

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

September & October 2014, issued January 2015

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Remit of the Complaints and Appeals Board

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

http://www.bbc.co.uk/bbctrust/assets/files/pdf/about/how_we_operate/committees/2011/cab_tor.pdf

All Trustees are members of the Board. At the time of these decisions, Richard Ayre was the Chairman. The duties of the CAB are conducted by Panels of the Board consisting of at least two Trustees, including the Chairman of the CAB and other Trustees as required. The Board is advised and supported by the Trust Unit.

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

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

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

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

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

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

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

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

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

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

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

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

Rejected Appeals

Appeals rejected by the CAB as being out of remit or because the complaints had not raised a matter of substance and there was no reasonable prospect of success.

BBC Worldwide partnership with the Sun

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

Complaint

The complainant considered that *The Sun* was not an appropriate partner for the BBC in relation to a *CBeebies Land* promotion.

Appeal

On 6 June 2014, the complainant appealed to the Trust against the decision of the General Counsel, BBC Worldwide, to dismiss his complaint that *The Sun* was not an appropriate partner for the BBC. The complainant made the following points.

- The General Counsel had failed to address the question why an Equality Impact Assessment ('EIA') had not been carried out, given:
 - the BBC's "*equalities and diversity framework*";¹
 - "*relevant Equality Act legislation*";² and
 - the issues of brand association with a newspaper and online application that promoted soft pornographic materials.
- The complainant requested clarification on the level of discussion within the BBC's Children's Division over the partnership between *CBeebies Land* and *The Sun* newspaper and *Sun+* application, which he described as the "*home of the Sun Page 3 back catalogue*".³
 - In his response of 8 May 2014, the Managing Director (UK & ANZ), BBC Worldwide, stated that the decision was taken in consultation with a Steering Group.
 - In response to the complainant's Freedom of Information ('FoI') request of 28 May 2014, the Chief Adviser, BBC Children's Division, stated "*no discussions took place in the Steering Group meetings on the subject of whether The Sun page 3 content made it suitable or not for a CBeebies Land promotion to take place*".
 - The BBC's response to the complainant's FoI request stated that there were no documents formally recording the position of BBC Children's Division in relation to BBC Worldwide, *The Sun* and Page 3. Given the absence of any definition of

¹ See: <http://www.bbc.co.uk/diversity/>; http://downloads.bbc.co.uk/diversity/pdf/Diversity_strategy_110523.pdf

² This is assumed to be a reference to the Equality Act 2010 and subordinate legislation. See: <http://www.legislation.gov.uk/ukpga/2010/15/contents>

³ <http://www.thesun.co.uk/sol/homepage/features/3227771/The-Sun-celebrates-40-years-of-Page-3-girls.html>

"pornography" in the BBC's Fair Trading Guidelines,⁴ this was a significant oversight.

- BBC Worldwide had not stated that it had used its right of prior approval of publicity and promotional material associated with BBC goods and services⁵ in relation to pictures of children with *Sun+* branded clothing/bags, or where, in order to obtain the relevant token, readers had to buy *The Sun* on days when there was a pornographic Page 3 feature. The exercise of the BBC's right of prior approval could have provided some mitigation.
- Given:
 - the significance of the (new, and first) *CBeebies Land* project;
 - that editorial judgment was one of the full range of decisions taken by an organisation,

an EIA should have been conducted, and editorial judgement subsequently exercised.

- Equality and Human Rights Commission ('EHRC') guidance stated that, in the development of "*policies*", there were legal requirements with regard to gender equality and EIAs. The EHRC guidance stated that "*policy*" needed to be understood broadly, as embracing the full range of functions, activities and decisions of the organisation – BBC Children's and BBC Worldwide being the responsible divisions. According to the EHRC, this included both current policies and policies under development.
- Paragraph 4.46 the Fair Trading Guidelines states that the BBC should only enter into partnership with organisations that are consistent with the BBC's brand values and that would not bring the BBC in to disrepute. Section V provides a list of organisations, activity with which could potentially undermine the BBC's editorial integrity, and states that the appropriateness of a given partner is an editorial issue – but, crucially, makes no reference to the need for the BBC's decision to be consistent with the Equality Act 2010, in terms of proportionality and relevance.
- The Fair Trading Guidelines state (in bold) that any activity involving a third party that could potentially undermine the BBC's editorial integrity must be referred in advance to the Editorial Policy department. Paragraph 4.65 gives a list of example organisations, including organisations involved in "*pornography*", which term is not defined in the guidelines. This element of the guidelines is therefore potentially open to varying interpretation, leading to inconsistency and a lack of equality in decision-making with regard to equality assessment.
- Noting that the Agreement between the Secretary of State for Culture, Media and Sport and the BBC ('the BBC Agreement') defined CBeebies as a channel providing a range of programming to educate and entertain very young children, the complainant asked whether page 3 of *The Sun* was, in the BBC's view, appropriate to CBeebies' target audience. Page 3, with its sexually suggestive nature, could arguably be considered obscene and to have a negative influence on children.
- There was no legal definition in UK law of "*pornography*". Pornographic material was considered "*obscene*" if it was judged to have "*a tendency to deprave and corrupt*"

⁴http://downloads.bbc.co.uk/aboutthebbc/insidethebbc/howwework/policiesandguidelines/pdf/fairtrading_guidelines_01081_2.pdf

⁵ Fair Trading Guidelines, para 4.26.

the intended audience. The complainant asked what definition of "*pornography*" was used in this instance. He was aware that only extreme- and child pornography were specifically defined in UK/Scots law. Without such a definition, the Fair Trading Guidelines appeared seriously flawed, lacked consistency of advice to relevant decision makers, and were a corporate dereliction of duty of care to employees and licence fee payers with respect to the BBC's values.

- Noting that the Fair Trading Guidelines had been in force since August 2012, the complainant requested confirmation of whether the guidelines had been subject to an EIA and, if so, whether "*pornography*" was defined in that assessment. Given the EHRC's suggestion that a review of the impact of a policy should be undertaken no later than one year after its introduction, the complainant asked whether the review that should have been conducted in August 2013 was available to staff involved in *CBeebies Land* discussions. The complainant requested the disclosure to him and the Trustees of any EIAs undertaken since the commencement of the Fair Trading Guidelines.
- The EHRC stated that, as a contribution to transparency, the process of assessments should be recorded. Records served to demonstrate that a genuine assessment had been carried out at a formative stage – although the complainant doubted that this had happened in the BBC's internal discussions.
- Failure to properly monitor the actual impact of an existing policy may leave a public authority open to legal challenge. The complainant had therefore copied his letter of appeal to the EHRC, requesting that it consider enforcement action.
- The complainant would welcome the Secretary of State's confirmation whether he had invoked paragraph (4) of Article 83 of the BBC Agreement.⁶ Paragraph (1) of Article 83 states that the Executive Board must make arrangements for promoting, in relation to the persons mentioned in paragraph (2), equality of opportunity (a) between men and women, and (b) between people of different racial groups. Paragraph (2) of Article 83 states that the persons referred to in paragraph (1) are persons employed in connection with any of the UK Public Services or making programmes for inclusion in any of those Services.

Decision of the Senior Editorial Complaints Adviser

The Senior Editorial Complaints Adviser ('the Adviser') carefully read the correspondence that had passed between the complainant and the BBC, and she acknowledged the strength of the complainant's feelings.

For the following reasons, the Adviser decided that the complainant's appeal did not have a reasonable prospect of success.

Choice of partner

The Adviser noted the allegation that *The Sun* was not an appropriate partner for the BBC.

The Adviser noted that Section V of the Fair Trading Guidelines ("*Appropriate partners for the BBC*") states:

⁶ "The Secretary of State may, by a direction to the BBC, amend paragraph (1) by adding any other form of equality of opportunity that the Secretary of State considers appropriate."

The assessment of 'appropriateness' of a given partner is an editorial issue governed by the BBC's Editorial Guidelines.⁷

The Adviser noted that, in its Stage 1 and 2 responses, BBC Worldwide confirmed that the decision to approve the promotional partnership required the application of professional editorial judgement.

The Adviser concluded that BBC Worldwide's choice of *The Sun* as a partner was an editorial decision.

The Adviser noted that Article 9(3) of the BBC's Royal Charter⁸ stated that the Trust must not exercise or seek to exercise the functions of the Executive Board, and that Article 38(1)(b) stated that the Executive Board was responsible for the direction of "*the BBC's editorial and creative output*". The Adviser noted that the Trust regarded editorial decisions as concerning the BBC's editorial and creative output, and as therefore falling beyond its remit. Consequently, as BBC Worldwide's choice of partner was an editorial decision, the Trust would not consider it unless it raised a potential breach of the Editorial Guidelines.

The Adviser noted that Appendix 5 to the Editorial Guidelines⁹ set out the guidelines on Editorial Integrity and Independence from External Interests, as applicable to BBC Commercial Services (including BBC Worldwide). Paragraph 4.9 of Appendix 5 states:

... It is important that any partnership arrangement involving an outside company does not suggest BBC endorsement of the company's products or services.

