’s mother.

Having taken all the factors above into account the Panel concluded that this was a regrettable sequence of events; however, the apology by the BBC's Managing Director, Finance and Operations resolved this matter.

Finding on Point A: Resolved

Point (B): The goodwill cheque for £15 promised in April 2014 was only received in March 2015

The Panel noted that apologies had been offered regards the non-issuing of the cheque in 2014 and that a further goodwill payment had also been made to the complainant's mother in this regard. The Panel noted that in his appeal of July 2015, the complainant referred to his mother having received the cheque for £15 in March 2015, and the £25 cheque "last month" (i.e. June 2015).

The Panel also noted that TV Licensing had recently experienced procedural problems relating to the issuing of goodwill payments to TV Licensing customers. In a certain specific set of circumstances a number of cases had been closed before cheques had been issued. This had been fully investigated by the Executive. An audit had been undertaken at the Trustees' request and a previous Panel of the Complaints and Appeals Board had received an assurance from the Executive that all such cheques are now issued correctly. The Panel noted that the Executive had confirmed that the problems relating to the issuing of the goodwill cheque in this case were connected with the broader problems which had now been resolved.

Trustees noted that the BBC's Managing Director, Finance and Operations had said that TV Licensing had now sent the cheque for £15 to the complainant and hoped that the complainant would accept her apologies that TV Licensing had not provided it to him the previous year. A further goodwill payment of £25 would be sent to the complainant's mother. This was received two months later.

The Panel regretted that the complainant and some other licence fee payers had experienced poor service in the issuing of goodwill cheques. In this case the apology by the BBC's Managing Director, Finance and Operations (and the further goodwill payment) resolved this matter.

Finding on Point B: Resolved

Point (C): The complainant had received complaints responses from a number of different people, which he believed amounted to a lack of ownership and accountability

The Panel noted, from the correspondence file, that the complainant had received replies from several different people across TV Licensing, the BBC's TV Licensing management team and the BBC Trust.

The Panel agreed that it was reasonable that different people were involved in the different stages of the complaints process: such a system was more likely to result in each of the individuals involved analysing the complaint independently before reaching their own decision. This would, however, inevitably result in different people responding at the different stages of the complaints process. The Panel also concluded that it was reasonable, and indeed in the interests of complainants, for members of staff, where appropriate, to respond to complaints in the absence of colleagues in order to progress a complaint as quickly as possible.

Finding on Point C: Not upheld

Point (D): The Stage 3 response was delayed by three months due to another administrative error, which was only identified when the complainant chased his response

The Panel noted that the complainant was invited to escalate his complaint to the BBC's Managing Director, Finance and Operations by replying to the Head of Revenue Management on 12 June 2014. At this stage he chose not to do so but instead lodged a separate complaint with BBC Complaints in November 2014. This was replied to in March 2015 where he was told that BBC Complaints did not deal with TVL matters and he was invited to contact TVL. The complainant contacted Television Licensing about his complaint on 13 March 2015, and on 14 March the complainant wrote to the Trust. On 23 March TVL wrote to the complainant and said his complaint had been escalated to the BBC's Managing Director, Finance and Operations. On 17 April the Trust Unit replied apologising for the late reply. The Trust Unit explained that TVL had no record of a request to pass his complaint to the BBC's Managing Director, Finance and Operations but that the Unit would pass it over on that day.

The handling of the complaint at Stage 3 was delayed and took considerably longer than the target of 10 working days outlined in the procedure. The Stage 3 response was sent 72 working days from receipt of the email by TV Licensing, and 71 working days from receipt of the request for an appeal by the BBC Trust.

The Panel noted that the BBC's Managing Director, Finance and Operations had apologised in the Stage 3 response for the delay in the response which she said was caused by "a delay in your case details being passed to my office".

The Panel accepted that any complaints system may be subject to delay for a variety of reasons, some of which were avoidable such as human error, and some unavoidable such as unexpected pressure on the complaints system. In general, 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 Panel noted that the timescales laid out in the Complaints Framework for responses had not been met. Trustees were aware that a previous Panel of the Board had recognised the difficulties in reviewing a case and providing a full reply at Stage 3 within 10 working days. The Panel noted that the previous Panel of the Complaints and Appeals Board had taken the view that it would be appropriate to review the timescales laid out in the television licensing complaints and appeals procedure so that realistic timescales were provided. However, Trustees were dismayed at the length of time it had taken to handle this complaint. The Panel also agreed that it would have been helpful if the BBC had proactively informed the complainant about delays in drafting his Stage 3 response.

Taking into account:

- the fact that the complainant had not directly contacted the Head of Revenue Management in order to escalate his complaint
- there had been a delay in passing the complaint to the BBC's Managing Director, Finance and Operations
- the time allowed in the complaints procedure was unrealistic
- the BBC's Managing Director, Finance and Operations had apologised and also made a further goodwill gesture to the complainant's mother

the Panel concluded that this aspect of the complaint was resolved.

Finding on Point D: Resolved

Finally the Panel noted that the BBC's Managing Director, Finance and Operations had explained that TV Licensing had reviewed their practice of making calls to customers who renew their licence in full every year and would no longer make such calls until two weeks after their licence had expired. Trustees noted that this was an operational decision but that this was an appropriate change which recognised the value of customers who chose to pay in full every year and gave them some time to make that payment.

Overall finding: Resolved and not upheld

Refund of domestic TV licences purchased unnecessarily - TVL0071

The complaint

Between 2000 and 2014, the complainant held separate domestic TV licences for his home and two adjoining holiday accommodation units (the "holiday lets"). Having discovered that he was eligible – and that it was significantly cheaper – to buy a single Hotel and Mobile Units TV Licence (a "Hotel Licence") for all three properties, the complainant bought a Hotel Licence, cancelled the domestic TV licences and was refunded his unexpired portions (in accordance with the TV Licensing Refund Policy).

The complainant claimed a refund of the domestic TV licences that he had purchased in previous years. TV Licensing (TVL) issued a refund for the two years prior to the date of issue of the Hotel Licence. TVL did not consider that any further refund was due because BBC Television Licensing Refund Policy provides that: where licences are purchased as a result of TVL's error, refunds will be paid for a period of up to six calendar years; whereas, where licences are purchased as a result of the customer's error, refunds are only available for up to two years. The complainant disagreed with this.

Appeal to the Trust

- Point (A) The complainant considered he was entitled to a refund of six years' worth of domestic TV licences
- Point (B) The complainant considered that the goodwill payment offered by the BBC was insufficient
- Point (C) The complainant considered that the complaint was mishandled

The Panel's decision

Point (A): The complainant considered he was entitled to a refund of six years' worth of domestic TV licences

The Panel noted the following arguments made by the complainant and by TVL.

The complainant argued that:

- a) TVL had not adequately publicised the potential availability of Hotel Licences in respect of holiday lets. TVL's website mentioned only hotels, campsites and caravan sites, and did not refer specifically to holiday letting accommodation.
- b) A "straw poll" of owners of holiday lets, conducted by the complainant, had revealed that none was aware that they might be eligible to hold a Hotel Licence.
- c) Just as TVL would not write off a licence fee underpayment, so it should not write off an overpayment.
- d) The refund should be for six years' worth of domestic licences, in order to achieve parity between a TV Licence holder and TV Licensing.

TVL argued that:

- a) The purchase of domestic TV licences was not as a result of an error by TVL.

- b) The refund the complainant had received was in line with the BBC Television Licensing Refund Policy ("the Refund Policy").¹⁰
- c) The availability of Hotel Licences was well established, and had been publicised for many years through the media and trade organisations.
- d) While the TVL website could not provide information on all possible scenarios, it did state:

If your establishment qualifies as a hotel your licence will cover the installation and use of all TV receiving equipment in guest rooms, the proprietor's on-site private living areas, on-site staff accommodation, common rooms and any other areas that are part of the same establishment and on the same site".¹¹

- e) A "hotel" was defined in the Communications (Television Licensing) Regulations 2004 ("the 2004 Regulations") as:

"...any establishment within the same premises or, as the case may be, on the same site which (whether or not it also provides other services) offers accommodation consisting wholly or mainly of units of overnight accommodation for guests staying for no longer than 28 nights in any consecutive period, and includes an inn, guest-house, holiday camp, caravan site and camp site".¹²

The Panel noted the following:

Section 365(3)¹³ of the Communications Act 2003 grants the BBC the discretion to make refunds of TV licence fees "in such cases as they may determine". In practice, the BBC's agent, TVL, exercises this discretion in accordance with the Refund Policy,¹⁴ which applies to all refund applications. The Refund Policy (and, hence, the discretion to make refunds) is to be applied in accordance with general administrative law requirements. These include:

- a) considering circumstances and consequences;
- b) being consistent;
- c) balancing the interests of those affected when making decisions; and
- d) listening to arguments as to whether exceptions should be made.

The Panel noted that Section 3.4 of the Refund Policy provides that: where licences are purchased as a result of TVL's error, refunds will be paid for a period of up to six calendar years; whereas, where licences are purchased as a result of the customer's error, refunds are only available for up to two years.

