

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

September, issued November 2016

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Remit of the Complaints and Appeals Board

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Summary of findings

Renewal of concessionary licence process and visit by a Licensing Officer

Summary of finding

The complainant was represented by her husband. The word “complainant” in this finding may also refer to the complainant’s husband where he represents the complainant.

This appeal is about:

- Point (A): The complainant said that she did everything reasonable to purchase a concessionary licence in good time and was prevented from doing so by TV Licensing [TVL].
- Point (B): The complainant also made a number of complaints about the behaviour of the TV Licensing officer who visited her home including that: he refused her attempts to pay; his demeanour was so aggressive and intimidating that it caused her to fall ill; and he disclosed personal data about her to a health worker who was also present.

In respect of both parts of her complaint, she asserted that TVL failed to make reasonable adjustments for her situation as a disabled, elderly person.

In relation to Point (A) Trustees decide that:

- TVL had sent two renewal notices at the concessionary rate (one before the licence expired) and both of these notices could have been used to pay for the concessionary licence.
- There were a number of payment options available to the complainant including one she had used in the past.
- The complainant had been unable to renew the licence at the Post Office, not because concessionary licences were not issued there, but because no customers can renew a licence there.
- The complainant requested a concessionary form during a telephone call 5 weeks after her licence had expired but a full fee form was sent in error. TVL had offered monies as a gesture of goodwill for this error, which the complainant had refused, and TVL had also spoken to the adviser concerned to prevent a recurrence.
- The sending of the wrong form appeared to be a human error and it did not indicate a systemic problem that might give rise to discrimination against those entitled to a blind concessionary licence.
- TVL’s arrangements for paying television licences appeared to be appropriate and proportionate and did not appear to be in breach of the Equality Act.

Point (A) finding: not upheld

In relation to Point (B) there were several aspects to this part of the complaint and the Panel considered each one in turn.

- On the balance of probabilities, the officer did not “choose confrontation” but he failed to display empathy and to defuse the situation.
 - Trustees noted that the complainant’s husband (in his call to TVL) admitted shouting and swearing at the officer; however, the evidence also showed that the officer had failed to defuse the situation, which they considered to be unfortunate.
 - The health worker said that the officer showed no sympathy to the complainant’s circumstances.
 - The officer was new to the job and that such situations were by their very nature difficult to handle, but Trustees would have expected him to be able to do so.
 - Based on the evidence from the complainant, her husband and the health worker and on the balance of probabilities, the officer did not behave in a particularly empathetic manner and this may well have exacerbated an already difficult situation.
- On the balance of probabilities, the officer left when he was asked to do so.
 - The Trustees however agreed with the BBC’s Head of Revenue Management who had said: “I can confirm that in the circumstances you have described we would expect our officers to terminate a visit and not proceed with an interview, and if appropriate to assist in calling for help”.
- On the balance of probabilities, the officer refused offers of payment that he believed he was unable to accept, but did not avail himself of assistance available to him to arrange payment.
 - The officer could have called the Visiting Officer hotline for assistance, both with processing a debit card payment and with issuing a concessionary licence.
 - Trustees thought it was deeply regrettable that the officer was unaware of these possibilities and continued to press the issue of payment of the Television Licence.
 - Trustees welcomed the Executive’s assurance that, as a result of this complaint, further training had been provided to the officer concerned and other officers to prevent any recurrence or confusion.
- On the balance of probabilities: the officer’s behaviour did not cause the complainant to lose consciousness, but he did continue to press the issue of payment of the TV licence and asked her to sign a statement after she became ill.
 - All parties’ accounts agree that the complainant became ill while the officer was in her home and that she lost consciousness for a period of time.
 - While the complainant has alleged that this was as a result of the officer’s behaviour, Trustees did not agree, on the balance of probabilities, that the evidence supported this conclusion. The complainant had pre-existing health issues, based both on the complainant’s correspondence and the health worker’s evidence that this was the reason she was in the complainant’s apartment installing the falls pendant alarm on the day in question and that she was aware that the complainant sometimes lost consciousness in this way
 - Trustees recognised that the stress of the situation in general might have contributed to the episode, but concluded, on the evidence, that the officer’s demeanour had remained calm and that he had neither raised his voice, nor shouted at the complainant or her husband. Therefore, Trustees felt that the episode could not be attributed to his behaviour and was likely

- to be due to a combination of factors.
- It was unfortunate that the officer did not terminate the visit earlier, particularly once the complainant became ill.
- On the balance of probabilities, the incident did not cause the complainant to suffer failing health or to move into sheltered accommodation.
 - The complainant had not provided any supporting evidence.
 - The complainant had pre-existing health issues of a nature which required a falls pendant alarm to be provided.

Trustees agreed that TVL's policies and procedures were compliant with the requirements of the Equality Act. But on this occasion the individual officer had not followed the procedures with regard to making a reasonable adjustment.

- The officer's manner was not "sympathetic and tactful" as TVL's guidance required when dealing with a person with a protected characteristic. In particular, he had not displayed a sympathetic manner and had thereby contributed to the situation becoming heated, at which point he failed to attempt to defuse it. The officer had also not terminated the interview when the customer had fallen ill. Finally, the officer did not attempt to seek assistance from the Helpline to enable the complainant to pay for the concessionary licence.

The Panel also considered whether the officer had complied with the Data Protection Act by discussing the TVL arrangements of the complainant while a third party was present. Trustees considered that the complainant and her husband were both fully aware of what the nature of the discussion would be and had consented to it taking place in front of the health worker. However, the appropriate appeal body in this case was the Information Commissioner, the data protection regulator. The complainant had already been informed that it was open to her to pursue this part of the complaint via this route.

Point (B) finding: upheld in part

Trustees noted that TVL had said they have provided the officer with additional training and that there had been no further complaints regarding his behaviour. TVL had also stated that they are using this case in their training materials for all Visiting Officers as a case study from which to learn. TVL has also said they believe there to be no evidence of a broader issue.

The Panel however, requested the Executive provide a written response to the Complaints and Appeals Board on two matters.

- CAB would like assurance from TVL that such incidents are not common, that they are thoroughly dealt with if they do occur and that steps are taken to prevent future occurrences.
- CAB would also like assurance that new officers are given sufficient training about TV Licensing's policy with regard to the Equality Act 2010 and that refresher training is given to existing TVL officers at appropriate intervals.

Trustees noted that the BBC did not have the benefit of additional evidence from the health worker. They therefore asked the Executive to reconsider the quantum of the goodwill payment offered to the complainant (as this was offered only on the basis of TVL's error regarding the wrong form being sent out) and whether it was a proportionate remedy in the circumstances, in the light of the new evidence.

Trustees noted that in November 2014 the complainant telephoned TVL. This call was

recorded and was referred to in the complaints correspondence, but the recording was not held. Though the contents of this call are not disputed the Panel reminded the Executive that where a complaint is ongoing, any such recording should be kept.

Overall finding: partially upheld

Horse racing coverage on 5live Sports Extra

Wireless Group's appeal contained four parts. These were that (based on the article published in the *Racing Post* on 7 March 2016 that stated 5live Sports Extra was introducing a regular live horse racing strand) 5live Sports Extra's horse racing coverage in 2016 was:

- A. incompatible with the Trust's decision in October 2015 not to approve 5live Sport Extra's expansion proposals;
- B. inconsistent with the 5live Sports Extra service licence, which specifies that it should be an irregular, overspill service, principally broadcasting live events for which the BBC already holds rights but for which there is no capacity on other BBC services;
- C. developed without a proper market impact assessment, thus contravening the BBC's Fair Trading guidelines; and
- D. likely to have a negative market impact on the entry of a nascent independent channel into the sector (i.e. talkSPORT2).

With regard to parts A and B of the appeal, a panel of the BBC Trust's Complaints and Appeals Board (CAB) considered: the regular scheduled timeslot for the racing coverage; the volume of the racing coverage in that period; whether the coverage exploited existing sports rights owned by the BBC; whether the coverage was "alternative coverage".

CAB noted that the racing coverage on 5 live Sports Extra in 2016 was much less than that suggested by the BBC in the *Racing Post* article. On the basis of what was broadcast, CAB considered the racing coverage to be significantly different to the 2015 expansion proposal, both in terms of volume and scheduling. Whilst CAB acknowledged that the racing coverage in 2016 represented a small increase in racing coverage in some, but not all, previous years; the 2015 proposal had represented a major format change, from an irregular live commentary service to one with a regular schedule with substantial elements of pre-packaged programming. CAB also noted evidence that the BBC had held rights to the horse racing in question for a number of years and had broadcast similar programming, in comparable volumes, in preceding years.

With regard to the point that the coverage was not consistent with the requirement in the Service Licence to provide "alternative coverage", CAB agreed that this provision related solely to coverage that was an alternative to other BBC output and that the service is not required to offer alternative coverage to non-BBC services.

On these grounds, the CAB decided not to uphold the appeal on points A or B.

CAB noted that the broadcast programming did not differ significantly in volume from all previous years, so was satisfied that the BBC had acted within the parameters of the BBC's Fair Trading Guidelines, Policies and Framework. CAB judged that the coverage could be treated as business as usual and so it was not necessary to conduct a Competitive Impact Principle assessment.

CAB noted that it was unfortunate that the *Racing Post* article, on which the original complaint had been based, contained inaccurate information about the scale of the proposed coverage. CAB considered that the BBC should aim to ensure more careful communications around programming initiatives which could be regarded as novel by other operators in their markets and that this would particularly be the case when it was known that another operator in the market was launching a new service. As CAB had found that the BBC Executive was not required to conduct a CIP, it considered there were

no grounds for the Trust to assess the market impact of the coverage now or to direct the BBC Executive to do so.

Accordingly, CAB decided not to uphold the appeal on points C or D.

Television Licensing Appeal Finding

Renewal of concessionary licence process and visit by a Licensing Officer

The complainant was represented by her husband. The word “complainant” in this finding may also refer to the complainant’s husband where he represents the complainant.

Background

The complainant, who is registered blind, is entitled to a concessionary TV licence. Her licence lapsed at the end of September 2014 and a TV Licensing officer visited her on 2 December 2014. The complainant took out a TV Licence payment card arrangement and eventually received a new concessionary TV licence. The renewal application process and the visit by the officer were the subject of this complaint.

Appeal to the Trust

Point (A)

The complainant said that she did everything reasonable to purchase a concessionary licence in good time and was prevented from doing so by TV Licensing [TVL].

Point (B)

The complainant also made a number of complaints about the behaviour of the TV Licensing officer who visited her home on 2 December 2014 including that: he refused her attempts to pay; his demeanour was so aggressive and intimidating that it caused her to fall ill; and he disclosed personal data about her to a health worker who was also present.

In respect of both parts of her complaint, she asserted that TVL failed to make reasonable adjustments for her situation as a disabled, elderly person.