The Adviser noted that this requirement was echoed in paragraphs 4.8 (*Use of BBC brands: key principles*), 4.46 (*Partnership arrangements*) and 4.59 (*Joint promotions*) of the Fair Trading Guidelines.

The Adviser noted that, in his Stage 2 response, the General Counsel addressed the issue of endorsement as follows:

- The Fair Trading Guidelines state that joint promotions should not imply endorsement of third-party activities. This was achieved, for example, by ensuring clear brand separation.
- The BBC was sensitive to this requirement, and joint promotions with a wide range of partners were entered into on this basis. For example:
 - the joint promotion with *The Sun* was part of a concerted media campaign, focusing mainly on television;
 - BBC Worldwide had also worked with newspapers such as *The Guardian*, *Metro*, *The Times* and *The Daily Mail*.
- BBC Worldwide disagreed that the use of *The Sun* to promote *CBeebies Land* constituted an endorsement of *The Sun* or its editorial position, just as joint promotions with other organisations did not constitute an endorsement of them or their activities.

Having considered the complainant's and BBC Worldwide's arguments, together with the images provided by the complainant, the Adviser was satisfied that there was no evidence

⁷ Para 4.65.

⁸ http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/about/how_we_govern/charter.pdf

⁹ <http://www.bbc.co.uk/guidelines/editorialguidelines/page/guidelines-commercial-services-introduction/>

to suggest that BBC Worldwide's promotional partnership with *The Sun* implied endorsement of *The Sun's* activities.

The Adviser noted that paragraph 4.46 of the Fair Trading Guidelines stated that the BBC should only enter into partnerships with organisations that were consistent with the BBC's brand values and which would not bring the BBC into disrepute.

The Adviser noted that:

- in his Stage 1 response, the Managing Director described *The Sun* as a "*legitimate publication*";
- in his Stage 2 response, the General Counsel stated that:
 - BBC Worldwide was sensitive to the requirement that third-party organisations should be consistent with the BBC's brand values and not bring the BBC into disrepute; and
 - the complainant's opinion that *The Sun* promoted sexism and the objectification of women was one view – but there were others, and a very large number of licence fee payers were readers of *The Sun*.

In the Adviser's view, BBC Worldwide's appraisal of *The Sun's* consistency with the BBC's brand values, and its decision that the partnership would not bring the BBC into disrepute, were matters of editorial judgement concerning the appropriateness of *The Sun* as a partner, and were therefore beyond the Trust's remit.

The Adviser noted the complainant's assertion that (although the Fair Trading guidelines did not define "*pornography*")¹⁰ *The Sun* was an organisation "*involved in pornography*" within the meaning of paragraph 4.65. This implied that the partnership in question was an activity involving a third party that could potentially undermine the BBC's editorial integrity, and that the partnership should have been referred in advance to the Editorial Policy department.

In the Adviser's opinion, BBC Worldwide's decision that the joint promotion with the Sun was consistent with the BBC's brand values, that the Sun was an appropriate partner in this context and that it would therefore not bring the BBC into disrepute, were matters of editorial judgment concerning the appropriateness of *The Sun* as a partner. Unless this judgment involved a clear breach of these guidelines, it would fall beyond the Trust's remit.

The Adviser noted that the complainant had queried whether 'Page 3' of *The Sun* was appropriate to CBeebies' target audience.

The Adviser noted that:

- in his Stage 1 response, the Managing Director stated that the campaign was targeted at adults with young children who watched CBeebies, not the children themselves.
- In his Stage 2 response, the General Counsel stated that the fact that the promotion was aimed at adults, not children, was relevant, as all newspapers contained material that might not be suitable for young children.

¹⁰ 4.65 of the Fair Trading Guidelines which deals with the assessment of the 'appropriateness' of partners for the BBC, includes a list of examples of organisations that could potentially undermine the BBC's editorial integrity, which included 'organisations involved in pornography.'¹⁰

The Adviser concluded that the complainant's question was beside the point, as the promotion was not aimed at CBeebies' target audience.

For all these reasons, the Adviser concluded that BBC Worldwide's choice of *The Sun* as a partner did not raise a matter of substance and should not proceed for consideration by the Trustees. The Adviser also concluded that it would not be appropriate, proportionate or cost-effective for Trustees to consider this issue.

Equality Impact Assessments

The Adviser noted the allegation that EIAs should have been carried out in relation to (i) BBC Worldwide's partnership with *The Sun* and (ii) the Fair Trading Guidelines.

The Adviser noted that EIAs were one way of facilitating and evidencing a public authority's compliance with its Public Sector Equality Duty ('PSED') under section 149 of the Equality Act 2010, but were not required by law.¹¹ The Adviser noted that the BBC was subject to the Public Sector Equality Duty ('PSED') under section 149 of the Equality Act 2010, but only to the extent specified in the Act. In particular, the PSED did not apply—

- to any subsidiary of the BBC, unless it was wholly-owned by the BBC, was not operated with a view to making a profit, and was principally concerned with the delivery of the BBC's public purposes – and BBC Worldwide did not meet these criteria; and
- to the BBC (or a subsidiary) "*in respect of functions relating to the provision of a content service*" within the meaning of section 32(7) of the Communications Act 2003;¹² and while the scope of that exception was unclear, it probably applied to editorial decisions such as this one.

The Adviser noted that, in its Stage 2 response, BBC Worldwide stated that the BBC's Equality Analysis template was structured to ensure that the BBC paid due regard to equalities considerations in its "*major projects and policies*", and so would not be routinely used when making editorial decisions regarding BBC Worldwide's commercial activities. The Adviser also noted that the complainant had acknowledged that, according to the EHRC, EIAs were applicable at a policy (ie, a strategic) level.

The Adviser concluded that the PSED did not apply to the decision to make *The Sun* a partner; that even if it did apply, the use of EIAs was not mandatory; and that EIAs were applicable at a strategic, but not an operational, level. The Adviser could not therefore agree that EIAs should be undertaken in relation to day-to-day operational, commercial or – as in this instance – editorial decisions, as this was not required by law and was disproportionate and unfeasible.

The Adviser noted that the Trust had carried out an EIA of the Editorial Guidelines,¹³ but not of the Fair Trading Guidelines.¹⁴ However, the Adviser did not consider that the absence of an EIA of the Fair Trading Guidelines implied that the BBC was failing to meet

¹¹ See, eg: <http://www.parliament.uk/business/publications/research/briefing-papers/SN06591/the-public-sector-equality-duty-and-equality-impact-assessments>

¹² Equality Act 2010, Sch 19, Pt 1, as amended by the Equality Act 2010 (Public Authorities and Consequential and Supplementary Amendments) Order 2011, SI 2011/1060, Sch 1, para 2.

¹³ See: http://www.bbc.co.uk/bbctrust/governance/tools_we_use/diversity_equality/equality_impact_assessments.html; http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/our_work/editorial_guidelines/2010/eia.pdf

¹⁴ A list of EIAs published by the Trust can be found at:

http://www.bbc.co.uk/bbctrust/governance/tools_we_use/diversity_equality/equality_impact_assessments.html

its statutory obligations in this regard, as EIAs were not mandatory and were not the only way of demonstrating that the BBC had discharged its PSED.

For all these reasons, the Adviser concluded that, so far as it concerned EIAs, the complaint did not raise a matter of substance and should not proceed for consideration by the Trustees. The Adviser also concluded that it would not be appropriate, proportionate or cost-effective for Trustees to consider this issue.

Other issues

The Adviser noted the allegation that BBC Worldwide had not stated that it had used its right of prior approval of publicity and promotional material associated with BBC goods and services in relation to pictures of children with *Sun+* branded clothing/bags, or where, in order to obtain the relevant token, readers had to buy *The Sun* on days when there was a pornographic 'Page 3' feature.

The Adviser noted that:

- in his Stage 1 response, the Managing Director stated that all promotional activity undertaken by Merlin (owner of Alton Towers) in relation to *CBeebies Land* required BBC Worldwide approval, and that this was done in this instance; and
- in his Stage 2 response, the General Counsel stated "*In the case of the CBeebies Land joint venture with Alton Towers there was also a requirement for all marketing material to be subject to BBC Worldwide approval*".

The Adviser concluded that BBC Worldwide had confirmed to the complainant that it had exercised its right of prior approval. In the Adviser's view, if *The Sun* had published any promotional materials or images without BBC Worldwide's prior approval, that was a matter between BBC Worldwide and *The Sun*.

The Adviser noted that the complainant stated that he would welcome the Secretary of State's confirmation whether he had invoked Article 83(4) to amend Article 83(1) of the BBC Agreement. Though obviously the Adviser could not speak for the Secretary of State, the Adviser was able to ascertain that paragraph (1) of Article 83 had not been so amended. The Adviser also noted that, according to paragraph (2), Article 83 applied to BBC employees, not the general public. The Adviser therefore failed to see the relevance of Article 83 to this complaint.

