

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

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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; Richard Ayre is Chairman and Mehmuda Mian is Vice Chairman. The duties of the CAB are conducted by Panels of the Board consisting of at least three Trustees, including either the Chairman of the CAB or the Vice 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.

Fair Trading

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

The Panel's decision

The Panel considered an appeal from the Advertising Producers Association ("APA") against the Trust Unit's decision not to proceed with a fair trading appeal. The APA's original fair trading complaint to the BBC Executive, and its appeal to the Trust, related to the alleged negative competitive impact on APA's members of a ten year "exclusive" agreement ("the agreement") dating from 2005 between the BBC and Red Bee Media which covered the production of trails and promotional material for BBC television programmes.

The Panel was provided with the following documents:

- Email from APA appealing decision by Trust Unit not to proceed with fair trading appeal
- Trust Unit decision letter to APA
- Trust Unit appeal assessment (attached to letter above)
- APA appeal to Trust against BBC Executive's decision not to uphold APA's fair trading complaint
- BBC Executive's fair trading complaint investigation report
- APA fair trading complaint to BBC Executive.

Members of the Panel confirmed that they had read the documentation.

The Panel noted the three key aspects of the Trust Unit's analysis, as measured against the Trust's fair trading and complaints procedure and its fair trading policies and framework, namely:

- Whether the appeal raised a matter of substance
- Whether the appeal stood a reasonable chance of success were it to be pursued, and
- Whether the appeal had been made within the time limits.

In addressing the first two considerations the Panel noted that the central allegation was that the contractual arrangement between the BBC and Red Bee Media was in breach of the Trust's Competitive Impact Principle ("CIP"). The Panel noted that the contract predated the creation of the Trust and its development of the CIP, but it also considered whether, had the CIP been in place, the contractual arrangement between the BBC and Red Bee Media could be deemed to be in breach of the principle. The Panel considered the circumstances of the original contract award, the scale of the effect of the contract on the overall market and the stage in the life of the contract. The Panel also noted from the documents provided that the core arguments advanced in the appeal had not changed since the earlier stages in the process and that no additional evidence had been submitted in the appeal.

The Panel took the view that, while the appeal raised some interesting questions about how the BBC ensures that the contract delivers value for money for licence fee payers, it did not raise any material fair trading issues and would not, if the Panel called for a full investigation, be likely to succeed.

The Panel noted that the appeal fell significantly outside the Trust's published time limits and that the appellant had submitted an explanation of why this was the case. The Panel was not persuaded as to the reasons for delay, concluding that if the appellant had wished to delay an appeal pending further necessary information it could have advised the Trust of its intentions much earlier. The Panel also commented that the level of leeway that might be permitted in terms of timing of an appeal case might reasonably be considered to be lower in cases where the appellant is a professional industry body as opposed to an individual or an individual company.

The Panel noted that the Trust Unit had received an offer from the Chief Executive of APA to attend in person to take the Panel through the facts of the case. The Panel was grateful for the offer but felt that the documentation provided was clear, that it had all the relevant information before it on which to base its decision and that no further explanation was required.

While the Panel would not have been comfortable in ruling out considering the grounds for the appeal in terms of time limits alone, taken alongside its consideration of whether the appeal raised a matter of substance, the Panel decided to uphold the Trust Unit's decision not to proceed with the appeal.

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

Television Licensing

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

Summary of complaint

This complaint was about TV Licensing's policy to require licence fee payers to provide an email address when paying for a TV licence online.

Under current TV Licensing arrangements, licence fee payers must provide an email address before they pay for a new licence or renew an existing licence online. TV Licensing uses this email address to send licence fee payers their licence (if they've chosen to receive it by email), reminder letters and other information about the licence.

The complainant asserted that it is not made clear at the point of renewal that the email address will be used by TV Licensing to send future renewal notices by email. The complainant felt there is no reason why TV Licensing cannot have an 'opt-in' for those licence fee payers who may wish to receive future renewal notices by email.

