

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

September 2015 issued December 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

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

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.

Television Licensing complaint

The complainants made the following points:

- In September 2014, having been unable to renew the licence online at their second home, the complainants had bought a new one for the same address. In October, they received a third renewal reminder for the expired licence, which they believed was aggressive in tone, clearly intended to cause stress, and sufficient to cause harassment.
- The envelope had the words "TV Licensing" on it, so as to suggest to anyone seeing it that the addressee had been evading licence payment, and this was potentially defamatory.
- The complainants required the BBC to amend its records, apologise, investigate and explain what had gone wrong and ensure it could not happen again.
- The complainants asked for £100 in compensation for harassment, defamation, waste of time, photocopying and postage.

TV Licensing Customer Relations replied explaining that the system had generated the reminders because the complainants had taken out a new licence rather than renewing the original one; TV Licensing confirmed that the old one had now been cancelled.

The complainants wrote again and made the following additional points:

- The BBC was operating a system which sent out aggressive material in response to a failure to renew, without human review and basic checks.
- The BBC had given no indication that the system was being investigated or might be improved upon.
- This was a predictable situation and there could be many reasons why a person might buy a new licence rather than renewing one – in this case the computer system had prevented the complainants from entering their postcode to renew which was why they had bought a new licence instead.

Customer Relations sent a second response, saying:

- The system worked in this way to allow for the possibility of more than one licence being issued to the same address, for example in a situation of multiple tenancies.

- As no mistake had been identified on the part of TV Licensing, there was no reason to grant financial compensation to the complainants.

The complainants wrote again complaining that since their complaint was that the procedure was at fault, TV Licensing's response that the procedure had been properly followed was inadequate.

The Operations Director, TV Licensing, wrote back explaining:

- The system does not automatically recognise when a new licence is issued for an address as there may be good reasons for multiple licences.
- The wording on letters becomes progressively stronger as successive reminders are sent to encourage responses.
- There are 20 million addresses on file so it is not possible to institute human checks every time a new licence is issued.
- The notice on the envelope is the same on all correspondence from TV Licensing.
- The BBC Trust reviewed the process in 2009 and considered it reasonable for the wording on successive reminder letters to become stronger to encourage a response.
- TV Licensing asked for any further details if possible from the complainants as to the difficulty they experienced in attempting to renew the original licence; and would investigate what went wrong with the system to prevent the complainants being able to renew the original licence online.
- As no error had occurred, no goodwill payment could be authorised.
- The Operations Director apologised for any concern caused to the complainants.

There was a further exchange of letters between the complainants and the Operations Director, after which the complainants escalated their complaint to the BBC's Head of Revenue Management. They summarised earlier points they had made and said:

- Not only did the envelope have TV Licensing written on the back, but also the words "You are hereby given official notice" (on the enclosure) were visible through the envelope at the front, so that anyone seeing it would assume they were unlawfully operating a TV Licence. Its intention was to harass.
- TV Licensing should make further enquiries or checks before sending out such letters.
- Although renewal letters asked the recipients to inform TV Licensing if no licence was required, recipients would not know that unless this was done the enforcement process would continue – their natural assumption would be that TV Licensing would know they had taken out a new licence at the same address.

The BBC's Head of Revenue Management responded. She explained:

- The names on the two licences did not match exactly, due to a presumed formatting error regarding the first licence.
- Checking individual licences would not be practical due to the sheer volume of addresses on TV Licensing's database.
- The computer system would not have identified the mismatched names as applying to the same person.
- The wording of letters is under constant review and feedback taken into account, and the Head of Revenue Management was grateful for their comments.
- The Head of Revenue Management could appreciate the complainants' frustration, and apologised, but could not authorise a goodwill payment which would only be legitimate in exceptional circumstances where complainants had incurred out of pocket expenses.

The complainants escalated their complaint. They said:

- TV Licensing should have picked up the error in names and apologised for it at the first stage of the complaints process.
- It should not be difficult to improve the system and they suggested ways this could be achieved.
- They felt they had been threatened, harassed and defamed. They understood that this was due to an error but the BBC had not explained or apologised early in the process.

The BBC's Managing Director, Finance and Operations responded. She said:

- She could understand their annoyance and the fact that they were seeking confirmation that changes would be made to the licence renewal process.
- Their comments would be taken into account at the next review of the process but no promise could be made that their suggested changes would be made, for example due to data protection issues.
- She was sorry they had not been given the specific reason why the two licences had not been matched as belonging to the same person until the response of the Head of Revenue Management.
- The complainants obtained their new licence promptly and greater clarity could have been given in TV Licensing's responses to the complainants.
- In the light of the above, she had asked TV Licensing to increase the offer [sic] to the complainants to £50 as a goodwill payment and she apologised.

Appeal

The complainants appealed to the Trust in a letter dated May 2015 They said that:

- They had finally received a sensible explanation for what had happened.
- They had made suggestions about how to remedy such a situation in future but the BBC had made no promise to implement the suggested, or indeed any, changes.
- It would be simple to add a sentence in reminder letters asking recipients to notify TV Licensing if there was another licence covering the addressee's use of television.
- There would be no need to refer to other licences, therefore no data protection issues.
- The red warning notice should not be visible through the envelope.
- There was no reason such changes should have to wait until the next review of the text of TV Licensing documentation.
- This could have been reviewed alongside the changes which took place regarding the situation when one person living in a house reached over-75.
- The reference by the Managing Director, Finance and Operations to "increasing" the ex gratia payment suggested she had not truly addressed her mind to the correspondence, the problem, or their proposed method of rectification, since her offer was the first they had received.

Decision of the Trust Adviser

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

She noted, as the complainants said, that it was not until the Stage 2 response from the Head of Revenue Management that the complainants had received a detailed explanation that the two licences had been registered differently, and that this was likely to be due to a formatting error in the first licence.

She noted also that TV Licensing and the BBC had both apologised to the complainants for any frustration or concern the tone of the third reminder letter had caused, and had informed them that their feedback would contribute to any future review of the TV Licensing process.

She further noted that at Stage 3 of the TV Licensing complaints process, the complainants had been offered an ex gratia payment in recognition of their frustration and the fact that it had taken them some time to obtain the full explanation of what had occurred in their particular case. The Trust Unit sought clarification from the BBC Executive as to why the letter had referred to “increasing” the ex gratia payment that had been made. The BBC Executive confirmed that the only payment offered to the complainants was the one offered by the Managing Director, Finance and Operations at Stage 3 of the complaints process for £50.

In deciding whether the appeal raised a matter of substance, the Trust Adviser took into account (in fairness to the interests of all licence fee payers in general) whether it was appropriate, proportionate and cost-effective to place the appeal before Trustees. Given all the circumstances described above, including the fact that the particular circumstances of the complainants’ case had been explained to them, apologies made and an ex gratia payment offered, she considered that it was not.

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:

- The refusal was based on the proposition that as procedures were properly followed and an apology and compensation had been received, the matter should be closed. The complainants said that was irrational.
- If procedures had not been properly followed and they had had an apology and compensation that might have been a reason for taking matters no further. But, as procedures had been properly followed, the matter could not be regarded as complete until the procedures had been reviewed.
- The complainants’ concern that the procedures should be reviewed was the major reason for escalating the complaint further. They would have sought to escalate it even if the apology had been worded differently and the compensation had been greater.
- The complainants said they had put forward practical proposals for changing the procedures and that they had received no explanation for the refusal to do so.

The Panel’s decision

The Panel noted the points made by the complainants, TVL, the BBC and the Trust’s Adviser.

In particular the Panel understood the annoyance experienced by the complainants when, after they had taken out a new TV licence for their address, reminder letters were sent to them for their previous, expired TV licence. This had occurred because of a difference in the ways that the TV licensee’s name had been registered on the two separate TV licences. This had been explained to the complainants at Stage 2 of the complaints process.

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

- checking individual licences would not be practical or proportionate due to the sheer volume of addresses on TV Licensing's database. They also noted that there were circumstances where more than one TV licence would be needed at an address.
- the implementation of changes to the procedures was an operational matter which was reserved for the BBC Executive by the Royal Charter.

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.

Television Licensing complaint

The complainant initially sought a refund of two years' TV licence fees (plus 8% interest) on behalf of his partner, who he claimed had watched TV only on "catch-up"¹ for the past five-and-a-half years. In the absence of what it regarded as supporting evidence, TV Licensing ("TVL") gave the complainant's partner a two-year refund as a goodwill gesture.

Having become aware of the potential availability of refunds of up to six years in cases of error by TVL, the complainant claimed a refund of the remainder of the past five-and-a-half years' licence fees.

The complainant made the following points:

- TVL had mis-sold TV licences to his partner.
- His 2 large download volumes as identified on statements provided to him by his Internet Service Provider were evidence that he watched TV programmes only via "catch-up".
- The fact that a TV licence is not needed to watch catch-up TV is inadequately publicised, especially to non-internet users.
- Information about licensing requirements for catch-up TV is difficult to access on TVL's website, even via the search box.
- He was incorrectly informed by a TVL adviser that there is no time limit on refunds.
- He was incorrectly informed by a TVL adviser that, if he had a TV, he needed a TV licence.

TVL and the BBC made the following points:

- The BBC has a discretionary refund policy, under which a refund of up to two years can be given (except where TVL is in error, in which case the refund can be for up to six years).
- The complainant had not provided sufficient evidence to support his claim.
- Exceptionally, the BBC had agreed to give the complainant's partner a two-year refund.
- As there was no evidence that TVL was in error, no further refund payments could be considered.
- With regard to the availability of information on whether a TV licence is needed to watch catch-up TV:
 - The licensing requirement appears on:
 - all standard mailings to unlicensed addresses;

¹ ie not watching programmes as they are being shown on TV or live on an online TV service

² In presenting his partner's case, the complainant sometimes conflated his conduct with that of his partner.