The Panel’s decision

In reaching its decision the Panel took full account of all the available evidence, including (but not limited to) a report by an independent adviser, correspondence between the complainant and the BBC, correspondence between the complainant and the Trust, a transcript of part of a telephone call between the complainant’s husband and TVL on 3 December 2014, the TVL officer’s record of interview and his additional notes, the notes of TVL’s investigation, and a note of a conversation between the Trust and a third party (a health worker) who was present during the visit.

The Panel noted that the complainant had given permission for her husband to liaise with the BBC Trust on her behalf.

The Panel noted that TVL wrote to the complainant in March 2014 asking the complainant about her Direct Debit payments as the Direct Debit instruction had been cancelled at the

bank. TVL wrote again in April 2014 advising that, as the Direct Debit was cancelled and no new instruction had been set up, the licence would expire in September 2014. The complainant's concessionary licence expired on 30 September 2014. The BBC said it had sent "several reminder letters" but these were not answered. These were

- a renewal notice for the concessionary licence on 12 September 2014
- a late renewal notice for the concessionary licence on 8 October 2014
- an unlicensed property notice on 15 October 2014 showing the full, undiscounted amount. (The BBC's Head of Revenue Management said that the concession lapsed because the complainant no longer had a licence and because the property's occupier or other circumstances may have changed over time).

The BBC said that, as no response was received to the reminder letters, an officer was asked to call, check the situation and ensure TVL's records were up-to-date. Trustees noted that the complainant's husband confirmed receiving a letter in October 2014 which stated that the property was unlicensed and that an officer was now scheduled to visit.

The Panel noted that the complainant's husband had stated that he had visited the Post Office in October 2014 to buy a concessionary licence but was told that he would need to obtain a form from TVL.

On 3 November 2014 the complainant's husband made a telephone call to TVL (which was recorded) and asked to be sent a form which he could take to a PayPoint outlet to buy his licence. He explained the circumstances to an adviser who then transferred the call to a second adviser in a different department. The second adviser was informed that a form should be sent, but was not informed that it should be for the concessionary fee. The adviser therefore sent a standard full fee renewal form instead. In light of this error TVL later offered its apologies and issued a cheque for £30 (which the complainant declined to accept). At Stage 2 of the complaints process the BBC increased this offer to £75 as a gesture of goodwill to recognise the fact that the complainant was sent the incorrect full fee form, and to acknowledge the resulting difficulties in trying to arrange her licence. The complainant also declined this offer.

On 2 December 2014 an officer called at the complainant's address.

The Panel noted that officers are asked to call at addresses in cases where there is no valid licence in place and they will not know whether the person they visit is a previous licensee at the address or a new occupier. The BBC has said that due to the error in sending a form for a full-fee licence, and as there was no current licence at the address, the officer was unaware that a concessionary licence had been held previously at the address and he "therefore did not have information that would have helped him manage the visit better".

The BBC also said that if an officer finds that a customer is using a television receiver without an appropriate licence he will formally interview them. He will also seek to set up a licence for the customer, either by an instalment payment scheme or by accepting payment in full.

The complainant's husband said that when the officer arrived, his wife asked the officer to come back in ten minutes as she had a visitor (a worker for a community response service who was installing a personal alarm).

The Panel noted that accounts vary as to what happened during the visit. It noted that the complainant's first written complaint was dated 23 December 2014, and that this was closest in time to the actual events, and the complainant's subsequent descriptions of the

visit did not change in terms of the basic elements (though some additional detail was added). The Panel also considered a transcript of part of a telephone call between the complainant's husband and TVL on 3 December 2014, the day after the visit.

The Panel also considered a record of the interview which was made during the visit by the officer, and his additional notes which were recorded immediately after the visit. It also considered an account of an investigation by the officer's Area Manager, who interviewed the officer on 6 January 2015.

The Panel also considered a typewritten statement which was provided by the complainant and was dated 9 April 2015. The complainant said this was a witness statement from the worker who was installing a falls pendant alarm when the officer called.

As the accounts of the visit varied significantly, the BBC had asked for contact details for the independent witness so the complaint could be investigated further, but the complainant declined to provide contact details. The Panel noted that this meant that while the complaint was under consideration by TVL and the BBC, they were reliant upon competing accounts of the visit, with no independent corroboration of either version.

On 5 April 2016 the complainant gave permission for the Trust Unit to contact the worker's employer and the worker confirmed that the statement was hers. She also gave a further account over the telephone to a member of Trust Unit staff on 31 May 2016 and confirmed via email that the notes made by the staff member were an accurate record of the conversation between them.

The Panel noted that, according to the complainant's accounts of the visit:

- she and her husband had explained that she was registered blind
- they said they had tried to buy a concessionary licence from the Post Office and had been advised to telephone TVL to obtain a concessionary licence payment slip so she could buy a one-year licence. They did so and were sent a full year licence form
- the officer was bullying and he demanded payment for a full licence
- when they offered the complainant's debit card, he asked for a bank statement because the account details were not on the card; when the complainant said she did not receive bank statements because she was blind, he said "I'll take that as a refusal"
- the complainant was distressed and began to cry
- the complainant's husband offered £160 in cash but the officer refused to accept it as he had no change; he also refused £140 in cash because it was not the full fee and repeated "I'll take that as a refusal"
- the complainant fainted and slid onto the floor
- the worker from the community response service requested an ambulance
- the officer did not leave and when the complainant came round, he took her signature for the TVL payment card arrangement before the ambulance arrived which took her to hospital.

The Panel noted that, according to the officer's account of the visit:

- the complainant explained that she was entitled to a concessionary licence as she was registered blind and TV Licensing had sent her the wrong form
- it was his understanding that he was unable to supply this type of licence during a visit and he therefore provided the complainant with contact details so she could make the necessary arrangements

- the complainant's husband became very abusive, shouting and calling the officer names like "Nazi"
- the husband was so abusive that the officer suggested he [the officer] left but the complainant said "No carry on, ignore him"
- the officer then suggested a cash easy card. The complainant's husband became angrier and suggested he paid in full in cash but the officer had no change and the husband swore at him
- the officer then set up a cash card and told him to pay the full amount on this
- the complainant slid down the sofa and seemed to faint. The husband and the worker did not appear to be alarmed and "it seemed to be a regular thing"
- the officer believed he remained calm and professional but in his opinion the husband's actions upset the complainant and possibly contributed to her "fainting".

When the officer was interviewed by his Area Manager he said that the complainant was "co-operative" when he began to fill out the Record of Interview but that her husband called him names including that he was a Nazi. When the officer said he "didn't need to put up with the calling of names ... and suggested that he left from the address", the complainant asked him to carry on and "made comment about how the male always acted in this way". During the interview the officer said that he suggested a second time that he might leave but the complainant "declined" and asked him to carry on.

In subsequent correspondence the complainant said that her husband "did indeed express himself very strongly and did so in order to protect me". However, she said, "the notion that he [the officer] volunteered to leave or that I encouraged him to stay I find deeply offensive".

The Panel noted the typewritten statement by the worker who was installing the falls pendant alarm, in which she said:

- the officer told the complainant that her TV licence had not been paid and that she must pay the money
- the discussion got a little heated as the complainant's husband said they should only be paying for a half TV licence due to her medical conditions
- the complainant became unwell and passed out on the sofa and then slid onto the floor
- as she was unable to arouse the complainant, the worker pressed the pendant she had just installed and asked control to call for an ambulance
- whilst this was happening the officer continued to ask the complainant if she was going to pay or not, knowing that she was unconscious
- after a short while the complainant regained consciousness and her husband asked the man to leave, which he did just before the ambulance arrived.

In her conversation with the BBC Trust the worker said:

- she remembered the discussion becoming heated: the husband was shouting
- the TVL officer was not shouting, but in her opinion, he was not being helpful either as he was not showing any empathy to the complainant and her husband
- she did not recall any name calling by either party
- the complainant was not participating in the discussion
- suddenly the complainant said "I need some water" and then she collapsed and slid onto the floor. The discussion between the husband and the officer then stopped
- the worker said she was aware that this sometimes happened and she asked the husband how long it usually lasted for. He replied that it "could be a few minutes,

but sometimes longer". The worker said she tried, but could not rouse the complainant and that she was not happy with the situation so decided to press the button she had just installed

- while the complainant was unconscious, she said that the officer was asking her "are you not going to pay?" and "shall I say that you are not paying?"
- at one point, the husband left the room and a few minutes later he returned with his son and they both helped the complainant onto the settee. The complainant then started to come round
- the officer then asked the complainant to sign a piece of paper to say that she was not going to pay. The husband became very angry at this point and told the officer to get out. The officer then left.

The Panel noted a further discrepancy between the accounts which related to when the ambulance was called, and whether the officer was still on site when the call was made. The officer's report stated that the time of his visit was 14.55 and that the interview was concluded at 15.02. In his notes the officer said, "I believe an ambulance was going to be called".

The complainant had said that according to the records of the alarm system which had just been installed, there was a record of the request for the control room to call an ambulance at 15.16. Trustees noted that this would suggest that (if the officer was correct in his timings) the ambulance was called after the officer left the building. The worker's accounts suggest that the interview continued while she was calling for an ambulance and that the officer left before the ambulance arrived. Trustees noted that this supported the complainant's recollection of events.

The complainant had said that the discrepancy arose because the officer faked the time the interview concluded in an attempt to prove that he was not present when the complainant collapsed. However, Trustees noted that the officer had stated that the complainant "appeared to faint" while he was present.

In considering each account, the Panel bore in mind the source, the passage of time between the alleged events and the statement being made, and the consistency of the statement with other accounts and with other reliable evidence.

The Panel noted that the appeal was set out as a "particulars of claim" letter which cited gross professional misconduct, professional negligence, reckless endangerment of life, disability hate crime, disability discrimination, data protection law, the Equality Act and a claim for personal injuries. As part of the appeal the complainant's husband asked whether compensation would be offered for breaking data protection law, for committing a "disability hate crime", for the deterioration in his wife's health, for her having to move into sheltered accommodation which was away from her son and for her being unable to take holidays abroad in 2015 as she may ordinarily have done.

Trustees considered that it was important to be clear about the Trust's role in this complaint. Trustees considered that this case engaged its functions under the Royal Charter in respect of:

- holding the Executive Board to account for the BBC's compliance with applicable regulatory requirements and the general law [article 24(2)(f)]
- acting as "final arbiter" of appeals in appropriate cases [article 24(2)(g)]
- ensuring that arrangements for the collection of the licence fee are efficient, appropriate and proportionate [article 24(2)(m)]

Trustees noted that the Trust is not a Court: the complaints and appeal process is not a

criminal inquiry into a person's guilt, or a process designed to award substantial sums in compensation. Nor can the Trust rule definitively whether the BBC has broken the law. Rather, the Trust (in its supervisory or regulatory role) seeks to establish the true facts of a situation in order to determine whether the Appeal should be upheld. In light of this, it was not appropriate for the Panel to impose a "burden" on either the complainant or on the BBC Executive to "prove" their case before the Panel, but rather the Panel should seek to decide, on the balance of probabilities, what happened when the officer visited the complainant's home.