For all these reasons, the Adviser concluded that these points of complaint did not raise a matter of substance and should not proceed for consideration by the Trustees. The Adviser also concluded that it would not be appropriate, proportionate or cost-effective for Trustees to consider these issues.

Request for review by Trustees

The complainant asked that Trustees review the decision of the Senior Complaints Adviser that the appeal should not proceed.

The complainant asked the Trust to exercise a number of duties which he considered applied to his case and were functions of the Trust as opposed to functions of the Executive.

He considered the Adviser's summary of his complaint to be "overtly subjective and in some aspects unreasonable. In his view it:

- solely focused on the newspaper
- dismissed the non-definition of pornography in the current Fair Trading Guidelines
 - he referred to the OED definition which he considered encompassed the page 3 feature and the p3.com back catalogue
 - he argued the policy was therefore subjective and left to individual editorial discretion or fettered in the implementation which would impact on issues of harm and offence in the BBC's Editorial Guidelines and the BBC's public body responsibilities under the Equality Act 2010
 - he said that as the BBC Fair Trading Guidelines do not include a definition of pornography, that there will be difficulty in applying the Guidelines consistently.
 - he said it was not transparent
- had not addressed the online version of the Sun (Sun+) a website which is the home of p3.com a back catalogue of page 3 features which allows users to spin the women featured by 360 degrees.
- had not addressed the use of children in Sun+ apparel in a newspaper beneath a headline containing a modified CBeebies logo/associated branding which others may view as an association or endorsement without clear supporting text in a newspaper on unregulated non age restricted public sale
- provided little justification for the Adviser's conclusions on the equality analyses issue in regards to editorial decisions especially in terms of how the BBC's compliance with public sector duties was demonstrated

He went on to argue that:

- without an Equality Impact Assessment on the Fair Trading guidelines and without a definition of pornography in those guidelines he could not see how they could be applied consistently and he was not clear that the decision had been taken correctly and in accordance with statute
- the BBC has clear Editorial Guidelines on harm and offence in regard to nudity, and he feels that they do not fit with the Sun's "semi-nude soft pornographic objectification solely of women either in print or online". He pointed out that the BBC has no control over the audience of a newspaper or consumption of the Sun's content by children, whether or not the promotion was aimed at adults.
- using a picture of a child in the promotion would be appealing to children.
- The swift dismissal of his query as 'besides the point' as to whether the page 3 content was appropriate for a CBeebies audience was unreasonable given the BBC's Editorial Guidelines on nudity and given the Adviser's statements [a referral to a stage1 reply] that the Sun was a legitimate publication which was consistent with the BBC's values and integrity.
- This was commercial involvement with an organisation which promotes soft pornography
- It was not possible to achieve brand separation given:
 - p3.com is part of the wider Sun+ website
 - Adverts on Facebook have included the Sun+ logo and CBeebies land logo
- The Adviser had ignored the discrepancy whereby Worldwide had said discussions had been undertaken in partnership with a working group including BBC Children's Division but the response to his FOI had said no discussions had taken place – whatever happened would have had an impact on an editorial decision.
- Common law suggested there was a duty to give reasons or explanation of Equality Analyses with regard to quasi-judicial decisions in relation to the Equality Act
- It was a breach of legitimate expectations to be led to believe that certain discussion had taken place or procedures will apply or provide the rationale for arriving at a decision in regard to the impact on protected groups. Nothing had ever explained how the BBC compliance with the public sector equality duty was

achieved. The Equality and Human Rights Commission advise it is good practice to record rather than just say it was an editorial decision.

- He felt 2.4 of the Editorial Guidelines (which addresses the concept of editorial justification) implied some form of formal recording for monitoring purposes and to ensure consistency
- The fact that the BBC's Fair Trading guidelines have not been subjected to an Equality Impact Assessment does not show that the BBC has due regard for protected groups. No reply has shown how the BBC had due regard for protected groups. This was possibly non complaint given the lack of a definition of pornography in relation to sex/gender discrimination
- The fact that there are worse things in newspapers did not seen a reasonable defence
- This was a precedent
- As a member of the public visiting CBeebies land he would assume that the promotion of CBeebies land had been subject to ethical and equality review. Fair Trading Guidelines should set out that public assets when used commercially should enable the achievement of public goals and w a wide ranging equality impact assessment should be undertaken for CBeebies land
- With regard to paragraph 82(3) of the BBC Agreement he wanted the BBC Trustees to require that equality is a core value in the next Charter

The Panel's decision

The Panel noted the complainant's appeal to the Trust, the reply from the Senior Complaints Adviser and the request to review the Senior Complaints Adviser's decision.

The Panel understood that the complainant felt extremely strongly that the decision to promote CBeebies land in the Sun and on-line was not appropriate as *The Sun's* page 3 and *p3.com* were, in his view, soft pornography.

The Panel noted all his reasons.

The Panel turned firstly to the application of the Fair Trading and Editorial Guidelines to the facts at hand. The Panel noted the key principles in the FTG on the use of BBC brands, which state that BBC brands should not be used in a manner that suggests endorsement of the activities a third party; or be associated with third parties which might affect the BBC's editorial integrity or potentially bring it in to disrepute (4.8).

The Panel also noted the specific Fair Trading Guidelines on partnerships (4.44-4.46); joint promotions (4.58-4.60); and associations between the BBC and third parties (4.64 & 4.65)—

- The BBC should only enter into partnerships with organisations that are consistent with the BBC's brand values¹⁵ and which would not bring the BBC into disrepute, while all off-air promotional activities by the BBC and its partner organisations should avoid the perception that the BBC is endorsing the third party's trading activities.
- For joint promotion activities, associations should not imply endorsement of third parties and third parties must be consistent with the BBC's brand values and not bring the BBC into disrepute.
- More generally, any activity involving a third party that could potentially undermine the BBC's editorial integrity must be referred, in advance to the Editorial Policy Department.

¹⁵ Editorial integrity, impartiality, quality and creativity

The Panel observed that the Fair Trading Guidelines stipulate that the assessment of 'appropriateness' of an association with a third party is an editorial issue governed by the BBC's Editorial Guidelines (4.65). Therefore the Panel also considered the Editorial Guidelines on independence from external interests applying to the Commercial Services (Appendix 5, EG). The Panel noted that these Guidelines seek to prevent Commercial Services arrangements with third parties which could undermine the BBC's editorial integrity, independence or impartiality, or suggest BBC endorsement of the third party's products or services.

The Trustees re-stated their role in considering such judgments. As the Adviser had noted, it was important to recognise in this context that the Executive is responsible for the direction of the BBC's editorial and creative output and its operational management (Articles 38(b) and (c) of the Charter) and that the Trust is prohibited from exercising the functions of the Executive (Article 9(3) Charter). This did not place such judgments 'beyond their remit', but rather the Trust would interfere only if there was a clear breach of rules or standards: they did not consider it was open to them simply to take a different view, and substitute their judgment for that of the Executive.

The Trustees noted that BBCW had identified the various Fair Trading and Editorial Guidelines relevant to the commercial services (noted above) and had clearly set out each of the factors it weighed in coming to its decision. They noted, too, that by conducting promotional activity through various outlets including *The Sun*, BBCW had sought to encourage visits to *CbeebiesLand* by children across a wide range of demographic groups. Trustees felt that BBCW's conclusion that this joint-promotion activity with *The Sun* did not suggest a BBC endorsement of *The Sun*, its editorial stance or activities; was consistent with the BBC's brand values; and did not undermine the BBC's editorial integrity or bring it into disrepute, was within the parameters of reasonable decisions open to it. Therefore, Trustees were of the view that if they took this matter on appeal, it would stand no reasonable prospect of success.

The Equality Act 2010

Trustees agreed with the Adviser that the BBC was subject to the Public Sector Equality Duty ('PSED') under section 149 of the Equality Act 2010, but only to the extent specified in the Act. In particular, the PSED did not apply—

- to any subsidiary of the BBC, unless it was wholly-owned by the BBC, was not operated with a view to making a profit, and was principally concerned with the delivery of the BBC's public purposes – and BBC Worldwide did not meet these criteria; and
- to the BBC (or a subsidiary) "*in respect of functions relating to the provision of a content service*" within the meaning of section 32(7) of the Communications Act 2003¹⁶.

While the scope of the second exception was imprecise, it possibly applied to decisions such as this one (including any involvement of Children's Division), which the FTG describe as "editorial". But Trustees concluded that they did not need to decide that question, as they did not believe that the duty was intended to be applied to every individual decision at an operational level. Accordingly, it could have no impact on the outcome of any appeal, and so the argument did not raise a matter of substance.

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

¹⁶ The Equality Act 2010 (Specific Duties) Regulations 2011, Schedule 1

Decision of BBC Audience Services not to respond further regarding a complaint about BBC Expenditure

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

Complaint

The complainant contacted the BBC on 18 June 2014 to raise his concern that the BBC Comedy Commissioning Editor had spent £120 on cupcakes "to reward staff for doing their job". He objected to this use of licence fee payers' money.

