

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

June & July 2015 issued September 2015

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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](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](http://bbc.co.uk/bbctrust) or is available from:

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

# Summary of finding

## Television Licensing Appeal: The handling of a complaint about the policy on licence fee refunds

### Summary of finding

The complainant appealed to the BBC Trust about the length of time it had taken him and the effort he had been required to make, to pursue his complaint about the BBC policy of only issuing refunds of licence fees for whole unused quarters.

The Panel concluded that:

- any complaints system may be subject to delay for a variety of reasons; however, it was important to try and meet the published timetables so that the public had an understanding of what might be expected when a complaint was raised with the BBC.
- the information the complainant wanted regarding the BBC's policy of refunding only whole unused quarters could have been provided to him much sooner. Had this been done, the complainant might not have felt the need to escalate his complaint through the complaints process.
- the delays the complainant had experienced were to be regretted.
- the error at the Trust Unit had led to a delay of 20 working days.
- Trustees felt it would have been helpful if the BBC had proactively informed the complainant about delays in drafting his Stage 3 response.
- the length of time it took to handle this complaint was not acceptable.
- 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 complaint was upheld

# Appeal Findings

## Television Licensing Appeal: The handling of a complaint about the policy on licence fee refunds

### Background

This appeal is about the handling of a complaint about TV licence refunds.

#### Relevant extracts from the BBC complaints framework

The Television Licensing complaints procedure has four main stages<sup>1</sup>:

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 are the sections of the Television Licensing complaints and appeals procedures which were considered particularly relevant to this complaint<sup>2</sup>:

#### Clause 2.2 (Stage 2)

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

#### 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

#### Background to the complaint as a Freedom of Information request

In July 2014, the complainant lodged a request with the BBC under the Freedom of Information Act. He was asking for all information held about the BBC policy of only

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

<sup>2</sup> 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](http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2014/complaints_fr_work_tv_licensing.pdf)

refunding whole unused quarters where a licence had been issued but was no longer needed.

The BBC denied the request because it would take more than 2.5 days to locate and extract the information the complainant had asked for; the complainant was advised that his request fell outside the "appropriate limit" set by the regulations.

Over the following months there were a number of email exchanges between the complainant and the BBC, at the end of which it was clear from the correspondence that the complainant felt his queries remained unanswered.

At one point the complainant's request appears to have been lost, there were substantial delays on two occasions, and requests for assistance from the complainant in framing his request to bring it within the "appropriate limit" were not met.

In October 2014 the BBC's internal reviewer decided the BBC had been in breach of the Freedom of Information Act, in that it had failed to provide the assistance requested by the complainant to enable him to narrow his request.

#### The handling of the TV Licensing complaint – relevant timeline of events

In December 2014 the complainant wrote to the BBC Trust asking for broadly the same information about the TV licence refund policy as he had when he originally made the request as a Freedom of Information application.

The Trust Unit replied to the complainant the following week, on 19 December, explaining that the BBC Trust was the last stage of the process and it was not appropriate for the Trust to involve itself at that stage as the issues he had raised were matters for BBC TV Licensing.

The response from the Trust Unit advised the complainant how the refund policy worked and explained that the complainant's letter had been forwarded by the Trust Unit to the BBC TV Licensing management team to investigate and respond directly.

The reply inadvertently included a link to an out-of-date version<sup>3</sup> of the TV Licensing complaints procedure which had been superseded by a new version in October 2014<sup>4</sup>.

Human error in the Trust Unit also meant the complaint was not sent through to TV Licensing immediately. It was sent on 22 January 2015. This caused a delay of 20 working days. The Trust Unit apologised to the complainant for these errors on 5 February 2015.

The BBC's Head of Revenue Management replied to the complainant four days after receiving the complaint from the Trust Unit. She set out the history of the licence fee refund policy and explained that the BBC operates a discretionary refund policy.

The complainant said the response did not supply the justification for the policy which he had requested, and on 28 January 2015 he asked for his complaint to be escalated.

The target timeframe for a response at the next stage, i.e. Stage 3, is 10 working days. Fifty-six<sup>5</sup> working days later, and after two reminders from the complainant, he received a response from the BBC's Managing Director of Finance and Operations.

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<sup>3</sup>[http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory\\_framework/protocols/2012/complaints\\_fr\\_work\\_tv\\_licensing.pdf](http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2012/complaints_fr_work_tv_licensing.pdf)

<sup>4</sup>[http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory\\_framework/protocols/2014/complaints\\_fr\\_work\\_tv\\_licensing.pdf](http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2014/complaints_fr_work_tv_licensing.pdf)

<sup>5</sup> Excluding Good Friday and Easter Monday on 3 and 6 April 2015, respectively.

The BBC's Managing Director, Finance and Operations' response explained the thinking behind the refund policy, which she said took into account the financial effect the licence refunds could have on the service provided for licence fee payers in general. The BBC's Managing Director, Finance and Operations also said that when deciding on policies and processes the BBC had to consider the best way of dealing with the majority of cases and how to keep costs as low as possible, which they believe is in the best interests of licence fee payers.

### The BBC Executive explanation for the delay at Stage 3

The BBC's Customer Experience Manager explained the department's procedure when asked by the complainant to escalate to the BBC Executive for a Stage 3 response:

- TV Licensing prepares a summary of the case for Executive review
- The Director of Finance at the BBC then reviews the case ahead of it going to [the Executive Board member responsible for licence fee collection] for final review.