¹⁰ Available on the TV Licensing website at

<http://www.tvlicensing.co.uk/ss/Satellite?blobcol=urldata&blobheadername1=content->

[type&blobheadervalue1=application%2Fpdf&blobkey=id&blobtable=MungoBlobs&blobwhere=1370006277544&ssbinary=true](http://www.tvlicensing.co.uk/ss/Satellite?blobcol=urldata&blobheadername1=content-type&blobheadervalue1=application%2Fpdf&blobkey=id&blobtable=MungoBlobs&blobwhere=1370006277544&ssbinary=true)

¹¹ <http://www.tvlicensing.co.uk/faqs/FAQ46>

¹² SI 2004/692, Sch 5, para 1. <http://www.legislation.gov.uk/uksi/2004/692/schedule/5/made>

¹³ NB not s 365(4) of the 2003 Act, as s 2 of the Refund Policy incorrectly states.

¹⁴ <http://www.tvlicensing.co.uk/ss/Satellite?blobcol=urldata&blobheadername1=content->

[type&blobheadervalue1=application%2Fpdf&blobkey=id&blobtable=MungoBlobs&blobwhere=1370006277544&ssbinary=true](http://www.tvlicensing.co.uk/ss/Satellite?blobcol=urldata&blobheadername1=content-type&blobheadervalue1=application%2Fpdf&blobkey=id&blobtable=MungoBlobs&blobwhere=1370006277544&ssbinary=true).

The Panel agreed that in this case, the overarching question was whether TVL acted in accordance with its Refund Policy. There were two specific issues:

- a) whether the complainant's purchases of domestic TV licences were attributable to his own error or TVL's (in that it failed adequately to provide public information about the availability of Hotel Licence concessions for holiday lets); and
- b) if so, were there specific circumstances to this case which exceptionally affect the way the policy should have been applied (taking into account the interest of all licence fee payers).

The Panel also noted that section 3.4 notes (among other things) that "an error on the part of TV Licensing can include failing to make publicly available information about ... the availability of concessions".

The Panel noted that the complainant had said: "I notice that your website now has details about Hotel Licences, I don't know how long this has been the case, I have never noticed it before. In any case, it does not refer specifically to holiday letting accommodation". For its part, TVL argued that the availability of Hotel Licences was well-established, and had been publicised for many years.

The Panel was aware that information about Hotel Licences that was currently on the TV Licensing website may not have been available at all material times. However, Trustees noted that the BBC's TV Licensing management team had confirmed that they had always provided some information on hotels (and other types of) licences on the TV Licensing website, since the first one was launched back in 1998.

The Panel noted that the TVL website explained what a Hotel Licence covers "[i]f your establishment qualifies as a hotel ..."¹⁵ The Panel noted that the statutory definition of "hotel" in the 2004 Regulations¹⁶ refers to "accommodation consisting wholly or mainly of units of overnight accommodation", which might reasonably be supposed to include holiday lets. However, the statutory definition does not include holiday lets (or any equivalent term) in its list of examples.

The Panel agreed that TVL's website discusses eligibility for Hotel Licences in terms broadly similar to those used in the statutory definition, and (like the 2004 Regulations) does not expressly mention holiday lets (or any equivalent term). However, TVL's FAQ 43¹⁷ does refer to "...any other structure in which a person can be accommodated overnight...", which might be supposed to include holiday lets.

The Panel noted information researched by an Independent Adviser on the TVL website regarding Hotel Licences. In summary, the research showed that the following information was available on TVL's website in relation to searches about "hotels" and "holiday accommodation":

- "A single TV Licence ... will cover up to 15 accommodation units on a single site", and goes on to define an "accommodation unit" as:

"... a room, caravan, tent or moveable dwelling. The majority of accommodation offered must be for fewer than 28 consecutive nights..."

¹⁵ <http://www.tvlicensing.co.uk/faqs/FAQ46>

¹⁶ The Communications (Television Licensing) Regulations 2004

¹⁷ <http://www.tvlicensing.co.uk/faqs/FAQ43>

- “If your establishment qualifies as a hotel your licence will cover the installation and use of all TV receiving equipment in guest rooms, the proprietor’s on-site private living areas, on-site staff accommodation, common rooms and any other areas that are part of the same establishment and on the same site”.¹⁸
- “... If you qualify as a hotel or the provider of mobile units, you can benefit from significantly reduced licence fees. For more information see [hotels, hostels, mobile units and campsites](#) [hyperlink].”¹⁹
- **“Hotels and similar establishments**

TV Licensing law states that a hotel is any establishment offering accommodation consisting wholly or mainly of units of overnight accommodation for guests staying no longer than 28 consecutive nights. A unit of overnight accommodation includes a room ... or any other structure in which a person can be accommodated overnight as provided by your establishment. ...

The hotel must be situated on one site or on the same premises. ...

For more information see [hotels, hostels, mobile units and campsites](#) [hyperlink].”

- “The regulations also set out ... the different concessions available, including concessions for ... people who run hotels, guesthouses or campsites.”
- “There are concessions available for ... businesses that provide units of overnight accommodation, for example, a hotel.”
- “There are different rules for [hotels, hostels, mobile units and campsites](#)[hyperlink]. Please see how you’re affected if your business operates premises like these.”

Entering the phrase “holiday let” into the search bar on TVL’s homepage yielded no relevant results.

The Panel also noted information gathered by the same Adviser by conducting internet searches, using relevant terms.

It appeared that, from time to time, TVL had launched awareness-raising campaigns (usually timed to coincide with the holiday season), reminding owners of hotels, guest houses and holiday parks that they must ensure they are correctly licensed. For example, an undated press release on TVL’s website stated:

“...TV Licensing is reminding hotels, guest houses and holiday parks across the UK to ensure they are correctly licensed ...

Holiday accommodation providers which offer rooms, caravans and chalets as short stay accommodation can apply for a Hotel and Mobile Unit Licence.”²⁰

TVL’s campaigns had been reported on trade association websites. There was also advice on a number of trade association websites regarding TV licensing requirements. This advice, collectively, included specific mention of the “Hotel and Mobile Units Television Licence” (hotel licence), where to get further TV licensing advice if needed and that if

¹⁸ <http://www.tvlicensing.co.uk/faqs/FAQ46>

¹⁹ <http://www.tvlicensing.co.uk/faqs/FAQ46>

²⁰ <http://www.tvlicensing.co.uk/about/media-centre/news/dont-let-a-tv-licence-fine-leave-egg-on-your-face-NEWS25>

offering short-stay accommodation to overnight visitors whether in serviced or self-catering accommodation and a device was provided on which guests could view TV programmes, the proprietor would need to apply for a hotel licence. There was also advice that despite its name, the hotel licence encompassed accommodation ranging from hotels, guesthouses, bed and breakfasts and inns to holiday cottages, flats and chalets through to camping and caravan sites and narrowboats.

The Panel agreed that there was available information regarding Hotel Licences on the TV Licensing website and on relevant trade websites. It was apparent from public searches that information had been available over time.

The Trustees also considered that the onus was on the complainant to establish which type of TV licence/s he might need when he began his holiday letting business.

Trustees concluded that the complainant's purchases of separate domestic TV licences for his domestic premises and holiday letting premises were attributable to his own error. TV Licensing had adequately provided the public with information about the availability of Hotel Licence concessions for holiday lets.

Finally, Trustees did not think there were specific circumstances to this case which exceptionally affected the way the Refund Policy should have been applied. Trustees concluded that the Refund Policy had been correctly applied (taking into account the interest of all licence fee payers).

Finding on Point A: Not upheld

Point (B): The complainant considered that the goodwill payment offered by the BBC was insufficient

The Panel noted that

- In September 2015 the BBC's Head of Revenue Management wrote to the complainant and explained that an additional refund was due, which equated to nine months of a TV Licence. This was because there had been a miscalculation by TVL and one of the complainant's existing domestic TV licences had not, in fact, been refunded the full two years by TV Licensing as the Executive had agreed it would be. She had asked TV Licensing to send the complainant a goodwill payment for £50. The BBC's Head of Revenue Management apologised for the miscalculation.
- The complainant sought an additional goodwill payment.
- The BBC's Head of Revenue Management declined to make an additional payment saying that the goodwill payment already offered was "proportionate and in line with goodwill payments offered in similar circumstances". She also said the BBC had a duty to ensure that goodwill payments were appropriate and consistent and fair to all licence fee payers.
- The complainant said that in his view the goodwill payment received did not reflect the amount of time he had spent on the matter, nor had it taken into consideration that the complainant had been misinformed by the BBC.

The Panel noted that the Trust does not have the power to make financial awards to complainants. Therefore, if the Panel upheld the complainant's appeal, the appropriate course of action open to Trustees would be to instruct TVL to make a further refund to the complainant.

One of the functions of the BBC Trust is “ensuring that arrangements for the collection of the licence fee are efficient, appropriate and proportionate”.²¹ The Panel noted that a previous Panel of the CAB had in the past recommended an amount for the Executive to offer as compensation in relation to a TVL case involving different circumstances. A Panel of the CAB considered in January 2014 a complaint about the amount of the “goodwill” payment of compensation offered by TV Licensing. In that case the Panel noted that

“as the sovereign body of the BBC and as the final arbiter of whether an appeal is for the Trust to determine or not, and as to the substance of any appeal, the Trust could decide whether a complainant should be given compensation, and whether any sum already offered by the Executive was appropriate. The Panel considered this was a power to be exercised sparingly, however.”