BBC Audience Services responded on 22 June 2014 stating:

"Purchases of flowers, champagne, and other gifts including entertainment and hospitality have been made on behalf of the BBC as an organisation to mark notable achievements, outstanding contributions and to support programme development."

The complainant was not happy with this response and made a follow-up complaint on 22 June 2014. He asked what 'notable achievement' this instance related to. He asked why the cakes had not been paid for out of the Commissioner's own money. He said he wanted the complaint investigated properly and also wished to take out a complaint against the Audience Services agent who had responded (in his view) flippantly to his original complaint.

Audience Services responded again on 6 July 2014 and apologised that their previous reply had not addressed the complainant's specific concerns. They said the issue had been raised as part of staff training. They made the following points of clarification in relation to the complainant's substantive concerns:

- Contrary to what was written in a newspaper article cited by the complainant, the cupcakes in question were not for BBC staff and were not bought by a BBC manager as a reward for staff, but had been bought for two different programme productions to wish them luck on their first day of filming
- The cakes were a small corporate gesture on behalf of the BBC to mark the occasion and were intended to foster relationships at the outset of the two projects
- As the cakes were a corporate gift on behalf of the BBC, it was appropriate for the Comedy Commissioning Editor to reclaim the expenditure from the BBC
- Audience Services appreciated that the complainant was unhappy with the premise of the BBC giving small gifts, but they felt it was appropriate to do so on some occasions

The complainant was not happy with this response. He felt that Audience Services had attempted to belittle and dismiss his complaint because he had used the word "staff". He made the following points in his further complaint on 7 July 2014:

- The BBC had used the licence fee to treat people who were already being paid for doing a job
- The BBC had already supported “programme development by encouraging the programme makers involved” by giving them the contract to produce the programmes
- If the Comedy Commissioning Editor wished to offer a further reward, he should have funded it himself. A ‘corporate gift’ was unnecessary and extravagant
- He said he wanted his complaint to be taken seriously and for the Comedy Commissioning Editor to repay the money he had claimed for the cupcakes

Audience Services sent a further response at Stage 1b on 21 July 2014 stating that they could not engage in further correspondence on the matter as they did not believe the complainant’s concerns raised a significant issue of general importance that might justify further investigation. They felt they had nothing further to add to their previous reply. They advised the complainant he could appeal against this decision.

Appeal

The complainant appealed to the BBC Trust on 21 July 2014 asking for his complaint to be investigated further. He said the matter had not been dealt with to his satisfaction and he believed the staff had been flippant and high-handed in their dealings with him.

Decision of the Senior Complaints Adviser

The Senior Complaints Adviser (the Adviser) carefully read the correspondence that had passed between the complainant and the BBC, and she acknowledged the strength of the complainant’s feelings.

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

With regard to the complainant’s concern about the claim for £120 for the purchase of cupcakes for production personnel, the Adviser noted that the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. “The operational management of the BBC” is specifically defined in the Charter (article 38, (1) (c)) as a duty that is the responsibility of the Executive Board, and one in which the Trust does not usually get involved unless, for example, it raised broader issues such as a breach of a station’s Service Licence. The Adviser considered that Trustees would be of the view that no evidence had been presented to suggest that such a breach had occurred.

Decisions relating to programme expenditure were day to day operational matters and the Adviser believed Trustees would consider that the purchase of cakes for a programme team on the first day of filming was an operational matter that rested with the Executive.

With regard to the handling of the complaint, the Adviser agreed that the initial response from Audience Services did not address the complainant’s specific concerns. She noted that in their subsequent, much more detailed, reply of 6 July 2014, Audience Services

apologised for this and sought to address the complainant's specific concerns. They clarified the position with regard to the expenditure on cupcakes, explaining that they were not bought for BBC staff, and their response had also stated:

"I'm sorry the reply you received didn't address your specific concerns. This has been raised as part of staff training."

The Adviser did not consider the tone of the detailed response was flippant and considered that Trustees would be likely to conclude that Audience Services had sought to give a reasoned and helpful response to the complainant. She did not consider she had seen evidence that suggested Audience Services had attempted to "belittle and dismiss" the complaint and she did not consider the complaint about complaint handling had a reasonable prospect of success. She considered that, following Audience Services' detailed response of 6 July 2014, Trustees would consider it appropriate for the BBC to say that it could not respond any further to the complainant's correspondence on this issue. Therefore she did not believe that the appeal had a reasonable prospect of success and she did not propose to put it before Trustees.

Request for review by Trustees

The complainant asked that Trustees review the decision of the Senior Complaints Adviser that the appeal should not proceed.

In his email of 18 September 2014, the complainant reasserted his view that the cupcakes were a gift to staff for doing a job for which they were already being paid. He commented that the cakes should have been paid for by the Comedy Commissioning Editor personally. He believed that claiming money back for them was a breach of licence fee payers' trust, and therefore, a matter for the Trust to consider.

The Panel's decision

The Panel noted the complainant's appeal to the Trust, the reply from the Senior Complaints Adviser and the request to Trustees to review the Senior Complaints Adviser's decision.

The Panel noted that the complainant felt that the handling of the complaint was flippant and dismissive, but did not agree. It noted that the second reply had been considered and had apologised for the shortcomings of the first reply.

The Panel acknowledged the importance of the Trust's role in ensuring that licence fee money is not wasted; there is a programme of regular Value For Money reviews which are conducted by the National Audit Office, to this end.

The Panel agreed that a decision to provide corporate gifts rests with the Executive. As the Royal Charter (article 38, (1) (c)) sets out "The operational management of the BBC" is specifically defined as a duty of the Executive Board, and one in which the Trust does not get involved.

The Panel agreed this was not a matter for the Trust. Trustees further agreed with the Adviser that it would be likely to conclude that BBC Audience Services had provided a reasoned and reasonable response to the complainant's concerns.

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

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

Decision of BBC Audience Services not to respond further regarding a complaint about Radio 2 scheduling changes

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

Complaint

The complainant contacted the BBC on 4 June 2014 to raise his concern about planned changes to the Radio 2 weekend schedule.

BBC Audience Services sent a consolidated response to all listeners who had submitted feedback about the planned changes, and apologised for the fact that the response might not address specific points in the manner each complainant would prefer.

The consolidated response included comments from the Radio 2 Controller, who explained the financial reasons for the changes and his thinking behind the editorial changes that had been made.

The complainant was not happy with this response and sent a follow-up complaint on 26 June 2014. He said the response was automated and identical to responses sent to others who had made their feelings about the changes known. He felt that kind of response was dismissive of the complaints. He also objected to the fact that he could not reply directly to the response but had to submit a further complaint via the BBC website.

Audience Services sent a Stage 1b response on 9 July 2014 stating that they could not engage in further correspondence on the issue as they believed they had responded as fully as they could and did not consider the points raised suggested a possible breach of standards. They acknowledged the complainant's frustrations at having to re-enter the same information into the complaints webform and explained that the BBC received more than a million contacts each year and needed to have a system that allowed them to be tracked and responded to appropriately – and the webform did that. The complainant was informed he could appeal against Audience Services' decision to close down the complaint.

Appeal

The complainant appealed to the BBC Trust on 29 July 2014. He reiterated his concerns and said he had been given various excuses for the changes, the primary one being cost savings.

He made the following points:

- He referred to the changes in presenters and in timings to particular shows that he disagreed with
- He asked for the cost savings in relation to the changes to particular shows
- He expressed his disappointment with the station controllers appointed since Jim Moir left Radio 2
- He appreciated that opinions varied and the issue was subjective but requested that a balance be brought to bear
- He complained about the handling of his complaint by Audience Services, stating that he found it rather insulting to be told that the decision had been

made and his complaint could go no further, and that there was not enough funding for the BBC to deal with the views of people like himself.

Decision of the Senior Complaints Adviser

The Senior Complaints Adviser (the Adviser) carefully read the correspondence that had passed between the complainant and the BBC, and she acknowledged the strength of the complainant's feelings and the thought the complainant had put into his consideration of the Radio 2 schedule. However, she decided that the complainant's appeal did not have a reasonable prospect of success.

The complainant had appealed on the substance of his complaint about Radio 2 scheduling changes. The Adviser noted, however, that BBC Audience Services had ceased handling this complaint at Stage 1 and that the complaint had not gone to Stage 2. She therefore decided that the point she should consider was whether an appeal against the decision of BBC Audience Services not to correspond further with the complainant had a reasonable prospect of success.

The Adviser noted that the complainant had received a consolidated response to his Stage 1a complaint which he felt was automated and did not address his specific concerns. The Adviser noted that Audience Services had apologised if complainants who received this response felt that their specific concerns were not addressed in the manner they would prefer. The Adviser noted that the BBC had stated that financial constraints lay behind the decision to make the scheduling changes, and the consolidated response – which also contained an explanation from the Controller of Radio 2 about the new schedule – was intended to respond to the key issues that had been raised and was being sent in the interest of an efficient use of the licence fee.