Appeal to BBC Trust

The complainant appealed to the BBC Trust on 19 July 2012. He said that "what TV Licensing are doing amounts to using deception in order to ensure all those that renew [their TV licences] online are sent future renewal notices by email". The complainant also stated that he felt "the TV Licensing complaints procedure had been a shambles from start to finish" and that he had "repeatedly been quite deliberately misinformed by staff of both TV Licensing and the BBC".

Chief Financial Adviser's decision

On review of the correspondence between the complainant, TV Licensing and the BBC Executive, the Trust's Chief Financial Adviser decided there were no grounds to accept the appeal for Trust consideration. He set out the reasons for this decision (see Panel's decision below) in an email to the complainant.

The complainant requested that the BBC Trustees review the Chief Financial Adviser's decision not to proceed with the appeal.

The Panel's decision

The Panel was provided with copies of the following correspondence:

- Complainant's original appeal to the Trust, dated 19 July 2012.
- Trust's Chief Financial Adviser's decision not to proceed, dated 13 August 2012 (with attachment).
- Complainant's request for Trustees to consider the Chief Financial Adviser's decision not to proceed, dated 13 August 2012.
- Stage 2 correspondence from the BBC Executive (submitted by complainant with his original appeal to the Trust).

The Panel noted that the key reasons for the Chief Financial Adviser's decision were:

- TV Licensing's policy to require licence fee payers to provide an email address when paying for their licence online is an operational matter which the Trust

would not ordinarily consider unless, for example, there was evidence of a serious breakdown in TV Licensing collection procedures. In this case, the Chief Financial Adviser did not believe there had been such a breach.

- TV Licensing's policy did not seem unreasonable or inconsistent with practices elsewhere. In its responses to the complaint, the BBC Executive explained that TV Licensing's policy aims to allow essential information to be provided to licence fee payers by email, saving money spent on paper, printing and postage, which can then be invested in BBC programmes and services.
- The BBC Executive explained that TV Licensing provides explanations of how email addresses will be used in 'Fair Collection Notices' on its website. These notices are displayed when licence fee payers enter their email addresses when paying for a new licence, or renewing an existing licence, online. The Chief Financial Adviser had asked the BBC Executive to provide copies of the notices, which he had sent to the complainant with his decision on the appeal.
- If they would prefer to be contacted by post, licence fee payers have the option to amend their communication preferences online by clicking on the 'update your details' button on every page of the website or by 'opting-out' of the emails they are sent.
- The Chief Financial Adviser apologised for the fact that the complainant felt he had been deliberately misinformed by BBC and TV Licensing staff, but noted that the BBC Executive had recognised the complainant was given incorrect and unclear answers and that it had apologised for this. The Chief Financial Adviser noted that the Executive Board member responsible for licence fee collection was confident that there had not been a deliberate intention to mislead the complainant and that the issue had been brought to the attention of the staff involved.

The Panel concluded that TV Licensing's policy was an operational matter for TV Licensing and that there was no evidence to suggest it had breached data protection regulations. On the basis of the above evidence, the Panel agreed that this complaint did not have a reasonable prospect of success on appeal.

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

Restriction of a “Have Your Say” User Account

The complainant appealed to the Complaints and Appeals Board following the decision of the BBC Trust’s Senior Editorial Strategy Adviser that the complainant’s appeal did not qualify to proceed for consideration by the Board.

Summary of complaint

Stage 1

The complainant contacted the BBC’s Central Communities team regarding their decision to enforce a permanent restriction of his Have Your Say (HYS) user account. The Central Communities team replied, noting that over 23% of the complainant’s comments had failed (as compared to a user average of around 1.5%), and that he appeared not to be prepared to abide by House Rules.

The complainant appealed this decision to the Central Communities team and advised them that if his appeal was unsuccessful, he would seek the prosecution of the decision maker for misconduct in public office. The BBC Central Communities team stated in response that it saw no grounds to uphold his appeal and, as he had stated an intention to proceed with criminal charges, it was unable to enter into further correspondence.