Point (A)

The Panel noted the complainant's view that she did everything reasonable to purchase a concessionary licence and was prevented from doing so by TVL. Specifically the complainant had contended that:

- TVL sent a renewal form for a full fee licence, despite knowing that the complainant was entitled to a concessionary one
- the complainant had been to the Post Office to purchase a licence, but blind customers are unable to do so, unlike sighted customers
- the complainant's husband telephoned TVL to ask for a concessionary licence application but was instead sent another full fee licence application.

The complainant said that as a direct result of incompetence by TVL the complainant was prevented from purchasing a concessionary TV licence, and the property became unlicensed.

The Panel noted that

- TVL wrote in April 2014 advising that, as the existing Direct Debit had been cancelled and no new instruction had been set up, the licence would expire in September 2014.
- the property was unlicensed for five weeks before the complainant's husband contacted TVL by telephone (though the complainant's husband said he made an unsuccessful visit to the Post Office in this period)
- TVL had sent two renewal notices at the concessionary rate (one before the licence expired) and both of these notices could have been used to pay for the concessionary licence
- the third renewal notice was at the full, non-concessionary rate because TVL could not be sure whether the property was occupied, or whether the circumstances of the occupancy had changed
- the complainant had been unable to renew the licence at the Post Office, not because concessionary licences were not issued there, but because no customers can renew a licence there. This has been the case since 2006 when TVL had awarded the contract to PayPoint on the basis that it offered better value for money.

The Panel therefore did not agree that the complainant did everything reasonable to purchase a concessionary licence and that she was prevented from doing so by TVL.

Trustees were also of the view that TVL's arrangements for paying television licences appeared to be appropriate and proportionate and did not appear to be in breach of the Equality Act.

Trustees noted that TVL had acknowledged that, despite the complainant requesting a concessionary form during his telephone call of 3 November 2014, a full fee form was sent in error. Trustees felt this was unfortunate but noted that TVL had offered monies

as a gesture of goodwill for this error, which the complainant had refused, and that TVL had also spoken to the adviser concerned to prevent a recurrence. Trustees decided this appeared to be a one-off mistake that TVL had remedied.

Trustees also noted that TVL had sent the complainant two renewal notices at the concessionary rate and that there were a number of payment options available to her, including one she had used in the past. The sending of the wrong form appeared to be a human error and it did not indicate a systemic problem that might give rise to discrimination against those entitled to a blind concessionary licence.

Point (A) finding: not upheld

Point (B)

Trustees then turned to the second part of the appeal. The complainant alleged that the behaviour of the officer was inappropriate because he was aggressive and failed to make a reasonable adjustment when dealing with a disabled elderly person. In particular:

- Point B1: He "chose confrontation against a pensioner registered blind in her own home who was clearly not well with her health visitor attending to her"
- Point B2: He refused to leave when ordered to do so by the complainant's husband
- Point B3: He refused payment of £140, £160 and direct debit and on each occasion made the remark "I'll take that as a refusal"
- Point B4: The complainant was "so distressed" that she fainted and slid off the sofa onto the floor. The worker called an ambulance which took her to hospital. The officer remained and continued to try to interview her and when she regained consciousness he took her signature
- Point B5: The officer broke the Data Protection Act by having the conversation while a third party (the worker) was present
- Point B6: "Fearing meeting him in the lift or lobby" she had moved into sheltered accommodation – away from her son - and her health had suffered as a result of the encounter.

The Panel dealt first with the complainant's view that the officer broke the Data Protection Act by discussing the TVL arrangements of the complainant while a third party was present [point B5].

Trustees noted that the BBC is obliged to process personal data "fairly and lawfully" and in accordance with at least one of the conditions in Schedule 2 of the Act and in the case of "sensitive personal data", at least one of the conditions in Schedule 3 must also be met. They noted that the alleged commission of an offence – watching television without a valid licence – falls into the category of "sensitive personal data" in the Data Protection Act.

The Panel noted that it was not disputed that the officer identified himself and the reason for his visit and that he was then invited into the complainant's home to discuss the matter. Both the complainant and her husband knew that the worker was present and must have anticipated that she would hear the discussion. On this basis, Trustees considered that the complainant and her husband were both fully aware of what the nature of the discussion would be and had consented to it taking place in front of the worker. They noted that "consent" is a condition that appears in both Schedules 2 and 3 of the Act.

The Panel therefore did not uphold the part of this appeal relating to data protection. However, the Panel noted again that the Trust could not rule definitively on whether or not the BBC had broken the law and that the appropriate appeal body in this case was the Information Commissioner, the data protection regulator, and the BBC Executive had already informed the complainant that it was open to her to pursue this part of the complaint via this route.

Point B5 – the evidence did not suggest that TVL had broken the law.

The Panel then turned to the allegations regarding the conduct of the officer.

The Panel noted the complainant's view that the behaviour of the officer was inappropriate because he was aggressive and failed to make reasonable adjustments when dealing with a disabled elderly person. Trustees noted the complainant's view that the officer:

- "chose confrontation against a pensioner registered blind in her own home who was clearly not well with her health visitor [the worker] attending to her" [B1]
- refused to leave when ordered to do so by the complainant's husband [B2]
- refused payment of £140, £160 and direct debit and on each occasion made the remark "I'll take that as a refusal". [B3]

Trustees also noted the complainant's view that

- the complainant was "so distressed" that she fainted and slid off the sofa onto the floor. The officer remained and continued to try to interview her and when she regained consciousness he took her signature [B4]
- "fearing meeting him in the lift or lobby" she had moved into sheltered accommodation, and her health had suffered as a result of the encounter. [B6]

Trustees noted that all parties agreed that the officer was invited into the property. They noted that the officer maintained that he was professional and that the husband was abusive. They noted that, in her phone conversation with the Trust Unit, the worker remembered that the officer was not shouting, and that she did not recall any name-calling by either party.

Trustees noted, however, that this phone conversation took place almost 18 months after the visit. They noted that the complainant's husband had telephoned TVL the day after the visit and during this call he had said that he had sworn at the officer:

"I said we don't live in the Nazi Germany, it was just as if Hitler had just walked into the house... It was just dreadful. I was swearing at him. I had to apologise to the lady afterwards... I was telling him to F off, I was telling him to get out. 'You're threatening my wife and you can see she's ill now get the F out'."

The Panel noted that the officer said that he had twice suggested he should leave but was asked to stay by the complainant. The complainant disputed this. Trustees noted that the third party statement by the worker said that the husband: "asked the man to leave which he did just before the ambulance arrived". During the phone call with the Trust Unit the worker stated that the officer was asked to leave and that he did then leave.

The worker also said that when the complainant became unwell she called an ambulance. "Whilst this was happening the man from TVL continued to ask [the complainant] if she was going to pay or not, knowing full well that she was unconscious on the floor." The officer's report, however, suggested that, in his view, the interview and setting up of a

payment method was completed before the complainant fainted.

The Panel noted its role again and that it needed to decide “on the balance of probabilities” what had occurred on that day.

In terms of point B1, Trustees noted that the complainant’s husband admitted shouting and swearing at the officer in his call to TVL; however, the evidence also showed that the officer had failed to defuse the situation, which they considered to be unfortunate.

Trustees noted that, in her phone conversation with the Trust Unit, the worker said that the officer showed no sympathy to the complainant’s circumstances. They also noted that the officer was new to the job and that such situations were by their very nature difficult to handle, but they would have expected him to be able to do so. They decided that, based on the evidence from the complainant, her husband and the worker and on the balance of probabilities, the officer did not behave in a particularly empathetic manner and this may well have exacerbated an already difficult situation.

Point B1 – on the balance of probabilities, the officer did not “choose confrontation” but he failed to display empathy and to defuse the situation.

Regarding point B2, Trustees decided that, based upon the evidence of the worker, it appeared that the officer had in fact left when asked to do so. However, they noted that, at an earlier stage in the complaints process, the BBC’s Head of Revenue Management said she was:

“...sorry that, given the stressful nature of events that then followed, the officer did not end the visit and return at a later time... Whilst we are unable to verify the circumstances of your visit, I can confirm that in the circumstances you have described we would expect our officers to terminate a visit and not proceed with an interview, and if appropriate to assist in calling for help.”

The Panel agreed with this view and felt that it was regrettable that the officer did not do so.

Point B2 – on the balance of probabilities, the officer left when he was asked to do so.

Turning to point B3, the Panel noted that both parties agree that, when the complainant’s husband offered to make payment for the full TV licence fee in cash, this was declined as neither the complainant nor the officer had the exact change and the officer could not accept a higher or lower amount.

The Panel noted that when the complainant asked about the possibility of paying by direct debit and gave the officer her bank card so that this could be arranged, the card did not contain an account number or sort code. Trustees noted that the officer appeared to believe that he could not set up a direct debit payment. They also noted that at Stage 1 of the complaints process the complaints adviser also appeared to take the view that the officer was unable to issue a concessionary licence during a visit. However, at Stage 2 of the complaints process the BBC’s Head of Revenue Management confirmed that a concessionary licence can be issued during a visit by one of TV Licensing’s officers and that the BBC had offered its “apologies that this did not happen during the visit”.

Trustees noted that the officer could have called the Visiting Officer hotline for assistance, both with processing a debit card payment and with issuing a concessionary licence. They welcomed the Executive’s assurance that, as a result of this complaint, further training

had been provided to the officer concerned and other officers to prevent any recurrence or confusion. Trustees thought it was deeply regrettable that the officer was unaware of these possibilities and continued to press the issue of payment of the Television Licence. Again, the Panel felt that the officer failed to show appropriate empathy and to defuse the situation.

Point B3 – on the balance of probabilities, the officer refused offers of payment that he believed he was unable to accept, but did not avail himself of assistance available to him to arrange payment.

Regarding point B4, Trustees noted that all parties' accounts agree that the complainant became ill while the officer was in her home and that she lost consciousness for a period of time. While the complainant has alleged that this was as a result of the officer's behaviour, Trustees did not agree, on the balance of probabilities, that the evidence supported this conclusion. Trustees noted that the complainant had pre-existing health issues, based both on the complainant's correspondence and the worker's evidence that this was the reason she was in the complainant's apartment installing the falls pendant alarm on the day in question and that she was aware that the complainant sometimes lost consciousness in this way. Further, Trustees noted that the officer and the worker's accounts are consistent regarding the worker asking the complainant's husband how long such an episode would usually last when the complainant first became ill and his replying that it could be "a few minutes, sometimes longer". Trustees recognised that the stress of the situation in general might have contributed to the episode, but concluded, on the evidence, that the officer's demeanour had remained calm and that he had neither raised his voice, nor shouted at the complainant or her husband. Therefore, Trustees felt that the episode could not be attributed to his behaviour and was likely to be due to a combination of factors.