- the TV licence document;
 - licence renewals; and
 - the letter sent when TVL is informed that no licence is needed.
- The relevant legislation³ is available online and at main libraries.
 - Customers can contact TVL by letter, email or phone with any questions about their licensing requirements.
 - The Citizens Advice Bureau and debt charities also hold relevant information.
 - TVL's website contains a clear description of when a licence is not needed, reached via the "Check if you need one" link from any page⁴. The description reads:

"If you only ever watch on demand programmes, you don't need a TV Licence. On demand includes catch-up TV, streaming or downloading programmes after they've been shown on live TV, or programmes available online before being shown on live TV."⁵

- In one of several calls from the complainant (in which the complainant was given otherwise accurate information), a TVL adviser stated incorrectly that there is no time limit on refunds. TVL would ensure that advisers were aware of the correct position. The BBC's Head of Revenue Management thanked the complainant for highlighting this issue.
- The TVL adviser's incorrect assertion (that, if the complainant had a TV, he needed a licence) was preceded by several correct assertions that the complainant needed a licence to watch live TV. It was a slip of the tongue, for which the BBC's Head of Revenue Management apologised.

Appeal

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

- He had only received a refund for two years and would like the remainder.
- He initially applied for a two-year refund but, on further research (with the help of his partner) had learned that he had not been notified or made aware of the rules. If it is TVL's error then he should be able to make a refund claim for a longer timeframe.
- TVL made the error by not having the information clearly visible on the TVL website prior to the recent website update (which he estimated took place around ten days before he received the Executive's Stage 3 response). The Executive's Stage 3 response had been based on the new, updated website and not the previous website.

³ The Communications Act 2003 and the Communications (Television Licensing) Regulations 2004, as amended.

⁴ The complainant later stated that the website quoted was amended only ten days or so before this response, and that previously, customers had had to click on an additional link to learn more about the licensing requirements for catch-up TV.

⁵ www.tvlicensing.co.uk/check-if-you-need-one/topics/technology--devices-and-online-top8 .

- He had been given incorrect and inconsistent information by TVL advisers concerning the time limit with regards to obtaining a refund. He had also been incorrectly informed by a TVL adviser that, if he had a TV, he needed a TV licence.
- He had requested recordings of his calls with TVL and copies of all letters from TV Licensing to him and had received an assurance from the Executive that he would be sent them but to date he had not received them.

Decision of the Trust Adviser

The Trust Adviser (the Adviser) decided that the point she should consider was whether the complainant's appeal had a reasonable prospect of success.

As a preliminary point, the Adviser considered the evidential value of the complainant's allegedly substantial download volumes. The Adviser noted that the complainant had not submitted any documentary evidence in this regard. The Adviser considered that, even if documentary evidence of this had been provided, this would not prove that he and his partner did not watch live TV.

The Adviser noted that section 365(3) of the Communications Act 2003 grants the BBC the discretion to make refunds of TV licence fees "in such cases as they may determine". She also noted that, in practice, TVL exercises this discretion on the BBC's behalf, in accordance with the BBC TV Licensing Refund Policy.⁶

The Adviser noted that section 3.4 of the Refund Policy states that:

"Where there is an error on the part of TV Licensing, a refund for a period of up to six years may be paid. In all other cases, a refund may be paid for [a] period of up to two years..."

In the Adviser's view, the complainant's partner's eligibility for an additional refund, over and above the two years she had already received, depended on whether there had been "an error on the part of TV Licensing".

The Adviser considered the complainant's allegation that TVL had mis-sold TV licences to the complainant's partner. The Adviser noted that TVL had issued the complainant's partner with the TV licences for which she had applied. In the Adviser's view, it was the complainant's partner's responsibility to ensure that she was correctly licensed. It was neither required nor easy for TVL to enquire into the circumstances of individuals who have applied for TV licences in order to ascertain their personal licensing requirements.

The Adviser then considered the complainant's allegation that TVL had failed to adequately publicise information on whether a TV licence is needed to only watch catch-up TV.

With regard to the general availability of information concerning TV licence eligibility, the Adviser noted the Executive's arguments that the licensing requirement appears on standard TVL mailings to unlicensed addresses, the licence document, licence renewals, and the letter sent when TVL is informed that no licence is needed. The Adviser also noted that, according to the Executive: the legislation concerning TV Licence eligibility is available online and at main libraries; customers can contact TVL by letter, email or phone with any questions about their licensing requirements; and the Citizens Advice Bureau and debt charities also hold relevant information.

⁶ See Refund Policy, s 2: <http://www.tvlicensing.co.uk/ss/Satellite?blobcol=urldata&blobheadname=content-type&blobheadvalue=application%2Fpdf&blobkey=id&blobtable=MungoBlobs&blobwhere=1370006277544&ssbinary=true>.

With regard to past availability of relevant information on TVL's website, the Adviser noted that, in response to the Trust Unit's enquiry, the BBC's Head of Revenue Management had stated:

"With regard to the website about when a licence is needed, a revised section went live on 10 September. It was this existing copy that [the complainant] complained about to the Executive (directly to me over the phone) ... [The complainant] only complained about the current version to the Executive."

The BBC's Head of Revenue Management went on to state:

"...[P]lease see below the screen shot of the website page that was replaced last September. You will see this states at the bottom of the page: 'Exception: If you only watch catch-up services online, then you don't need a licence. For example, you don't need one to use BBC iPlayer, or ITV player, to catch up on programmes after they have been shown on TV.'"

The Adviser reviewed the screenshot, a copy of which was provided to the complainant, and noted that, in order to reach that page, customers would have had to navigate via three links, as follows:

Home / Check / TV Licensing topics / Technology - devices and online.

The Adviser did not consider that following these links would have been difficult. Therefore, the Adviser was satisfied that, prior to 10 September 2014 (when the revised section of the website went live), TVL's website had adequately publicised information concerning licensing requirements for watching catch-up TV.

With regard to current availability of relevant information on TVL's website, the Adviser noted that each webpage now contained a "Check if you need one" link. These link to a webpage containing the following statement:

"If you only ever watch **on demand** programmes, you don't need a TV Licence. On demand includes catch-up TV, streaming or downloading programmes after they've been shown on live TV, or programmes available online before being shown on live TV."⁷ [emphasis supplied]

The Adviser noted the complainant's argument that this was a recent change to TVL's website, which pre-dated the Executive's Stage 3 response by a matter of days. The Adviser noted that the complainant had supplied three screenshots of the mobile version of the TVL website. The Adviser noted that the file-names of the images suggested that they were all taken on 29 May 2015, although she acknowledged that this was not conclusive.

The first screenshot was reached by the following links: Home / Check. The webpage stated:

"Please let us know if you believe that a TV Licence is not needed." [underline denotes HTML link]

The second screenshot was of the bottom of the same webpage. The second screenshot contained the following link:

"Learn more about technology" [underline denotes HTML link]

⁷ www.tvlicensing.co.uk/check-if-you-need-one/topics/technology--devices-and-online-top8 .

By comparison with the current version of the TVL website, the Adviser inferred that this link led to the third screenshot, which contained the statement quoted above, beginning "If you only ever watch on demand programmes ..." This webpage could be reached via the following three links:

Home / Check / TV Licensing topics / Live TV and how you watch it.

The Adviser did not consider that following these links was difficult.

The Adviser had asked an independent editorial adviser to visit TVL's mobile website, to find out whether it had been altered since the complainant took the screenshots, as alleged. The independent editorial adviser provided corresponding screenshots as at 13 August 2015, a copy of which was provided to the complainant.

The Adviser noted that the wording of the current mobile version of TVL's website appeared to differ slightly from the complainant's first and second screenshots, although the third screenshot appeared unaltered. However, in the Adviser's view, all the screenshots contained either information concerning the licensing requirements for watching catch-up TV, or a link to that information. She therefore concluded that the minor alterations to TVL's website were not material.

For these reasons, the Adviser concluded that information on whether a TV licence is needed to watch catch-up TV is widely available, to both internet users and non-internet users. She could see no evidence of any lack of transparency on TVL's part. She was therefore satisfied that there had been no error by TVL that could possibly form the basis for a further refund.

Furthermore, with regard to the complainant's partner's specific circumstances, the Adviser noted that, under the heading "The terms and conditions of the TV Licence", the reverse of the complainant's partner's TV licence stated:

"What is a TV licence needed for?"

... If you only watch on-demand services, then you don't need a licence."

The Adviser concluded that, as from 7 November 2011 (being the date of the licence) at the latest, the complainant's partner had received personal notification of the fact that she did not need a TV licence to watch catch-up TV.

With regard to the TVL adviser's inaccurate statement in a phone call that there was no time limit on refunds, the Adviser noted that the BBC's Head of Revenue Management had thanked the complainant for highlighting this issue and had promised action. The Adviser noted that, where the Executive accepted an error and took steps to rectify the cause of the error, Trustees normally considered the matter resolved (unless there were features to the error which suggested it was so serious that further action might be necessary). The Adviser did not believe that this matter raised such serious issues that further action would be required. She therefore decided this point of appeal did not have a reasonable prospect of success.

With regard to the TVL adviser's inaccurate statement in a previous phone call that, if the complainant had a TV, he needed a licence, the Adviser noted that the BBC's Head of Revenue Management had apologised for what she considered a slip of the tongue. The Adviser believed that Trustees would therefore consider this matter resolved. She did not believe that the matter raised such serious issues that further action would be required. She therefore decided this point of appeal did not have a reasonable prospect of success.

With regard to the complainant's assertion that he had requested recordings of his calls with TVL and copies of all letters from TV Licensing to him but had not received them

(despite his understanding that the Executive had agreed to send them), the Adviser noted that this information constituted personal data for which a formal Subject Access Request (SAR) should be made. The BBC was entitled to charge a £10 fee to search for and provide the information, which the Adviser understood the complainant was refusing to pay. The BBC had not agreed to waive the fee. The Adviser noted that, following various discussions via telephone between the Trust Unit and the complainant on this point, the complainant had been advised in a letter from the Trust's Head of Editorial Standards in August 2015 that if he wished to appeal the BBC's decision not to waive the fee he should approach the Information Commissioner's Office. The Trust's Head of Editorial Standards also informed the complainant that this element of his appeal was not a matter for the Trust and had no reasonable prospect of success.