The Panel also agreed in that case that “it would not always be right for the Trust to consider substituting a different amount [to the total goodwill gesture proposed by the Executive]”, but it went on in that case to request an amount for the Executive to offer as total compensation.²²

Trustees were not persuaded by the facts of the case that, on this occasion, they should consider substituting a different amount to the total goodwill gesture of £50 offered by the BBC. Trustees agreed that the payment offered had been fair and reasonable in the circumstances.

Finding on Point B: Not upheld

Point (C): The complainant considered that the complaint was mishandled

The Panel noted that the complainant complained that:

- he had often had to wait several months for a reply to his enquiries
- he was initially told that no refund was due, and only his persistence had led to him receiving a partial refund

The Panel was aware that the Television Licensing complaints procedure has four main stages²³:

The Panel agreed that the following sections of the Television Licensing complaints and appeals procedures were relevant to this complaint²⁴:

Clause 2.2 (Stage 2)

- If you are dissatisfied with how TV Licensing responds to your complaint you may complain to the BBC Executive.
- The Head of Revenue Management aims to respond to you within 10 working days of receipt of your complaint, though complex cases may take longer.

²¹ BBC Charter, Article 24 (2)(m)

²² http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/appeals/cab/jan_2014.pdf

²³ Details of these stages are on the TV Licensing website at <http://www.tvlicensing.co.uk/about/making-a-complaint-AB7>

²⁴ The full document is available online at

http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2014/complaints_fr_work_tv_licensing.pdf

Clause 2.3 (Stage 3)

- If you are dissatisfied with the BBC's response at Stage 2, you may appeal to the BBC's Executive Board member responsible for licence fee collection.
- The Executive Board member aims to respond to you within 10 working days of receipt of your complaint, though complex cases may take longer.

The Panel noted how the complaint was dealt with at the various stages of the complaints process.

The complainant had received timely responses at Stage 1, and during one exchange of correspondence at Stage 2.

In her letter of November 2014, the Head of Revenue Management stated that the complainant's letter of October 2014 had not reached her for several days. The Panel noted that from the actual day of receipt the complaint was replied to in 26 working days which is outside the 10-working-day target at Stage 2 (although the Television Licensing complaints and appeals procedure acknowledges that complex cases may take longer).

The Head of Revenue Management's further letter of December 2014 took 15 working days. The Panel noted that this was again outside the 10-working-day target.

The Managing Director, Finance and Operations stated in her Stage 3 response of April 2015, "I hope you will accept my apologies for the delay in responding". The Stage 3 response had taken 49 days, from the date of receipt. The aim is to reply in 10 working days.

Trustees accepted that any complaints system may be subject to delay for a variety of reasons, some of which were avoidable such as human error, and some unavoidable such as unexpected pressure on the complaints system. In general, 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 Panel agreed that the target timescales laid out in the Complaints Framework for responses had not been met on all occasions at Stage 2 and 3.

The Panel noted that a previous Panel of the Complaints and Appeals Board had recognised the difficulties in reviewing a case and providing a full reply at Stage 3 within 10 working days. The Panel noted that the previous Panel of the Complaints and Appeals Board had taken the view that it would be appropriate to review the timescales laid out in the television licensing complaints and appeals procedure so that realistic timescales were provided.

The Panel noted that at Stage 2 it is noted that complex cases may take longer. The Panel agreed this case was complex and so a longer timescale did apply.

At Stage 3 the Panel noted that the Managing Director, Finance and Operations had stated in her response of April 2015, "I hope you will accept my apologies for the delay in responding". The Panel concluded that the apology resolved this aspect of the complaint.

TVL had given the complainant incorrect information about eligibility of a refund at Stage 1. However, as this was rectified at Stage 2 of the complaints process the Panel considered this matter was also resolved.

Finding on Point C: Resolved

Overall finding: Resolved And not upheld.

Requests to review the Trust Unit's decisions on Television Licensing appeals

The following complainant asked the Complaints and Appeals Board to review the decision of the Trust Unit that the complainant's appeal did not qualify to proceed for consideration by the Panel.

The Panel was provided with the complainant's appeal/s to the Trust, the response or responses from the Trust Unit and the complainant's request/s to review that decision.

Complaint about a TV Licensing Officer's visit to an unlicensed property – TVL 0074

The Panel decided that one element of this appeal qualified for consideration. This element is under Appeal Findings. The Panel decided that the remainder of the appeal did not qualify to proceed for consideration. The elements of the appeal which were not considered are reflected below.

The complaint

The complaint concerned the conduct of a TV Licensing officer during his visit to the unlicensed home of the complainant's sister.

The complainant made the following points:

- The TV Licensing officer's behaviour had been intimidating. He had not made it clear that he was cautioning the complainant's sister for using a television without a licence and he had not ensured that she had understood this.
- His sister had believed that the reason for the visit was to sell her a TV licence and she had signed the Record of Interview²⁵ paperwork on that basis, only realising that she had been formally cautioned when reading it later.
- There were factual inaccuracies on the form completed by the officer; she had not been using the television for the two weeks since she had moved in as she had not been connected to cable television at that point.
- His sister had intended to buy a licence but had not got round to it due to personal circumstances; some allowance for this should have been made.

TV Licensing made the following points in its various responses:

- The purpose of the visit was explained. The property had been unlicensed for some time.

²⁵ The Record of Interview is a form filled out by a TV Licensing officer in circumstances where an individual is found to be watching a television without a TV licence. It is signed by the interviewee and the TV Licensing officer.

- Officers were expected to follow strict instructions and were subject to regular audits.
- Evidence suggested that the visit had been conducted appropriately and there was no evidence that the complainant's sister had not understood that she was being cautioned.
- A record would be kept of the complaint on the officer's file and reported to the BBC and Directors.
- No further action would be taken against the complainant's sister as long as monthly payments were maintained.
- Inconsistencies and conflicting information provided to the complainant in his various contacts were acknowledged and apologised for.

The BBC's Head of Revenue Management made the following points:

- There was a difficulty of reaching a judgement when there are conflicting versions of events.
- The processes around visits and subsequent action for unlicensed properties were explained, including the scope for discretion by TV Licensing's officers.
- The BBC's Head of Revenue Management recognised "inconsistencies and misleading comments" made by TV Licensing's advisers in various telephone calls with the complainant and offered her apologies for any concern caused, noting the action that had been taken. A £40 goodwill payment was offered in recognition of this.

The BBC's Managing Director, Finance and Operations, who is the Executive Board member responsible for licence fee collection, made the following additional points:

- She was satisfied that the officer had called at the address appropriately and completed the Record of Interview form correctly.
- TV Licensing had considered all the available information relating to the case and taken the appropriate action.
- She confirmed that the complainant's sister had not been classified as a criminal offender.
- She offered a further £40 payment as a gesture of goodwill.

Appeal

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

- The response from the BBC's Managing Director, Finance and Operations "highlighted more issues". It was sent to an incorrect postcode and included an intention to send a cheque to the complainant, despite him having asked for it to be sent to his sister. Liaison with another BBC staff member over this issue had resulted in a delayed response from them.

- The complaint had not been dealt with properly; there had been misinformation and a failure of professionalism. BBC core values had not been adhered to.
- The compensation offered was not satisfactory and did not make up for the stress caused. The complainant and his sister had not received a sincere apology for the stress caused.
- The officer's account of the visit was false.
- He was unhappy with the way the BBC had to date administered a Subject Access Request his sister had made for her personal data.

Decision of the Trust Adviser

The Trust Adviser (the Adviser) considered that there had been issues with the handling of the complaint at various stages and decided to put this aspect of the appeal to Trustees.

Regarding the substance of the complaint (ie the TV Licensing officer's conduct during his visit to the complainant's sister's home), the Adviser decided that the complainant's appeal did not have a reasonable prospect of success.

The Adviser noted the responses from the BBC's Head of Revenue Management and the BBC's Managing Director, Finance and Operations who had reviewed the evidence and noted the difficulty of reaching a judgement in view of the conflicting versions of events. Both had decided that the action taken by TV Licensing in relation to the officer concerned (namely, adding the complaint to the officer's record and carrying out further checks by contacting other people the officer had visited, before deciding whether to take disciplinary action or instigate further training) was appropriate. The Adviser noted the context in which the visit by the TV Licensing officer had taken place and the personal circumstances of the complainant's sister. Nevertheless, she believed Trustees would consider, on the basis of the existing evidence, that the Executive's position was reasonable.

Regarding the complaint about the Subject Access Request made by the complainant's sister for her personal data, the Adviser understood that the BBC had sent an email to the complainant in August on this issue. This was a matter for the Executive and not a matter for the Trust to become involved in²⁶. The Adviser considered this point did not have a reasonable prospect of success if put in front of Trustees.

Furthermore, the BBC's Royal Charter and the 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. These make clear that responsibility for the operational management of the BBC lies with the BBC Executive rather than the BBC Trust; the BBC Trust would not ordinarily consider an appeal concerning such matters unless it raised significant issues of general importance.