The Adviser acknowledged that the complainant did not feel that lack of financial resources was an appropriate reason either for a) the specific scheduling changes to which he objected, or b) the consolidated response he received at Stage 1a or the second Stage 1b response which explained that his complaint would not be investigated further.

The Adviser acknowledged that the complainant felt the BBC's explanation about cost cutting was inadequate because he considered that cost was not relevant to his substantive complaint about the moving of specific shows to different time slots. She sympathised with the complainant's feelings on this issue but noted that scheduling changes were a BBC operational issue. The Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. "The operational management of the BBC" is specifically defined in the Charter (paragraph 38, (1) (c)) as a duty that is the responsibility of the Executive Board, and one in which the Trust does not usually get involved unless, for example, it raised broader issues such as a breach of a station's Service Licence.

The Service Licence for BBC Radio 2 can be found here:

http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/service_licences/radio/2014/radio2_apr14.pdf

The Adviser did not consider that Trustees would be likely to conclude that there was evidence that the Service Licence had been breached. She noted that decisions relating to scheduling changes were day to day operational matters and were the responsibility of the BBC Executive.

She noted that the Stage 1a consolidated response included an apology in advance from the Executive that the complainant's specific concerns might not be addressed in the manner he would have preferred. She also noted that the BBC Complaints Framework states:

- 2.10. If the BBC receives a number of complaints about the same issue, it may:
 - 2.10.1. compile a summary of the range of issues raised;
 - 2.10.2. consider them together across the full range of issues identified;
 - 2.10.3. send the same response to everyone and/or it may publish it on the BBC's complaints website.

The Adviser noted that this was the procedure the Executive had adopted in this instance. She considered that the Executive's consolidated response was comprehensive and, while she acknowledged that the complainant considered that the issue of cost cutting need not affect the shows, she considered that these were operational decisions which rested with the Executive rather than the Trust.

She believed Trustees would consider that the consolidated response was reasoned and reasonable, and that it was appropriate for the BBC to say that it could not respond further to the complainant's correspondence on this issue.

She also noted that the complainant would have preferred to be able to respond directly to Audience Services following the Stage 1a response he received from them but instead had to submit a further complaint via the website. The Adviser understood that the reason Audience Services ask people to use the webform, even when replying to an email they have sent, is because of the sheer volume of audience contacts received and the need to ensure they can be efficiently tracked using the handling system. She appreciated this might be frustrating; however, the policy was designed to take into account what was operationally efficient and avoid the need to employ additional staff to process incoming emails.

For the complainant's information she attached a link to a report published by the Trust this year which tested the complaints system.

http://www.bbc.co.uk/bbctrust/news/press_releases/2014/mystery_shopping_2014.html

For these reasons the Adviser did not believe the appeal had a reasonable prospect of success and did not propose to proceed with it to appeal.

Request for review by Trustees

The complainant asked that Trustees review the decision of the Senior Complaints Adviser that the appeal should not proceed.

The complainant questioned how the licence fee paying public can have a say over decisions made by BBC Executives, whose salaries are funded by the licence fee, and urged the Trust to consider changing the position where the public have "no input or chance to question" scheduling decisions. He felt that listeners ought to be given notice ahead of suggested changes, to give them the chance to provide feedback. As the complainant could no longer listen live to his preferred shows, given the scheduling changes, he asked the Trust to investigate why the Radio iPlayer did not offer listeners the opportunity to retain programmes for 30 days after broadcast.

The Panel's decision

The Panel noted the complainant's appeal to the Trust, the reply from the Senior Complaints Adviser and the request to the Trustees to review the Senior Complaints Adviser's decision.

Trustees appreciated that the complainant had raised these issues because he enjoyed Radio 2 output and was concerned both that he could no longer hear his favourite shows live and that he had no say in the changes to the scheduling of those shows.

However, the Panel agreed with the Adviser that the complainant's concerns had received a reasoned and reasonable response from BBC Audience Services. They noted it had been clearly signposted that the response was going to multiple complainants and aimed to capture the main issues which had been raised. Accordingly, Trustees agreed that the complainant's appeal against the decision of BBC Audience Services not to correspond further did not have reasonable prospects of success.

The Panel also noted that decisions to make changes to the radio schedules are for the Executive alone. As the Royal Charter (article 38, (1) (b) and article 38, (1) (c)) sets out, "the direction of the BBC's editorial and creative output" and its "operational management" are specifically defined as duties of the Executive Board and ones in which the Trust does not get involved.

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

The Panel was pleased to note that programme downloads are now available for 30 days post-broadcast, rather than seven days, through Radio iPlayer as of 6 October 2014. It hoped this would be of some help to the complainant.

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

Decision of BBC Audience Services not to respond further regarding a complaint about the amount of sports coverage

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

Complaint

The complainant contacted the BBC on 17 July 2014 to express his concern at what he considered to be an excessive amount of sports coverage in BBC output.

He considered that the BBC did not: "acknowledge that there is a significant proportion of licence fee payers who are not interested in sport".

He considered there had already been too much coverage of Wimbledon and the World Cup and considered that BBC2 had been "turned into a golf channel".

Audience Services responded on 22 July 2014, stating:

"We certainly do acknowledge that not all licence payers are interested in sport, and make every effort to ensure our schedules appeal across a whole variety of interests. However, there is a very large audience for sport and the BBC as a public service broadcaster would be failing in its role if it did not cover the most notable sporting events of the year. Although it may not seem like it, the time allocated to sport in our schedules over the year is relatively modest within the context of the total hours we transmit, and many sports enthusiasts are disappointed about events we cannot acquire or about coverage they regard as insufficient."

The complainant was not happy with this response and made a follow-up complaint on 22 July stating:

"...claiming coverage is not unbalanced by averaging it over a year (as his response does) ignores the need for balance on a 'day to day' basis. It is simply not 'fair' to licence fee payers with no interest in sport to be denied anything that suits their interests for many hours and even days on end in order to cover sport (golf coverage was a recent and quite bizarre example).

Specific questions:

What 'day to day' limits do you impose on the percentage of broadcast time devoted to sport on BBC1 and BBC2 in order to ensure that licence fee payers with no interest in sport are being treated fairly?

What specific, concrete steps do you take during forward planning of broadcast schedules to ensure that licence fee payers with no interest in sport are catered for?

Is there anyone in the BBC with specific responsibility for protecting the interest of licence fee payers with no interest in sport? If not, why not?"

Audience Services acknowledged the follow-up complaint on 22 July 2014 but stated they could not engage in further correspondence on the issue because they felt they had responded as fully as they could and did not consider that the points raised suggested a possible breach of standards.

Appeal

The complainant appealed to the BBC Trust on 26 July 2014 against the decision by BBC Audience Services to close down the correspondence.

He said he was complaining about the handling of his complaint, stating that the BBC had failed to show it had policies, guidelines and mechanisms in place to deal with the issue he had raised.

He made the following points:

- The Stage 1a response missed the point by saying that sports coverage over a year was not excessive when he had made it clear in his complaint that his concern was about sports coverage at the time of his complaint.
- When he wrote a follow-up complaint, the specific questions he asked in that complaint were not answered.

In concluding his appeal the complainant also said that although his appeal was about complaint handling, he was still seeking satisfactory answers to the original complaint itself.

Decision of the Senior Complaints Adviser

The Senior Complaints Adviser (the Adviser) carefully read the correspondence that had passed between the complainant and the BBC. The Adviser acknowledged the strength of the complainant's feelings. However, she decided that the appeal did not have a reasonable prospect of success.

The Adviser noted that the complainant said he was appealing about the handling of his complaint. She noted that BBC Audience Services had ceased handling this complaint at Stage 1 and that the complaint had not gone to Stage 2. She therefore decided that the point she should consider was whether an appeal against the decision of BBC Audience Services not to correspond further with the complainant had a reasonable prospect of success.

The Adviser noted that the complainant felt the Stage 1a response from Audience Services did not address his concerns because they referred to the amount of sports coverage over the whole year and his concern was that there was too much sport being broadcast during the period in which he made his complaint.

The Adviser believed that Trustees would consider that it was reasonable to make reference to the amount of sports coverage over a year. She noted that the response also referred to the fact that

"... there is a very large audience for sport and the BBC as a public service broadcaster would be failing in its role if it did not cover the most notable sporting events of the year."

She noted that the scheduling of sports events involved operational decisions made by the BBC Executive. The Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. "The operational management of the BBC" is specifically defined in the Charter (article 38, (1) (c)) as a duty that is the responsibility of the Executive Board, and one in which the Trust does not usually get involved unless, for example, it raised broader issues such as a breach of a station's Service Licence. The BBC's television service licences can be found here:

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

The Adviser considered that Trustees would be of the view that there was no evidence to suggest that any of the Service Licences had been breached, and that decisions relating to scheduling of sports events were day to day operational matters for which the responsibility rested with the BBC Executive rather than the Trust.