However, Trustees noted with concern the worker's evidence that the officer continued to press the issue of payment of the TV licence once the complainant had become ill. Trustees noted that the officer had not referred to this in his contemporaneous notes and that the worker's recollection was first written down some months later. There was no other witness. Trustees also noted that the officer had, according to both the complainant's and the worker's accounts, asked the complainant to sign a statement before he departed the premises. Trustees considered that the evidence on this point suggested that the officer had again not adopted a suitably sympathetic manner and had failed to defuse the situation.

Again, Trustees noted that it was unfortunate that the officer did not terminate the visit earlier, particularly once the complainant became ill.

Point B4 – on the balance of probabilities: the officer's behaviour did not cause the complainant to lose consciousness, but he did continue to press the issue of payment of the TV licence and asked her to sign a statement after she became ill.

Finally, in terms of point B6, Trustees noted that the complainant said that she had moved into sheltered accommodation and has suffered failing health as a direct result of the encounter. Trustees did not consider that there was any evidence to support these allegations.

Trustees noted that the Trust Unit wrote to the complainant's husband asking to speak to a contact at the local authority to ask them whether there was any documentation they would be able to provide to the BBC Trust about the reasons for the complainant's change of address, to help Trustees reach a decision about the complaint. They noted that there

was no response to this part of the Trust Unit's request and the complainant had not provided any supporting evidence from her local authority, nor from medical sources. Further, Trustees noted again that the complainant had pre-existing health issues of a nature which required a falls pendant alarm to be provided.

Point B6 – on the balance of probabilities, the incident did not cause the complainant to suffer failing health or to move into sheltered accommodation.

Trustees then considered the issue of whether the BBC had breached the Equality Act in light of their findings of fact in Point B as a whole.

They noted that the majority of the administration of TVL is contracted to Capita Business Services Ltd and that Capita's guidance for Visiting Officers states:

"When it is established that the interviewee is visually impaired, the VO should ensure that an appropriately sympathetic and tactful approach is adopted throughout the interview."

"If the customer's status has been confirmed from the correct documentation as being blind/severely sight impaired... The customer should be informed that they are entitled to a 50% reduction on the fee payable, and should be urged to obtain a TV licence without delay."

Trustees also noted that the BBC has provided information on the training given to Visiting Officers on how to interact with people who have a protected characteristic as covered by the Equality Act 2010.

"Visiting Officers, along with other staff complete annual training on equality and diversity. Following training, managers ensure that Visiting Officers have understood the issues and are able to undertake their duties confidently and appropriately.

"Training includes an understanding of equality and diversity, TV Licensing procedures, the law relating to the protected characteristics, legal obligations and skills for communicating fairly with customers, together with an understanding of different forms of discrimination. Visiting Officers also receive additional training on understanding and recognising unconscious bias. ... In cases where the customer cannot produce a current licence, the officer is instructed to exercise discretion as to whether it is appropriate to conduct an interview under caution. Where the officer is aware that the customer has a protected characteristic they are instructed to complete additional notes and add them to the Record of Interview in order to inform the decision maker of the circumstances."

Trustees decided that it appeared that TVL's policies and procedures were compliant with the requirements of the Equality Act. The Visiting Officer's procedures clearly anticipated that they would encounter those with protected characteristics and contained suitable reasonable adjustments for them to make for those customers. Trustees also noted that officers were also given comprehensive training on how to interact with those who have one or more protected characteristics.

However, Trustees considered that on this occasion the individual officer had not followed the procedures regarding making these adjustments. They noted that the officer did conduct an interview, which they accepted he had the discretion to do, and that he did make additional notes regarding the complainant's circumstances, including the complainant's husband's claim that the complainant was blind and that he had previously

attempted to renew the concessionary licence, but was sent the wrong form. However, based on the evidence available to them, it appeared that the officer's manner was not "sympathetic and tactful" as TVL's guidance required when dealing with a person with a protected characteristic. In particular, he had not displayed a sympathetic manner and had thereby contributed to the situation becoming heated, at which point he failed to attempt to defuse it. The officer had also not terminated the interview when the customer had fallen ill. Finally, the officer did not attempt to seek assistance from the Helpline to enable the complainant to pay for the concessionary licence.

The Panel noted that TVL had said they have provided the officer with additional training and that there had been no further complaints regarding his behaviour. TVL had also stated that they are using this case in their training materials for all Visiting Officers as a case study from which to learn. TVL has also said they believe there to be no evidence of a broader issue. Trustees agreed that they would like further assurance on this point.

To that end, the Panel would request the Executive to provide a written response to the CAB on two matters. These both concern the allegation regarding unprofessional behaviour on the part of the officer, which is serious in nature and is in certain respects corroborated by a third party eye witness (the worker) and where the Executive has agreed the correct action would have been to end the visit.

1. CAB would like assurance from TVL that such incidents are not common, that they are thoroughly dealt with if they do occur and that steps are taken to prevent future occurrences. Trustees ask that the written response contains a report on the conduct of Visiting Officers. Trustees would expect this to include numbers of complaints eg in the financial year 2015/16, an indication, if possible, of their seriousness, whether they are increasing or decreasing, how many involved persons with protected characteristics if possible (and whether or not issues arose around making reasonable adjustments) and – if it possible to aggregate this information - what actions were taken in response.
2. CAB would also like assurance that new officers are given sufficient training about TV Licensing's policy with regard to the Equality Act 2010 and that refresher training is given to existing TVL officers at appropriate intervals. This would include such factors as:
 - What training is given to new officers about TV Licensing's policy with regard to the Equality Act 2010 and how is the training given to them?
 - What records are kept with regard to whether new or existing officers have received training about TV Licensing's policy with regard to the Equality Act 2010?
 - How does TVL monitor whether officers comply with TVL's policy on the Equality Act 2010? If such monitoring takes place, where does this information get reported? Have there been any concerns?
 - How many officers were trained on TVL's policy with regard to the Equality Act in the financial year 2015/16?

Trustees noted that during much of the complaints process the BBC was reliant upon two competing accounts of events and that it did not have the benefit of the additional evidence from the worker. They therefore asked the Executive to reconsider the quantum of the goodwill payment offered to the complainant (as this was offered only on the basis of TVL's error regarding the wrong form being sent out) and whether it was a proportionate remedy in the circumstances, in the light of the new evidence.

Finally, Trustees noted that on 3 November 2014 the complainant telephoned TVL. This

call was recorded and was referred to in the complaints correspondence, but the recording was not held. Though the contents of this call are not disputed the Panel reminded the Executive that where a complaint is ongoing, any such recording should be kept.

Point (B) finding: upheld in part

Overall finding: partially upheld

Appeal Finding

Horse racing coverage on 5live Sports Extra

On 10 March 2016, Wireless Group (owner of talkSPORT and talkSPORT2) submitted a complaint to the BBC in relation to an article published in the *Racing Post* on 7 March 2016 that stated 5live Sports Extra was introducing a regular live horse racing strand ("the racing coverage") in March 2016, as a significant 'expansion' in its coverage of the sport. The article in question appeared a week before Wireless Group was due to launch a new digital sports offer, talkSPORT2, at the Cheltenham Festival.

The complaint was considered in part by the Controller, BBC Radio 5live and 5live Sports Extra in accordance with the standard procedure for BBC complaints. The Controller issued a response on 22 March 2016 rejecting the element of the complaint referred to him. The other element of the complaint was considered by the Executive's Fair Trading Panel which issued a decision on 11 May 2016, not upholding the complaint.

On 8 June 2016 Wireless Group appealed that decision to the Trust.

Appeal

Wireless Group's appeal contained four parts. These were that (based on the article published in the *Racing Post* on 7 March 2016 that stated 5live Sports Extra was introducing a regular live horse racing strand) 5live Sports Extra's horse racing coverage in 2016 was:

- A. incompatible with the Trust's decision in October 2015 not to approve 5live Sport Extra's expansion proposals;
- B. inconsistent with the 5live Sports Extra service licence, which specifies that it should be an irregular, overspill service, principally broadcasting live events for which the BBC already holds rights but for which there is no capacity on other BBC services;
- C. developed without a proper market impact assessment, thus contravening the BBC's Fair Trading guidelines; and
- D. likely to have a negative market impact on the entry of a nascent independent channel into the sector (i.e. talkSPORT2).

BBC policies and guidelines relevant to the appeal

Parts A and B of this appeal concern compliance with the Trust's service licence for 5live Sports Extra. The service licence can be found at:
http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/service_licences/radio/2016/5livesportsextra_apr16.pdf

The appeal also relates to a decision by the BBC Trust in October 2015 on a proposal from the BBC Executive to expand the 5live Sports Extra schedule, changing the nature of the station from being an 'overspill' service to 5live to one with a regular daily schedule that included magazine and repeat programming in addition to its existing live output.

The Trust decided that they could not approve the proposal without carrying out a Public Value Test and the Executive decided not to proceed with an application for a PVT approval, so did not take the proposals further. The Trust's decision can be found here:

http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/assessment/5live_sports_extra.pdf

Points C and D of the appeal concern compliance with the BBC's Fair Trading Guidelines (Chapter One: Competitive Impact Principle) and the Trust's Fair Trading Policies and Framework, the full text of which can be found at:

http://downloads.bbc.co.uk/aboutthebbc/insidethebbc/howwework/policiesandguidelines/pdf/fairtrading_guidelines_010812.pdf and

http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/our_work/fair_trading/fair_trading_policies_framework.pdf

The Panel's decision

Grounds A and B

Given the overlap between parts A and B, CAB considered it appropriate to consider them together. The key question for both A and B was whether the racing coverage from March - June 2016 on 5live Sports Extra was outside the scope of the station's service licence, taking into account both the wording of the service licence itself and the Trust's decision in October 2015 on a proposal from the BBC Executive to expand 5live Sports Extra.

Regular timeslot

CAB firstly considered whether a regular timeslot for the racing coverage was incompatible with the station's service licence.

The 5live Sports Extra service licence does not expressly say that coverage cannot be scheduled to take place in regular timeslots on the station. However, the service licence does:

- describe 5live Sports Extra as "offering a part-time extension of BBC Radio 5live";
- say that "All output on 5live Sports Extra should be live sports coverage"; and
- say that "5live Sports Extra should exploit sports rights owned by the BBC that cannot be accommodated by BBC Radio 5live or Radio 4 Long Wave. However, it should not provide an additional outlet for which the BBC would bid for rights against commercial broadcasters".

CAB noted the BBC Executive's acknowledgement that the introduction of a regular timeslot for horse racing was a new aspect of its coverage of the sport, but also noted that there are other sports broadcast on the station (such as Rugby League and American Football) which are broadcast in regular timeslots.