Taking this into account the Adviser considered Trustees would be likely to conclude that the appeal on the substance of the complaint did not have a reasonable prospect of success. She therefore did not consider it was appropriate, proportionate or cost-effective to proceed with the appeal and did not propose to put it before Trustees.

Request for review by Trustees

²⁶ Compliance with the general law is an operational matter for the Executive and not a matter for the Trust to become involved in, unless there was a question of a breach of the law or it involved significant issues of general importance.

The complainant requested that the Trustees review the decision not to proceed with the appeal. He made the following points:

- The officer had lied and was incentivised to lie and his job was at stake. His sister had no reason to lie.
- In his view it was appropriate, proportionate and cost-effective to consider his appeal.
- An officer should not be able to caution someone and accept a vague "yeah" as an acceptance of a legal caution.
- He should not be able to mumble the caution and mislead someone into thinking they are signing something different to what they are signing.
- It was "ridiculous" to say that an officer does not have to take into account a person's circumstance and surroundings when making a home visit (as the complainant said had been told to him in subsequent liaison with TV Licensing). He noted his sister's circumstances and that women are in general more likely to be fined for not having a TV licence than men.
- He noted that Visiting officers are expected to be resilient.
- The officer had gone against most of the BBC core values.
- Three TVL agents had said to him that this kind of problem happened all the time.
- It was ridiculous to give the benefit of the doubt to the officer. The evidence that the visit had been conducted appropriately was "minimal" – a "yeah" on a form which his sister signed under duress and which would not hold up in court.
- There had been inconsistencies and conflicting information given on the part of TV Licensing. The complainant and his sister had been consistent in the information they had provided throughout the complaints process.

The Panel's decision

The Panel noted the points made by the complainant, TVL, the BBC and the Trust's Adviser on the substance of the complaint (ie the TV Licensing officer's conduct during his visit to the complainant's sister's home).

The Trustees noted the complainant's strength of feelings on the matter. They also noted that there were two conflicting accounts as to what had occurred.

However, the Panel agreed that if they took this matter on appeal they would not be likely to uphold it given:

- the complainant's sister was an adult.
- in relation to the interview form, completed by the TVL officer at the time of the visit:
 - it contains the wording of the caution.
 - it is signed by the complainant's sister as being an accurate record of the interview.
 - there was no indication in the paperwork that the complainant's sister was not responsible and unable to take decisions on her own behalf, nor has there been any suggestion since that this is the case.
- the complainant accepted that his sister had said "yeah" to the caution
- the complainant's sister had at that time chosen to purchase a licence. (She had maintained payments and had not been taken to court.)
- any views expressed by other TVL agents could not be material as they had no first-hand knowledge of these events.
- the Panel saw no indication of any incentive for the TVL officer to lie, as has been alleged by the complainant. The reward structure for officers was not a matter for the Trust, but given his sister had purchased a licence it did not appear to the

Panel that there was any incentive to lie for the officer as he had achieved the purpose of his visit. (This did not mean the complainant's sister had lied – in the Panel's view it was possible for two people to have different views of the same event but they were not incompatible.)

The Panel noted that there had been two goodwill payments of £40 each to the complainant's sister in recognition of inconsistencies and comments made by TV Licensing's advisers in various telephone calls, which they noted were minor in nature. The Panel also noted that TV Licensing had said that a record would be kept of the complaint on the officer's file and reported to the BBC and Directors.

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

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

Complaint about phone calls received from TV Licensing – TVL0077

The Panel decided that one element of this appeal qualified for consideration. This element is under Appeal Findings. The Panel decided that the remainder of the appeal did not qualify to proceed for consideration. The elements of the appeal which were not considered are reflected below.

The complaint

The complaint concerned a phone call from TV Licensing received by the complainant's mother in March 2014 only nine hours after her licence had expired. The call was intended to be a courtesy call, explaining that the licence had expired and providing an opportunity to pay for a new one.

The complainant later added to his complaint that his father had received a similar call in March 2015 (two days after a new licence had in fact been purchased), in which he alleged that the caller had hung up on his father.

The complainant made the following points:

- The tone of the TV Licensing caller in March 2014 was inappropriate.
- The TV Licensing caller had misinformed his mother about cheque clearance times and not being able to use her television in the interim.
- The licence had only just expired.
- He requested a letter of apology to his mother from the member of staff who had called, and co-signed by their manager, giving an indication of actions which would be taken.

TV Licensing made the following points in its various responses:

- It apologised to the complainant for errors in the phone call of March 2014.
- It confirmed that information had been provided to the caller's manager so that feedback and training could be given, but explained that details of this could not be provided to the complainant as the information was protected under the Data Protection Act.
- It offered a cheque for £15 as gesture of goodwill.

The BBC's Head of Revenue Management made the following points:

- The phone call of March 2014 had been intended as a "courtesy" to explain that the licence had expired and to "offer the opportunity to renew the licence quickly and easily, by credit card or debit card".
- She was sorry that the complainant's mother felt that the TV Licensing caller was rude and that the complainant's mother felt her behaviour was unacceptable.

- The response and apology had come from TV Licensing's Customer Relations Department rather than the caller themselves, as all complaints are directed to this team to ensure that complaints are properly managed.
- She confirmed that the caller's manager had listened to the call and ensured that appropriate steps "are taken to address any issues identified".

The BBC's Managing Director, Finance and Operations, who is the Executive Board member responsible for licence fee collection, made the following additional points:

- She acknowledged that a further similar call received by the complainant's father in March 2015 could have been closed in a more "customer-friendly way" and that she had asked TV Licensing to address it with the person concerned.
- She explained that this further call had been received despite the complainant's mother having purchased a licence two days previously at a PayPoint outlet; as PayPoint terminals are not linked directly to the TV Licensing database it "can take one or two days to arrive".
- The BBC would waive the £10 fee for the complainant's mother's Subject Access Request which they had received.
- She confirmed that appropriate action had been taken with the agent who called the complainant's mother in March 2014, but that it would be inappropriate to reveal details of what that action was.
- She had asked TV Licensing to make an additional £25 goodwill payment to the complainant's mother "for any concern or inconvenience".
- She advised that TV Licensing had reviewed its approach to contacting customers on the expiry of their licence and would not now call customers in this way until at least two weeks after the expiry of the licence.

Appeal

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

- The phone call to the complainant's father in March 2015 was poorly handled.
- Regarding the March 2014 call to the complainant's mother, TV Licensing should have known payments can take several days to arrive and should have waited before calling.

He made the following points on complaints handling:

- His mother had still not received a letter of apology written to her from anyone in TV Licensing.
- The complainant had received complaints responses from a number of different people, which he believed amounted to a "lack of ownership and accountability".

- The response from the BBC's Managing Director, Finance and Operations was delayed by three months due to another administrative error, which was only identified when the complainant chased his response.

Decision of the Trust Adviser

The Trust Adviser (the Adviser) decided that there were two separate aspects to the complainant's appeal.

The Adviser decided that handling of the complaint should be put to Trustees.

Regarding the substance of the complaint, i.e. the calls received by the complainant's mother from TV Licensing nine hours after her licence had expired in 2014 and by the complainant's father in 2015, the Adviser considered that Trustees would be likely to conclude that this had been resolved. The Adviser noted the confirmations from the BBC's Managing Director of Finance and Operations and the Head of Revenue Management as well as TV Licensing that the callers' behaviour had been raised with their respective managers and that action had been taken. The Adviser also noted that a number of apologies had been provided for the errors in these calls (albeit the complainant stated that they had not been provided to his mother as requested). In particular, the BBC's Head of Revenue Management had stated, "Please pass my apologies to [the complainant's mother] for the concern this matter has caused her". The BBC's Managing Director of Finance and Operations had stated that "...appropriate action was taken following your complaint [in 2014] as TV Licensing recognised that the call did not meet acceptable standards" and "I hope you will accept my apologies for any concern or inconvenience caused to you and your mother".

Furthermore, the Adviser noted that TV Licensing had changed its approach so that customers would not be contacted for at least two weeks following the expiry of their licence. This would provide time for any payments being made via PayPoint to reach TV Licensing and for payments via cheque to clear.

Taking this into account, the Adviser considered Trustees would be likely to conclude that the appeal on the substance of the complaint did not have a reasonable prospect of success. She therefore did not consider it was appropriate, proportionate or cost-effective to proceed with the appeal and 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 the appeal. He made points relating to both the aspect of his complaint which was being put to Trustees (ie the handling of the complaint) and the aspect which the Adviser had determined should not be put before Trustees. Concerning the latter, he made the following points:

- The original phone call, received by his mother in March 2014, was acknowledged by TV Licensing to have been "below standard". The complainant had been reassured in writing on several occasions that corrective action had been taken to improve the quality of outbound calls. Yet, in March 2015, 12 months after corrective action, a further poorly handled call was received relating to fee payment for 2015. The BBC's Managing Director of Finance and Operations indicated in her letter that this could have been performed in a more "customer friendly way". Thus, in 12 months nothing had improved relating to the culture of outbound calls from TV Licensing.

- The complainant again requested further detail on the action which had been taken with the agent who called the complainant's mother in March 2014.
- The complainant also said it was not sufficient that the BBC's Head of Revenue Management and the BBC's Managing Director of Finance and Operations had asked him to pass on their apologies to the complainant's mother for any concern and inconvenience as a result of receiving the phone call in March 2014.