The BBC's Customer Experience Manager explained that she had the sole responsibility in the team for managing complaints and customer correspondence and commented that:

"The 10 day timeframe for response by the Executive is unrealistic at times due to busy diaries at a Director Level."

She said that a prompt response had not been possible in this instance due to unforeseen personal circumstances. She added:

"The circumstances surrounding the delay were exceptional and on my return, following the prompt from [the complainant], I advised that a response would be with him in due course. Giving a timeframe at this point would be unrealistic and in order to manage expectations we do not commit to a set timeframe.

"As I was [away from the office] I could not keep him regularly updated."

The department responsible for the Stage 3 response also commented. The BBC's Director of Business Management, Finance and Operations said:

- TV Licensing sent the briefing pack to the BBC Executive on 8 April.
- The relevant Executive Board member was on holiday.
- She returned on 13 April and a response was sent to the complainant on 20 April

The BBC's Director of Business Management, Finance and Operations added:

"I think this case does illustrate some of the key issues around the management of these sort of cases. At an Executive level, we are not always immediately aware of the length of time that a complaint has been in the hands of TVL before it is referred up to us with a full briefing. I do believe that TVL try very hard to escalate as soon as possible, but they need to send us a comprehensive review (since otherwise we would waste time in 'back and forth' answering queries). Preparing that sort of review can take time, which is not always possible within a 10 day turn around. In this case the length of time between initial complaint and the referral upwards seems very long, and does raise some concerns, although I understand there were mitigating circumstances.

"Under normal circumstances we would expect to be able to reply at an Executive level within 5 working days of the referral from TVL (as occurred in this case). I would expect TVL to manage any communication with complainants up to the



point that we get the referral and that we then manage any communications about delay after that referral.”

### **Appeal to the Trust**

The complainant appealed to the Trust on 22 April 2015 He said:

“I have seen the response from [the BBC’s Director of Business Management, Finance and Operations] and it is not satisfactory as it is not clear to me:

- why it would cost significantly more to administer full refunds; and
- why the interests of BBC Licence Fee payers outweigh the interests of people like me who no longer require a licence.

Please forward my complaint to the Trust for their consideration. Please ask them to also consider the length of time and the amount of effort that it has taken for me to get even an unsatisfactory reply from the BBC to what is a very simple question...”

The Trust’s Senior Adviser decided that it would not be proportionate or cost-effective for the part of the complaint about the refund policy to go to appeal. The complainant was advised of the decision.

### **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).

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 information the complainant wanted about the BBC policy of refunding only whole unused quarters could have been provided to him much sooner. Had this been done, the complainant might not have felt the need to escalate his complaint through the complaints process. The Trustees did not consider this was a complex query.

Trustees regretted the delays the complainant had experienced. It was doubly unfortunate that this had happened after he had also experienced delay when making an FOI request on the same matter. In this instance the error at the Trust Unit had led to a delay of 20 working days before his complaint had entered the system, and at Stage 3 he had been delayed some 46 working days beyond the timeframe he might have expected would apply from a reading of the complaints procedure. The two delays had compounded each other.

The Panel noted, however, that the BBC, in an effort to respond quickly, had moved the complaint straight to Stage 2 and had replied very promptly in four working days (although the reply had not satisfied the complainant). This was responsive and helpful.

It was also noted that various apologies had been provided:

- The Trust Unit had apologised to the complainant for the delay in sending the complaint to TV Licensing.
- The BBC's Customer Experience Manager had apologised for the delay when, after 25 working days, the complainant wrote an email asking why he had not had a response.
- The complainant followed up his complaint a second time, 48 working days after he was advised his complaint was being escalated to Stage 3. Eight days later, the BBC's Managing Director, Finance and Operations responded at Stage 3; she apologised for the delay.

The Panel noted that the timescales laid out in the Complaints Framework for responses had not been met. The Panel agreed that the length of time it took to handle this complaint was not acceptable. 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.

The Panel noted the difficulties in reviewing a case and providing a full reply at Stage 3 within 10 working days. It took 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.

**FINDING: Upheld**

# Requests to review the Trust Unit's decisions on a Television Licensing appeal

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.

## Television Licensing complaint

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

### Background

The complainant was visited by a TV Licensing Officer on 22 December 2013 as there was no current TV Licence held at the property. The complainant said that the property belonged to his mother and that she was responsible for the TV Licence.

On 30 April 2014 a court summons was issued against the complainant for unlicensed use of a television.

The complainant contacted TV Licensing on 6 June 2014 and said that he wished to complain about the conduct of a TV Licensing Officer. He said that the summons should have been issued against his mother as she was responsible for the TV Licence.

### Complaint summary

The complainant alleged that:

- during the enforcement visit the TV Licensing Officer:
  - tried to coerce the complainant into signing for a TV Licensing Card
  - falsified information recorded in his notes resulting in a court summons being issued
  - did not show the complainant his notes.
- the TV Licensing Officer breached the Criminal Procedure Rules, r27.1(2) of the Criminal Justice Act (s.9) 1967

and the complainant also stated that he should be compensated for the distress he had been caused.

His complaint was not upheld by the BBC.

### **Appeal**

The complainant escalated his complaint to the BBC Trust. He said that although the case had been dropped because his mother had since purchased a TV Licence, the case should have been dropped due to the fact that the TV Licensing Officer had falsified evidence against him.