The complainant entered into correspondence with the BBC Trust Unit and the BBC Executive around the procedure for appealing the Central Communities team’s decision. The result was that the Managing Editor of BBC Online provided the complainant with details of five examples of the complainant’s comments that had broken House Rules and the reasons why. The complainant was then given the option to appeal against the decision to restrict his account on the basis of the five particular examples provided. The complainant appealed the decision to Stage 2 of the complaints procedure.

Stage 2

The complainant appealed to the Social Media Complaints Group (SMCG), arguing that the BBC had been unable to provide him with all the comments that had been failed and the reasons for failing them. The complainant said that in his view no fair appeal was possible without knowing what comments the BBC was objecting to, and its reasons for rejecting them. The complainant then said why he disagreed with the BBC’s reasoning for deleting the five examples previously provided.

The Managing Editor wrote to the complainant in his capacity as SMCG Chair informing him that, having reviewed the comments that were removed from the site and which formed the basis of his appeal, the SMCG had found that they were indeed in breach of House Rules and, as a result, the initial decision to restrict the account had been upheld.

The complainant responded arguing that not all of his points had been considered and that therefore a complete appeal had not been considered. The complainant indicated that although he wished to appeal to the Trust he felt he could not do so until the SMCG had conducted a complete appeal. The complainant asked the Trust to instruct the SMCG to conduct a complete appeal.

The Trust responded, noting that the complainant felt that the SMCG had not considered his appeal properly and explaining that this was something the Trust would look at as part of its consideration of any appeal he might make.

Appeal to the Trust

The complainant appealed to the Trust arguing that, before he could make a proper appeal to the Trust, the SMCG must conduct an appeal based on his Stage 2 appeal (a copy of which was enclosed, together with a copy of the SMCG’s decision). The

complainant reiterated the arguments as to why he disagreed with the Central Communities team's decision and asked the Trust to refer his Stage 2 appeal back to the SMCG for re-consideration. The complainant asserted that, if he perceived that BBC staff or the Trust were refusing to follow the BBC's complaints procedure, he would refer this to the police as being possible misconduct in public office.

The Trust's Senior Editorial Strategy Adviser responded firstly considering whether the SMCG had made a valid Stage 2 decision in respect of which the Trust could accept an appeal. The Senior Editorial Strategy Adviser noted that although the SMCG's decision did not expressly address the complainant's specific arguments in respect of each of the five specimen comments, there was, in her view, insufficient evidence to support the complainant's contention that the SMCG had not properly considered all the points raised on appeal. The Senior Editorial Strategy Adviser also considered that it was clear that the SMCG had considered the complainant's specimen comments against the House Rules, and she therefore concluded that the SMCG had made a valid Stage 2 decision, in respect of which the Trust could entertain the appeal.

The Senior Editorial Strategy Adviser then assessed each of the five examples provided as examples of comments the complainant had made that had broken the House Rules. In each case the Senior Editorial Strategy Adviser agreed that there was insufficient evidence to suggest that the Executive's removal of any of the five specimen comments, or its restriction of the complainant's user account, was unreasonable. In her view the complainant's appeal had no reasonable prospect of success and it would not be appropriate, proportionate or cost-effective for the Trust to address his appeal.

The complainant challenged the Senior Editorial Strategy Adviser's decision not to proceed with his appeal. He repeated his view that in not addressing all of the comments which the BBC said it had removed as they breached House Rules, a proper appeals procedure had not been followed. The complainant analysed each of the five comments on which the SMCG decision was based and argued in each case that the comments were justified. In some cases he found examples of similar wording being used on the BBC website.

The Panel's decision

The Panel was provided with the complainant's appeal to the Trust, the response from the Senior Editorial Strategy Adviser and the complainant's letter appealing against her decision.

The Panel noted the complainant's view that in not addressing each and every one of the comments that had been removed, the Social Media Complaints Group had not properly considered his appeal at Stage 2. The Panel confirmed that it agreed that the sample comments which had been addressed by the SMCG were sufficient for it to make a decision with regard to the complainant's alleged misuse of the BBC's Have Your Say message boards.