Taking all the above 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 (who made his complaint by phone and not in writing) requested that the Trustees review the decision not to proceed with the appeal. He made the following points:

- The Adviser's decision did not include anything about TV Licensing having previously advised him that he could not make a complaint verbally. The Adviser had not addressed this.
- The complainant was dissatisfied with the Adviser's reasoning regarding the changes to the TV Licensing website. He said he was advised by several TV Licensing personnel that "they were updating the website as it was not sufficiently clear, as shown by his experience". The complainant said that the website was updated on approximately 10 August, just before his Stage 3 response was sent to him. He said that this proved there had been an issue with the website. It was not easy, as the Adviser had said, to find this material under the technology header. The link he had been provided with at Stage 4 had been to the new website which proved his point.
- The complainant noted that he had still received no copies of letters from TV Licensing [which was being dealt with separately by his Subject Access Request]. He said these would show he had not been advised by post that there is no need for a TV Licence to watch catch-up TV. He said in conjunction with the fact that this information was hidden on the website, and he had to hunt for it as it was not under "do [you] need a TV Licence?", this would show the information was not made clear.
- The complainant understood it was his and his partner's responsibility to ensure they only have a licence if they need one, but he could only follow the law if it was made clear to him, as could his partner. He said that to the average person, the header "Learn more about technology" has nothing to do with needing a TV licence or not.
- He had spoken to someone from Trading Standards about the way the site was structured who had said if this was a commercial site the officer would have prosecuted.

The Panel's decision

The Panel noted the points made by the complainant, TVL, the BBC and the Trust's Adviser. The Panel noted the complainant's strength of feelings on the matter.

The Panel noted that the complainant had not said on appeal that he wanted to complain to the Trust that he had been told the BBC would not accept a verbal complaint. As this had not been raised on appeal it was not appropriate to take this point now. The Panel none the less wished to make it clear the BBC should accept verbal complaints if a complainant was disabled such that it was difficult for them to make a complaint in writing (and therefore to access the complaints system on the same terms as everyone else). The Panel considered that this would usually be a suitable "reasonable adjustment" to make in terms of the BBC's obligations under the Equality Act and noted that TVL as well as other areas of the BBC would usually do this as a matter of course.

The Panel noted that section 365(3) of the Communications Act 2003 grants the BBC the discretion to make refunds of TV licence fees "in such cases as they may determine". The Panel also noted that, in practice, TVL exercises this discretion on the BBC's behalf, in accordance with the BBC TV Licensing Refund Policy. The Panel noted that whether an additional refund was due, over and above the two years already received, depended on whether there had been "an error on the part of TV Licensing".

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

- all the screenshots from the TV Licensing website contained either information concerning the licensing requirements for watching catch-up TV, or a link to that information. (There were some minor differences in wording between the screenshots provided by the complainant and by TV Licensing. However, the changes were very slight.)
- substantial download volumes did not necessarily mean that only catch-up TV was watched.
- the TV licence issued to the complainant's partner, in November 2011, had included a line which stated "... If you only watch on-demand services, then you don't need a licence".
- there had been no error in the part of TV Licensing.

The Panel noted that there had been some errors on the part of TV Licensing call handlers when speaking with the complainant. Trustees agreed that if they took this matter on appeal they would be likely to consider these matters resolved given that:

- they were isolated errors.
- the BBC Executive had indicated that action had been taken.
- these were operational matters and so matters which were the responsibility of the BBC's Executive Board and not the Trust. As the Royal Charter in articles 38(1)(b) and (c) sets out, "the direction of the BBC's editorial and creative output" and "the operational management of the BBC" are specifically defined as the responsibility of the Executive Board.

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.

Complaint about access to BBC World Service output in the UK

The complainant made the following points:

- As the BBC World Service was now solely funded by the UK Licence Fee, all World Service output, not just World Service English, ought to be available on DAB radio and satellite TV in the UK.
- UK licence fee payers did not receive some Language Services and this was unfair.
- Not all UK audiences had access to the internet as there were large areas of the country with poor internet and broadband coverage. A majority was dependent on DAB radio and TV.

Audience Services/the World Service made the following points:

- The distribution of World Service output had to be balanced with the BBC's obligation to be cost-effective and deliver best value for licence fee payers.
- All World Service TV, radio and digital output was therefore available to audiences in the UK online.
- All Language Services had YouTube channels and there was some Language Service content on community radio in the UK. For most languages there was insufficient content to justify using continuous broadcast channels in the UK.
- Given the wider appeal of World Service English to audiences in the UK, it was available on DAB digital radio, Freeview, Astra 2A 28.2E and overnight on BBC Radio 4.
- This was the most cost-effective solution that allowed users across the UK full access to the wide range of World Service output.
- There were no plans to change those arrangements, although the BBC kept its distribution strategy under constant review, including any potential changes in distribution costs.

Appeal

The complainant appealed to the BBC Trust on the substance of his complaint. He additionally stated that he considered the exclusion from DAB radio and TV of African programmes by the World Service was intentionally discriminatory and he stated that he did not accept the responses he had been given that these decisions were about cost-effectiveness.

Decision of the Trust Adviser

The Trust Adviser (the Adviser) carefully read the correspondence between the complainant and the BBC. She appreciated that the complainant highly valued the BBC World Service and sought greater access to it within the UK. However, she decided that the complainant's appeal did not have a reasonable prospect of success. The Adviser noted the concern that not all World Service output was available through DAB radio and on TV. The complainant was particularly concerned that he was unable to receive the BBC African Service. She noted that he felt this was a policy which was intended to discriminate against the UK's African community.

The Adviser noted the replies from the BBC had explained that although the World Service was very keen for British audiences to be able to access all output, this desire for accessibility had to be balanced with the BBC's obligation to be cost-effective and deliver best value for all licence fee payers.

She noted that the replies had explained to the complainant that providing all output on the internet to UK audiences was a cost-effective and efficient means of delivery. They had gone on to explain that while World Service English was available to audiences in the UK on DAB digital radio, Freeview, Astra 2A 28.2E and overnight on BBC Radio 4. However, they stated that the size of the potential audience to many of the language services meant that the BBC could not justify using broadcast channels in the UK for these services.

In addition the Trust Adviser noted that the Trust was separate from the Executive Board which is led by the Director-General and which is responsible for the operational delivery of BBC services. Decisions such as the distribution of World Service output in the UK was an operational decision and therefore was the responsibility of BBC management and was not an issue in which the Trust would normally become involved unless, for example, it involved a breach of the service licence, which did not apply in this case. The Operating Licence for the BBC World Service can be found here: http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/other_activities/wsol/operating_licence.pdf

The Adviser noted that the Operating Licence included the following information about the scope of the World Service:

"Within the UK, all BBC World Service audio and television output may be made available online to UK audiences, both live and on-demand. BBC World Service's English output should also be made available in the UK as a digital service, and on existing FM platforms overnight."

She also noted the BBC's fifth public purpose in "...bringing the UK to the world and the world to the UK" and that the Operating Licence also stated:

"BBC World Service should make the global material it generates, including debates, discussions, features and analysis of international events, available to UK audiences online."

Taking this into account the Adviser considered Trustees would be likely to conclude that there was no indication the World Service was in breach of its Operating Licence, and nor was there any indication that it was discriminating against the UK's African community. 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 Trustees review the decision of the Adviser not to proceed with his appeal. He said that the Adviser had not addressed the points raised by his complaint:

- The Adviser had quoted from the Operating Licence for the BBC World Service which said that “World Service English output” including all English programmes should be available on a UK digital platform. *Focus on Africa* was an English language programme on the BBC African Service. It, and other programmes should therefore be available both digitally and online or the BBC World Service would be in breach of its Operating Licence.
- The Adviser had not disproved the complainant’s view that the BBC World Service was discriminating against the UK’s African community by not making programmes available on a digital platform. The UK Asian community had a radio service.
- The Adviser ignored the cost to licensees who have to pay broadband or data charges.
- The Adviser had used cost and audience size for not adding more programmes to the digital platform but had failed to justify what those numbers were. He noted the low audiences for BBC Three and BBC Four.

The Panel’s decision

The Panel noted the points made by the BBC, the Adviser and the complainant. Trustees agreed that if they took this matter on appeal they would be likely not to uphold this complaint given that:

- Trustees noted that the Royal Charter set out a clear division of responsibility between the BBC Executive and the BBC Trust. The BBC Executive was responsible for the operational delivery of BBC services which included decisions made about the distribution of World Service output in the UK. The BBC was entitled therefore to make operational decisions without interference and the Trust would only have a role if the BBC was in breach of, in this case, the World Service Operating Licence.
- World Service English was a reference to the English Language Service and not to programmes in the English language on other services.
- BBC World Service English was available to UK licence fee payers on DAB digital radio, Freeview, Astra 2A 28.2E and overnight on BBC Radio 4.
- The World Service complied with its service licence.
- Making services available online provided a cost-effective and efficient means of delivery.
- The BBC had explained to the complainant its obligation to all licence fee payers to deliver the best value for money
- The provision of a content service is not subject to the equality duty but in any event Trustees had not seen any evidence which suggested this policy was discriminatory. It was a matter of editorial discretion for the BBC Executive as to how it chose to distribute World Service content outside the requirements of the Operating Licence. However, Trustees noted that the primary audience of the World Service was outside the UK and that costs of distribution on broadcast channels are very high. Trustees considered that the Executive’s approach in putting the content with the widest appeal to a UK audience out on broadcast channels, with the remainder available online was a reasonable one.

- The BBC had provided a reasoned and reasonable response to the complainant's concerns.

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.

Complaint regarding Jeremy Clarkson and future appearances on the BBC

Have I Got News for You was due to be hosted by Jeremy Clarkson.

The complainant made the following points:

- Jeremy Clarkson should have been banned from appearing on all future BBC programmes.
- The Director-General of the BBC said that “there cannot be one rule for one and one rule for another dictated by either rank, or public relations and commercial considerations”, but this hadn’t applied to Jeremy Clarkson.

BBC Audience Services made the following points at Stage 1:

- Although Jeremy Clarkson’s contract had not been renewed on *Top Gear*, he was not banned from appearing on the BBC altogether.
- Since the complainant contacted the BBC, Jeremy Clarkson had decided against hosting *Have I Got News for You* on this occasion, but he might host the programme at some point in the future.

BBC Television made the following points at Stage 2:

- The matter had been considered at the highest level and the Director-General had stated the BBC’s position.
- The complainant’s points had been noted and raised with senior BBC management but there was little else to add to the BBC’s previous response.

Appeal

The complainant appealed to the BBC Trust on the substance of his complaint. He said that the BBC should end its continuing involvement with Jeremy Clarkson.