The Panel's decision

The Panel noted the points made by the BBC, the Adviser and the complainant. The Panel also noted that a Panel would consider the matters related to the way the complaint was handled at a separate meeting.

The Panel noted the complainant's strength of feelings on the matter.

Trustees agreed that if they took this matter on appeal they would be likely to conclude that this matter had been resolved given that:

- At the time both calls had been made the policy of TVL was to make calls to those whose licence had expired.
- Errors had been made by the TV Licensing call handlers which the BBC had acknowledged.
- TV Licensing had taken action with regard to the staff members who had made the phone calls to the complainant's mother and then father in March 2014 and 2015, respectively.
- The nature of the action was an operational matter.
- TV Licensing had explained that they could not give the complainant further information on exactly what action had taken place as the information was protected under the Data Protection Act. The Panel considered that this decision was also an operational matter and that it did not need the detail of this to make a determination on the appeal. The BBC's compliance with the general law was an operational matter for the Executive and not a matter for the Trust to become involved in, unless there was a question of a breach of the law or a matter of general significance, which the Panel did not believe was the case here. The complainant was entitled to make a Freedom of Information request for this information and, if it was refused, appeal that decision to the Information Commissioner, the Freedom of Information and Data Protection regulator. This was the appropriate route for such matters.
- TV Licensing had reviewed its approach to contacting customers on the expiry of their licence and would not now call customers who paid in full in this way until at least two weeks after the expiry of the licence.
- The BBC's Head of Revenue Management and the BBC's Managing Director of Finance and Operations had offered their apologies to the complainant's mother for any concern and inconvenience as a result of receiving the phone call in March 2014, plus goodwill payments.
- The BBC's Director of Finance and Operations had acknowledged that the call to the complainant's father could have been closed in a more customer friendly way.

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

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

Complaint about the collection and enforcement of the TV licence fee by Television Licensing

The complaint

The complainant alleged a number of legal issues around the collection and enforcement of the TV licence fee by Television Licensing ("TVL"). The BBC provided responses to the complainant at stages 2 and 3 of the Television Licensing complaints and appeals procedures.

Appeal

The complainant appealed to the Trust.

Decision of the Trust Adviser

The Trust Adviser carefully considered all the correspondence and the relevant Complaints Procedure and decided that the complainant's appeal did not have a reasonable prospect of success because it did not "raise a matter of substance".

Request for review by Trustees

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

The Panel's decision

Trustees carefully considered the points raised by the complainant and took legal advice on any potential legal issues arising. They acknowledged the strength of the complainant's feelings on Television Licensing's enforcement activities and the nature of the BBC's investigation into the issues the complainant raised; however, they agreed with the Trust Adviser's decision not to proceed with the appeal.

1. The complainant raised a number of points challenging the legality of BBC actions in collecting and enforcing the TV licence fee (including that there is no legal basis for TVL or its activities and alleged breaches of the PACE Code²⁷, Article 8 of the ECHR²⁸ and the Data Protection Act). The CAB considered these in light of its duty under the Charter²⁹ to hold the Executive to account for its compliance with the general law, and took its own independent legal advice. That advice is legally privileged. Trustees were satisfied that the conduct and practices of TVL are in compliance with the law. Trustees therefore concluded these parts of the appeal stood no reasonable prospect of success.
2. In relation to the other points raised regarding TVL letters, training documents and the TVL complaints procedure, Trustees considered these in light of their responsibility under the Charter for ensuring that arrangements for the collection of the licence fee are efficient, appropriate and proportionate³⁰ as well as compliant with the general law³¹:

²⁷ Police and Criminal Evidence Act Code

²⁸ European Convention on Human Rights

²⁹ Article 24(2)(f)

³⁰ Article 24(2)(m)

³¹ Article 24(2)(f)

- a) Trustees considered the terms of TVL's letters and whether, in their view, they might constitute an unreasonable attempt to make members of the public think that they were obliged to reply. In this context, Trustees took into account the Trust's report on TV licence enforcement in 2009, which recommended that a balance be struck between ensuring that early reminders are polite and a stronger message the longer a property is unlicensed. Trustees were satisfied with the explanation provided by the BBC Executive regarding the content of their letters, which they accepted was necessary so that TVL could establish whether or not a licence was needed. They noted the complainant's argument that letters should not "instruct" the recipient to become "correctly licensed" but should be less confrontational, to address recipients who do not need a licence. However, they were of the view that the letters anticipated a number of scenarios including that no licence was necessary, rather than assuming that one was required and that the occupant was watching television illegally without a licence. They were also satisfied that these were sent at reasonable intervals and, whilst it might prove frustrating to reply every two years, that this was a relatively simple matter. Trustees concluded that an appropriate balance had been achieved and that this aspect of the complaint therefore had no reasonable prospect of success.
- b) Concerning the complainant's criticisms of a BBC training document listing examples of grounds for obtaining a search warrant, and the claim that respondents have been denied access to depositions submitted to court in applications for warrants, Trustees considered the explanation given by the BBC Executive, as well as the legal advice. Trustees noted that it is ultimately the decision of the magistrates' court as to whether or not to grant the warrant, according to the statutory criteria. Further, they noted that the BBC must comply with all disclosure obligations but may sometimes – consistently with those obligations – legitimately resist disclosure. Again, ultimately the court will decide what the BBC is obliged to disclose. Trustees therefore concluded that they did not believe that this point had a reasonable prospect of success.
- c) Finally, the Panel considered Procedure no. 3 of the Complaints Framework: Television Licensing complaints and appeals procedures which includes the following section:

Where else can I take my complaint?

Depending on the nature of your complaint there are other regulatory bodies to which you may be able to take your complaint:

(a) the Advertising Standards Authority for TV Licensing advertising and direct marketing.

Trustees noted the complainant's assertion that TVL letters constitute "marketing materials" and as such fall under the jurisdiction of the Advertising Standards Authority, who the complainant stated had refused to hear their complaint. The Panel also noted the BBC Executive's position that the letters to which the complainant referred are letters of enquiry and not advertisements, and for that reason would not fall within the ASA's jurisdiction. Trustees also noted the complainant's supplementary point that the letters are marketing materials because, in the complainant's view, the BBC has no "comprehensive statutory responsibility for enforcement". Finally, Trustees

noted the legal advice they received on the status of the letters and on TVL's enforcement remit. On this basis, Trustees concluded that this aspect also did not stand any reasonable prospect of success. However, Trustees did consider that the reference in the Complaints Framework should be changed and would recommend the following alteration to the Trust to point (a) to make the situation clearer:

(a) the Advertising Standards Authority where the complaint concerns a marketing communication, such as if TV Licensing are directly selling a product or service

3. Finally, regarding the complainant's allegations of "irregularities" regarding confessions to TVL officers and "inappropriate prosecutions", Trustees considered that the evidence provided was anecdotal and insufficient for them to consider, or for TVL to further investigate. Such allegations should, of course, be thoroughly investigated by TVL as and when they are made and the Trust would, in turn, consider requests for appeals in such circumstances.

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

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

Requests to review the Trust Unit's decisions on appeals

The following complainants asked the Complaints and Appeals Board to review the decision of the Trust Unit that the complainant's appeal did not qualify to proceed for consideration by the Panel.

The Panel was provided with the complainant's appeal/s to the Trust, the response or responses from the Trust Unit and the complainant's request/s to review that decision.

BBC Worldwide's involvement with Jeremy Clarkson

The complaint concerned the Clarkson, Hammond and May Live tour 2015, which was continuing as planned following Jeremy Clarkson's departure from BBC *Top Gear*.

The complainant made the following points:

- The BBC should completely disassociate itself from Jeremy Clarkson by cancelling his contract for the live tour shows as well as *Top Gear*.
- By allowing the tour to continue, the BBC was still associating itself with Jeremy Clarkson both by paying for his work on the tour and by exercising editorial control over what he does.
- The BBC Director-General had stated that "there cannot be one rule for one and one rule for another dictated by either rank, or public relations and commercial considerations". The complainant felt that by allowing the live tour to continue, the BBC was not following that dictum.
- He found BBC Worldwide's claim that it was not paying Mr Clarkson hard to believe. If Sub Zero was half owned by BBC Worldwide, then surely it was paying him, and therefore half the money was ultimately coming from the BBC. He thought that the commercial success, or otherwise, of the tour would result in the BBC making or losing money.
- He found BBC Worldwide's claim that the decision to continue with the tour was taken in order not to disappoint people who had bought tickets for it disingenuous: the BBC had already removed Mr Clarkson from *Top Gear* despite the disappointment this had caused to hundreds of thousands or millions of viewers.

BBC Worldwide made the following points:

- Neither the BBC nor BBC Worldwide was paying Mr Clarkson for the live tour, and no licence fee income was being used for it.
- The decision to allow the tour to continue was not a commercial one. The BBC had stated publicly that the tour was going ahead because it did not want to disappoint thousands of fans who had already bought tickets for the shows.