The Panel noted the five examples which the SMCG had looked at when it considered the complainant's Stage 2 appeal against the decision to ban him from posting comments on the Have Your Say website.

1. Subject: London and housing benefit: Boris v Dave

"If Boris Johnson will not accept 'Kosovo-style social cleansing', what is he going to do, to stop what seems to be the ethnic cleansing of White British people from London."

2. Subject: What do you think of the shadow cabinet appointments?

"Milband the jew has reorganised his bunch of losers, so what."

3. Subject: Is the BBC making the right decisions?

“When is the BBC going to cut 1XTRA a station which Michael Lyons describes as ‘the digital station for young black urban audiences’. How come Blacks get their own special radio station? Why do Whites not get a radio station devoted to white music and white news and white special features. The answer would be appear to be because the BBC is racist. Just look at the race of all the DJ's on 1xtra most of them are Black – why so many Blacks and not more Whites?”

4. Subject: Is France’s treatment of Roma too harsh?

“Viviane Reding is an unlected bureacrat. None of us in this country have ever had the chance to vote for her. She has no right to speak for Europeans - because Europeans have not had the chance to vote for or against her. It’s time Europe got rid of this dreadful woman who would appear to be a half wit.”

5. Subject: Should dogs be banned from parks?

“Yes Ban the mangy mutts. Never mind the dog waste - I am fed up walking through the park and every minute bumping into some Pitbull or Rotweiller Can I suggest that the park enforce the ban by shooting on site any dog found in the park.”

The Panel agreed that it was clear in each of the five cases cited by the SMCG that the comments posted by the complainant were either off topic, offensive or both. The Panel noted the complainant’s arguments against the SMCG’s decisions; however, it did not find the complainant’s arguments persuasive and it agreed that there was no reasonable prospect of success for his appeal. The Panel noted that the complainant had found examples of where other comments on the BBC website, and BBC web content, had itself used the term “half wit”. The Panel was satisfied, however, that the decision of the SMCG would not be undermined even if this example were to be discounted. The Panel agreed that it was the specific context in which the complainant’s comments appeared that was critical and it did not accept the broad conclusions which the complainant drew about the ability of the BBC to cover topics or use certain words elsewhere in its output.

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

Match of the Day, BBC One, 11 February 2012

The complainant appealed to the Complaints and Appeals Board following the decision of the BBC Trust's Senior Editorial Strategy Adviser that the complainant's appeal did not qualify to proceed for consideration by the Board.

The complaint

Stage 1

The complainant contacted the BBC about a *Match of the Day* interview with Kenny Dalglish, the Liverpool Football Club manager. Mr Dalglish had agreed to be interviewed on the pre-condition that he would not answer questions about the refusal of Luis Suarez to shake hands with Patrice Evra. The complainant alleged that the conditions imposed by Mr Dalglish on the interview represented a breach of the BBC's guidelines on not allowing any external influences to affect journalistic independence. The complainant compared these circumstances with what would be acceptable in interviews with President Assad or al Qaeda.

BBC Audience Services replied, saying that, unlike the hypothetical interviews the complainant mentioned, the interview with Mr Dalglish was not pre-arranged with pre-conditions attached. The BBC said the interviewer was told only seconds before the interview started that Mr Dalglish would not entertain questions about the handshake incident. The BBC accepted that this was not ideal, but said that the situation was mentioned in the first question of the interview and was made "abundantly clear thereafter".

The BBC reply said that *Match of the Day* also took the unusual step of running an extract from what it described as the "fractious" live interview which Mr Dalglish conducted with Sky about the handshake incident – which had been why the Liverpool manager had told the BBC that he would not agree to an interview if they also asked him about the incident.

The complainant responded, noting that it was common practice after matches for managers and players to be interviewed. He said this was a contractual obligation on their part and stated that "questions asked ... should not in any way be subject to what a person will or will not talk about". The complainant said it was "editorially imperative" that Mr Dalglish be asked about the handshake matter. The complainant said that, by declining to undertake the interview if he was asked about this, and the BBC agreeing to this pre-condition, Mr Dalglish could be seen to be "unduly influencing BBC Editorial Policy". He went on to note that this all took place at a time when the issue of racism within football (a matter linked to the handshake incident) was a matter of major public interest.