With regard to the complainant's view that Audience Services had not addressed his specific questions made in his follow-up complaint, the Adviser noted that they were new points which he had not made in his original complaint. She noted that the BBC Complaints Framework states that when submitting a complaint at Stage 1b:

- 3.2: The BBC will not consider new points unless, exceptionally, it is necessary to do so in the interests of fairness.

The Adviser believed that Trustees would be of the view that the complaint did not warrant an exception to be made in this case.

She believed that Trustees would consider that Audience Services had provided a reasoned and reasonable response to the complaint, and that – in the interests of the efficient use of the licence fee – it was appropriate for Audience Services to say it could not engage in further correspondence on the issue. For these reasons the Adviser did not believe the appeal had a reasonable prospect of success and she did not propose to place it before Trustees.

Request for review by Trustees

The complainant asked that Trustees review the decision of the Senior Complaints Adviser that the appeal should not proceed. He considered her response had not considered specific points he had raised

- Did the BBC answer the actual complaint? (He did not complain about the amount of sports programming over the course of a year. Rather, he complained that the amount of sport being broadcast *around the time of his complaint* was excessive.)
- The BBC gave no detail as to how it protected the interests of licence fee payers who had no interest in sport

and was biased in the BBC's favour.

The complainant disagreed with the conclusion of the Adviser that the points raised in his second contact constituted 'new points', stating that he had simply pointed out that the first response from the BBC had not answered his complaint correctly – rather, it had answered a different complaint, which he had not made. He felt that the BBC had ceased responding before answering his actual complaint properly, which he felt to be curt and dismissive.

The Panel's decision

The Panel noted the complainant's appeal to the Trust, the reply from the Senior Complaints Adviser and the request to Trustees to review the Senior Complaints Adviser's decision.

The Panel agreed with the Adviser that the complainant's concerns had received a reasoned and reasonable response from BBC Audience Services.

Trustees noted that the BBC had said:

"... there is a very large audience for sport and the BBC as a public service broadcaster would be failing in its role if it did not cover the most notable sporting events of the year."

This alluded to the coverage at the time at which he complained. The Panel noted that any broadcaster which is successful in acquiring rights for a major sporting event such as Wimbledon or the World Cup is required to cover a high proportion of the action over the course of the tournament in order to fulfil its contractual obligations. In the Panel's view the BBC's explanation of the amount of sports coverage over the course of the year was reasonable, despite the complaint specifically describing the sports coverage he had considered was excessive (Golf on BBC2) around the time of the complaint.

Accordingly, Trustees agreed that the complainant's appeal against the decision of BBC Audience Services not to correspond further did not have reasonable prospects of success.

The Panel also noted that decisions about how much sport to broadcast is for the Executive alone. As the Royal Charter (article 38, (1) (b) and article 38, (1) (c)) sets out, "the direction of the BBC's editorial and creative output" and its "operational management" are specifically defined as duties of the Executive Board and ones in which the Trust does not get involved.

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

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

Decision of BBC Audience Services not to respond further regarding a complaint about the “Strictly Come Dancing” show title

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

Complaint

The complainant wrote to express his concern about the title of the programme *Strictly Come Dancing*.

Audience Services wrote to the complainant on 16 April 2014 and, following a further letter from the complainant, wrote again on 16 May 2014. They acknowledged the complainant's concern that the word “strictly” was not an accurate description of the dancing on the programme.

They assured the complainant that his comments had been entered into the daily document of audience feedback which was made available to staff throughout the BBC, including the *Strictly Come Dancing* team and members of senior management.

Following further correspondence Audience Services wrote on 26 June 2014 stating that they believed they had responded to the complaint as fully as they could and would not be entering into further correspondence on the issue as they did not consider the points raised suggested a possible breach of standards.

Appeal

The complainant appealed to the BBC Trust on 28 July 2014. His appeal consisted of a copy of the first letter of complaint he had submitted to the Chairman of the Trust, and also the letter dated 7 June which he sent to Audience Services.

Decision of the Senior Complaints Adviser

The Senior Complaints Adviser (the Adviser) carefully read the correspondence that had passed between the complainant and the BBC, and she acknowledged the strength of the complainant's feelings. However, she decided that the appeal did not have a reasonable prospect of success.

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

The Adviser noted that the choice of title for a programme was an editorial decision taken by the programme producers. She noted that the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. “The direction of the BBC's editorial and creative output” was specifically defined in the Charter (article 38, (1) (b)) as a duty that is the responsibility of the Executive Board, and one in which the Trust does not get involved unless, for example, it related to a breach of

the BBC's editorial standards, which did not apply in this case. Decisions relating to the choice of programme title fell within the "editorial and creative output" of the BBC and were the responsibility of the BBC Executive.

The Adviser noted that the complainant felt very strongly about the programme title, and she considered that Audience Services had responded reasonably by assuring him that his feedback had been documented and would be made available to the programme team and other senior members of BBC management.

She acknowledged the complainant's comments that constructive feedback should be "embraced and learnt from" and she felt that by acknowledging his feedback, the BBC had responded appropriately. Any change of title would be an editorial decision for the producers to consider as part of their editorial and creative decision making process. Audience Services had explained that audience feedback may be used to assist in the shaping of future programming and content.

The Adviser believed that Trustees would be of the view that Audience Services had provided a reasoned and reasonable response to the complaint, and would consider it appropriate for Audience Services to state that they could not engage in further correspondence on the issue. For these reasons the Adviser did not believe the appeal had a reasonable prospect of success and did not propose to proceed with it to appeal.

Request for review by Trustees

The complainant asked that Trustees review the decision of the Senior Complaints Adviser that his appeal should not proceed for consideration.

In his challenge of the Senior Complaints Adviser's decision, the complainant reiterated that he felt there was no problem posed by a change in programme title, which excluded or changed the word "strictly".

The Panel's decision

The Panel noted the complainant's appeal to the Trust, the reply from the Trust's Senior Complaints Adviser and the challenge to the Senior Complaints Adviser's decision.

The Panel noted that the choice of programme title would be for the Executive to decide. As the Royal Charter (article 38, (1) (b) and article 38, (1) (c)) sets out, "the direction of the BBC's editorial and creative output" and its "operational management" are specifically defined as duties of the Executive Board and ones in which the Trust does not get involved, unless, for example, they relate to a breach of the BBC's standards. In this case, the Panel did not consider the complainant had raised any evidence that the show's title had breached the BBC's standards, and therefore the Panel did not consider that his complaint raised a matter for the Trust.

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

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

Decision of BBC Audience Services not to respond further regarding a complaint about the accents of Welsh news presenters

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

Complaint

The complainant contacted the BBC on 3 June 2014 to express her concern that the vast majority of Welsh news presenters at the BBC spoke with North Wales accents. She asked why there were no Welsh presenters who spoke with South Wales or anglicised accents.

Audience Services responded on 9 June 2014 stating:

"...we have an obligation to reflect the whole of UK society which includes the many accents and cultures that make up the population. In selecting presenters and other contributors for our programmes and staff to work at the BBC we aim to employ those with the most suitable talents for the role."

The complainant asked the BBC to justify its claim that it selected presenters with the most suitable talents for the role regardless of whether they were Welsh speakers or non-Welsh speakers. She asked for information about how many non-Welsh speakers applied for posts with the BBC in Wales.

Audience Services sent a Stage 1b response to the complaint on 26 June 2014 stating:

"We regret that providing information regarding people who apply for jobs at the BBC is not a service that we provide. Once again, we would like to assure you that all our presenters are chosen on the basis of their talent, experience and suitability for the role. We do not discriminate against non-Welsh speakers."

Audience Services also stated in this response that they could not engage in further correspondence on the issue as they felt they had responded as fully as they could and did not believe the points raised by the complainant suggested a possible breach of standards.

Appeal

The complainant made the following points in her appeal to the BBC Trust:

- She felt her complaint had been dismissed without adequate investigation and she believed that was inconsistent with the BBC complaints procedure
- She believed there was an imbalance between the numbers of Welsh and non-Welsh speaking news presenters at the BBC and that this was a significant issue which needed to be addressed
- In support of her appeal she referenced the BBC's Diversity Strategy document of April 2011 which stated that the BBC would "talk to our diverse audiences so we're aware of what they like, want and need when developing new programmes and services"
- She believed the BBC's recruitment policies were problematic in the context of diversity, equality and transparency.

The complainant stated that in the 1970s and 1980s presenters' jobs in Wales were advertised in Welsh only; consequently only Welsh-speaking candidates were appointed. Although vacancies were now being advertised in English also, a Welsh-speaking monopoly still existed at the BBC. The complainant believed that, given that 80% of the population of Wales was non-Welsh-speaking, the majority of licence fee payers in Wales were not being represented.

She believed the BBC was in breach of standards in the context of equal opportunities as the demographic in which recruitment took place in Wales was inappropriately restricted.

She believed that in the interests of transparency, the BBC should be prepared to reveal the relevant statistics.