Decision of the Trust Adviser

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

The Adviser noted that issues relating to the choice of presenters and contributors for BBC output were editorial and operational decisions which were the responsibility of the BBC’s Executive Board and not a matter for the BBC Trust. The Trust only became involved in the BBC’s editorial or operational decisions if there was a possibility that there was a breach of editorial standards or with specific operational requirements – for Service Licences. She did not consider that was the case here. While she noted the complainant’s reference to the comments of the Director-General, she noted that in the wake of the incident, the presenter had not had his contract renewed and this was a very significant decision for the BBC. While she appreciated that the complainant believed the BBC should sever all links with Mr Clarkson, she considered this was an operational and editorial matter and was a decision for the BBC rather than the Trust.

Taking this into account the Adviser considered Trustees would be likely to conclude that the appeal concerned a matter that was the responsibility of the Executive rather than the Trust and 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 requested that Trustees review the decision of the Adviser not to proceed with his appeal. He said that the statement issued by the Director-General of the BBC (that there cannot be one rule for Jeremy Clarkson and one rule for others) was inconsistent with the statements of other BBC staff who said he had not been banned from appearing on the BBC. If the BBC allows the employment of someone who has assaulted another member of staff then the policy should be reviewed.

The Panel's decision

The Panel noted the points made by the BBC, the Adviser and the complainant.

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

- the choice of presenters for BBC output was an editorial and operational decision which was the responsibility of the BBC's Executive Board and not the Trust. As the Royal Charter in articles 38(1)(b) and (c) sets out, "the direction of the BBC's editorial and creative output" and "the operational management of the BBC" are specifically defined as the responsibility of the Executive Board.
- the BBC had clearly outlined its position and in its responses to the complainant it had also explained that while Mr Clarkson's contract had not been renewed on *Top Gear*, he had not been banned from taking part in future BBC programmes.

The Panel did not consider that it was appropriate, proportionate or cost-effective to take this matter on appeal because it did not have a reasonable prospect of success.

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

Discourtesy by the BBC and complaints handling

The complainant wrote to the BBC Trust to complain that discourtesy had been shown to him by the Director-General and the BBC in his recent correspondence, and about the handling of his subsequent complaint by the BBC Trust Unit, as follows:

- he had not received a personal response from the Director-General to his personally addressed letter or subsequent emails.
- he objected to the manner in which he had been addressed in communications received from BBC Audience Services, ie “Hi [forename]”, and “Sir [forename] [surname]”, instead of “Lord [forename] [surname]”.
- there had been failures in the handling of his complaint by Trust Unit staff, which included not forwarding his complaint to BBC Audience Services as promised, and incorrectly forwarding to him internal email correspondence about the handling of his complaint.

In his response, the Complaints Manager for Audience Services:

- explained and apologised for the delay in responding which was because the Trust Unit had not forwarded the correspondence in the first instance.
- accepted that the complainant had in some instances – “Hi [forename]” – been addressed inappropriately, and apologised for this.

In her responses, the Trust Unit’s Correspondence Co-ordinator:

- explained why his complaint had to be forwarded to BBC Audience Services for response by the BBC Executive in the first instance.
- subsequently apologised for the Trust Unit’s failure to then forward this complaint to Audience Services.
- apologised for having forwarded internal email discussion about the handling of the complaint to him inadvertently.

Appeal to the Trust

Having received replies from both the Complaints Manager for Audience Services and the Trust Unit’s Correspondence Co-ordinator, the complainant appealed to the BBC Trust on both the handling of his complaint by the BBC Trust Unit and the discourtesy he said was shown to him by the BBC. He subsequently complained that on contacting the Trust Unit by telephone for an update on the progress of his appeal, a member of staff refused to put him through to her manager and ended the call.

The Trust Unit’s decision

The Trust’s Head of Editorial Standards replied to the complainant, addressing the two matters raised separately:

- 1) The handling of the complaint by the Trust Unit.
- 2) Discourtesy by the BBC, including the Director-General.

1) The handling of the complaint by the Trust Unit

The Head of Editorial Standards noted that (in accordance with the procedure for complaints about the Trust Unit available at http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/201

[4/complaints_fr_work_handling.pdf](#) – see page 6) the Director of the Trust Unit had asked the Head of Editorial Standards to take this forward, as the staff involved worked in her team or the complaints related to her.

The Head of Editorial Standards agreed that errors had been made in the Trust Unit's correspondence with the complainant, and added her apologies to those already offered by the Correspondence Co-ordinator:

- she said she was sorry that the Correspondence Co-ordinator had forwarded internal emails asking for advice on how to reply to the complainant, and the replies she received.
- she explained that it was standard practice for her team to ask for advice if they were unsure on how to reply, and recognised that the internal email chain should not be sent externally.
- she appreciated that none of the internal correspondence was in any way inappropriate or discourteous to the complainant, but was sorry that it upset the complainant and that he found the emails distasteful.
- she noted that the Correspondence Co-ordinator was upset by her error at the time and had brought it to the attention of the Head of Editorial Standards, and the Correspondence Co-ordinator confirmed that she understood the requirement to be diligent when sending emails outside the BBC.

As to the Trust Unit's failure to pass on the complaint to Audience Services, the Head of Editorial Standards:

- noted that the complainant was told on 19 June 2015 that his letter of 9 May 2015 to the Trust Unit would be passed to Audience Services (after he had given permission on 12 June), but Audience Services had informed the Trust Unit that this was not done.
- apologised for the delay of two months in subsequently passing the complaint to Audience Services (on 5 August) and that the Trust Unit did not explain this error to the complainant when it was finally understood in August.
- explained that she had been on leave and so could not give guidance, and that the Correspondence Co-ordinator and assistant were new in post and it took them time to understand what had happened. As they were new and the previous staff no longer here, she was unable to find out why the complaint had not been sent across.
- noted that the current staff had been made aware that they must send correspondence across to Audience Services if they had said that they would do so, and also that when a Trust Unit error was spotted, that they should write and apologise as soon as possible and not rely on a letter from Audience Services to explain what happened.

As to the subsequent complaint regarding the handling of the complainant's call to the Trust Unit on 7 September to ask about the progress of his complaint/s, the Trust's Senior Editorial Adviser had called the complainant back to tell him that a reply to his letter would be sent that week but that she was unacquainted with the case and could not tell the complainant what the answer would say. When the complainant had asked to speak to her manager, she had declined to pass the call to the Head of Editorial Standards saying that he was in a formal complaints procedure and that the Trust Unit would correspond in writing, and had then ended the call. The Head of Editorial Standards noted that the complainant had complained about this and believed he should be able to speak to her as her direct manager. She considered that the Senior Editorial Adviser had provided the answer to the complainant's query by telling him that a response would be sent to him that week. She noted that it was correct that he was in a formal procedure

and that asking for a verbal summary of what the Trust Unit was about to say would not be helpful if he subsequently asked the Trustees to review the case as there would be no record of what had been said. She determined that the Senior Editorial Adviser was not incorrect in refusing to pass the call to her and in ending the phone call. She was nonetheless sorry that this had disappointed the complainant.

The Head of Editorial Standards explained that a copy of her letter and the correspondence with the Trust Unit would be provided to the next Panel of the Trust's Complaints and Appeals Board so that they were aware of the complaint and its outcome.

2) Discourtesy by the BBC, including the Director-General

The Head of Editorial Standards had reviewed the correspondence in relation to the complainant's overarching complaint about discourtesy by the BBC and on the part of Lord Hall. She did not consider that this matter should proceed to the Trust as it did not have a reasonable prospect of success. She referred to the relevant procedure set out by the Trust in 2012 (amended in 2014) which was available at:
http://www.bbc.co.uk/bbctrust/governance/complaints_framework/general.html

She first considered the complainant's concern that he had sent a number of emails to Lord Tony Hall, the Director-General, but had not received a personal response. She noted that matters relating to a complaint regarding the BBC should be sent to BBC Audience Services in the first instance, and that the BBC did not guarantee a response to communications sent through other channels. She therefore considered that it was correct that the complainant's letters were passed to Audience Services and that he received a response from them.

She further noted the complainant's dissatisfaction with the manner in which he was addressed in communications from the BBC. When he had raised this matter with BBC Audience Services, the complainant had received an apology from the Complaints Manager for BBC Audience Services:

"I fully accept this was a poor judgement on the part of my team and I do hope you will accept that it is never our deliberate intention to cause offence or upset anyone. I'm particularly disappointed that on this occasion we were replying to a letter addressed to the Director-General as it understandably left you with a poor impression of his office, which is unfair to my colleagues who work there. So I'd like to offer a very sincere and personal apology on behalf of my own team. I do hope that should you choose to contact the BBC again in the future, your experience will be a much better one."

She considered that the Complaints Manager's response had resolved this issue. She further noted that as the complainant was not referred to in Debrett's Peerage ("Debrett's") as Lord [forename] [surname], she could not find that the BBC was wrong in not addressing him as such.

She noted that according to the Complaints Framework, Trustees should only consider operational matters that raised significant issues of general importance. For the reasons she had set out, her view was that the matters the complainant had raised were not significant matters of general importance and that she therefore did not propose to put this matter before the Trustees. She did not believe it was appropriate or cost-effective to do so.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with his appeal. After further correspondence with the Trust Unit he also complained about the failure to address him as "Lord [forename] [surname]" and about the Trust Unit's use of Debrett's to make enquiries as to the correct form of address.

The Panel's decision

Trustees had before them correspondence between the complainant and the Trust Unit, and BBC Audience Services. In particular, they noted the complainant's formal submission dated 28 August 2015, subsequent further submission of 11 September 2015, and a letter to Trustees dated 14 September 2015.

Noting the response by the Trust's Head of Editorial Standards (see above) and having considered the relevant correspondence, Trustees agreed that the letter from the Complaints Manager for BBC Audience Services resolved the complaints about the manner in which the complainant had in some instances been addressed by members of Audience Services staff. They also agreed with the Head of Editorial Standards that it had been appropriate for the letter to the Director-General to have been passed to Audience Services for reply. Trustees concluded that it was not appropriate, proportionate or cost-effective to proceed with an appeal on either of these issues as it did not have a reasonable prospect of success.

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

Trustees then considered the subsequent issue arising out of the Head of Editorial Standards' letter of 7 September where she had stated:

"As you will be aware you are not referenced in Debrett's Peerage as Lord [forename] [surname]. I cannot therefore find that the BBC was wrong when they did not address you as Lord [forename] [surname]. I am very sorry if you find this personally upsetting."