BBC Audience Services replied saying there was nothing further they could add, and advised the complainant how to contact BBC Sport if he wished to pursue his complaint.

Stage 2

The complainant wrote to BBC Sport asking for his complaint to be investigated. The Chief Adviser and Business Manager for BBC Sport replied reiterating the view that, given the late notice available to the interviewer as to Mr Dalglish's intentions, it was the correct decision to go ahead with the interview and to reflect the handshake controversy elsewhere in the programme. The Chief Adviser and Business Manager did not believe that the BBC's Editorial Guidelines had been breached.

Appeal to the BBC Trust

The complainant asked for his appeal to be passed to the Trust. He reiterated his complaint that the *Match of the Day* interview with Kenny Dalglish, because of its pre-

conditions, had breached the BBC's Editorial Guidelines. He argued that the "outside, commercial and personal interests" of Liverpool Football Club were allowed to influence the editorial decision making. He emphasised his view that it was vital that Mr Dalglish, as the manager of Liverpool Football Club, be asked why Mr Suarez had refused to shake the hand of Mr Evra. He asked the Trust to further investigate the complaint.

The Trust's Senior Editorial Strategy Adviser replied to the complainant. She explained that the Trust does not adjudicate on every appeal that is brought to it, and part of her role is to check that appeals qualify for consideration by the Trust (or one of its complaints committees) under the Complaints Framework.

The Senior Editorial Strategy Adviser said that she had read the relevant correspondence and she did not consider that the appeal had a reasonable prospect of success. She said that, for this reason, she did not propose that the appeal should proceed to be considered by the Trust's Complaints and Appeals Board.

The Senior Editorial Strategy Adviser accepted that the complainant felt strongly that Mr Dalglish's refusal to do the interview if he was to be questioned about the handshake was problematic. She noted that the BBC had accepted that this was not ideal but she said that there were a number of reasons why she thought that the appeal on this matter would not have a reasonable prospect of success if put before the Trustees.

The Senior Editorial Strategy Adviser noted that the refusal of Kenny Dalglish was mentioned by the interviewer at the start of the interview and thus was clear to the audience. She also noted that the studio presenter had referred to the conditions imposed by Mr Dalglish:

Gary Lineker: Well some strong words there from Sir Alex. Kenny Dalglish would not discuss the handshake incident with Jonathan Pearce following this exchange with Sky... [cut to interview with Sky]

The Senior Editorial Strategy Adviser said that a good part of the subsequent programme was taken up with a discussion of this issue by the studio guests. She added that the "fractious interview" which Mr Dalglish had earlier done with Sky, during which he was questioned at some length about the incident, was included in the programme.

The Senior Editorial Strategy Adviser said that viewers would have been left in no doubt about what had happened regarding the handshake, of Mr Dalglish's reaction to it, and also of the importance which *Match of the Day* attached to the day's events.

The Senior Editorial Strategy Adviser concluded that the complaint about the questions Mr Dalglish was asked in the interview is one involving creative and editorial decisions.

The Senior Editorial Strategy Adviser explained that the BBC's Royal Charter and the accompanying Agreement between the Secretary of State and the BBC draw a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General, namely that "the direction of the BBC's editorial and creative output" is specifically defined in the Charter (paragraph 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 it relates to a breach of the BBC's editorial standards.

She said that decisions relating to the content of programmes fall within the category of editorial and creative output and are therefore the responsibility of the BBC Executive. The Senior Editorial Strategy Adviser said that the complainant had not made a case for a breach of the BBC's editorial standards and, for the reasons explained above, she did not propose to put the appeal before the Trust's Complaints and Appeals Board.

The complainant appealed against the decision of the Senior Editorial Strategy Adviser not to proceed with the appeal. He said that he believed the complaint to be a "matter of substance" as he alleged that the BBC had breached its Guidelines on Editorial Integrity

and Independence from External Interests. The complainant said that the inclusion of the Sky interview was not an adequate defence for this.