- All the tour shows had been stripped of *Top Gear* branding and did not feature The Stig, *Top Gear* clips, or any stunts or sequences based on the BBC TV series *Top Gear*.
- The tour was being overseen by a joint venture business between Brand Events (who were running the shows) and BBC Worldwide, called Sub Zero.
- Appropriate provisions had been made to ensure that the BBC was not brought into disrepute.

The complaint went to Stage 2 and was not upheld. The Director of Regulatory Affairs, BBC Worldwide, made the following points:

- He repeated an apology for a delay the complainant had experienced in waiting for his response at Stage 1.
- The decision about the live tour had been a difficult one and there was no one outcome that would have pleased everybody.
- The factors involved in the consideration of how to handle the scheduled live tour were different in a number of ways from those in the decision not to renew Jeremy Clarkson's contract as a presenter on future series of *Top Gear*.
- To clarify the financial aspects already referred to by BBC Worldwide at Stage 1, no licence fee income was being used to run the live tour shows. However, BBC Worldwide did have a financial stake in the company, Sub Zero, that was paying him.
- BBC Worldwide's primary consideration was for the people who had already purchased tickets and made plans to attend shows. Cancellation would have meant not just disappointment but in some cases a significant disruption to existing plans.
- Sub Zero, being a joint venture between BBC Worldwide and Brand Events, had legitimate interests as a joint venture partner and it was right to consider those interests as well as the impact on Sub Zero's employees.

Appeal

The complainant appealed to the BBC Trust on the substance of his complaint, and reiterated his concerns.

Decision of the Trust Adviser

The Trust Adviser (the Adviser) decided that the complainant's appeal did not have a reasonable prospect of success.

She acknowledged the complainant's concern about Jeremy Clarkson continuing to be involved in non-broadcast events in which BBC Worldwide had a contractual association, despite the fact that Mr Clarkson's contract to appear in BBC output had not been renewed. She also acknowledged the complainant's view that this was not compatible with the BBC Director-General's comment that "there cannot be one rule for one and one rule for another dictated by either rank, or public relations and commercial considerations".

The full content of the Director-General's statement of 25 March 2015 can be found at: <http://www.bbc.co.uk/mediacentre/statements/jeremy-clarkson-dg-statement>. This statement announced the BBC's decision not to renew Mr Clarkson's contract with *Top Gear*. This decision ended Mr Clarkson's involvement in any future *Top Gear* programmes as part of BBC output.

The Adviser considered that Trustees would decide there was a difference between Mr Clarkson making future *Top Gear* programmes to be broadcast on the BBC and him taking part in a live tour which was not broadcast by the BBC and did not include any BBC branding or content.

The Adviser acknowledged that the complainant considered the disappointment caused to people who had bought tickets for the Live Tour was no different from the disappointment caused to fans of Mr Clarkson on *Top Gear*. She considered that the Director of Regulatory Affairs, BBC Worldwide, had explained the factors he had borne in mind. These included that people who had bought tickets to the shows might have already made arrangements that would involve them in considerable disruption if the tour was cancelled. The Adviser acknowledged that the complainant had rejected this argument; however, she believed that it was reasonable for BBC Worldwide to differentiate between fans who had purchased tickets and possibly made arrangements to go to see a live event featuring Mr Clarkson, and a general BBC audience who received *Top Gear* as part of the BBC's directly broadcast output.

The Adviser considered that the decision about whether the tour should go ahead was an operational one and that the decision was the responsibility of the BBC's Executive Board and not a matter for the BBC Trust. The Adviser acknowledged the complainant's view that the BBC should sever all links with Mr Clarkson, whether these were part of BBC output or whether they were events put on by companies with which the BBC had an association. However, she noted that the BBC Trust only became involved in operational decisions if there was a possibility that there was a breach of operational requirements such as those associated with the BBC's service licences, which the Adviser did not consider to be the case in this instance.

Taking this into account the Adviser considered Trustees would be likely to conclude that the appeal did not have a reasonable prospect of success. She therefore did not consider it was appropriate, proportionate or cost-effective to proceed with the appeal and did not propose to put it before Trustees.

Request for review by Trustees

The complainant asked the Panel to review the Trust Adviser's decision. He said that the treatment of Jeremy Clarkson was clearly a "matter of substance" given the substantial public attention it had received, and the high level at which it was decided.

The Panel's decision

Trustees noted the points made by the complainant, the BBC and the Trust Adviser.

The Trustees noted that the issue in front of them was whether the decision by the Director of Regulatory Affairs, BBC Worldwide, not to uphold the complaint was correct.

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

- The decision by the Director-General to end Mr Clarkson's role in future *Top Gear* programmes was different in kind to the decision by BBC Worldwide to continue with the live tour.
- The decision to go ahead with the live tour was an operational one rather than an editorial one. The Charter made it clear that operational decisions were matters for the Executive and not the Trust. In this case it was a matter for the BBC Worldwide Board and staff, with reference to the BBC Executive Board if necessary.
- The impact on the BBC's reputation was a relevant factor in this decision as it was one of the four commercial criteria which should be considered in deciding if the event should go ahead.
- It was clear that BBC Worldwide had taken into account the impact on the BBC's reputation:
 - The live tour concerned was not being broadcast by the BBC and did not include any BBC branding or content.
 - BBC Worldwide's primary consideration was for the people who had already purchased tickets and made plans to attend shows and would have been disappointed and disrupted by a cancellation.
 - No BBC licence fee money was being used to run the live tour shows. Mr Clarkson was being paid by the company Sub Zero, a joint venture between BBC Worldwide and Brand Events. (Sub Zero had legitimate interests which it was appropriate to take into consideration when reaching a decision about the future of the live tour.)

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

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

Lack of BBC coverage of the plight of Bradford & Bingley shareholders

Lack of BBC coverage of the plight of Bradford & Bingley shareholders

The complaint concerned a lack of BBC coverage of the plight of Bradford & Bingley shareholders.

The complainants made the following points in 2009/10:

- They felt the BBC had a “duty of care to offer a fair balance without being biased which in this case in our opinion you most certainly are”.
- They wanted to know why the BBC had not covered the story. They did not accept that there would not be enough public interest in it to merit coverage.
- They referred to BBC News and the Jeremy Vine show as examples, but said their complaint referred to the BBC generally, not just BBC News.

BBC Audience Services made the following points:

- Choosing the content of our news bulletins was often a difficult and complicated process. In making their decisions BBC editors needed to take several different factors into consideration including whether the news is breaking and the perceived level of public interest in the subject matter.
- The BBC appreciated that its audience held a wide range of opinions, and this, coupled with the subjective nature of editorial decisions meant the BBC would never expect everyone to agree with every decision it took.
- The BBC did cover the shareholder meeting on 10 October 2009 and Audience Services gave web links to the stories at:
<http://news.bbc.co.uk/1/hi/business/8300676.stm>
<http://news.bbc.co.uk/1/hi/programmes/moneybox/8300606.stm>

The complainants took their complaint to Stage 2 in February 2010 but although a response was received from the Director of News at that time, there is no record available of the content of that reply. The complainants believed that the response indicated that BBC News did not regard there to be enough public interest in the story to merit BBC coverage.

Appeal

The complainants appealed to the BBC Trust on the substance of their complaint.

They made the following points as members of the Bradford & Bingley Action Group and said they had made a number of complaints to the BBC over the past six years:

- The BBC had refused to give the Bradford & Bingley scandal fair, balanced news coverage.
- After months of going through the BBC complaints procedure, being passed from one person to another, they said they received an email from the Director of BBC

News in 2010. As they recollected, she had told them that the BBC had deemed there to be no public interest in the Bradford & Bingley story.

- The story was that the bank had been seized from its shareholders only six weeks after they had been asked to invest a further £400 million in a rights issue. The complainants believed it was probably one of the biggest banking scandals.
- They said they were asking the Trust to investigate why the BBC had treated one million people in such a disgusting way, especially when the BBC was “well aware many older people who are not computer literate depend on them, for a fair and balanced news coverage”.

Decision of the Trust Adviser

The Trust Adviser (the Adviser) decided that the complainants’ appeal did not have a reasonable prospect of success.

The Adviser noted that all BBC output was required to meet the standard of “due impartiality” which, under the Editorial Guidelines, was defined as follows:

The term ‘due’ means that the impartiality must be adequate and appropriate to the output, taking account of the subject and nature of the content, the likely audience expectation and any signposting that may influence that expectation.

The Adviser acknowledged that the complainants believed that the BBC’s lack of coverage of the Bradford & Bingley story demonstrated a lack of balance and they did not accept that there was insufficient public interest in the story to merit greater focus on the plight of shareholders.

The Adviser noted that a considerable period of time had passed between the original complaint and the appeal to the BBC Trust, and that it had not been possible to gather all the relevant correspondence that had passed between the complainants and the BBC for a comprehensive review of the case. She noted in particular that the 2010 Stage 2 response from the Director of BBC News was not available. However, a follow-up email to the Director of BBC News from the complainants indicated the complainants’ understanding that the BBC had not deemed there to be sufficient public interest in the story to merit greater coverage. She noted that in Stage 1 correspondence from 2010, Audience Services had provided web links to a BBC News online article, and an edition of Radio 4 Moneybox, which covered the Bradford & Bingley shareholder compensation issue in 2009.