In subsequent correspondence, the complainant reiterated his concern that he considered the BBC was wrong not to use his title – which he stated was one that was commonly used across Europe. He stated that Debrett's Peerage did not include titles without an English provenance and that he considered it was insulting that the BBC Trust had sought information from Debrett's Peerage. He later queried whether it was a "policy" to seek information from Debrett's Peerage and stated that he did not consider it was reasonable for "BBC [Trust] staff to 'check up' " in this way.

Trustees expressed regret that the complainant had felt insulted by the actions of the Head of Editorial Standards, and for any personal distress caused (inadvertently and indirectly) to the complainant or his family, but they did not consider that the Head of Editorial Standards had acted improperly. In their view, in a situation where she needed to determine a complaint that an incorrect form of address had been used, it had been legitimate for her to have sought guidance from Debrett's, which is a publicly available and authoritative source. They considered that the Head of Editorial Standards had acted in good faith and for proper reasons in undertaking such research, and appreciated that, on receipt of the complainant's grievance, had herself promptly written to the complainant and apologised for any upset caused.

Trustees therefore did not uphold this complaint.

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 an incident involving Jeremy Clarkson and a BBC producer

The complaint related to an incident which took place on 4 March 2015 between Jeremy Clarkson and a producer of Top Gear at a hotel.

The complainant made the following points:

- What action did the BBC take against its employees who witnessed the physical and verbal attack by Jeremy Clarkson on his producer but who did nothing to stop it?
- The BBC was incapable of investigating its own scandals and had a history of covering up the inappropriate behaviour of its "talent".

Audience Services made the following point:

- The matters raised by the complaint were of an internal nature and therefore could not be discussed.
- They acknowledged the comments that had been made and said they had been passed to the appropriate figures within the BBC.

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. The Trust Adviser understood that BBC Audience Services had decided not to correspond further with the complainant after stage 1. She decided that the point she should consider was whether the complainant's appeal against the decision of Audience Services not to correspond further had a reasonable prospect of success.

Decision of the Trust Adviser

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

The Adviser noted that the issue raised by the complainant was a human resources matter and one which was internal to the BBC and was not covered by the Complaints Framework. She therefore considered that, on the complainant's substantive point, Trustees would be likely to conclude that Audience Services had acted appropriately in advising the complainant that it would not be able to comment on internal, human resource matters. However, she noted that the Director-General had made a statement about these circumstances and this had included the following information:

Common to all at the BBC have to be standards of decency and respect. I cannot condone what has happened on this occasion. A member of staff – who is a completely innocent party – took himself to Accident and Emergency after a physical altercation accompanied by sustained and prolonged verbal abuse of an extreme nature. For me a line has been crossed. There cannot be one rule for one and one rule for another dictated by either rank, or public relations and commercial considerations.

She noted the complainant raised broader issues about the conduct of significant figures at the BBC and about the responses – and responsibilities – of staff who had witnessed inappropriate behaviour. She considered that it was very important to the BBC to retain the trust of licence fee payers in this significant area. She thought the complainant might already be aware that in October 2012, the BBC set up a review to be led by the former Court of Appeal Judge, Dame Janet Smith DBE, her review was intended:

“... to conduct an impartial, thorough and independent review of the culture and practices of the BBC during the years that Jimmy Savile worked there.”

And also to:

“...investigate the extent to which BBC personnel were or ought to have been aware of inappropriate sexual conduct by Jimmy Savile in connection with his work with the BBC, and consider whether the culture and practices within the BBC during the years of Jimmy Savile’s employment enabled inappropriate sexual conduct to continue unchecked”

The work of the review was subsequently broadened so that it would also consider the culture and practices of the BBC during the period of Stuart Hall’s employment.

She noted that, while the review had now been finished, its publication had been delayed at the request of the Metropolitan Police who considered it could prejudice its own inquiries into allegations of sexual assault. She noted that it remained the expectation that the Review would be put into the public domain.

The Adviser also noted that, separately, the BBC had carried out an inquiry into bullying and harassment which had been published in May 2013. The Respect at Work Review was prepared by the BBC’s Human Resources department with the help of Dinah Rose QC and Change Associates. It had also been set up after the revelations about Jimmy Savile and looked at BBC policies and processes relating to sexual harassment and to consider what it was like to work at the BBC more broadly with regard to respect and appropriate behaviour for staff and freelancers. Following the Review the BBC announced that it would be making changes to its bullying and harassment policy. The Respect at Work Review could be found here:

downloads.bbc.co.uk/aboutthebbc/insidethebbc/howwework/reports/bbcreport_dinahrose_respectatwork.pdf

She hoped this information was of interest to the complainant. On his underlying complaint, she considered that 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 Trustees review the decision of the Adviser not to proceed with his appeal. The complainant said that to respond by describing it as a matter “of an internal nature” was inadequate and that the BBC needed to address the culture that led the organisation to ignore the behaviour of its employees.

The complainant asked:

- What did the BBC employees who bore witness to this “sustained and prolonged verbal abuse of an extreme nature” do to try and stop it?
- What investigation was made into their conduct?
- What sanction has been taken against them if they did nothing?

The complainant also referred to the conduct of other significant figures at the BBC and said that the BBC’s response on those occasions was “a very clear indication of the shameful way your organisation closes ranks to protect the disgraceful conduct of its employees.”

The Panel’s decision

The Panel noted the points made by the complainant, the BBC and the 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.

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

- any inquiry into the actions of other BBC staff present at the time of the incident and any subsequent action would be an operational matter. Operational matters are the responsibility of the BBC’s Executive Board and not the Trust. As the Royal Charter in articles 38(1)(c) sets out, and “the operational management of the BBC” is specifically defined as the responsibility of the Executive Board.
- the complainant was asking for the personal data of BBC staff and the Panel noted the BBC’s obligations under the Data Protection Act regarding the personal data it holds. 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 Act and Data Protection Regulator. This was the appropriate route for such matters.
- The BBC had taken the matter extremely seriously as evidenced by the Director General’s statement on the matter.

As to the allegation that the BBC had a culture which tolerated bullying the Panel agreed that if they took this matter on appeal they would be likely not to uphold this complaint given that the Adviser had referred the complainant

- to the Dame Janet Smith Review which was set up in October 2012:

“... to conduct an impartial, thorough and independent review of the culture and practices of the BBC during the years that Jimmy Savile worked there.”

and

- to the Respect at Work Review which had been published by the BBC in May 2013 and had looked at BBC policies and processes relating to sexual harassment and to consider what it was like to work at the BBC with regard to the behaviour of employees. The BBC had responded to the Review by making changes to its bullying and harassment policy.

The Panel agreed that Audience Services had provided a reasoned and reasonable response to the complainant's concerns.

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

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

Decision of BBC Audience Services not to respond further to a complaint that BBC Four is failing to meet its remit

The complainant wrote to the BBC Trust following the decision of BBC Audience Services not to uphold his complaint about the fulfilment of BBC Four's remit. The complainant believed that BBC Four had failed to meet its remit which is to "reflect a range of UK and international arts, music and culture. It should provide an ambitious range of innovative, high quality programming that is intellectually and culturally enriching, taking an expert and in-depth approach to a wide range of subjects".

The complainant provided his own analysis of new programmes broadcast on BBC Four during the first 13 weeks of 2015 to support this, and concluded that there were only 18 programmes "which could, by the widest and most generous stretch of the imagination be labelled arts programmes ... and in 4 weeks no such programmes at all had been broadcast".

In their responses, Audience Services made the following points:

- the BBC did not agree that BBC Four had failed in its remit, saying that a "broad scope of arts and culture are covered by the channel"
- a number of examples of programmes were referred to in support of this position
- the BBC referred to the channel's service licence which it believed the BBC was meeting.

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

Appeal to the Trust

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

Decision of the Trust Adviser

The Trust Adviser (the Adviser) carefully read the correspondence that had passed between the complainant and the BBC. She noted that BBC Audience Services had ceased handling this complaint at Stage 1 and had not offered the complainant the opportunity for a more detailed response at 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. She appreciated the complainant's wish to see more arts output on BBC Four; however, she decided that the complainant's appeal did not have a reasonable prospect of success.

The BBC's Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. The Trust's role was to set the overall framework, which in terms of the BBC's services is "issuing service licences for BBC services and monitoring compliance with them" (Charter, Article 24, (2) (c)). The Executive Board's role is "the delivery of the BBC's services in accordance with the priorities set by purpose remits and the framework set by service licences and any other strategies" and "the direction of the BBC's editorial and creative output" (Article 38, (1) (a and b)).

This meant that, as long as the BBC met the requirements for BBC Four, as set out in its service licence, individual decisions about programmes were editorial choices that remained with the BBC. This was a significant distinction that protected the BBC's editorial independence.

The BBC Trust carries out its monitoring role by undertaking reviews of each of the BBC's services at least every five years. A review of all the BBC's television services, including how well they were performing against the terms of their service licences, was undertaken and published in 2014. The review, which was informed by a public consultation, audience research and performance analysis, determined that BBC Four had met the terms of its service licence. In terms of arts and music programming, the review stated:

"BBC One, Two and Four are the main providers of arts and music programming, and all BBC channels exceed the minimum requirements set out in their service licences for arts and music each year. The volume of output has remained similar between 2010-11 and 2013-14, although some programming has moved from BBC Two to BBC Four."

"BBC Four has a very strong reputation, particularly for its music documentaries. Its scheduling of these regularly on Friday nights has clearly helped it grow a following in this area. Its documentaries are highly appreciated for their depth and focus on single artists and genres. BBC Four also now shows the most coverage of the BBC Proms."

The full report of the review can be found at:

http://www.bbc.co.uk/bbctrust/our_work/services/television/service_reviews/television_services.html

BBC Four's service licence includes a number of quantified conditions, including that it deliver at least 150 hours of "new arts and music each year". Performance against this condition is reported annually, and in 2013/14 BBC Four exceeded this by broadcasting 269 hours (see http://downloads.bbc.co.uk/annualreport/pdf/2013-14/BBC_PAPC_201314_AP.pdf). Data for 2014/15 is being analysed and will be published in July alongside the BBC's Annual Report and Accounts⁸.

The Adviser decided that there was no information suggesting BBC Four had not met the terms of its service licence, and therefore decisions about output were editorial matters for the BBC which the Trust would not be involved with. She also noted the response provided by Audience Services which had provided examples of BBC Four's arts and music output in support of the BBC's assessment that BBC Four was fulfilling its remit.