It noted that the racing coverage ran for a limited number of weeks and that the broadcast timeslots varied, from 13:00 to 16:00 as did the duration of the programming, lasting from 45 minutes to 2 hours 25 minutes.

CAB took into account the live nature of the programming and the fact that it was dictated by the horse racing calendar.

Whilst CAB noted that the regular nature of the racing coverage was a new aspect to that sport's coverage on the service, it concluded that the limited run, live nature and varied timeslots and running time were compatible with the terms of the Service Licence.

Volume

CAB then considered whether the volume of the racing coverage fell outside the scope of the 5live Sports Extra service licence.

CAB noted that Wireless Group had accepted that the number of hours broadcast was around half that originally reported in the *Racing Post* article which had prompted Wireless Group's complaint (21 hours as opposed to 40 hours). It considered the appeal against what was broadcast.

CAB considered to what degree the volume of live horse racing broadcast in the timeframe in question differed from broadcasts on the station in previous years, as detailed in the table below:

Year	Total Hours of horse racing coverage	Hours of horse racing coverage in the March–June period
2012	23:18	08:10
2013	29:17	21.07
2014	07:10	07:10
2015	08:10	08:10
2016	-	21:15

CAB noted that the volume covered annually and from March-June varies from year to year and had been as high in 2013 as it was in 2016. It accepted the Executive's explanation that the volume of racing coverage was affected by the coverage of other sports on the service such as the ICC Twenty20 Cricket World Cup or ICC Cricket World Cup.

CAB concluded that the volume of racing coverage in 2016 was compatible with the service licence.

Existing sports rights

CAB considered whether the racing coverage exploited existing sports rights owned by the BBC. It considered the provision in the 5live Sports Extra service licence that states:

"5live Sports Extra should exploit sports rights owned by the BBC that cannot be accommodated by BBC Radio 5live or Radio 4 Long Wave. However, it should not provide an additional outlet for which the BBC would bid for rights against commercial broadcasters.... The service should aim to provide increased value for licence fee payers from the portfolio of sports rights already owned by the BBC by offering alternative coverage to that provided on other UK-wide BBC services".

CAB noted that in its submission to the Trust the Executive had demonstrated that the current horse racing rights had been held on a non-exclusive basis from Racing UK since 2013. This was supported by the fact that the station has broadcast horse racing content in previous years.

Additionally some of the live horseracing coverage on 5live Sports Extra between March - June 2016 had preceded or followed on from horseracing coverage on 5live.

CAB therefore concluded that there was no breach of the service licence on this point.

Alternative coverage

CAB also considered whether the racing coverage fell outside the scope of the 5live Sports Extra service licence because it was not "alternative coverage".

The 5live Sports Extra service licence states that:

"The service should aim to provide increased value for licence fee payers from the portfolio of sports rights already owned by the BBC by offering alternative coverage to that provided on other UK-wide BBC services".

Wireless Group argued that because 5live Sports Extra is required by its service licence to "bring a greater choice of live sports action to sports fans" and not to be the basis on which the BBC competes against commercial broadcasters for rights, then this clearly implies that 5live Sports Extra's role is to offer something different from non-BBC output.

CAB noted that the reference to providing alternative coverage is expressly linked to coverage provided on other "UK-wide BBC services" and that the service does not have to provide an alternative to non-BBC services when it is providing coverage of sports rights already held by the BBC. Given this had been proven, CAB did not uphold this point of the appeal.

BBC Trust 2015 decision on proposal to expand 5live Sports Extra

Having concluded that the racing coverage was compliant with the service licence for 5live Sports Extra, CAB considered whether the racing coverage ran counter in any way to the Trust decision not to approve a proposal from the Executive in 2015 to expand the service.

Wireless Group suggested that, as the Trust did not approve the expansion proposals in 2015 due to concerns that the proposals would increase Radio 5live Sports Extra's programming hours and transform it from an "overspill" service to one with consistent hours of broadcast, the increased programming hours from the racing coverage must then fall outside the scope of Radio 5live Sports Extra's service licence.

The effect of the 2015 proposal would have been to increase the annual broadcast hours of the station by 76%. The Trust viewed that the effect of this would be to change 5live Sports Extra from a part time, irregular service to one with consistent hours of broadcast which could become a listening destination in its own right.

The Panel considered that the Trust's 2015 decision was specific to the proposal put before it at the time and therefore had extremely limited precedential value. That said, CAB considered that the racing coverage at issue in this appeal did not raise the same concerns as the 2015 proposal, due, in particular to the much more limited regularity and volume of racing coverage, as described above.

Finding on grounds A and B

Taking into account the considerations above CAB decided not to uphold Grounds A and B of the appeal.

Grounds C and D:

Compliance with the Executive's Fair Trading Guidelines and the BBC Trust's Fair Trading Policies and Framework

Ground C of Wireless Group's appeal concerned whether the racing coverage was broadcast without a "proper market impact assessment". Wireless Group argued that:

- the Executive's view (that no market impact assessment was required) failed to take into account that "despite the relatively low number of programming hours involved... the racing programme represents an incremental creep towards a significant change in remit for 5live sports extra, since it entails a precedential shift in scheduling policy";
- the launch of talkSPORT2 was a relevant consideration for the development of 5live Sport Extra's 2016 schedule since its remit is to "bring greater choice of live action to sports fans";
- referring the 2016 schedule for a Competitive Impact Principle assessment would not have been disproportionate; and
- despite the Executive's assertion that it did not have sufficient information around talkSPORT2's planned launch (both timing and strategy), there was a significant amount of publicly available information about talkSPORT2's plans to include horse racing as a key feature of the schedule. While the precise date of launch was not confirmed until late January 2016, the conditions of the licence issued by Ofcom to Sound Digital (under which talkSPORT2 was provided) meant that it would have to launch between 29 February and 29 March 2016.

Application of the Competitive Impact Principle (CIP)

CAB noted that neither the Trust's Fair Trading Policies and Framework nor the Executive's Fair Trading Guidelines set out a threshold of significance which triggers a CIP assessment. However, it noted that both documents make it clear that the BBC needs to comply with the CIP when carrying out its public service activities and that this is an ongoing requirement that does not just apply in relation to the introduction to a new service. Both documents refer to the BBC taking a proportionate approach to the CIP assessment dependent on the size and scale of the activity and of the market likely to be affected.

CAB noted that the Fair Trading Guidelines also make it clear that *"The CIP is not intended to protect the commercial interests of every company that believes they are undermined by the BBC's presence"* and that *"The CIP does not necessarily require that the BBC should eradicate all potential negative impacts of its Public Service Activities"*.

CAB considered the Executive Fair Trading Panel's conclusion that a CIP assessment was not required for the racing coverage and that it would have been disproportionate to do so as the racing coverage was not significant or sufficiently material to require referral to the BBC's Fair Trading team or a CIP assessment.

CAB agreed that the racing coverage did not constitute a material change to the activities previously undertaken by 5live Sports Extra, in terms of its volume, its coverage of events it has previously offered and its prior ownership of the rights.

CAB considered whether the Executive should have conducted a CIP assessment in this case in light of the fact that 5live Sports Extra's racing coverage was due to start on 11 March 2016, just before the launch of talkSPORT2 on 15 March.

CAB agreed with Wireless Group that, even if the precise launch date of talkSPORT2 was not known by the BBC, they should have been aware of the likelihood of a March 2016 launch as it had been in the public domain for some time.

However CAB concluded that the fact that talkSPORT2 was planning to launch and broadcast horse racing did not necessarily mean that the 5live Sports Extra racing coverage had breached the BBC's fair trading requirements, taking into account that the coverage was consistent with coverage broadcast in previous years and that scheduling was driven by the racing calendar, not by the BBC. CAB noted that 5live Sports Extra had broadcast live horse racing coverage from the Cheltenham festival in each of the past four years and it was reasonable for Wireless Group to have expected them to do so again this year.

For these reasons – in addition to its conclusions on points A and B above – CAB concluded that the coverage could be categorised 'business as usual' within the terms of the existing service licence and that the Executive was not obliged to assess the CIP formally.

CAB therefore agreed not to uphold this point of the appeal.

Negative market impact on a nascent independent channel (Part D of the complaint)

Wireless Group stated that, following talkSPORT2's launch at the Cheltenham Festival, it had not since broadcast significant horse racing coverage. It indicated that the horse racing coverage on 5live Sports Extra from March to June 2016 was a significant reason for this.

CAB noted that the Fair Trading Guidelines clearly state that the BBC is expected to deliver its public purposes across a range of media markets and is not expected to confine its activities to areas of market failure nor seek to eliminate all elements of potential negative impacts of public service activities. CAB noted there would be no need for the Trust's CIP if that were the case. It considered that it would not be reasonable to expect the BBC to alter its activities or to withdraw from markets because another operator had decided it wished to enter that market. It also noted that horse racing was not the sole focus of talkSPORT2.

Given that CAB agreed with the Executive Fair Trading Panel's conclusion that the coverage in question was 'business as usual' and that the BBC Executive was therefore not required to conduct a CIP on this occasion, CAB considered that there were no grounds for the Trust to assess the market impact of the coverage now, either by attempting this exercise itself, or by directing the Executive to do so.

Finally, CAB considered that the BBC comments in the *Racing Post* article (which had triggered the original complaint) had been inaccurate regarding the scale of the proposed coverage and that this was unfortunate. CAB considered that the BBC should aim for more careful communications around programming initiatives which could be regarded as novel by other operators in their markets and that this would particularly be the case when it was known that another operator in the market was launching a new service.

Finding on Grounds C and D

Taking into account the considerations above CAB decided not to uphold on Grounds C and D of the appeal.

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

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

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

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

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

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

Decision of BBC Audience Services not to respond further to a complaint about the BBC's coverage of Rugby League

The complaint concerned the amount of sports coverage given to Rugby League in BBC output which the complainant considered inadequate. The complainant made the following points:

- She had hoped that when the BBC moved to Salford the coverage would get better but she felt it had got worse.
- She referred to a previous complaint on the same issue.
- The BBC covered Rugby Union but did not bother with Rugby League.
- She understood that the BBC Head of Sport had publicly stated that the BBC would endeavour to cover Rugby League more, but that had not happened.
- She wanted to know why the BBC did not cover Rugby League weekend properly, but did cover a Rugby Union match which had a much smaller attendance.
- She felt that the response from Audience Services "was like a political statement" and did not address her complaint.

BBC Audience Services made the following points:

- The BBC accepted that not everyone would agree with the decisions of BBC editors on which sport stories to cover and the prominence given to them.
- These were matters of editorial judgement, rather than an exact science.
- The BBC served the whole of the diverse United Kingdom and its approach had to be "broad", so there needed to be a degree of compromise.
- The BBC appreciated audience feedback that suggested a sport had been overlooked or marginalised.
- The fact that BBC Sport was now based in Salford did not influence what sports it covered for a national audience, but local programmes such as *North West Tonight* would continue to report on Rugby League in the North West, and Rugby League was covered in the weekly *Super League Show*.
- The BBC had a dedicated web page and associated BBC Red Button pages.
- There was some Rugby League coverage on BBC Radio 5 Live Sports Extra.