At this distance, some five years on from the Stage 2 investigation, it had not been possible to review all the correspondence involved in the 2010 complaint, especially as it appeared that correspondence had been received from different email addresses and from more than one complainant. The Adviser observed that one of the reasons for imposing a deadline for the submission of complaints and appeals was because of the increasing difficulty of investigating complaints as time went on. However, in this case the Adviser believed Trustees would be of the view that the Editorial Guidelines had not been engaged by the complaint. She noted that editorial choices about which news stories to cover, and the manner in which they were covered were the responsibility of BBC news and production teams. The Trust would only become involved if they thought there may have been a breach of editorial standards.

Taking this into account the Adviser considered Trustees would be likely to conclude that the appeal did not have a reasonable prospect of success. She therefore did not consider

it was appropriate, proportionate or cost-effective to proceed with the appeal and did not propose to put it before Trustees.

Request for review by Trustees

The complainants requested that the Trustees review the decision not to proceed with their appeal. They made the following points:

- They felt the BBC had a duty to be fair, balanced and unbiased in its news coverage.
- The one million Bradford & Bingley shareholders who had their bank seized only six weeks after being asked to invest £400 million in a rights issue, had been victims of the biggest bank robbery in the history of this country.
- There were many pensioners who lost their savings and were not computer literate who depended on the BBC for fair and balanced news on this scandal, and had been left in despair.
- They believed that Bradford & Bingley had only been discussed three times since 2008.

The Panel's decision

Trustees noted the points made by the complainant, the BBC and the Trust Adviser.

The Trustees noted that the Trust Unit had decided that this appeal was out of time. The Trustees were aware that this was a very distressing subject for those who had lost money and the passage of time would not have reduced the importance of the issue to those affected.

Trustees agreed, however, that this appeal was out of time. The last correspondence with the Executive had been in 2010.

It was important that appeals should be made according to the time limits set out in the Complaints Framework. This was because over time memories faded, staff moved and complaints documents were destroyed according to the BBC's data protection policies. It was no longer possible to retrieve all the paperwork in this case which appeared to relate to a number of different complainants, or to be sure what items had been broadcast or published on this subject.

The decision in front of the Panel was whether such a serious issue had been raised that regardless of the delay the Trust should exceptionally accept the appeal.

Trustees agreed that there was no good reason to make an exception and take this matter on appeal given that:

- the newsworthiness of any particular story was a matter of editorial judgement for the BBC News team. 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.
- it was clear that the BBC had covered the issue albeit not as often as the complainants would have wished.

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

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

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 the BBC's decision not to recommission *Atlantis*, BBC One

The BBC Trust received several appeals from complainants who were disappointed that the BBC had decided not to commission a third series of *Atlantis*. As the complainants raised the same substantive issues, the appeals were consolidated. In the interests of an efficient use of the licence fee, this response was therefore intended to address the key issues that had been raised.

The complainants made the following points:

- The decision not to recommission *Atlantis* for a third series showed a disregard for the opinions of licence fee payers.
- The decision was unjustified as the audience figures were good.
- Good quality drama aimed at families was rare, so it was especially disappointing that the BBC had decided to cancel *Atlantis* after only two series.
- The scheduling of *Atlantis* meant that it was competing with big and well-established popular shows on other channels and it had not been given a proper chance.
- The storylines were unfinished. It was not justifiable to broadcast the second series and leave it without a definite conclusion.
- The final episode contained a "trailer" for series 3, which will never be broadcast.

BBC Audience Services made the following points:

- The BBC was very proud of both series but to keep increasing the range of BBC One drama it was necessary to make difficult decisions to bring new shows through.
- The programme makers had explained that the final episode of [series 2 of] *Atlantis* was filmed in September 2014, long before any decision had been made about its future.
- Some of the references in the final episode alluded to the myth of Jason and the Argonauts, which provided clues to the characters' future adventures.
- The BBC hugely appreciated the loyalty of the many fans of *Atlantis* and hoped that the ending had not spoilt the overall experience for viewers.

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

Appeal

Several complainants appealed to the BBC Trust on the substance of their complaints.

Decision of the Trust Adviser

The Trust Adviser (the Adviser) decided that the point she should consider was whether the complainants' appeals against the decision of Audience Services not to correspond further had a reasonable prospect of success – she decided they did not.

The Adviser acknowledged the disappointment felt by the complainants at the decision of the BBC not to commission a third series of *Atlantis* and accepted how frustrating it was that the end of series 2 had left some storylines unfinished. She noted that the

programme makers had explained that the last episode of series 2 had been filmed before a decision had been taken about the future of *Atlantis* and that this was why storylines had been unresolved.

However, she noted that decisions about the commissioning of programmes were part of the operational and editorial management of the BBC. As such she considered that these were decisions which were the responsibility of the BBC Executive rather than the Trust. The Trust would not become involved unless they raised broader issues such as a breach of a station's Service Licence - which did not apply in this case. She noted that such decisions were matters where commissioners were free to exercise their own judgment and that it was bound to be the case that not everyone would agree with each decision that was made.

She noted that one complainant had queried why *Atlantis* had not been recommissioned despite having strong audience figures and that one complainant considered that the scheduling of the series against other programmes with very large established audiences was a factor in viewing figures perhaps being lower than the BBC wanted. However, the Adviser noted that commissioning decisions were based on many factors – not only audience figures – and that Audience Services had explained that one of these was about the development of new drama output.

The Adviser did not, therefore, consider it was appropriate, proportionate or cost-effective to proceed with the appeals as they did not have a reasonable prospect of success. The Adviser did not propose to put them before Trustees.

Request for review by Trustees

One of the complainants requested that the Trustees review the decision not to proceed with her appeal. She made the following points:

- She wished to take the matter as far as she could until either a third series was commissioned or there was a conclusion to the end of *Atlantis*.
- She was upset and frustrated and believed many others were too. She felt viewers were let down by the automatic response they received when they complained.
- *Atlantis* was not just a programme; it was educational, funny and good family entertainment. *Atlantis* was like no other programme on TV, and it stood out. It made BBC One different. She acknowledged that it was not everyone's cup of tea but she believed the majority of viewers, not just from the UK but all over the world, loved it.
- She suggested that *Atlantis* was brought back and scheduled in a different broadcast slot. She also suggested that the BBC do a poll to determine how many people would like *Atlantis* recommissioned. She believed that the BBC did not promote the series enough and therefore viewers had not known about it.
- To end the series on a cliffhanger was very unprofessional and it needed to be corrected.

The Panel's decision

Trustees noted the points made by the complainant, the BBC and the Trust Adviser. They understood that the complainant was extremely committed to this series and distressed that it had ended.

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

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

- decisions about the commissioning, scheduling and promotion of BBC programmes were matters for the BBC Executive. As the Royal Charter (article 38, (1) (b) and article 38, (1) (c) sets out, "the direction of the BBC's editorial and creative output" and its "operational management" are specifically defined as duties of the Executive Board and ones in which the Trust does not get involved.
- BBC Audience Services had given a reasoned and reasonable response to the complaint including that:
 - programme commissioners were free to exercise their own judgment and that it was bound to be the case that not everyone would agree with each decision that was made.
 - the programme makers had explained that the final episode of *Atlantis* was filmed in September 2014, long before any decision had been made about its future.

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

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

Decision of BBC Audience Services not to respond further to a complaint about the presenting team on *The Voice*

The complaint primarily concerned the decision to replace Tom Jones as a judge on *The Voice* and instead use Boy George. The complainant made the following points:

- He considered Tom Jones was a respected music industry figure, was very talented, and should not have been replaced.
- He considered Boy George was not an appropriate judge and referred amongst other matters to his criminal conviction in support of his argument.
- He referred in general to a number of other BBC presenters who he did not consider were very good.
- He was unhappy to receive a generic response and considered this indicated the scale of unhappiness there had been at the decision.
- He noted that Boy George's conviction was not "spent", and considered he was not a good role model for viewers of *The Voice* who would be likely to include a high proportion of young people.

BBC Audience Services responded and made the following points:

- They were sending a consolidated response as they had received a number of complaints and comments about this matter
- They were very grateful to Tom Jones who had been a coach and mentor on *The Voice* for four successful series.
- The panel was regularly refreshed, not only in the UK version of the show but around the world.
- The chemistry between the coaches was extremely important and it was also important that they represented different musical genres.
- The final decision regarding who should be coaches in the fifth series was taken on Wednesday, 12 August. Tom Jones's team was informed early the next day. It was then announced it to the press and public.
- The producers had approached the coaches at this point in every series and the process had been the same for series five of the show.
- Boy George was an icon of British pop music and Audience Services considered he was an appropriate choice for *The Voice*.

- They stated that previous criminal convictions did not automatically prevent someone from contributing to a BBC programme and noted that Boy George had served his prison sentence.
- They said such decisions were given a great deal of careful consideration.
- They stated that programme contributors were appointed on the basis of their experience and qualifications; they considered Boy George was a significant figure in British pop music.
- They accepted that some disagreed with the approach that had been taken and thanked the viewers for their feedback.

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

Appeal

The complainant considered he had not been given a satisfactory response. This matter was "a most serious issue of principle" which should be considered by Trustees on behalf of licence fee payers.