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

Request for review by Trustees

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

⁸ Since this appeal was lodged the 2014/15 data has been published and is available here:

<http://downloads.bbc.co.uk/annualreport/pdf/2014-15/bbc-papc-2015.pdf>

appeal noting that the Trust Adviser had referenced the conclusions of the BBC Trust's Service Review of Television undertaken in 2014 to support her decision, and questioning the adequacy of this review in enabling the Trust to fulfil its role to monitor compliance of BBC Four against its service licence. He said that:

- the service review was essentially a report of viewers' perceptions
- the single quantity measure (at least 150 hours of new arts and music programming) was a headline figure, and not broken down or analysed, with no attention given to the quality of the programming
- the one factual figure was that BBC Four broadcast 269 hours of new arts and music in 2013/14
- 5 hours a week was not sufficient for a channel whose primary role was to reflect a range of UK and international arts, music and culture
- he also questioned the definition of an arts programme
- he noted the 269 hours included music and said that the Friday night documentaries about pop music hardly amounted to "an ambitious range of innovative, high quality programming that is intellectually and culturally enriching taking an expert and in-depth approach" as required by the remit
- he questioned whether the Trust had seriously applied itself to monitoring the BBC Four service licence and he considered that the Service Review of Television fell short of the task
- there was no attention to quality although it is the first measure listed in the performance measurement framework in Annex 1 of the BBC Four service licence (July 2014)
- he wished to know where the Trust had addressed the requirement to provide "an ambitious range of innovative, high quality programming that is intellectually and culturally enriching taking an expert and in-depth approach"

The Panel's decision

The Panel noted the points made by the complainant, BBC Audience Services 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 on the basis that the service licence had not been breached.

The Panel noted that the Trust's role in relation to the BBC's services was clearly defined by the BBC's Royal Charter and the accompanying Agreement between the Secretary of State for Culture, Media and Sport and the BBC, and was distinct from that of the BBC Executive. The Trust's role was to set a service licence for each service; provided that BBC Four met the requirements set out in its service licence, all editorial decisions about programmes were matters for the BBC Executive.

The Panel considered the complainant's concern about the adequacy of the Trust's monitoring of BBC Four's compliance with its service licence. It noted that the Agreement between the Secretary of State and the BBC set out the requirements for service licences, as well as how the BBC Trust issues them and carries out its monitoring role through service reviews (Clauses 17 to 20). BBC Four's service licence set out the framework by which performance would be assessed, and that this included quality as well as reach, impact and value for money. The review of BBC Four had provided this assessment, which had been informed by a public consultation as required by the Agreement, audience research to ensure that a breadth of opinion was taken into account, as well as performance analysis. The Panel was content that the review had been appropriate.

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

- the Trust's most recent review of BBC Four's performance against its service licence, undertaken in 2014, had concluded that BBC Four had met the terms of its service licence. As part of its service licence, BBC Four is required to deliver at least 150 hours of "new arts and music each year", and it had consistently exceeded this
- there was no information suggesting BBC Four had not met the terms of its service licence
- although the complainant was not happy with the volume or type of arts and music output being broadcast these were editorial decisions that rested with the BBC
- BBC Audience Services had provided a reasonable response to the complaint.

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 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 standard of grammar and diction in BBC programmes

The complainant made the following points:

- There were many examples on BBC programmes of poor grammar and syntax, incorrect usage of certain words and phrases and poor diction.
- This applied to news correspondents, presenters, continuity announcers and contributors.
- Presenters should be given more instruction to correct basic errors.
- In response to Audience Services asking for specific references to output, the complainant referred to several instances, of which the following are two examples:
 - The use of “so”
 - The use of “kind” instead of “kinds”:
- The complainant sent further detailed information about the use of English to support his complaint.

BBC Audience Services made the following points:

- Unfortunately without some specific examples of programmes containing such grammatical errors, concerns raised by the complainant could not be addressed.
- However, presenters were expected to have a good command of Standard English, but it was also important they came across as approachable and easy for viewers to identify with.

Audience Services said that 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) understood the frustration felt by the complainant when hearing examples of poor use of English. She was also sorry that at times the complainant found poor diction meant that presenters could be difficult to understand. However, she decided that the complainant's appeal did not have a reasonable prospect of success.

The Adviser understood that BBC Audience Services had ceased handling this complaint at Stage 1 and had not given the complainant the opportunity to seek a more detailed response at 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.

She noted that the complainant had provided the BBC with a large number of examples of poor use of English from a wide range of BBC programmes. She noted that Audience Services had explained to the complainant that BBC presenters were expected to have a good command of spoken English but that it was also important that they were representative of the whole of UK society.

The Adviser considered that correspondents and presenters were employed by the BBC because of their experience and talent, and that it would always be the case that not every viewer and listener would agree with every appointment made.

The Adviser also noted that issues relating to standards of speech in BBC programmes were part of the operational management of the BBC. As such she considered that these were operational 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 the BBC's Editorial Guidelines - which was not the case here. She noted that such decisions were subjective matters where programme editors were free to exercise editorial judgment and that it was bound to be the case that not everyone would agree with every decision.

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 Trustees review the decision of the Adviser not to proceed with his appeal. He said that although he understood that some broadcasting by reporters, presenters and continuity announcers was unscripted, and that mistakes would always be made, there was no excuse for the failure to correct pre-recorded items. The complainant also said that he understood that language should evolve; however, repeated mistakes relating to the incorrect use of language, poor grammar and poor diction should be corrected.

The Panel's decision

The Panel noted the points made by the complainant, the BBC and the 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.

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

- matters relating to the standard of speech in BBC programmes were the responsibility of the Executive Board alone. 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" were specifically defined as duties of the Executive Board and ones in which the Trust did not get involved
- BBC Audience Services had provided a reasonable response to the complaint.

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

Decision of BBC Audience Services not to respond further to a complaint about changes to the BBC Parliament schedule, 26 April 2015

The complainant made the following points:

- There were continual mismatches between the electronic programme guide (EPG) and what was actually broadcast on BBC Parliament.
- Instead of the speech by Alex Salmond on 26 April there was a presentation by the Institute for Fiscal Studies.
- These mismatches had been happening repeatedly and the complainant provided several examples.

BBC Audience Services made the following points:

- The Alex Salmond speech was available online and a link was included to the output.
- On a channel such as BBC Parliament it was inevitable that running orders and line-ups would change frequently. This was especially true during the election campaign, where live events had to be accommodated.
- The schedules were updated accordingly, sometimes several times a day. Unfortunately, despite the BBC's best efforts to communicate these changes to the individual platforms, the BBC was reliant on them to implement the changes on their respective EPGs.

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) carefully read the correspondence that had passed between the complainant and the BBC. She appreciated – and regretted – the frustration caused to the complainant by the incorrect schedule information for BBC Parliament on his EPG.

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 about his complaint had a reasonable prospect of success.

She noted the responses from Audience Services which had explained that the nature of accommodating live events meant there were often changes to the planned broadcasts and that, while the schedule was updated frequently, it was a matter for individual platforms whether they reflected the changes to the schedules, and the BBC did not have control over that.

The Adviser noted the further examples provided by the complainant in his appeal. However, she noted that decisions about the scheduling of programmes were part of the operational management of the BBC. As such she considered that these were operational decisions which were the responsibility of the BBC Executive rather than the Trust. The

Trust would not become involved unless the complaint raised broader issues such as a breach of the BBC's Editorial Guidelines – which was not the case here. She noted that such decisions were matters where schedulers were free to exercise editorial judgment and that it was bound to be the case that not everyone would agree with every decision that was made. She also considered that it was important that BBC Parliament remained flexible and ready to adapt to last minute changes as required.

Taking this into account the Adviser considered Trustees would be likely to conclude that the complaint related to an operational matter that was the responsibility of the Executive rather than the Trust. She considered Trustees would be likely to conclude also 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 Trustees review the decision of the Adviser not to proceed with his appeal. He said that:

- the Adviser had clearly not read all the correspondence relating to the complaint as she had failed to take account of a letter from the complainant to the Director-General of the BBC in January 2015 and to the Chairman in June 2015.
- many of the instances he had listed had occurred over the Christmas period when there were no live events and no changes to the planned broadcasts.
- the problem was not one of scheduling, as the Adviser's decision had implied, but one of timing.
- these issues should be taken up by the BBC with the service provider.
- the lack of synchronisation between the EPG and the broadcast programme breached the BBC's Editorial Guidelines on Accuracy and was not an "operational" matter as it was not accurate to eg broadcast part of the Autumn Statement during a programme entitled the David Davis lecture.
- This also failed to meet the public purpose of "representing the UK" and "bringing the UK to the world" given the impression this would create on overseas viewers.

The Panel's decision

The Panel noted the points made by the BBC, the Adviser and the complainant. The Panel noted the frustration caused to the complainant by the inconsistencies between the EPG and the broadcast programmes on BBC Parliament.

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 appreciated that the complainant had contacted the BBC on several previous occasions and also subsequently to complain about other mismatches between the EPG and the broadcast programmes. However, this complaint dated from 26 April 2015 and related to the fact that a speech by Alex Salmond had not been shown as advertised on the EPG.

Trustees agreed that

- this matter did not engage the BBC Editorial Guidelines which applied to BBC content as broadcast, as opposed to a discrepancy between what was broadcast and the published schedule.
- the hypothetical impact on an overseas viewer of viewing a programme which was not as scheduled did not amount to reasonable evidence that there had been a failure to meet a public purpose.

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

- the Royal Charter set out a clear division of responsibility between the BBC Executive and the BBC Trust. Articles 38(1)(b) and (c) set out that “the direction of the BBC’s editorial and creative output” and “the operational management of the BBC” were specifically defined as the responsibility of the Executive Board. Scheduling decisions were therefore the responsibility of the BBC’s Executive Board and not matters for the Trust.
- Audience Services had provided a reasoned and reasonable response to the complainant’s concerns including:
 - that on a live channel running orders and line-ups would be subject to frequent changes. Such changes were kept to a minimum.
 - that it was the responsibility of individual platforms to update their EPGs to reflect new information.
 - web links to sites where he could find the programmes he had missed.

The Panel did not consider that it was appropriate, proportionate or cost-effective to take this matter on 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 BBC News coverage of the Transatlantic Trade and Investment Partnership

The complainant made the following points:

- BBC News had failed to cover the Transatlantic Trade and Investment Partnership (TTIP) and its implications for the UK.
- The complaints process was unsatisfactory as complainants were required to fill in the same information when they pursued their complaint.