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

Appeal

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

- The BBC demonstrated a class bias in its coverage of Rugby League which was unprofessional, frustrating and it should stop.
- She would like an honest explanation from the BBC about the lack of coverage.
- The response to a previous complaint on the same issue was unsatisfactory.
- Last year the BBC Head of Sport had promised the BBC would give more coverage to Rugby League but this had not happened.
- An individual was a dreadful commentator. He knew nothing about the rules of the game and was out of his depth.

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. She decided it did not.

The Adviser noted that the complainant did not feel she had received a satisfactory outcome in response to her long-standing concerns about the amount of Rugby League coverage in BBC output. While she appreciated that the complainant was seeking more extensive coverage of Rugby League, she noted that decisions about what sports to cover and how to cover them were matters of editorial judgment. These kinds of decision rested with the BBC, and the Trust had no role to intervene, unless there was a potential breach of the Editorial Guidelines, which the Adviser considered was not the case here. The Adviser noted this was important because it safeguarded the BBC's editorial independence, which was valued highly by licence fee payers.

The Adviser noted that the BBC had affirmed its commitment to Rugby League on the BBC Sport website (<http://www.bbc.co.uk/sport/rugby-league/16658285>), which included information about Rugby League coverage on the BBC.

The Adviser noted that the complainant felt that Audience Services should have addressed her concerns in greater depth and that she felt that one of the responses was like a "political statement". However, the Adviser noted that the BBC received around a million complaints and contacts a year and that some standardised responses were used in order to respond to them efficiently. However, she considered that Audience Services had responded appropriately and had sought to address the points raised.

The Adviser appreciated that the complainant believed there was a "class bias" to the BBC's coverage of Rugby League and Rugby Union. However, she noted that Trustees had previously considered a similar complaint by the complainant about this and had decided that her appeal did not have a reasonable prospect of success.

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. The Adviser did not propose to put it before Trustees.

Request for review by Trustees

The complainant requested that the Trustees review the decision not to proceed with her appeal. She felt she had never been given a straightforward answer to her question about the BBC's failure to report Rugby League when it drew very large crowds. She felt the complaints process was futile and the responses she has received so far had been meaningless.

The Panel's decision

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

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

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

- Decisions about the coverage of Rugby League are a matter for the BBC Executive. As the Royal Charter (article 38 (1) (b) sets out, “the direction of the BBC’s editorial and creative output” is specifically defined as a duty of the Executive Board and one in which the Trust does not get involved.

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

The Panel noted that the complainant had been presented with the opportunity to escalate her complaint to the BBC Trust, and it agreed that this had been correct because the ultimate decision as to whether or not a matter is for the Trust to consider on appeal is for Trustees.

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 about inaccuracies in scheduling on Radio 4 Extra

The complainant contacted the BBC after tuning in to Radio 4 Extra to listen to a specific broadcast but its start time was delayed. He made the following points:

- He had tuned in at midnight to listen to Sally Warboyes' *Wishing Well*.
- He had specifically wished to avoid the previous programme yet it continued to run for a further seven minutes.
- Following that programme, there was an insert by Arthur Smith in which he said he was waiting under the Machynlleth clock for the midnight chimes.
- He considered listeners' time was being wasted because of inaccuracies in scheduling and people were missing output they wanted to hear.
- He considered the BBC was disseminating inaccurate time information because the BBC used pre-recorded continuity announcements based on an inaccurate schedule.
- In a follow-up complaint, he stated that his complaint was not that the previous programme had overrun – as he believed it was the same length as usual – but that the scheduling had been extremely poor.
- He considered that scheduled programmes often started later because of trails and links that were played between output.
- He considered the scheduling inaccuracies were damaging to the BBC's reputation and noted the "inclusion of pre-recorded time checks" - the station had said it was midnight, when in fact it had been eight minutes past.

BBC Audience Services responded and made the following points:

- They acknowledged that the complainant felt it was unacceptable that *Mordrin McDonald: 21st Century Wizard* had overrun, delaying the broadcast of *Wishing Well*.
- They noted that programmes were generally slightly shorter than their billed timeslots to allow for trails or news bulletins, but sometimes they over or under ran.
- They noted that, sometimes, it was necessary to start programmes slightly earlier or later than their billed schedule.
- This was common practice across all stations in the UK and they considered it was reasonable to have some flexibility regarding transmission times.
- They apologised for the inconvenience that had been caused.
- His comments had been shared with senior managers.

Audience Services said they had nothing further to add and 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 also made a complaint about complaints handling and queried why Audience Services had said they would need more time to respond, when they later said they had nothing to add to their initial response.

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. She decided it did not.

The Adviser noted that the Royal Charter and accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. "The operational management of the BBC" was defined as a duty that was the responsibility of the Executive Board under paragraph 38, (1)(c). The Adviser noted that scheduling decisions were operational matters that rested with the BBC.

She considered that Audience Services had given a reasonable response which acknowledged the complainant's dissatisfaction and included the explanation that some programmes started earlier or later than they had been scheduled and all stations used some flexibility with their scheduling.

She noted the complainant's comments that the broadcast of inaccurate time checks brought the BBC into disrepute. However, she noted that the output he referred to was not a time check, but a pre-recorded insert related to a comedy festival and, while she agreed that it had apparently been scheduled so that it would be broadcast at midnight, she did not consider that audiences would have understood it to have been a time check.

She noted that the complaints process used timeframes and that these helped to ensure complaints were responded to in a timely way. She appreciated that the complainant was unhappy that the BBC had said it needed more time to investigate his complaint, but had not added anything in their final response. However, she noted that the email included the explanation that a delay could be caused by other pressures on members of staff. She considered that it was important for the BBC to inform complainants if there was likely to be a delay in responding to them.

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 maintained that no reasonable answers had been given to his complaints. And the responses issued by Audience Services came across as a deliberate attempt to brush the issues aside by disingenuous misinterpretation.
- The first response assumed that he was upset by a programme overrunning, when he had not complained about this and was not under the impression that it had overrun.
- There was frequent use of words like "slightly" in the response when the BBC knew the schedule was over-running by seven minutes, and "sometimes" when, in fact, the complaint was raised because this kind of thing was very common. He referred to the previous evening when he said at least three programmes between

2230 and midnight started more than five minutes later than billed and at least two inaccurate “time checks” were given.

- The comparison of a station like R4 Extra with other stations was spurious. Most other stations had live content with genuine reasons for deviation from published schedules; and their time checks were, usually, accurate. The content of R4 Extra was known entirely in advance.
- Failure to communicate accurate timings could only be explained by incompetence, complacency or a deliberate policy of foisting unwanted content on listeners.
- The second response from Audience Services, belatedly, simply refused to add to the first, saying “We do not believe your complaint has raised a significant issue of general importance”. He said that the issue of a radio station needlessly publishing inaccurate schedules, broadcasting inaccurate information and brushing aside complaints with unsatisfactory replies was of considerable importance in its own sphere.
- He felt the Adviser’s response had been absurd in suggesting that, rather than the editors excluding “time” announcements that they knew might be wildly out or synchronising the text information with programmes, listeners should be expected to know this information was not meant to be accurate. He said it was clear from his comments that he knew the output was “a pre-recorded insert” but to suggest that “it’s midnight” was not also, in a way, a time check was ridiculous.

The Panel’s decision

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

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

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

- The Royal Charter sets out a division of responsibility between the BBC Executive and the BBC Trust. “The operational management of the BBC” was defined as a duty that was the responsibility of the Executive Board under article 38, (1) (c). The responsibility for decisions about programme scheduling and communicating scheduling information to the audience rested with the BBC.
- It was reasonable to have some flexibility regarding transmission times.
- The pre-recorded insert relating to a comedy festival scheduled for broadcast at midnight which contained the words “it’s midnight” was not a “time check”.
- Audience Services had dealt with the complaint reasonably.
- There was no evidence to suggest that Audience Services had deliberately misinterpreted the initial complaint when they responded assuming the complainant had complained about an over-running programme when he had in fact complained about the late-running schedule.
- The reply from Audience Services to the second letter from the complainant (known as a 1B reply) had been received within twenty working days as set out in the general complaints procedure¹ at 3.4:

“The BBC Executive will investigate your complaint and aim to reply within 20 working days of receipt of your complaint, though some complaints take longer than others to investigate...”

¹ http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2014/complaints_fr_work_general.pdf

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

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 about schedule changes caused by sports coverage

The complainant contacted the BBC about changes to regular schedules caused by sports coverage. He made the following points:

- Rather than change schedules to make way for sports coverage, sport should be broadcast on a separate channel.
- Many people had no interest in sporting events such as Wimbledon.
- In a follow-up email, he considered that his complaint had not been addressed.
- He noted that this year included the Euros, Wimbledon, Olympics and Paralympics and the Rugby World Cup and did not consider this was a minor amount of sport.
- He noted that schedules had also been disrupted to make way for unscheduled programmes about the EU referendum.
- He queried whether he should receive a refund for the hours of output that were disrupted.
- He thought it likely that the BBC had received a number of complaints about this and asked how many.
- He queried again why BBC One's schedules in particular were disrupted by sport.

BBC Audience Services responded and made the following points:

- They thanked him for his comments and acknowledged that he was unhappy at schedule changes caused by sports coverage.
- They accepted that many people did not like sport – but stated that there was a huge audience for sports coverage and, as a public service broadcaster, the BBC felt an obligation to cover the most notable events.
- They endeavoured to keep disruption to schedules to a minimum – and to give reasonable warning of schedule changes.
- They considered that the airtime devoted to sport was modest compared to that for other genres and was unlikely to warrant its own channel.
- They acknowledged that the complainant would continue to be unhappy at sports coverage, but hoped the BBC's thinking had been explained.
- Audience Services said they had nothing further to add and 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. She decided it did not.

She noted that the complainant set out three points in his appeal that he considered had not been answered, these were:

- Why could not the BBC have a dedicated sports channel so that BBC One and BBC Two were not subject to schedule changes?
- How many complaints had been received about schedule changes?
- Could he reclaim part of his licence fee because of the schedule changes?

The Adviser appreciated the complainant's frustration at the changes that were made to regular broadcast schedules. However, she noted that in answer to the first point, Audience Services had stated that, compared to other genres, the amount of time given to sport was comparatively limited and there was not likely to be enough to warrant another channel.

In answer to the second, she noted that the BBC put a good deal of information about complaints into the public domain – which could be found here: www.bbc.co.uk/complaints; however, it was not required to give information about the number of complaints received about any single subject. In answer to the third point, she also noted that everyone who watched television as it was broadcast – whether they watched on a television set or via another device such as a tablet – was required to have a television licence. Further information can be found here: <http://www.tvlicensing.co.uk/check-if-you-need-one>

The Adviser noted that the Royal Charter and accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. “The operational management of the BBC” was defined as a duty that was the responsibility of the Executive Board under paragraph 38, (1)(c). The Adviser noted that scheduling decisions were operational matters that rested with the BBC.