### **Decision of the Trust Adviser**

The Trust Adviser decided that the points she should consider were whether

- a) the complainant was a responsible adult as he lived at the property
- b) there was any evidence to suggest the TV Licensing Officer had falsified records or behaved in an inappropriate manner.

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

The Adviser noted that the original TV Licence was not in the complainant's name; however, as had been explained to him, as a responsible adult living at a property he could be held liable for a TV Licence.

The Adviser noted the correspondence that had taken place between the complainant and TV Licensing between August and October 2014. TV Licensing had explained the reasons for the summons issued against the complainant and that the case had been dropped as the complainant's mother had since purchased a TV Licence.

The complaint was escalated to the TV Licensing Operations Director on 7 October 2014. The Adviser noted that the key points raised by the complainant were that the TV Licensing Officer was forceful and rude; that he fabricated his version of events with regards to his visit to the property; and, when the complainant tried to contact TV Licensing to resolve the issue, the advisers on the phone were dismissive of the issue. The complainant said that the officer had breached Criminal Procedure Rules. The complainant sought compensation for the distress and inconvenience this issue had caused him.

The Operations Director responded to the complainant on 23 October 2014. She said that the TV Licensing Officer's Manager had spoken to him about the events; however, due to the length of time since the visit, he was unable to recall specific details of the conversation that had taken place. The Operations Director said that the TV Licensing Officer had commented on issues the complainant had made in earlier emails. In particular he agreed that he would have initially asked the complainant if he was resident at the property, but would not have said that he had something for the complainant to sign.

The TV Licensing Officer went on to say that if the complainant had said that his mother dealt with the TV Licence then possibly he would have terminated the interview and left a calling card, but that this would have been dependent upon the complainant's age and circumstances.

The Operations Director commented further on the background to the visit on 22 December 2013. In particular she noted that when a TV Licensing Officer visits a property, the first question they will ask is whether the person they meet lives there. If that is the case and they appear to be a responsible adult, the officer will continue with

their interview. During the course of the interview, if the officer finds reason to believe that there is unlicensed use of a television receiver they will caution the person and ask a series of questions. The Operations Director made clear that regardless of who is normally responsible for a TV Licence at an address, any responsible adult living there can be held liable.

The Operations Director set out the background to the visit to the complainant. She said that the TV Licensing Officer had been asked to call because the previous TV Licence had expired in June 2013 and had not been renewed. She said that the Prosecutions team had found reason to raise a summons in the complainant's name and that they had written to him on 13 January 2014 advising him to purchase a TV Licence. She stated that had he done so, it was possible that a summons would not have been raised. She concluded that she could not find any evidence to suggest the TV Licensing Officer breached the Criminal Procedure Rules, r27.1(2) of the Criminal Justice Act (s.9) 1967.

The Adviser noted that the complainant had remained unsatisfied with the response from the TV Licensing Operations Director and had escalated his complaint to the Head of Revenue Management at the BBC.

The Adviser also noted that the complainant had advised that he did not receive the letter sent to him dated 13 January 2014. However, the Adviser noted that TV Licensing are under no legal obligation to advise the complainant and/or his mother to purchase a TV Licence as it is the responsibility of the complainant and/or his mother to renew the TV Licence on expiry. As such, the Adviser noted that it was not a relevant concern whether or not the complainant received the letter dated 13 January 2014.

On 18 December 2014 the Head of Revenue Management responded to the complainant and explained that where a TV is being viewed without an appropriate licence, a TV Licensing Officer will conduct an interview under caution and note the details on a Record of Interview Form. The interviewee is given the opportunity to check the content of the Record of Interview Form before being asked to sign the document to confirm it is correct.

She went on to note that in this case, the officer had completed part of the Record of Interview Form and that the officer had noted that the complainant did not wish to give any more details, that he had asked for his manager's name and questioned Sunday working hours. She noted that the form was unsigned by the complainant.

The Head of Revenue Management noted that the complainant disagreed with some of the details recorded on the Record of Interview Form; however, she said that she had found no evidence to suggest that the form had been falsified in any way. She noted that details of the complaint had been recorded on the officer's file and that it was standard procedure following any complaint made about an officer to carry out further checks by contacting other people that he had visited.

The Head of Revenue Management reiterated that any responsible adult living at a property can be held liable for a TV Licence.

In addressing the complainant's request for compensation, the Head of Revenue Management said that all requests for compensation were reviewed on a case by case basis and that if a mistake is found to have been made on the part of TV Licensing, a goodwill payment can be arranged. She concluded that in this case she had been unable to find any evidence of error on behalf of TV Licensing and therefore could not agree with the complainant's request for compensation.

The Adviser noted that the complainant had remained dissatisfied with the response from the Head of Revenue Management and had escalated his complaint to the Managing Director, Finance and Operations at the BBC.

On 2 February 2015 the BBC's Managing Director, Finance and Operations had responded to the complainant and made the following points:

- as had been previously explained, any responsible adult living at a property can be held liable for a TV Licence. The TV Licensing Officer was therefore correct to continue the interview after the complainant told the officer that the complainant's mother was responsible for the television and the licence
- the TV Licensing Officer had stated that the notes made as part of the enforcement visit were correct. All TV Licensing Officers are aware that they may face disciplinary or legal sanction if the information they provide to a court is found to be incorrect
- the case was withdrawn at court because the complainant's mother subsequently obtained a licence and maintained payments
- while TV Licensing were unable to take the complaint further with the officer, a permanent record of the complaint had been added to the TV Licensing Officer's records and it would be taken into account if a similar complaint were made in the future.