Decision of the Senior Complaints Adviser

The Senior Complaints Adviser (the Adviser) carefully read the correspondence that had passed between the complainant and the BBC, and she acknowledged the strength of the complainant's feelings. However, she decided that the appeal did not have a reasonable prospect of success.

The complainant appealed on the substance of her complaint about her belief that the BBC discriminated in favour of Welsh-speaking presenters. She also appealed on the issue of complaints handling. The Adviser noted, however, that BBC Audience Services had ceased handling this complaint at Stage 1 and that the complaint had not gone to Stage 2. She therefore decided that the point she should consider was whether an appeal against the decision of BBC Audience Services not to correspond further with the complainant had a reasonable prospect of success.

With regard to the substantive complaint about the number of non-Welsh-speaking BBC presenters, the Adviser noted that the complainant referred to the BBC's Diversity Strategy document of April 2011 (http://downloads.bbc.co.uk/diversity/pdf/diversity_strategy_research_report.pdf#zoom=100) which stated that the BBC would "talk to our diverse audiences so we're aware of what they like, want and need when developing new programmes and services".

The Adviser noted that Audience Services had explained to the complainant that her comments had been logged and that this log would be circulated to senior BBC management. Audience Services had also explained that complaints were a source of valuable feedback when it came to developing future strategies and shaping future BBC programmes and services. She noted the complainant's comments, "While it is commendable whenever the BBC attempts to research its audiences, it would be more to the credit of the organization were it to commit to its own findings". The Adviser considered that Trustees would be of the view that no evidence had been presented to suggest that the BBC was not committed to its own findings with regard to its diversity strategy.

The Adviser noted that the choice of presenters was an operational decision by the BBC Executive. She noted that the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. "The operational management of the BBC" is specifically defined in the Charter (article 38, (1) (c)) as a duty that is the responsibility of the Executive Board, and one in which the Trust does not usually get involved unless, for example, it raised broader issues such as a breach of a station's Service Licence. The BBC Service Licences can be found here

http://www.bbc.co.uk/bbctrust/governance/tools_we_use/service_licences_reviews.html

However, the Adviser considered that Trustees would be of the view that there was no evidence that any of the Service Licences had been breached.

The Adviser noted that Audience Services had explained the BBC's recruitment strategy in the Stage 1a response of 9 June 2014:

"...we have an obligation to reflect the whole of UK society which includes the many accents and cultures that make up the population. In selecting presenters and other contributors for our programmes and staff to work at the BBC we aim to employ those with the most suitable talents for the role."

The Adviser acknowledged that the complainant would have preferred to be given access to the statistics she had requested in order to make up her own mind about whether the BBC was in breach of standards, but she noted that the BBC was not under an obligation to provide such figures. She noted that the BBC aimed to employ those with the most suitable talents for the role regardless of accent. She acknowledged the complainant's comments about the available 'pool' of experienced Welsh applicants in the context of legacy from a recruitment policy dating back to the 1970s and 1980s, but as with many other aspects of equal opportunity, policies – and career opportunities – had evolved over the decades. The BBC's current diversity policy aimed to improve diversity awareness in all areas, including recruitment. Audience feedback, as acknowledged by Audience Services in its response to the complaint, had an important part to play in helping to shape future operational and creative policies.

The Adviser considered Trustees would be of the view that Audience Services had provided a reasoned and reasonable response to the complaint. She believed that Trustees would be of the view that it was appropriate for Audience Services to say it could not respond any further to the complainant's correspondence on this issue.

For the reasons set out above the Adviser did not believe the appeal had a reasonable prospect of success and she decided it should not proceed further.

Request for review by Trustees

The complainant asked that Trustees review the decision of the Senior Complaints Adviser that her appeal should not proceed for consideration.

In her request to Trustees to review the Senior Complaints Adviser's decision, the complainant stated that the BBC ought to make recruitment statistics available to licence fee payers so that they can decide if editorial standards have been breached, rather than issue a flat denial. The complainant reiterated that she felt there is an imbalance between Welsh-speaking and non-Welsh-speaking News presenters, and asked again for statistics to be provided.

The Panel's decision

The Panel noted the complainant's appeal to the Trust, the reply from the Trust's Senior Complaints Adviser and the challenge to the Senior Complaints Adviser's decision.

The Panel was aware that the Trust annually publishes its observations on the effectiveness of the BBC Executive's arrangements for promoting equal opportunities in employment. Trustees noted the complainant's assertion that an historic imbalance in

recruitment had occurred which favoured Welsh-speakers but agreed it had not seen any evidence to suggest that the BBC was failing to recruit in accordance with the law in Wales.

The Panel noted that decisions regarding the employment of staff, including on-air presenters, are operational matters which are a responsibility of the Executive Board (Royal Charter, article 38, (1) (c)).

Trustees agreed with the Adviser that BBC Audience Services had provided a reasoned and reasonable response to the complainant's concerns.

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

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

Decision of BBC Audience Services not to respond further regarding a complaint about the use of offensive language in an out-take

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

Complaint

This complaint related to a clip published by the *Mirror* on 1 May 2014. It was filmed during the making of a *Top Gear* programme in 2012 but never broadcast. The clip showed Jeremy Clarkson reciting the nursery rhyme Eeny, Meeny, Miny, Moe as he attempted to choose between two cars. The rhyme, in its traditional form, included a word now generally recognised to be racially offensive. Mr Clarkson was heard mumbling at that point in the rhyme and it was unclear whether he said the word or not. Jeremy Clarkson subsequently released a film in which he set out his recollection of what happened. This stated that he had not used the offensive word but, in reviewing the footage that had been filmed, was concerned as it appeared unclear as to whether he had used the word. He apologised that the efforts he had made to not use the word had not been sufficient.

The complainant believed that Jeremy Clarkson had not received natural justice.

He contacted the BBC on 12 May 2014. He posed several questions related to the publication of the clip:

- "Is the BBC actively trying to discover who leaked this story?"
- "If it proves to be a member of the BBC staff will they be subject to the disciplinary procedure?"

In relation to the BBC statement: "Jeremy Clarkson has set out the background to this regrettable episode. We have made it absolutely clear to him the standards the BBC expects on air and off. We have left him in no doubt about how seriously we view this", the complainant asked:

- "Does the BBC make it clear to all staff ... what standards are expected of them or is the above specific to Jeremy Clarkson after the event?"
- "What is the BBC policy on staff that make unauthorised leaks other than to the appropriate authorities?"

Following errors by the BBC in replying to this complainant and further exchanges of correspondence, Audience Services stated:

"With regard to your original enquiries, I have to inform you we can't discuss internal investigations or disciplinary procedures and would not be able to provide the information you requested."

...

"We are not prepared to comment on the subject of how this footage was leaked."

The complainant remained dissatisfied and renewed his complaint. On 22 July BBC Audience Services stated that they had nothing to add to their previous reply. They did not believe the complaint had raised a significant issue of general importance that might justify further investigation and they would not therefore correspond further in response

to additional points, or further comments or questions, made about this issue or their responses to it.

Appeal

The complainant appealed to the BBC Trust on 18 August. The complainant appealed on the substance of his complaint. He stated:

“The BBC’s position is that because the questions I posed relate to the disciplinary procedure and an internal investigation they are unable to answer. Whilst that may be reasonable when it concerns an entirely internal BBC matter there will be occasions when there is an overriding public interest in full disclosure and, in my view, this is just such an occasion.”

In addition, the complainant raised several other issues. Referring to an article published on the BBC News website on 2 May 2014 he asked that the BBC Trust should ensure that:

“BBC reporters and editorial staff should treat all news items in the same way even when it involves stories about itself.

“When publishing facts there should be balanced disclosure. (e.g. If the number of complaints is quoted then so should the number of letters of support).”

The complainant added:

“When an internal investigation or the disciplinary procedure may be prejudiced by leaked BBC material he [Director-General] must give serious consideration to asking for the matter to be overseen by someone independent of the BBC.

“When issuing a statement it must not have any element of obfuscation and should give a brief outline of the facts upon which it is based.

“Objectivity and truth are overriding factors as against not bringing the BBC into disrepute.”

The Adviser noted, however, that BBC Audience Services had ceased handling this complaint at stage 1 and that the complaint had not gone to stage 2. She therefore decided that the point she should consider was whether an appeal against the decision of BBC Audience Services not to correspond further with the complainant had a reasonable prospect of success.

Decision of the Senior Complaints Adviser

The relevant correspondence was reviewed by the Trust Unit. The Senior Complaints Adviser (the Adviser) carefully read the correspondence that had passed between the complainant and the BBC and she acknowledged the strength of the complainant’s feelings. However, she decided that the complainant’s appeal did not have a reasonable prospect of success.

The Adviser noted that the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. “The operational management of the BBC” is specifically defined in the Charter (paragraph 38, (1) (c)) as a duty that is the responsibility of the Executive Board, and one in which the Trust does not

usually get involved unless, for example, it raised broader issues such as a breach of a station's Service Licence.