She also noted that Audience Services had acknowledged the complainant's dissatisfaction and explained that the BBC was required to take account of the demands of all audiences and, while accepting that the complainant was not interested in sport, it was nonetheless the case that large numbers of other licence fee payers did want to see sports coverage.

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:

- The BBC had stated that the amount of air time given to sport was small compared to other genres. A review of the television schedules over the past few months would show that this was not the case; a vast amount of time over the past few months was given over to sports coverage, and in the coming months it was likely to get even worse.
- He had asked for details of the number of complaints that had been received regarding schedule changes due to sports coverage, but the question had never been answered and he had been unable to find the information he wanted on the BBC complaints website. He said he was considering making a Freedom of Information request about complaints about BBC Sports coverage.

The Panel's decision

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

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

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

- The Royal Charter sets out a division of responsibility between the BBC Executive and the BBC Trust. “The operational management of the BBC” was defined as a duty that was the responsibility of the Executive Board under article 38, (1) (c). The responsibility for decisions about scheduling sports coverage rested with the BBC’s scheduling teams.
- The amount of sports coverage would vary throughout any one year. In 2016 the BBC had covered a number of major international sporting tournaments such as the Olympics, Paralympics and the Rugby World Cup, as well as popular annual events such as Wimbledon. The BBC had explained at Stage 1 that there was a huge audience for sports coverage and, as a public service broadcaster, the BBC felt an obligation to cover the most notable events.
- The BBC was not required to give information about the number of complaints received about any single subject.
- If the complainant wished to make a freedom of information request then it may be helpful to know that
 - A request can be made by emailing foi@bbc.co.uk
 - Information about making a request can be found here: <http://www.bbc.co.uk/foi/requesting-information>
 - Some information is excluded from the Act and the BBC provides information about that at this link: <http://www.bbc.co.uk/foi/publication-scheme/excluded>
 - The Information Commissioner’s Office also has advice to help requesters <https://ico.org.uk/for-the-public/official-information/>.

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

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 about scheduling changes as a result of football coverage

The complaint concerned changes to schedules as a result of coverage of the Euro 2016 competition. The complainant made the following points:

- He was concerned at changes to BBC One schedules, particularly on Saturday night, to make way for football.
- He queried why football was not shown on BBC Two where fewer people would be affected by schedule changes.
- He noted that many licence fee payers did not follow football.
- In a follow-up complaint, he stated that his initial complaint had not been addressed – that is, why football was not covered on BBC Two rather than BBC One.
- He noted that football fans would not mind which channel was used.
- He considered that his perspective – that of a licence fee payer who did not like football – should also be taken into account.
- He was unhappy at the generic response he had received.

BBC Audience Services made the following points:

- They thanked the complainant for contacting them about the Euro 2016 coverage.
- They noted that football was the most popular sport in the country and that competitions like Euro 2016 generated a huge amount of interest – particularly as three of the UK's nations had qualified on this occasion.
- They acknowledged that coverage would cause some changes to the normal schedules, but tried to keep audiences informed by publishing schedules ten days in advance and keeping disruption to a minimum.
- They stated that the BBC remained committed to a wide range of programmes to cater for viewers who did not like football or sport in general and that other programmes were promoted across 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. He also raised a complaint about complaints handling, including the following points:

- The BBC had not answered the question he had raised.
- He was unhappy about the generic response he had been sent.
- He had not asked the BBC to carry out any further investigation, but only to respond to the complaint he had made.

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. She decided it did not.

The Adviser appreciated that the complainant was not interested in football and was unhappy at schedule changes made during coverage of the Euro 2016 competition. She also noted the complaints handling points he had raised.

She noted that the Royal Charter and accompanying Agreement between the Secretary of State and the BBC draw a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. "The direction of the BBC's editorial and creative output" and "the operational management of the BBC" are defined as duties that are the responsibility of the Executive Board under paragraph 38, (1)(b) and (1)(c). The Adviser noted that this was important because it safeguarded the BBC's independence from interference - which was highly valued by licence fee payers.

She decided that decisions about which channel to show output on and which schedules to change were editorial and operational matters that rested with the BBC. The Trust only had a role if the BBC was potentially in breach of its standards (e.g. where an operational decision was in breach of the Fair Trading Guidelines, or if editorial output did not meet the standards set out in the Editorial Guidelines).

She noted that the BBC had not answered the query as to why football was not shown on BBC Two rather than BBC One. She was aware that this issue had arisen previously and that, on those occasions, the BBC had stated that broadcasting sport on BBC One allowed it to reach the highest and widest audience. While she appreciated the complainant's disappointment at changes to the BBC One schedule, she considered that for licence fee payers as a whole, it was reasonable for the BBC to try to ensure that significant output reached the greatest number of people. She noted too that the complaints framework allowed the use of standardised responses for reasons of efficiency, and this took into account the interests of all licence fee payers.

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:

- His main concern was the cancelling of Saturday night programmes in favour of sport.
- If BBC Two programmes were cancelled and sport shown on BBC Two instead, this would affect fewer people than moving programmes on BBC One.
- He paid the licence fee to watch BBC channels so therefore felt he had the right to complain and should also expect an answer to his complaint.
- He felt the BBC should take the time to answer complaints individually and not send a pre-printed email.
- He felt there was no point in having a complaints procedure if complainants' questions were not answered.

The Panel's decision

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

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

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

- The Royal Charter sets out a division of responsibility between the BBC Executive and the BBC Trust. “The direction of the BBC’s editorial and creative output” and “the operational management of the BBC” were defined as duties that were the responsibility of the Executive Board under article 38, (1)(b) and (c). The responsibility for decisions about which programmes to schedule on each of the BBC’s channels, and changes to the billed schedules, rested with the BBC’s scheduling teams.
- Audience Services had explained that the BBC’s coverage of Euro 2016 reflected the very high level of interest in the competition across the UK. They had also explained that the BBC tried to give reasonable notice of changes and also to ensure that a range of programming was available across BBC channels and services.
- The Adviser had noted that Audience Services had not responded to the complainant’s query about why football was not shown on BBC Two rather than BBC One and had explained that when this issue had arisen previously, the BBC had stated that broadcasting sport on BBC One allowed it to reach the highest and widest audience.
- The complaints framework allowed the use of standardised replies for reasons of efficiency, and this took into account the interests of all licence fee payers.

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

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 about the BBC continuing to employ Chris Evans as a presenter

The complainant felt that presenter Chris Evans should not appear in BBC output following press speculation about his behaviour. The complainant made the following points:

- He believed the BBC was “turning a blind eye” to his behaviour.
- He referred to an article from 2005.

BBC Audience Services responded by stating that the BBC did not comment on press speculation.

In response to a follow-up complaint, they said they had nothing further to add and 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 reiterated his concerns and made the following points:

- He said that at first the BBC said it would not act on conjecture, but when he presented facts contained in the press articles to which he had given links, the BBC denied that any facts had been presented.
- He objected to the employment of Chris Evans.

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. She decided it did not.

She noted the complainant’s belief that the article, which he had mentioned in his original complaint, was not “press speculation” and noted his view that the BBC should act on information contained in the article by ceasing to employ Chris Evans.

The Adviser noted that decisions about BBC presenters were made by BBC senior management. The BBC was entitled to make editorial and operational decisions without interference and the Trust would only have a role if the BBC was potentially in breach of any of its other commitments – for example, if there had been a possible breach of the BBC’s Editorial Guidelines, or if one of the licence-fee funded services had not operated within the terms set out in its Service Licence. The Adviser had not seen evidence to suggest that was the case here.

Taking this into account the Adviser 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 the Trustees review the decision not to proceed with his appeal. He made the following points:

- He felt the BBC was being negligent by employing Chris Evans.
- He objected to his licence fee being used to pay Chris Evans.

The Panel's decision

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

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

- The Royal Charter sets out a division of responsibility between the BBC Executive and the BBC Trust. "The editorial and creative direction" and "the operational management of the BBC" were defined as duties that were the responsibility of the Executive Board under article 38, (1)(b) and (c). The responsibility for decisions about the employment of BBC presenters rested with the BBC senior management.

Trustees agreed that the complainant had received an appropriate reply from Audience Services.

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 about appropriate clothing for female weather presenters

The complainant contacted the BBC about the clothes worn by female weather presenters. He made the following points:

- He noted that male weather presenters were covered up but women were under-dressed.
- He considered weather presenters should always be covered up to set an example for viewers with regard to UV radiation and protection from insects.
- He had written about the subject and wanted presenters to read his work.
- In a follow-up complaint, he stated that it was also important in terms of fuel efficiency.

BBC Audience Services responded and made the following points:

- They thanked him for his comments.
- They noted the BBC did not have a dress code, that presenters wore clothes they chose and that, while these might not be formal, they were nonetheless suitable.
- They said his points had been shared with senior managers.
- In a follow-up response, they noted that he had repeatedly written to the BBC's *Look North* team about the same issues and received a number of responses addressing them.

Audience Services stated the complaint did not raise a significant issue of general importance and they would not respond further.

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. She decided it did not.

The Adviser noted that the Royal Charter and accompanying Agreement between the Secretary of State and the BBC draw a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. "The direction of the BBC's editorial and creative output" and "the operational management of the BBC" are defined as duties that are the responsibility of the Executive Board under paragraph 38, (1)(b) and (1)(c). She considered that it was an operational matter for BBC managers to ensure their staff wore appropriate clothing and not a matter for the Trust.

She considered that Audience Services had given a reasonable response to the complainant. She noted that the complaints system had to operate in the interests of licence fee payers generally – and it was not appropriate to repeatedly answer the same complaint that had no prospect of success.

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:

- The same rules about clothing needed to apply to both sexes. If the men were covered up in winter and summer, then that should also apply to the women and it would set an example to viewers to do likewise.
- It was a serious issue given insect bites and stings and resulting sickness.
- Underdressing was inappropriate when those at home may be in fuel poverty.
- Only the male weather presenters said "wrap up warmly".

The Panel's decision

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

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

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

- The Royal Charter sets out a division of responsibility between the BBC Executive and the BBC Trust. "The operational management of the BBC" was defined as a duty that was the responsibility of the Executive Board under article 38, (1) (c). The responsibility rested with the producers of the weather bulletins to ensure staff wore appropriate clothing; it was not a matter for the Trust.
- Audience Services had explained that the BBC did not have a dress code; presenters wore clothes of their own choice and therefore there were no rules about dress which would be applied to either men or women.