The Managing Director, Finance and Operations concluded that where there are two differing accounts of the same event and there are no further factors to consider, it is difficult to resolve matters. In respect of the matter of compensation she was in agreement with the finding of the Head of Revenue Management, that there had been no error made on behalf of TV Licensing and therefore no award of compensation should be made.

The Adviser noted that a summons was issued to the complainant on 30 April 2014 and that the complainant's mother purchased a TV Licence on 22 May 2014. The case was heard and adjourned at the Magistrates Court on 17 July 2014 in order to monitor payments. She went on to note that TV Licensing took the discretionary decision to drop the case despite an offence having been committed whilst the property was unlicensed between 30 June 2013 and 22 May 2014. She noted that this point was not in dispute.

The Adviser concluded that the Trustees would be of the view that TV Licensing and the BBC Executive had acted reasonably, taking proper account of all relevant factors and had reached a decision that was within the published policies. She therefore considered that the complainant's appeal did not have a reasonable prospect of success and should not therefore be put before the Trustees.

### **Request to review the Trust Adviser's decision**

- The complainant asked that Trustees review the decision of the Trust Adviser that the appeal should not proceed.
- The complainant stated the following grounds:
- Legal proceedings had been taken against him as a result of information compiled about him that he said was incorrect.
- It was for TV Licensing (TVL) to prove that the information was valid/credible.

- TVL could not do that nor could they prove that what the complainant was saying was incorrect and nor did they have additional evidence to support the claim that the complainant had committed an offence.
- The TV Licensing Officer had attempted to use the lack of signature to enhance the credibility of his account.
- TVL accepted that the two versions were different.
- The TV Licensing Officer could not remember the events so how could he deny the complainant's version of events? He could have apologised after the case was dropped. He continued to lie.
- How could the Head of Revenue Management use information from the Licensing Officer's notes when the officer could not validate them? In addition why had she quoted from them as the complainant had already stated they had not been shown to him? (An example of malpractice by the officer.)
- He had said to the TV Licensing Officer he could not sign for anything or answer his questions.
- He had phoned TVL. He had been told that the TV Licensing Officer was known to the person he had called, that the TV Licensing Officer would not act as suggested and asked what motivation the TV Licensing Officer would have for fabricating evidence.
- Why should TVL wait for another complaint of a similar nature in order to act against the TV Licensing Officer?
- The TV Licensing Officer had broken the Criminal Procedure Rules r27.1(2) of the Criminal Justice Act (s9) 1967. Whether he had done it only once was not relevant.
- He wished to be compensated for the distress caused.

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

The Panel noted the points made by the complainant, TVL, the BBC and the Trust's Adviser. The Panel also reviewed the witness statement made by the TV Licensing Officer which was based on his note of his visit.

The Trustees agreed that they had two conflicting accounts of what had occurred. They noted that TV Licensing Officers make very many visits and it should not be expected that they would recall individual visits; therefore the fact that he could not recall this visit was not a matter on which they placed weight. They noted that the complainant would, conversely, have only this individual visit to recall and so it would be more prominent in his mind. Therefore some weight could be given to his recollection.

However, the Trustees agreed that they should set most weight on contemporaneous or near contemporaneous records of what had occurred. In this case they had the TV Licensing Officer's notes, made during the visit, which appeared credible. The complainant's account was put in writing several months later when he made his complaint.

The Panel noted that the TV Licensing Officer's notes included the complainant's name. The content of the notes appeared unexceptional in that they recorded that there was a television at the property, that it was owned and was in use but that the complainant had not been able to answer when it was installed or when it was used without a licence.

The Panel noted that the TV Licensing Officer's record noted that the complainant refused to sign the notes (and that the officer had asked some questions). Trustees noted that the complainant's correspondence had confirmed that he had been asked if he lived there, that the TV Licensing Officer had persistently asked questions, and that the complainant had refused to sign for anything. They noted the complainant said: "I noticed that he continued to write notes".

They noted the complainant had said that the TV Licensing Officer's record stated that the complainant had been asked if he had a licence and to provide him with it. The complainant said this was untrue because he had already informed the officer that his mother was responsible for the licence. The complainant had also said that if he had taken part in the interview he would not have had a reason to refuse to sign the notes.

The Panel considered there was good evidence that the TV Licensing Officer's notes had been made contemporaneously and had recorded the essential facts that both parties were agreed on. These were: the complainant's name, that there was a television in use at the property and that the complainant refused to sign the notes. Trustees agreed that, on the balance of probabilities, the TV Licensing Officer had not fabricated the evidence or made a false written statement to the court.

Trustees agreed that the evidence did not support the allegation that the Criminal Procedure Rules and Criminal Justice Act had not been complied with.

The Panel noted that at the heart of the complainant's concerns lay his belief that he should not be held responsible for the use of the television at the property where he lived. However, the Panel noted that as a responsible adult residing at the address, he could indeed be held responsible for the licensing status of the property under section 363 of the Communications Act. Trustees noted that, regardless of the differing accounts of the visit of the TV Licensing Officer to the complainant's address, two key facts were not in dispute. The complainant had not denied that there was a television in use at the address or that he was a responsible adult living at the property. Trustees agreed that, in the circumstances, Television Licensing had acted appropriately both in carrying out the interview with the complainant and then in summoning him based on the information obtained during that interview.