She considered the original questions posed by the complainant. She noted the response from the BBC – namely, that they were not prepared to comment on questions related to the leaked footage. She considered it reasonable that the BBC should refuse to discuss, or release, any information related to internal investigations or disciplinary procedures.

The Adviser noted that the complainant had raised other issues in his appeal including those which related to a bbc.co.uk news article. However, she noted that the complaints framework made clear that all aspects of a complaint had to be raised at Stage 1 (that is, had to be raised initially with the BBC) and that the Trust could only consider complaints which the BBC had already responded to. She considered this requirement was made with good reason as it was intended to allow complaints to be considered firstly by those who were nearest to the output and allowed them to be answered in a timely and efficient way. She also considered that the purpose of this appeal was to examine whether the decision of Audience Services not to correspond further with the complainant on points already raised at Stage 1 was reasonable.

The Adviser considered Trustees would be likely to conclude that BBC Audience Services had gone on to give a reasoned and reasonable response to the complaint and had acted appropriately in declining to enter into further correspondence. She therefore did not consider the appeal had a reasonable prospect of success and did not propose to put it before Trustees.

Request for review by Trustees

The complainant asked that Trustees review the decision of the Senior Complaints Adviser that his appeal should not proceed for consideration.

In his challenge of the Senior Complaints Adviser's decision, the complainant stated that it took the BBC two months and a lengthy exchange of emails before they provided details of how to pursue his complaint further, and that it was during the course of this delay that further issues came to his attention [an article of 2 May]. He therefore indicated he thought it unfair that the further issues raised could not be considered by the Trust on the grounds they had not been considered by the Executive and asked if the BBC was wrong at Stage 1 to refer him to the Trust.

The Panel's decision

The Panel noted the complainant's appeal to the Trust, the reply from the Trust's Senior Complaints Adviser and the challenge to the Senior Complaints Adviser's decision.

The Panel regretted the time it had taken for the complainant to receive a reply concerning his initial complaint.

The Panel noted that the decision concerning what action should be taken regarding any alleged leak of material, and any disciplinary action that might be taken against any member of staff, are solely for the Executive to take. As the Royal Charter (article 38, (1) (b) and article 38, (1) (c)) sets out, "the direction of the BBC's editorial and creative output" and its "operational management" are specifically defined as duties of the Executive Board and ones in which the Trust does not get involved.

The Panel did not consider that this complaint raised a matter for the Trust.

The Panel noted that in his appeal to the Trust dated 18 August the complainant had raised new issues concerning both a BBC news online article published on 2 May and the BBC's statement about the matter. Trustees noted that the complainant was within time to complain about this article when he first complained to the BBC on 12 May. They also noted that he referred to the BBC's statement in his initial letter but had not raised the new points he had now mentioned on appeal. They noted the general complaints procedure explains that:

"Your complaint should also include all of the points about the item that you wish to be considered as the BBC may not consider new or different points after Stage 1a of the Procedure has concluded."

The Panel agreed that the Trust's Adviser was correct to say that issues should be raised at Stage 1a as set out in the complaints' procedures and could not be included later in the process.

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

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

Decision of BBC Audience Services not to respond further regarding a complaint about The One Show misleading viewers over the coverage of the Commonwealth Games

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

Complaint

The complainant contacted BBC Audience Services on 23 and 24 July 2014. He stated he was unhappy that the BBC had not covered a Lulu concert which had taken place in Glasgow on the same evening as the opening ceremony of the Commonwealth Games:

"The previous evening Lulu was on The One Show and they said she would be at the concert. The BBC had no footage of this concert; her concert was part of the opening ceremony."

He added that Lulu's concert could have been recorded and broadcast later or on another occasion.

BBC Audience Services stated on 29 July that Lulu had appeared at a separate venue and was not part of the official opening ceremony event that was covered by the BBC at Celtic Park. They provided a link to the BBC website which carried more details about that event.

The complainant responded the same day, registering his dissatisfaction and stating that he thought the BBC had misled viewers by not making it clear from the outset that Lulu's concert would not be included in the transmission:

"She did appear on The One Show the night before the games started, and even then there was no mention that her performance would not be transmitted."

He stated that he was a huge fan of Lulu's and would have travelled to see the concert if he had been aware that the BBC was not going to broadcast it. BBC Audience Services sent a further response on 5 August which stated:

"Matt Baker did state that Lulu was part of the festivities for the Commonwealth Games, but did not state that she was part of the opening ceremony the next day. He asked Lulu what she would be doing, and she clearly stated that she had a gig at the Glasgow Green for the following night. We were responsible for broadcasting the opening ceremony for the Games, but would not have been responsible for covering other events connected to the event."

The BBC provided a link to the BBC iPlayer which showed the closing ceremony of the Games in which Lulu had performed.

The complainant responded repeating his view that the BBC could have been clearer on *The One Show*.

On 18 August BBC Audience Services stated they had nothing to add to their previous reply. They concluded that the complaint had not raised a significant issue of general

importance that might justify further investigation and they were therefore unable to engage in further correspondence on the issue.

Appeal

The complainant appealed to the BBC Trust on 19 August. The complainant appealed on the substance of his complaint, that *The One Show* had misled viewers by suggesting that a Lulu concert would be broadcast as part of the BBC's coverage of the Commonwealth Games opening ceremony. The Adviser noted, however, that BBC Audience Services had ceased handling this complaint at stage 1 and that the complaint had not gone to stage 2. She therefore decided that the point she should consider was whether an appeal against the decision of BBC Audience Services not to correspond further with the complainant had a reasonable prospect of success.

Decision of the Senior Complaints Adviser

The relevant correspondence was reviewed by the Trust Unit. The Senior Complaints Adviser (the Adviser) carefully read the correspondence that had passed between the complainant and the BBC and viewed the relevant section of *The One Show*. She acknowledged the strength of the complainant's feelings and understood he had been very disappointed that the Lulu concert had not been broadcast on the BBC. However, the Adviser decided that the complainant's appeal did not have a reasonable prospect of success.

The Adviser noted that the interview with Lulu on *The One Show* stated:

Matt Baker: You're not just here to talk to us are you because you are indeed involved in the festivities running up to the Games. Talk us through what you're doing tomorrow.

Lulu: I've got a gig tomorrow night at the Glasgow Green so if you hadn't planned...didn't plan already on coming you should come on down....

The Adviser noted that the complainant had said he believed *The One Show* had given viewers the impression that Lulu was performing as part of the opening ceremony and that he had assumed from this that her performance would be broadcast as part of the BBC's coverage.

She noted that the BBC had explained in their responses that Lulu was not appearing in the opening ceremony but at a separate event taking place on the same night. The BBC did not believe that this had given viewers the impression that the concert in which Lulu was appearing at Glasgow Green would be broadcast.

The Adviser agreed with the BBC that *The One Show* had not suggested that Lulu was performing at the opening ceremony in Celtic Park but had said during the interview that her concert was at a different venue, Glasgow Green. Neither the presenter of the programme nor Lulu herself suggested that the concert would be either broadcast live or recorded for broadcast at a later time or date. The Adviser considered that Trustees would be likely to conclude that *The One Show* had not misled viewers by suggesting that Lulu's concert would be shown by the BBC.

In terms of whether or not the BBC should have recorded the Lulu concert for later broadcast the Adviser noted that the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. "The

direction of the BBC's editorial and creative output" was specifically defined in the Charter (paragraph 38, (1) (b)) as a duty that was the responsibility of the Executive Board, and one in which the Trust did not get involved unless, for example, it related to a breach of the BBC's editorial standards, which did not apply in this case. Decisions relating to recording and broadcasting individual programmes fell within the "editorial and creative output" of the BBC and were the responsibility of the BBC Executive.

The Adviser therefore 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 the appeal had a reasonable prospect of success and did not propose to put it before Trustees.

Request for review by Trustees

The complainant asked that Trustees review the decision of the Senior Complaints Adviser that his appeal should not proceed for consideration.

The complainant maintained that the BBC could have broadcast the concert, and kept licence fee payers better-informed. The BBC did not make it clear they were not going to broadcast the concert. He stated that he knew of another person who was also under the impression that the BBC was broadcasting the concert. He asked that Trustees consider the complaint so that "the BBC can be given the opportunity to admit they were wrong".

The Panel's decision

The Panel noted the complainant's appeal to the Trust, the reply from the Senior Complaints Adviser and the challenge to the Senior Complaints Adviser's decision.

The Panel agreed with the Adviser that the complainant's concerns – that the BBC ought to have made it clearer that the Lulu concert was not being broadcast – had received a reasoned and reasonable response from BBC Audience Services.

The Panel also noted that a decision as to whether to offer coverage of a concert would be for the Executive alone. As the Royal Charter (article 38, (1) (b) and article 38, (1) (c)) sets out, "the direction of the BBC's editorial and creative output" and its "operational management" are specifically defined in the Charter as a duty of the Executive Board and one in which the Trust does not get involved.

Trustees agreed that the complainant's appeal against the decision of BBC Audience Services not to correspond further did not have reasonable prospects of success.

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