Decision of the Trust Adviser

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

The Adviser acknowledged his views and appreciated that he had sought to raise his genuine concerns with the BBC' however, she decided that his appeal did not have a reasonable prospect of success.

She noted that the Royal Charter and accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. In broad terms, the BBC is free to make editorial decisions as long as its output meets the standards set out in the Editorial Guidelines. The BBC is also entitled to make operational decisions as long as they are in keeping with the other guidelines (such as fair trading guidelines) that the BBC works within.

The Adviser considered that decisions about who should be a contributor to a programme were editorial judgements that rested with the BBC. While she noted the points made by the complainant, she noted Audience Services had responded that having a criminal conviction did not prevent someone being a contributor to the BBC and that Boy George was qualified for the role by his very successful music career. She considered that decisions about how and when to tell contributors about changes to output were operational matters that, again, rested with the BBC.

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.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with his appeal. He made the following points:

- He believed the viewing public deserved better than Boy George when there must have been dozens of suitable candidates available to replace Sir Tom Jones.
- His objection to Boy George as a judge on *The Voice* was that, as recently as January 2009, he was convicted of false imprisonment and violence and received a custodial sentence.
- Boy George would be acting as a mentor to young people of both sexes and would be a very poor role model in that respect.

The Panel's decision

Trustees noted the points made by the complainant, the BBC and the Trust Adviser.

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

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

- having a criminal conviction did not prevent someone being a contributor to the BBC.
- the choice of judges and presenters on *The Voice* was a matter for the BBC Executive. As the Royal Charter (article 38, (1) (b) and article 38, (1) (c)) set out, "the direction of the BBC's editorial and creative output" and its "operational management" are specifically defined as duties of the Executive Board and ones in which the Trust does not get involved.
- BBC Audience Services had given a reasoned and reasonable response to the complaint.

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

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

Decision of BBC Audience Services not to respond further to a complaint about *Countryfile*, BBC One

The complainant was concerned about an emphasis on meat-eating and slaughtering animals for food in *Countryfile*.

She made the following points:

- The presenters were all strongly pro-farming and seemed to have no reservations about the killing and eating of any kind of creature.
- Vegetarians and vegans were not a tiny minority in the UK any more, yet they remained wholly unrepresented amongst the presenting team. Vegetarian and vegan viewpoints were largely absent from features about animal farming in *Countryfile*.
- She felt the BBC was showing bias by presenting meat-eating as a “norm” when it was not; meat-eating was a controversial issue but the BBC was not treating it as such. She found this assumption offensive and thought the programme should be re-titled “Carnophile”.
- She was a sheep and poultry farmer herself, and was a vegetarian. The BBC should have a balance of pro- and anti-meat eating presenters and that balance should be reflected when commenting on animal farming issues.
- In her follow-up complaint at Stage 1b, she gave the example of the *Countryfile* programme broadcast on 1 February 2015. She said that despite being advertised as “everything about sheep”, having watched the programme, the “everything” seemed to mean that they existed to be killed and eaten, with wool as an unprofitable by-product.
- She said she was still waiting for the *Countryfile* programme that equally promoted vegan and vegetarian lifestyles and products in the countryside.

BBC Audience Services made the following points:

- They acknowledged the complainant’s concerns and said that *Countryfile* aimed to reflect all aspects of the British countryside – from the beauty and diversity of wildlife and landscape to environmental issues.
- The BBC did not seek to denigrate any view, or to promote any view. *Countryfile* aimed to identify significant views, and to test them rigorously and fairly on behalf of the audience.
- The BBC accepted that not everyone would agree with its choices on which stories to cover and the prominence given to them. These were subjective decisions made by the programme producers and were judgement calls rather than an exact science.
- The BBC’s intention was to remain impartial and to provide information which allowed audiences to make up their own minds.

- They apologised that the complainant felt vegan and vegetarian lifestyles had been overlooked. Her feedback had been made available to the production team.

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

Appeal

The complainant appealed to the BBC Trust on the substance and handling of her complaint. She made the following points:

- There was an excessive bias in *Countryfile* towards the killing of animals.
- *Countryfile* attempted to present meat farming and being a farmer as synonymous.
- *Countryfile* worked to create an impression that animals must necessarily be killed and if people did not share that viewpoint they were not in touch with the countryside, which was untrue and also offensive to people who did not support the killing of animals.
- She pointed out that she was a farmer herself and kept sheep on her farm where they performed a valuable role in the production of the main crop – hay and haylage. None of her sheep were killed.
- She said she was not complaining about showing meat butchery, but her concern was that it dominated the programme excessively. In the interests of balance there should be more features on vegan and vegetarian lifestyles. She asked to know which editions of future programmes would be showing those features.
- She felt the responses she had received to her complaint evaded the issue by repeating that the programme was largely about farming and agriculture and did not address her substantive concerns.

Decision of the Trust Adviser

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

The Adviser acknowledged the complainant's view that there was a lack of editorial balance in the way *Countryfile* presented countryside issues because the programme was biased towards meat-eaters. She noted that the complainant felt the presenters themselves were helping to create a lack of balance because they were themselves apparently all meat-eaters.

The Adviser noted that Audience Services had said they were sorry the complainant felt vegan and vegetarian lifestyles had been overlooked in the series, and said that it was the BBC's intention to remain impartial and not denigrate any particular view; the BBC sought to provide the information which allowed its audiences to make their own minds up. Audience Services had also explained in their response of 8 September 2015 that:

“*Countryfile* visits and explores the diverse British countryside and reports on rural and environmental issues. This means that a main element of the programme is on farming and agricultural matters and the nature of these

industries will mean the subject matter will naturally lean towards the livelihoods of farmers and countryside issues. The BBC has discussed the ethics of farming animals for food in other outlets but that is not in the remit of '*Countryfile*'."

The Adviser acknowledged that the complainant felt that all the responses she had received from the BBC had been "empty platitudes" and noted the complainant's comments about her own farming methods and the fact that not all farming was about meat production. She noted that the complainant had stated her substantive concern to be about a lack of "balance" between the number of features which focussed on the killing of animals for meat compared with a lack of features on vegan and vegetarian lifestyles.

She appreciated the complainant's desire to see more items devoted to vegan and vegetarian issues but noted that under the terms of the Royal Charter and accompanying Agreement between the Secretary of State and the BBC, the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board. "The direction of the BBC's editorial and creative output" was defined as a duty that was the responsibility of the Executive Board. In this instance, decisions about programme presenters and the issues featured in *Countryfile* were the responsibility of the *Countryfile* editors rather than the Trust.

The Adviser noted that the complainant also considered the BBC was biased by presenting meat-eating as a "norm"; she said that meat-eating was a controversial issue but the BBC was not treating it as such. The Adviser acknowledged that many people, like the complainant, did not eat meat – and were opposed to it, but she did not consider that meat-eating was a controversial issue that engaged the Editorial Guidelines.

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 her appeal. She made the following points:

- Countryfile was dominated by pro-meat eating views to the complete exclusion of all others. Countryfile was being used to promote a view of the countryside that strongly implied that if you do not eat meat you have no role in the countryside – that you do not "belong" and are not "a real country person". Countryfile sought to exclude and make "other" the views of vegans and vegetarians about countryside issues in general, thereby insinuating that their views were not relevant. It sought to pretend that vegan and vegetarian farmers and food producers and processors in the countryside did not exist at all, which was nonsense.
- It was not a true reflection of reality to suggest that people who were vegan or vegetarian did not live in the countryside, keep livestock, or make their living from countryside issues, including food production and processing.
- She said her complaint was not that Countryfile contained meat-eating features about livestock, but that it contained no vegan or vegetarian ones at all. To

eliminate the possibility that that was some coincidence or oversight, she said she had asked several times when any planned edition of *Countryfile* would feature a vegan or vegetarian lifestyle in the countryside, but had not received a response. She believed that was because it was the BBC's intention to deliberately and intentionally exclude those lifestyles from the series.

- In pursuing a course of actively excluding those other ethical choices *Countryfile* actively sought to misinform viewers about the nature of the countryside and the people who live there, misleading people about the range of choices that were already available and being followed in food and in country lifestyles. The complainant regarded that as insulting and intellectually aggressive behaviour towards vegans and vegetarians and their ethical viewpoint.

The Panel's decision

Trustees noted the points made by the complainant, the BBC and the Trust Adviser.

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

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

- A key element of the series was farming and agricultural matters. The nature of those industries meant the subject matter would naturally lean towards the livelihoods of farmers and countryside issues. That could include items about meat food production or vegetarian food production in the countryside.
- The inclusion or omission of items about vegan or vegetarian lifestyles did not engage the Editorial Guidelines on impartiality.
- Choices about the topics covered in *Countryfile* were made by the BBC Executive. As the Royal Charter (article 38, (1) (b)) sets out, "the direction of the BBC's editorial and creative output" is defined as the duty of the Executive Board. This was not a matter for the Trust.
- The fact that the BBC had not replied to the complainant's question about when a planned *Countryfile* would include vegan and vegetarian lifestyles was not evidence that the BBC was deliberately excluding those lifestyles.
- There was no evidence that it was the BBC's intention to deliberately misinform viewers about the nature of the countryside and the people who live there.
- BBC Audience Services had given a reasoned and reasonable response to the complaint.

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

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