BBC Audience Services made the following points:

- There were a number of articles on the BBC News website which dealt directly with the TTIP, and they included links to some of these.
- BBC Parliament was due to show live coverage of the European Parliament debate on the TTIP before it was postponed.
- It was not the BBC's intention to promote any particular views but to provide the audience with accurate information so they could make up their own minds. Editors were charged with making sure that a range of views and opinions were reflected over a reasonable period of time.
- Which stories to cover were subjective decisions made by BBC news editors and not everyone would agree with those choices on every occasion.
- Several factors were taken into consideration - whether the story was new and required immediate coverage, how unusual the story was, and how much national interest there was in the story.
- These decisions were always judgement calls rather than an exact science.

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) understood that BBC Audience Services had ceased handling this complaint as Stage 1 and had not offered the complainant the opportunity of a further, more detailed, response at 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; she decided that it did not.

The Adviser noted that Audience Services had explained to the complainant the BBC's approach when choosing which news and current affairs stories to cover. They had also pointed out that such decisions were necessarily subjective and they accepted that not everyone would think editors were correct on every occasion.

In addition the Adviser noted that issues relating to which news stories were covered by the BBC were editorial decisions which were the responsibility of the BBC and were not a matter for the Trust unless they involved a breach of editorial standards – which was not the case here. She noted that such decisions were matters where programme editors

were free to exercise editorial judgment and that it was bound to be the case that not everyone would agree with every decision. She appreciated that the complainant considered there should have been more reporting of this subject, but noted that the separation between the roles of the Trust and the BBC was important because it was intended to safeguard the BBC's independence and editorial freedom – which was of great concern to licence fee payers.

The Adviser noted that in his appeal the complainant had referred to how the BBC “avoided having proper programmes on TTIP” and that this was “a failure to address issues that are important for the UK and Europe”. He added that “to limply suggest that by having the subject matter on a BBC news website a couple of times is somehow relevant is frankly pathetic”.

However, the Adviser noted that Audience Services had sent to the complainant a number of links to stories on the BBC News website which had covered the TTIP. These included articles which looked at the background to the TTIP and the views of interested parties; investigated in some detail the opposition to it including the impact on food standards and threats to privacy; and questioned the supposed economic benefits to the UK.

In addition the Adviser noted that several radio programmes had broadcast pieces about the TTIP this year. These included *Farming Today* which had looked at whether it could lead to a weakening of Europe's animal welfare and environmental standards; *You and Yours* which investigated whether it would drive down standards of consumer protection and looked at concerns over regulatory convergence; and an episode of *In Business* which had investigated the possible effects of the TTIP.

The Adviser did not therefore agree with the complainant that the BBC had failed to address the issues raised by the TTIP in its programming.

The Adviser also noted the complainant's irritation at having to re-enter information into the web-form when pursuing his complaint. The BBC received around a million complaints and comments a year and its computer systems were intended to ensure that they were tracked and answered in a way that was efficient, in the interests of all licence fee payers. However, she appreciated that it was frustrating having to re-enter information – and would raise this point with Trustees.

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 contacted the Trust. He said there had been no programmes about TTIP. He said that the BBC was failing to inform the public about this legislation. The decision of the Adviser not to proceed with the complainant's appeal was passed to the Trustees for review.

The Panel's decision

The Panel noted the views of the BBC, the Adviser and the complainant.

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 on the basis that there had been no breach of the BBC's policies or standards and that this did not raise a significant matter of general importance.

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

- the BBC had covered the TTIP:
 - responses to the complainant had included links to a number of articles on the BBC website which had covered the background to it and also looked at opposition to it
 - the Adviser had included references to a number of BBC programmes which had featured items about TTIP and which again had questioned its effects and supposed benefits
- the Royal Charter (Article 38(1)(b)) sets out that "the direction of the BBC's editorial and creative output", which includes decisions as to which stories to cover and how to cover them, are the responsibility of the Executive Board
- BBC Audience Services had given a reasoned and reasonable response to the complaint.

The Committee did not consider that it was appropriate, proportionate or cost-effective to take this matter on appeal. It did not therefore have a reasonable prospect of success.

The Committee 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 Victoria Derbyshire, BBC Two

The complaint concerned *Victoria Derbyshire*, the daily morning news and current affairs programme on BBC Two and the News Channel.

The complainant made the following points:

- While he had a great deal of respect for BBC news output and its journalists, he considered this programme was of poor quality. The presenter lacked experience, style and authority and relied on an uninformed studio audience and contributors to social media to “debate” issues.
- BBC News had a reputation for factual and informed debate. This programme resorted to sensational reports where the presenter was more important than the content.
- He did not consider the presenter was a credible choice and noted, for example, that a presenter such as Andrew Neil had a stronger journalistic pedigree for such a role.
- He queried why it was running on both the News Channel and BBC Two and considered this reduced the options for viewers in a way that was unreasonable.
- He had initially understood the programme would only be broadcast up until the General Election, but was concerned that this did not seem to be the case.

BBC Audience Services made the following points:

- *Victoria Derbyshire* was an innovative programme which would enable the daytime audience to access breaking news, current affairs debates, exclusive interviews and reports from across the country, from a new perspective.
- It aimed to discuss topical issues and look in-depth at developing news in an intelligent and accessible way.
- The programme was at the heart of the BBC News Channel's schedule and had a clear brief to cover breaking news and open up news coverage to a wider audience on BBC Two.
- *Victoria Derbyshire* was also helping to blaze a trail for BBC News in a world which was moving increasingly online – with its stories shared in advance online, on mobile and social media.

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) 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; however, after carefully reviewing the correspondence, she decided that it did not.

The Adviser noted that in his appeal the complainant had praised BBC News for its professional and well informed programmes. She noted that he had referred in particular to *Business Live*, *Outside Source* and *HARDTalk* as examples of where the BBC had successfully “modernised” news coverage through the use of different media. He considered therefore that there was little need for *Victoria Derbyshire* to “blaze a trail for BBC News in a world which was moving increasingly online”.

The Adviser noted the replies from Audience Services which had explained the thinking behind the new programme and, while acknowledging his own opinions, had referred to positive feedback which had been received.

The Adviser also noted that issues relating to the choice of presenters and to programme content were editorial decisions which were the responsibility of the BBC and not a matter for the BBC Trust unless they involved a breach of editorial standards, which did not apply here. She noted that such decisions were matters where editors should be free to exercise editorial judgement and that it was bound to be the case that not everyone would agree with every decision. While she appreciated the complainant did not enjoy this programme, she considered that the distinction between the role of the Trust and the role of the BBC was important because it was intended to safeguard the BBC’s independence and to protect its editorial freedom – which was of the greatest concern to licence fee payers (including, the Adviser believed, the complainant who clearly placed a high value on news output).

Taking this into account the Adviser considered Trustees would be likely to conclude that the appeal related to an editorial matter that was the responsibility of the Executive rather than the Trust and that Audience Services had given a reasoned and reasonable response to the complaint. 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 Trustees review the decision of the Adviser not to proceed with his appeal. He said that he was a lifelong defender of the BBC and its role to inform, educate and entertain. BBC News was an important source of news and information for him. However:

- Mixing a studio debate with breaking news meant neither was done properly.
- This was not innovative.
- There were many talented news presenters who could look at news in an intelligent and accessible way without resorting to sensational tactics to present human interest news items.
- This strategy was a breach of the BBC’s Editorial Standards.
- Viewers’ choice is limited because *Victoria Derbyshire* is broadcast on BBC Two and the News Channel.
- It was possible to broadcast it only on BBC Two.
- This material was being pushed into other news programmes.
- The show could have been piloted.
- There appeared to be a “determined resolve” at the BBC to tell the licence payer that “we know what is good for you”.

The Panel’s decision

The Panel noted the points made by the BBC, the Adviser and the complainant.

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:

- there was a division of responsibility between the BBC Executive and the BBC Trust. As the Royal Charter in articles 38(1)(b) and (c) sets out, “the direction of the BBC’s editorial and creative output” and “the operational management of the BBC” are specifically defined as the responsibility of the Executive Board. Decisions relating to the choice of presenters and programme format, content and scheduling were therefore the responsibility of the BBC’s Executive Board.
- This complaint did not engage the BBC’s Editorial Guidelines which set out the BBC’s Editorial Standards.
- BBC Audience Services had given a reasoned and reasonable response to the complaint.
- Although the complainant believed the BBC had been saying “we know what is good for you” when it had said:

“It can take time for some viewers to get used to new formats, but we hope that you will keep watching and give the programme a chance.”

It appeared from the letter that the BBC had intended to point out that new and innovative formats often do take time to become popular with the audience.

The Panel did not consider that it was appropriate, proportionate or cost-effective to take this matter on appeal because it did not have a reasonable prospect of success.

The Committee 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 complainant's music not being played on BBC radio

The complaint concerned a song written and composed by the complainant which he had put on iTunes, and which he had requested the BBC to play.

The complainant made the following points:

- If the BBC played the song and someone liked it, that person would then download it from iTunes.
- BBC Asia played Asian songs, including Bollywood songs, and Bollywood stars were given air-time to talk about their songs free of charge.
- The complainant said he was a citizen of the United Kingdom and could not get the opportunity to have his song played by the BBC.
- If his song was played, and people downloaded it from iTunes, the revenue would increase, tax would be paid, and people would have enough money to pay the TV licence fee without a struggle.
- If his song was played, the producer, singer and himself, the writer and composer, might move to another level.
- There were rumours that BBC programme producers were offered gifts by big record labels to play songs even though the public had not requested these songs to be played. The complainant said he could not afford to make gifts to producers.
- He would be grateful if the BBC Director General would intervene to find out why none of his songs received a single airplay. He gave web links to four of his songs on iTunes.
- In response to Audience Services' suggestion at Stage 1 that he upload his music to BBC Introducing, he said that he had already done that two years ago, but nothing had come of it.

BBC Audience Services made the following points:

- They understood the complainant was enquiring about sending music to the BBC and gave him a web link to the BBC Introducing webpages where he could find instructions on how to upload his music to the BBC.
- They assured the complainant that sending gifts made no difference to whether or not a song would be played. Ultimately, the final choice on airplay was subjective and up to the local show producers and presenters.