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

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 about BBC News coverage of the events of 9/11

The complainant alleged that the BBC had “abused its power in order to support the official narrative of lies regarding the official conspiracy theory on 9/11”. The complainant made the following points:

- By supporting the official version of events, the BBC was guilty of complicity to commit acts of terrorism against innocent people.
- She gave a number of video links in support of her allegation.
- She believed it was evident that the BBC had supported terrorist actions, concealed the truth from the public and had simultaneously cast suspicions on an innocent, ethnic and religious group.
- She alleged that 9/11 was an attack by criminal bankers and corrupted allies operating secretly within USA and UK intelligence, military and government, and these people had all profited directly from 9/11.
- The BBC had still not adequately explained how they knew building 7 was going to collapse 20 minutes before it did.
- She wanted to know why the BBC continued to support national and international terrorists and their lies.

BBC Audience Services made the following points:

- They could only investigate complaints relating to content from the last 30 days. As the 9/11 attacks occurred in 2001, they fell outside the scope of the complaints service. <http://bbc.co.uk/complaints/handle-complaint/>
- They gave a weblink to a blog article from 2008 which discussed some of the conspiracy theories regarding the BBC and 9/11 which have grown up since the attacks and might provide answers to some of the questions posed by the complainant:
http://www.bbc.co.uk/blogs/theeditors/2008/07/controversy_conspiracies_iii.html

Appeal

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

- Audience Services were saying that her understanding was based on a “belief” when it was actually based on fact and it was the BBC who were promoting a “belief” which had been thoroughly disproven by basic physics. The evidence was undeniable and the BBC should be asking questions to get at the truth.
- As a public broadcaster the BBC had a duty of care, to inform the public and look out for the public good and best interests. Lying and misleading the public could not be accepted as for the public “good”.

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. She decided it did not.

The Adviser acknowledged the complainant's concern that BBC News had not told the truth about the orchestrators of the 9/11 attacks in 2001, and noted her belief that she had supplied evidence to that effect.

The Adviser noted that Audience Services had explained that complaints could only be investigated under the terms of the BBC Complaints Framework if they were made within 30 days of broadcast of the content which had given rise to the complaint. As the attacks of 9/11 occurred in 2001, Audience Services had therefore deemed the complaint to be outside the time limit for consideration.

The Adviser agreed that the complaint was outside the scope of the BBC Complaints Procedure because it did not refer to a specific piece of BBC output from the last 30 days.

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

Request for review by Trustees

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

- She disputed use of the word "allege" when there was "solid factual evidence which has provided a more accurate understanding of what happened on 9/11, who are the most likely culprits and what their motives were".
- She felt it was inappropriate to apply a 30 day time limit when so many people had suffered worldwide because of lies about 9/11.
- Her complaint was issued in response to a BBC programme analysing events of 9/11 and in which BBC reiterated the same falsehoods issued on 9/11. Not everyone watched BBC programmes as soon as they were broadcast and the complainant did not think some issues could be discarded because of a "30 day" restriction, especially not when they remained an issue of national and international security.
- There were times when regular rules and procedures needed to be overridden and this was one of those times. New evidence was emerging with every passing day and it was time the BBC took note of the evidence and altered their presentation and previous analysis of 9/11 accordingly.

The Panel's decision

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

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

- Whilst noting the complainant's view that there was compelling new evidence about what really happened on 9/11, Trustees agreed that the complaint was outside the scope of the BBC Complaints Procedure because it did not refer to a specific piece of BBC output from the last 30 days.

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

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.

Admissibility decisions

The BBC's general complaints system has three stages. During the first two stages complaints are considered and replied to by the BBC. At the third stage the Complaints and Appeals Board of the BBC Trust may consider an appeal against a decision by the BBC.

Complaints are answered at Stage 1 by BBC Audience Services. 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 answered either by a senior manager within the BBC.

However, under the Complaints Framework, it is open to the BBC to close down correspondence at any stage – 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 was wrong to close down the correspondence. Where a complainant appeals to the Trust in these circumstances, and Trustees uphold the appeal, the complaint is sent back to the BBC for a further response.

The General Complaints and Appeals Procedure² explains that:

At all stages of this Procedure, your complaint may not be investigated if it:

- is trivial, misconceived, hypothetical, repetitious or otherwise vexatious.

In the cases where BBC Audience Services had ceased handling the complaints at Stage 1, the complainants appealed to the Trustees on the substance of their complaints. However, the point put to the Trustees was whether an appeal against the decision of BBC Audience Services not to correspond further with the complainant had a reasonable prospect of success.

In the cases which progressed to Stage 2 the decision for the Trustees was whether to take the complaint as an appeal or whether it had no reasonable prospect of success and was not admissible.

The BBC's television licensing complaints procedure has four main stages³. During the first stage, complaints are considered by Television Licensing. At the second stage, complaints are considered and replied to by the BBC Executive. Stage 3 is handled by the BBC's Executive Board member responsible for licence fee collection. At the fourth stage, the Complaints and Appeals Board of the BBC Trust may consider an appeal against a decision by the BBC.

A fair trading complaint may proceed through up to two stages⁴. The BBC's Fair Trading complaints panel which is appointed by the Executive Fair Trading Committee (EFTC) will respond at Stage 1. If the complaint qualifies for an appeal, the BBC Trust will respond at Stage 2.

²http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2014/complaints_fr_work_general.pdf

³http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2016/complaints_fr_work_tv_licensing.pdf

⁴http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2014/complaints_fr_work_fair_trading.pdf

In each of the following cases the Panel was provided with the complainant's correspondence with the BBC and the complainant's appeal/s to the Trust. The Committee was also provided with any relevant output or published content.

Complaint about the Director of the BBC Trust, in connection with a complaint regarding TV Licensing

The correspondence in this matter was sent by post and not by email.

The original complaint to the BBC concerned TV Licensing. The complainant's correspondence with the Director of the BBC Trust resulted from a letter of complaint sent to the Chairman of the BBC Trust on 24 May 2016 requesting her to investigate the BBC Executive's failure to reply to correspondence. She provided a copy of her letter to the Director-General sent on the same date.

The complainant made the following points in her letter to the Director-General:

- The BBC had ignored four letters sent by the complainant prior to litigation and had also ignored letters from the County Court.
- Unless the complainant received payment within 10 days she would take further action.

The BBC Trust Unit Correspondence Assistant replied on 10 June 2016:

- The Trust was not in a position to settle legal disputes.
- The role of the Chairman and Trustees was distinct from that of the BBC's management, and the Trust had no role in the day-to-day operational running of the BBC, including matters relating to TV licensing.
- The Trust Unit had been assured by TV Licensing that they would be responding to the complainant in due course.

In a letter dated 9 June 2016 to the Chairman (sent before the letter of 10 June was received) the complainant stated:

- She wished to lodge a formal complaint against the Chairman of the BBC Trust for not instigating an investigation into the BBC Executive's failure to reply to correspondence.
- She requested an independent investigation into her concerns.
- She requested a copy of the Trust complaints policy.
- She said she regarded the Chairman's actions as a conspiracy to cover up serious wrongdoing. It would not be appropriate to reply to the letter of 24 May to say there had been a delay.

In a further letter to the Trust Unit Correspondence Assistant dated 13 June 2016 (sent after the letter of 10 June had been received) the complainant stated:

- The letter of 10 June from the assistant was unacceptable.
- The complainant's letter of 24 May would have been ignored if she had not written her letter of complaint of 9 June.
- The assistant was part of a conspiracy.
- The letter of 9 June was a formal complaint and should be dealt with under the complaints policy.
- With regard to the assistant's comments that the Trust is not in a position to settle legal disputes the assistant was well aware of the facts of the judgement.

- The complainant was taking action to recover the money owed by the BBC.

The Director of the BBC Trust made the following points in a letter dated 16 June 2016:

- The Trust Unit had made enquiries of the BBC Executive and he understood that payment had been made.
- BBC TV Licensing had written to the complainant about this.
- As payment had been made, the Director of the BBC Trust hoped the complainant would agree that further action would not be necessary.
- The complainant's concerns were a matter for the BBC Executive in the first instance rather than the Trust as the BBC Executive was responsible for the BBC's operations, including litigation and television licensing. For that reason, the Trust Unit asked the BBC to respond to the substantive issue in the complainant's letter of 24 May 2016, addressed to the Chairman of the Trust, which was that payment from the BBC had not been received.
- The complainant's letter had not been seen by the Chairman, nor was she informed of its contents. Therefore, in the view of the Trust Director, an official complaint against the Chairman was not appropriate.
- The complaints procedure regarding complaints about Trustees or Trust Unit staff could be found at the following link:
http://www.bbc.co.uk/bbctrust/governance/complaints_framework/handling.html.
- The complainant's letter of 9 June was received after the letter of 10 June had been sent to the complainant.
- The letter of 24 May had been drawn to the Executive's attention on the day it was received by the Trust.
- The Trust did not settle legal disputes and the assistant was not aware of the contents of the judgement.
- He considered that the response from the Trust Unit dated 10 June 2016 was reasonable and constructive.
- If the complainant wished to make a complaint about the fact that her original correspondence was not responded to by the BBC and she did not receive a timely reply to the court judgement, then a complaint could be made by contacting the Head of BBC Revenue Management (contact details supplied).
- Complaints must start with the BBC Executive and could not start at the Trust unless they were about Trustees or Trust Unit staff. The complainant would be told at what point she could appeal to the Trust if she remained dissatisfied with the BBC's response.
- For completeness, he explained that the Director-General had a different address to the Trust.

Appeal

The complainant responded to the Director of the BBC Trust in a letter dated 20 June 2016. She made the following points:

- The Director's response was totally unacceptable.
- He had failed to investigate the matter despite claiming to have done so.
- At no point had the Director made reference to the personal injury caused to the complainant as a result of "your agents whose actions you are legally responsible for".
- There should be action taken against a number of people.
- She wished to lodge a formal complaint against the Director of the BBC Trust and required an independent body to investigate.

The Trust Unit replied and said that the matter would be passed to the Complaints and Appeals Board.

The Panel's decision

A panel of the Committee considered the points made by the complainant and the BBC.

Trustees noted that there was no independent body to investigate this matter. They agreed that the complaint against the Director of the BBC Trust was not admissible as it had no reasonable prospect of success.

This was because:

- The Royal Charter set out a division of responsibility between the BBC Executive and the BBC Trust and drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. The "operational management" of the BBC were specifically defined in Article 38, (1)(c) as duties which were the responsibility of the Executive Board. The Royal Charter also explained that the Trust must not exercise or seek to exercise the functions of the Executive Board. (Article 9, (3)). As explained by the Trust Director, the BBC Executive was responsible for BBC operations, including litigation and television licensing.
- They did not agree that the Trust Director had claimed to investigate the complainant's concerns yet failed to do so.
- The Trust Director had explained that the complaint would need to be addressed by the BBC Executive.
- The Trust Director's response was reasonable, accurately explained that the Trust was not in a position to settle legal disputes, and gave appropriate further information to assist the complainant in escalating her concerns.

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

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