It followed that the Panel did not agree that compensation was due to the complainant.

The Panel concluded that there was no reasonable prospect of success for an appeal.

**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.

## Homes Under the Hammer, BBC One

The complaint concerned the BBC's choice of Dion Dublin as a presenter of *Homes Under the Hammer*.

The complainant made the following points:

- She thought Dion Dublin was an unsuitable presenter.
- She believed that he had not been recruited through fair and open competition.
- She felt that having a third presenter on the programme was a waste of licence fee payers' money.

A response was issued by the Complaints Management & Editorial Standards Manager, BBC Television, at Stage 2 of the BBC complaints process. He did not uphold the complaint and made the following points:

- He said the search for a third presenter was carried out in accordance with standard practice in the broadcasting industry. A production company spoke to, and viewed tapes from, dozens of potential candidates, eventually narrowing these down to a shortlist of 12. The process of appointment took just under a year.
- He acknowledged the complainant's disagreement with the decision to appoint a third presenter but hoped she was reassured that an appropriate recruitment process was followed.
- He explained that it was not possible for the BBC to disclose an individual's salary details.

### Appeal

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

- The BBC's Stage 2 response was from a set template and was poor.
- The Stage 2 response did not address why the BBC felt it was necessary to waste licence fee payers' money on a salary for a third presenter. She asked to know who made that decision. She said that the two established presenters were well-liked and she could not see a reason to have an additional presenter on the series.

- It was relevant for the BBC to disclose the presenter's salary, because BBC staff are paid by taxpayers and are therefore public servants who are liable to such scrutiny.

### **Decision of the Trust Adviser**

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

She acknowledged the complainant's strong view that the BBC had made a poor decision in selecting a third presenter for *Homes Under the Hammer*, and that she wished to be given details of who made this decision, how they reached it, and how much the presenter was paid.

The Adviser noted that the Complaints Management & Editorial Standards Manager, BBC Television had explained the recruitment process and the Adviser saw no evidence to support the suggestion that Mr Dublin's appointment had been inappropriate. She acknowledged the complainant's dissatisfaction at the lack of information given to her about Mr Dublin's salary, but noted that it had been explained that salary details for a contracted BBC employee could not be disclosed because it was commercially sensitive as well as being personal and confidential information.

With regard to the decision to employ a third presenter on the programme, which the complainant considered to be a waste of licence fee payers' money, the Adviser noted that decisions about the employment of programme presenters were operational ones that rested with the BBC rather than the Trust.

The Adviser noted that the complainant was disappointed in the responses she had received from the BBC, and this was partly because she felt a standard template was used. The Adviser noted that it was the BBC's practice, when answering complaints, to use some standardisation of response in the interests of efficiency and cost-effectiveness. She appreciated that the complainant did not find the responses satisfactory but considered that the BBC's responses were polite and appropriately informative and noted too that the use of standard templates helped to ensure efficient use of resources.

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 that Trustees review the decision of the Trust Adviser that the appeal should not proceed. She was displeased that proceeding with her appeal was considered a waste of resources while the decision to employ a third presenter on *Homes Under the Hammer* was not.

- A third presenter was not required on *Homes Under the Hammer*.
- Dion Dublin was not suitable.
- How was the post advertised?
- Who had made the decision to include a third presenter and why?
- How much was Dion Dublin paid?
- As a licence fee payer, it was appropriate for her to ask: how the BBC's resources were spent; the decision to increase the number of presenters; and Mr Dublin's salary.

## **The Panel's decision**

The Panel was given the complainant's appeal to the Trust, the reply from the Trust Adviser and the request to review the Trust Adviser's decision.

The Panel noted the complainant's key concerns.

The Panel noted that the complainant had received a response at Stage 2 which acknowledged her dissatisfaction with the programme's decision to include Dion Dublin but reassured her that his recruitment was in line with industry standards. Trustees agreed with the Adviser that they had seen no evidence to suggest that the appointment of Mr Dublin had been inappropriate.

The Panel noted the complainant wished to understand why the decision to include a third presenter had been taken. Trustees were aware that the BBC Executive was not obliged to give the detailed reasoning behind its decision to engage a third presenter in general or Mr Dublin in particular.

The Panel noted that decisions about presenters are for the Executive alone. 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. Therefore, the decision to employ a third presenter; who made that decision and why; who the presenter was; and what they were paid were matters for the Executive and not the Trust.

The Panel concluded that, were the complaint to come to it on appeal, there was no reasonable prospect of it upholding the complaint.

**The Panel therefore decided that the 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 *A Point of View*, Radio 4, 15 February 2015

The complaint concerned episodes of the Radio 4 programme, *A Point of View* written and presented by Will Self. The complainant said he would prefer the programmes to include a variety of people offering their own points of view, rather than just Will Self, whose contribution he disliked.

BBC Audience Services made the following points in response to the complaint:

- They acknowledged the complainant's concerns but explained that the BBC audience was so diverse that opinions on individual presenters varied considerably and it was inevitable that some listeners would dislike certain presenters.
- They explained that the complainant's feedback would be included in the daily report sent to programme producers and senior management. These reports helped to inform decisions about current and future programmes.

The complainant made a follow-up complaint querying Will Self's popularity. He asked how the BBC determined his popularity, and queried why Will Self was the only presenter of the series.