- There were 500,000 tracks on the system and just under 200,000 artists uploaded onto BBC Introducing. It was always going to be tough when there was a demand vs supply issue.
- The BBC monitored audience listening to the tracks played, and the BBC was currently at 83 percent listening.
- They appreciated that the complainant was disappointed that his tracks had not been chosen for airplay, but were confident that the systems in place were fair and consistent with the BBC Editorial Guidelines.

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

Appeal

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

- He assured the BBC that sending gifts *did* make a difference to whether or not a song was given priority for airplay. However, he said that was not the issue. The issue was that it was for the BBC to set up an independent body to investigate how programme producers and presenters came to select a song for airplay. He felt the BBC was being defensive in their Stage 1b response.
- There was no justification in the “demand vs supply” argument put forward by Audience Services. He believed it was perfectly possible to squeeze his song in.
- It appeared to the complainant that the BBC was suggesting that he should try to get his song played on pirate radio stations, knowing full well that such stations operated illegally in the UK.
- He noted that he was required to fill in a form stating his ethnic origin when uploading his songs to BBC Introducing. He wondered whether the BBC considered his identity as a black African citizen of the United Kingdom a problem. He asked the BBC to prove it was not an issue by playing his song and giving him the same opportunities as those afforded to white songwriters and composers who uploaded their songs to BBC Introducing.
- He thought that leaving the choice of songs for airplay to producers and presenters could invite nepotism. He thought their personal choices might not be the same as the general public’s.

Decision of the Trust Adviser

The Trust Adviser (the Adviser) carefully read the correspondence between the complainant and the BBC. She was very sympathetic to the complainant’s wish to have his music played on the BBC; however, she decided that his appeal did not have a reasonable prospect of success.

The Adviser understood that BBC Audience Services had ceased handling this complaint at Stage 1 and had not offered the complainant the opportunity to seek a further, more detailed, response at 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.

She acknowledged the complainant's dissatisfaction with the BBC's decision so far not to play any of his songs on BBC radio, and his suspicion that there could be reasons for not playing his songs which were unfair. She noted that the complainant had heard rumours that producers were given gifts in exchange for playing records; however, she had not seen any evidence to support this statement, and she noted that Audience Services had stated that sending gifts made no difference to whether or not a song would be played. She acknowledged the complainant's view that Audience Services were being defensive in their response but having reviewed the correspondence she had not seen any evidence to suggest that this was the case.

She noted that the complainant was concerned about the personal choices of radio presenters and producers and he felt that it might not reflect the general public's taste in music, something he thought was not being properly considered by the BBC. The Adviser took into account the information given by Audience Services at Stage 1b:

"Whilst we do have mass volume coming in, we do monitor all the local shows listening to try to ensure that all tracks are listened to. We are currently at 83% listening. We appreciate you are disappointed that your tracks have not been chosen for airplay, but we are confident that the systems in place are fair and consistent with our editorial guidelines."

The Adviser noted that the BBC endeavoured to establish how popular individual tracks broadcast were with listeners, and that this was intended to inform the decisions of programme producers and presenters. However, she considered that the choice of songs played on a radio programme was ultimately a responsibility which rested with the programme producers and presenters, as stated by Audience Services at Stage 1. She acknowledged that such choices were inevitably subjective, but she had not seen evidence to suggest that unfair influence was being exerted on those choices.

The Adviser disagreed with the complainant that by not playing his song the BBC was encouraging him to pursue a non-legal means of getting his song broadcast. She also noted that the complainant did not agree with the "demand vs supply" argument put forward by Audience Services and acknowledged his view that there was no reason why his song could not have been "squeezed in". She appreciated his disappointment in not having his song played on air, but as already explained, the BBC's decision not to play his song was an editorial choice, which was a matter for the programme-makers rather than the Trust.

The Adviser also noted the comments made by the complainant with regard to his ethnicity, and that he had stated he had had to give information about ethnicity when uploading music. However, she could not agree that there was evidence to suggest that his ethnicity had anything to do with the decision not to broadcast his work. She consulted with the management team of BBC Introducing who stated that there was no field for BBC Introducing users to state their ethnic origin before going on to upload music. She noted that when people wish to use the BBC Introducing Uploader they must do the following:

1. Create a BBC ID
2. Once signed into bbc.co.uk with a BBC ID, visit the Uploader and create an account

She noted that creating a BBC ID only required an email address and a password.

BBC Introducing stated:

“At no point is the user asked to state their ethnic origin. We do encourage users to select one of our specialist shows if they believe their music is relevant (eg Jazz on 3, Yasser on the Asian Network and DJ Target on 1Xtra), these options are clearly a way of aggregating specialist music by genre, and not around ethnicity.”

The Adviser noted that further information about BBC Introducing which might be of interest to the complainant could be found at

<http://www.bbc.co.uk/programmes/articles/4wSZbmPkNVYMKpcHqPmkClp/frequently-asked-questions>.

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

Request for review by Trustees

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

The Panel's decision

The Panel noted the points made by the BBC, the Adviser and the complainant.

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

- the choice of music played on the radio rested with the BBC. 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
- the BBC took steps to monitor the public’s taste and that this had been explained to the complainant by Audience Services
- there was no evidence to suggest that producers were accepting gifts in exchange for airtime
- the process for uploading music to BBC Introducing did not require any information on ethnicity.

Trustees agreed that the BBC was correct to close this complaint down at Stage 1 and 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 Committee 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 Johnnie Walker's Sounds of the 70s, Radio 2

The complaint concerned the absence of Bay City Rollers songs on the show.

The complainant made the following points:

- In 305 shows Johnnie Walker had never played any songs by The Bay City Rollers. He understood that Johnnie Walker did not like the band but the complainant felt that licence fee payers were entitled to hear what they wanted rather than what Johnnie Walker always wanted.
- The Bay City Rollers was a prominent band in the seventies and had several number one hits. The complainant saw the band as Scotland's answer to the Beatles.
- He felt Johnnie Walker was unreasonably biased against The Bay City Rollers.
- In a follow-up complaint on the issue, the complainant raised concern that he may have been the subject of an on-air joke about The Bay City Rollers following his first complaint. His concern stemmed from an alleged listener request for a Bay City Rollers track to be played on the programme. Johnnie Walker's response was to ask on-air whether the person who requested this would be prepared to donate money to charity if he played it. The requester did not respond. Mr Walker then said on-air that someone had called the programme and offered £20 for a Bay City Rollers track NOT to be played.

BBC Audience Services made the following points:

- They acknowledged that Johnnie Walker did voice his poor opinion of The Bay City Rollers some time ago.
- They said he "now aims to present to his audience the classic tracks from the 1970s he feels they will most enjoy".
- With regard to the follow-up complaint about a listener allegedly contacting the show to request a Bay City Rollers track, they reviewed the content of the programme and transcribed the section in which Mr Walker offered to play a track in return for a donation from the requesting listener to Carers UK (as Radio 2 was supporting Carers Week); also the section which Mr Walker said he had received a text from another listener who said he would pay £20 for him NOT to play a Bay City Rollers track. Mr Walker said he felt that was a "good result".
- They said that Johnnie Walker made "no secret of his dislike of the band" but they appreciated that The Bay City Rollers did appeal to some listeners.
- They said they were sorry to hear that the complainant was unhappy with this element of the programme and they had let the programme team know about his concern.

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

Appeal

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

He made the following points:

- In 6 years, Johnnie Walker had never played a Bay City Rollers track during any of the 312 shows broadcast during that time despite the band being one of the most prominent during the 70s with several number one hits. The programme was supposed to play the popular music from that era.
- Johnnie Walker had shown bias against The Bay City Rollers by saying in the past that he disliked the band and had only read out one request for the band on his show during 6 years and he made demands of the caller who made that request in terms of asking for a charitable donation. The complainant said he found this offensive and inappropriate. He did not believe Mr Walker's conduct here was consistent with the BBC's policy for playing requests.

The Trust Adviser ascertained from the BBC's Chief Complaints Adviser that the reference to The Bay City Rollers and a request for an on-air donation was part of a running joke about The Bay City Rollers and was not in any way related to the complaint from the complainant.

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 to end the correspondence had a reasonable prospect of success.

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

The Adviser acknowledged the complainant's view that it was inappropriate for Johnnie Walker to deliberately omit tracks by The Bay City Rollers from his radio programme *Johnnie Walker's Sounds of the 70s* just because he did not like the band. However, she considered that decisions about which tracks were played on the programme were editorial ones that were the responsibility of the programme makers rather than the Trust. The Royal Charter and accompanying Agreement between the Secretary of State and the BBC draw a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. "The direction of the BBC's editorial and creative output" is defined as a duty that is the responsibility of the Executive Board. Referring to the complainant's query about BBC policy in relation to playing requests, the Adviser noted that although requests were made by listeners for certain tracks to be played, the programme was not specifically a "request" show and that, in any event, programme-makers were not obliged to pursue a policy of playing all tracks requested by listeners.

The Adviser also acknowledged that the complainant found it offensive and inappropriate for Mr Walker to have asked for a charitable donation to be made by a listener in return for a Bay City Rollers track to be played. She noted that Mr Walker's personal aversion to The Bay City Rollers was well known and that the title of the radio programme was

Johnnie Walker's Sounds of the 70s which suggested that Mr Walker's personal preferences might be expected to have some influence in the selection of classic 70s tracks played. She considered that the programme references to payments for a Bay City Rollers track to be played or not played were intended to be humorous in the light of Mr Walker's professed distaste for the band.

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

Request for review by Trustees

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

- He thought the programme in question was called "Sounds of the Seventies" and not "Johnnie Walker's Sounds of the 70s" as the Adviser had noted. He said it was still advertised without the presenter's name. He asked if this meant Brian Matthew's Saturday show was now "Brian Matthew's Sounds of the Sixties".
- The Adviser did not address the point that Scottish people pay the licence fee only to suffer bias from BBC programme-makers. This should not be allowed. If the presenter had shown bias against another group instead of a Scots group, the matter would have been dealt with immediately.

The Panel's decision

The Panel noted the points made by the BBC, the Adviser and the complainant.

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 on the basis that the Editorial Guidelines had not been breached and that this was not a significant matter of general importance.

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

- The choice of music played on *Johnnie Walker's Sounds of the Seventies* was a matter 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.
- The programme was called *Johnnie Walker's Sounds of the Seventies* and reflected his taste.
- There was no evidence to support the suggestion that this decision was because the group was Scottish.

- The suggestion that the presenter wanted a donation to charity to play a track should be regarded as part of a long-running joke.

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.