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

### Appeal

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

### Decision of the Trust Adviser

The Trust Adviser (the Adviser) noted that BBC Audience Services had ceased handling this complaint at Stage 1 and that it had not gone to Stage 2. She decided that the point she should consider was whether an appeal against the decision of Audience Services not to correspond further had a reasonable prospect of success.

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

She noted that Audience Services had explained that the range of tastes and opinions held by BBC audiences was so diverse that it was inevitable that some listeners would dislike certain presenters. She acknowledged that the complainant had asked for further information about why Will Self was considered popular, and why he was the only presenter. However, she noted that the Royal Charter and accompanying Agreement between the Secretary of State and the BBC draw a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. "The direction of the BBC's editorial and creative output" and "the operational management of the BBC" are defined in the Charter as duties that are the responsibility of the Executive Board under article 38, (1)(b) and (1)(c) respectively.

The Adviser noted that commissioning decisions concerning writers and presenters fell within the operational management of the BBC. She considered that Trustees would be of the view that the responsibility for such decisions rested with the BBC Executive rather than the Trust, and that the Executive was not obliged to give detailed reasoning behind the decision to commission Will Self to write and present his point of view on a variety of subjects for the series *A Point of View*. She noted that Audience Services had acknowledged the complainant's view as valuable feedback which was circulated to the Executive. For completeness, the Adviser also noted that *A Point of View* used a number of different presenters, including Roger Scruton, Lisa Jardine, Tom Shakespeare, A.L. Kennedy and Howard Jacobson.

Overall, the Adviser considered Trustees would be likely to conclude that Audience Services had given a reasoned and reasonable response to the complaint and had acted appropriately and in the interests of licence fee payers as a whole in declining to enter into further correspondence. She therefore did not consider the appeal had a reasonable prospect of success and did not propose to put it before Trustees.

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

The complainant asked that Trustees review the decision of the Trust Adviser that the appeal should not proceed. He felt he had not been provided with an adequate explanation of the BBC's decision to continue employing Will Self. For example, he asked whether the BBC had assessed how popular Will Self was. He objected to the response from the BBC and expressed his view that his complaint would be closed without the issues he raised being addressed.

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

Trustees understood the complainant objected to the use of Will Self to present *A Point of View*. The Panel noted that the complainant recommended an assessment of Mr Self's popularity in order to measure his suitability for the role.

The Panel noted that Audience Services had explained that the diversity of the BBC's audience meant it was inevitable that some listeners would dislike or disapprove of certain presenters. The Panel noted that *A Point of View* uses a number of presenters.

The Panel noted that decisions about presenters are for the Executive alone. 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.

For the reasons set out above, the Panel agreed that there was no reasonable prospect of success for an appeal against BBC Audience Services' decision to cease corresponding with the complainant on this issue.

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

## Decision of BBC Audience Services not to respond further to a complaint about the under-representation of white, English men on BBC Breakfast

The complainant made the following points:

- White English males were excluded from the BBC and from *BBC Breakfast* in particular.
- The BBC claimed to be inclusive but it was clearly not.
- "Scotsman" Bill Turnbull had on many occasions presented the programme with an all-female cast.
- As a white English male watching the BBC he felt excluded.

BBC Audience Services made the following points:

- The BBC had an obligation to reflect the diversity of UK society which included the many cultures that made up the population.
- The BBC was committed to equal opportunities for all, irrespective of ethnic or national origins. Presenters and other contributors were selected on the basis of their experience and suitability for the role in line with UK employment legislation.
- The BBC promoted equality of opportunity and did not undertake "positive discrimination".
- *BBC Breakfast* was regularly anchored by Charlie Stayt and Bill Turnbull. Audience Services included a link to the BBC Breakfast website which had profiles of the main presentation team.
- White English males are not excluded from presenting BBC programmes

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

### Appeal

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

### Decision of the Trust Adviser

The Trust Adviser (the Adviser) noted that Audience Services had ceased handling the complaint at Stage 1 and that the complaint had not gone to Stage 2. She decided that the point she should consider was whether the complainant's appeal against the decision of Audience Services not to correspond further had a reasonable prospect of success.

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

The Adviser noted that the complainant felt that white, English men were not properly represented, particularly on *BBC Breakfast*.

The Adviser noted that the BBC's stated aim regarding employment on their website was "to make content that informs, educates and entertains everyone" by employing people "who represent and reflect the diversity of everyone in the UK". The BBC was committed to "equality of opportunity" and that those who sought employment at the BBC would "be judged on your suitability for the job and nothing else". She noted the replies from

Audience Services, which had reflected these aims, had stressed the importance of inclusivity and had explained that BBC recruitment policy was in line with UK employment law.

The Adviser also noted that Audience Services had referred to two of the regular main male presenters on *BBC Breakfast*. She noted that both had been born and brought up in England. She noted that Audience Services had also included a link to the *BBC Breakfast* web page which profiled all the regular presenters on the programme and a number of these also fitted the criteria outlined by the complainant. The Adviser decided she had not seen any indication that the programme had a "policy of discrimination against white males".

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 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 asked that Trustees review the decision of the Trust Adviser that the appeal should not proceed. He said he had been e-mailing the BBC "on the subject of the exclusion of white, English males from presenting current affairs, news and breakfast programmes" for two years and had yet to receive a response with which he was satisfied. He felt that as a licence fee payer, he was entitled to an answer.

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

The Panel noted the complainant's view that white, English men were excluded from presenting news and current affairs programmes, and in particular, *BBC Breakfast*.

Trustees noted the response from Audience Services which outlined the BBC's obligation to reflect the whole of UK society. Trustees observed that this would include white, English men. The Panel noted that Audience Services had also highlighted the BBC's commitment to equal opportunities.

The Panel saw no evidence that the BBC was operating in a discriminatory manner.

The Panel considered that Audience Services had provided a reasoned and reasonable response to the complainant. The Panel agreed that there was no reasonable prospect of success for an appeal against BBC Audience Services' decision to cease corresponding with the complainant on this issue. It did not raise a matter of substance.

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



## Decision of BBC Audience Services not to respond further to a complaint about the omission of Gary Moore from BBC Four's programmes about Irish rock music

The complaint concerned two programmes broadcast on BBC Four in March 2015: *The Irish Rock Story: A Tale of Two Cities* and *Irish Rock at the BBC*. The first told the story of how rock music helped to change Ireland through the very different musical traditions of the two main cities in the island: Belfast and Dublin.

The second was described as a whistle-stop tour of some of the finest Irish rock offerings from the early 1970s to the present day, as captured on a variety of BBC shows from *The Old Grey Whistle Test* and *Top of the Pops* to *Later... with Jools Holland*.

The complainant made the following points:

- BBC Four failed to include the musician Gary Moore in either of the programmes about Irish Rock Music.
- Thin Lizzy was included but not at the time Gary Moore was in the band.
- Other bands like Horslips and Hothouse Flowers were included but were less deserving.

BBC Audience Services made the following points:

- They were sorry the complainant was disappointed Gary Moore was not included.
- They provided a link to the website of the programme *Gary Moore - Still Got the Blues* broadcast on BBC One in March 2011 which contained clips of interviews with the artist.
- The first response from Audience Services included the statement:

"I appreciate your concern and being a fan myself I watched both programmes with great interest and while Thin Lizzy had been mentioned and could be seen performing I realise that you feel Gary Moore deserved to be included on his own merit."

- The second response referred to *The Irish Rock Story: A Tale of Two Cities* and included the statement:

"We do appreciate that you were disappointed that Gary Moore wasn't featured in the programme, but I spoke to the programme makers and they simply couldn't include everyone in a one hour programme and left out other huge selling acts like: The Cranberries, Enya, and Boyzone to name a few."

The complainant expressed dissatisfaction with the responses from Audience Services. In particular she referred to the second response and said that it was clear the programme makers had not been consulted. She wrote:

"Firstly it's a tale of 2 cities so why mention the Cranberries who come from neither? Secondly it's of a particular time so why mention Boyzone? Thirdly to say that the programme makers mentioned the above artists and Enya in the conte[x]t of Dublin and Belfast in the 60s and early 70s is beyond belief..."

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

## **Appeal**

The complainant appealed to the BBC Trust on the substance of her complaint.

## **Decision of the Trust Adviser**

The Trust Adviser (the Adviser) noted that Audience Services had ceased handling the complaint at Stage 1 and that the complaint had not gone to Stage 2. She decided that the point she should consider was whether the complainant's appeal against the decision of Audience Services not to correspond further had a reasonable prospect of success.

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

The Adviser noted that the complainant's main concern was that Gary Moore had not been included in either of the BBC Four programmes about Irish rock music. She understood that the complainant was knowledgeable about the subject and that she felt very strongly that the programme was incomplete without his inclusion.

The Adviser noted, however, that issues relating to the content of individual programmes were editorial decisions which were the responsibility of the BBC's Executive Board and not a matter for the BBC Trust unless they involved a breach of editorial standards. She noted that such decisions were matters where programme makers were free to exercise editorial judgment and that it was bound to be the case that not everyone would agree with each and every decision.

The Adviser also noted the replies from Audience Services in which they had attempted to explain the position of the programme makers, that in a documentary which was only one-hour long it would have been impossible to include everyone.

She noted the frustration that the complainant had experienced with the replies from Audience Services which the complainant had felt contained inaccuracies. The Adviser noted how *The Irish Rock Story: A Tale of Two Cities* had been described:

"This film tells the story of how rock music helped to change Ireland. The 40-year-old story of Irish rock and pop music is grounded in the very different musical traditions of the two main cities of the island, Belfast and Dublin.

"This musical celebration charts the lives and careers of some of the biggest selling acts in Irish rock, punk and pop from Van Morrison and Thin Lizzy to the Undertones and U2. From the pioneers of the showbands touring in the late 50s through to the modern day, the film examines their lineage and connections and how the hard-core, rocking sound of Belfast merged with the more melodic, folkly Dublin tradition to form what we now recognise as Irish rock and pop."

She disagreed with the complainant that the programme was "of a particular time" but noted her view that artists such as The Cranberries and Enya would not have necessarily qualified for inclusion. However, she considered that Audience Services and the programme makers had intended to make a general point that a one hour programme was restricted in what it could include.

Taking this into account the Adviser considered Trustees would be likely to conclude that 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 asked that Trustees review the decision of the Trust Adviser that the appeal should not proceed. She asked whether anyone had contacted the programme makers about the issue she raised, and if not why not?

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

Trustees understood the complaint to centre on the failure to include Gary Moore in either *The Irish Rock Story: A Tale of Two Cities* or *Irish Rock at the BBC*. The Panel noted that the complainant was particularly concerned that no one had consulted the production team on the points raised in her complaint.

The Panel noted the responses from Audience Services which acknowledged the complainant's disappointment at the lack of coverage of Gary Moore and also noted the impossibility of including everyone in the output.

The Panel noted that programme content is a matter for the Executive alone. 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 as such, one in which the Trust does not get involved.

Trustees considered the complainant's concern that no one in the production team had been consulted following her complaint. With the complainant's correspondence before them, Trustees noted that Audience Services had informed her in their first response that her points had been passed to senior management and programme makers in Audience Services' overnight report. In addition, Audience Services noted they had contacted the programme makers in their reply of 3 April 2015. Trustees understood that despite this, the complainant did not believe contact had been made as the programme makers were quoted as citing the failure to include The Cranberries, Enya and Boyzone in order to explain it was not possible to include everyone in the programmes. The complainant felt that those artists would have had no place in the programmes she was complaining about and therefore the programme makers could not have been truly consulted.

The Panel felt that the artists cited by the programme makers could have been included in *The Irish Rock Story: A Tale of Two Cities*, which was not limited to the 1960s and 1970s as outlined in its introduction or *Irish Rock at the BBC*, which was not tied to artists from Belfast and Dublin alone. In conclusion, Trustees found no evidence that programme makers had not been contacted as stated.

The Panel agreed that there was no reasonable prospect of success for an appeal against BBC Audience Services' decision to cease corresponding with the complainant on this issue.

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

## Decision of BBC Northern Ireland not to respond further to a complaint about The Nolan Show, BBC Radio Ulster

### Complaint

The complainant made the following points:

- The complainant spoke to *The Nolan Show* on BBC Radio Ulster during a phone-in about a possible story idea related to her use of the drug Vioxx.
- The complainant had been campaigning to bring more attention to the use of Vioxx which was withdrawn from the market following concerns about its safety.
- She considered that as a licence fee payer she should be given airtime and noted that other media had reported her story.
- Since putting forward the idea, the programme had not been in touch.
- The programme had deliberately chosen not to feature the story.

BBC Northern Ireland made the following points:

- *The Nolan Show* production team had spent some time looking into the complainant's concerns but they did not believe they could cover the issue on the programme.
- The programme received a large number of story suggestions from listeners and only a proportion would be followed up.
- Decisions about what was included were made by individual programme editors working within the context of editorial priorities and the BBC's editorial guidelines.
- The programme had no plans to interview the complainant but the issues would be kept under review.

BBC Northern Ireland said that the BBC's complaints process was designed to address concerns about broadcast or published material and the issues raised by the complainant did not fall into this category. They therefore had nothing further to add to their previous replies.

### Appeal

The complainant appealed to the BBC Trust on the substance of her complaint. The complainant said: "I would like someone to honestly tell me why I cannot get on his show."

### Decision of the Trust Adviser

The Trust Adviser (the Adviser) noted that BBC Audience Services had ceased handling the complaint at Stage 1 and that the complaint had not gone to Stage 2. She decided that the point she should consider was whether the complainant's appeal against the decision of the BBC not to correspond further had a reasonable prospect of success.

The Adviser carefully read the correspondence that had passed between the complainant and the BBC and decided that the appeal did not have a reasonable prospect of success.

The Adviser understood that the complainant felt very strongly that the BBC should cover her story on *The Nolan Show*. However, she noted that issues relating to which stories were included in BBC programmes were editorial decisions which were the responsibility of the BBC's Executive Board and not a matter for the BBC Trust. She considered that it was important that programme editors were free to exercise their own judgment in order to maintain the editorial independence of the BBC. She noted that it was bound to be the case that not everyone would agree with each of these decisions but that it was important for the BBC to exercise editorial freedom without the intervention of the BBC Trust unless there was a potential breach of editorial standards. While she appreciated that the complainant was a licence fee payer and that other media had chosen to cover her story, the Adviser did not consider that there was any requirement for the BBC to do so.

The Adviser noted that BBC Northern Ireland had explained to the complainant that the story idea that she had raised with the programme had been considered but that the programme team had decided not to feature the story at that time. The Adviser considered that it was inevitable that programmes like *The Nolan Show* would receive a large number of ideas put forward by listeners and would not be able to feature them all. She did not consider there was a requirement for the BBC to give a more detailed explanation as to why it did not wish to pursue her story.

Taking this into account the Adviser considered Trustees would be likely to conclude that the BBC 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 asked that Trustees review the decision of the Adviser that her appeal should not proceed for consideration. She said the programme had "assured" her she would be interviewed. She provided an update on her story and reiterated her hope that *The Nolan Show* would investigate her case.

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

Trustees understood the complaint to centre on the complainant's sincere wish for *The Nolan Show* to investigate her case. The Panel noted that *The Nolan Show* production team had considered the complainant's story but ultimately decided it was not something they could cover on the programme.

Trustees noted the complainant's distress regarding the outcome. However, they acknowledged that the production team was not obliged to provide detailed reasons for their decision not to proceed with her story. Given the number of programme ideas the show might receive, it would not be feasible to enter into such discussion with each individual.

Trustees agreed that programme content is a matter for the Executive alone. 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 as such, one in which the Trust does not get involved.

Trustees agreed that they would be likely to conclude that Audience Services had provided a reasoned and reasonable response to the complainant's concerns. Accordingly, the Panel concluded that there was no reasonable prospect of success for an appeal.

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