The complainant said that the issue was not whether viewers would have been left in any doubt as to what happened, but rather whether the BBC allowed its independence to be brought into question because of what happened. The complainant repeated his view that to allow the interview to go ahead with pre-conditions was a breach of the Guidelines on Editorial Integrity and Independence from External Interests.

The complainant similarly argued that it was irrelevant how much time had been spent discussing the issue in the studio.

The complainant stated his view that the correct way to have handled this issue was for the BBC not to have conducted the interview and to have stated that this was because pre-conditions were imposed to which the BBC would not agree.

The Panel's decision

The Panel was provided with the complainant's appeal to the Trust, the response from the Senior Editorial Strategy Adviser and the complainant's letter appealing against her decision. The Panel was also provided with the Stage 2 finding and the item in question.

The Panel noted the complainant's contention that in accepting the pre-conditions and going ahead with the interview with Mr Dalglish the BBC had breached its guidelines on Editorial Integrity and Independence from External Interests.

The Panel noted that the decision not to ask Mr Dalglish a question about the incident was an independent decision made by the editor in order to proceed with the interview. The Panel was satisfied that this decision was a creative and editorial one which it was entirely within the remit of the editor to take. The Panel also agreed that the audience was not misled in any way, as the conditions under which the interview was conducted were made clear and the views of Mr Dalglish were given by the broadcast of a clip from the interview with Sky.

The Panel was mindful that the editor's decision to proceed with the interview was not to be considered in isolation but should be looked at in the context of the related editorial decisions that the editor had taken: namely, the decision to refer explicitly to the conditions under which the interview had been given and the decision to broadcast a clip from Sky in which the issue of the handshake had been raised. The Panel concluded that, considering the matter as a whole the BBC's editorial integrity had not been called into question and therefore the Panel agreed that this complaint did not engage the Guidelines on Editorial Integrity and Independence from External Interests. The Panel did not agree with the complainant that the only acceptable course of action was for the BBC not to have conducted the interview with Mr Dalglish while stating the reasons why.

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

Use of the word "shut" in BBC traffic bulletins

The complainant appealed to the Complaints and Appeals Board following the decision of the BBC Trust's Senior Editorial Strategy Adviser that the complainant's appeal did not qualify to proceed for consideration by the Board.

The complaint

Stage 1

The complainant wrote to the BBC about the BBC Radio 2 traffic presenter's use of the word "shut" (as opposed to "closed") to describe road closures. The complainant said this was "absurd and inappropriate".

BBC Audience Services replied to say that the complainant's opinion would be circulated in the daily duty log.

The complainant wrote again, reiterating his original point and saying that, as nothing had been done to address this basic grammatical error, he would like the Director-General of the BBC or the BBC Trust to address his complaint.

BBC Audience Services replied, saying that the BBC Radio 2 production team had noted the complainant's views but had nothing further to add except to explain that the presenter in question preferred to use the word "shut".

Stage 2

The complainant wrote to the Controller of BBC Radio 2. He said that he expected the BBC to maintain correct standards of spoken English. The complainant said he was particularly dismayed at the notion that the traffic presenter herself should have the latitude to use this term should she choose to do so.

The Controller of Radio 2 said that Radio 2 was committed to accurate use of language in its broadcasts but did not believe the term "shut" could be considered inaccurate. He referred to a dictionary definition of "shut" as "to close something". He said he would not be asking his presenters to refrain from using the word "shut" in future broadcasts. He provided details on how the complainant could take this complaint to the final stage of appeal.

Appeal to the BBC Trust

The complainant wrote to the BBC Trust reiterating his original complaint and saying that while dictionaries inevitably use the closest words to explain the meaning of other words, this did not mean such words share an identical meaning. The complainant then elaborated on why he believed the use of the word "shut" in relation to motorway lanes, roads and streets was inaccurate, and that the BBC should insist on its presenters using the word "closed".

The Senior Editorial Strategy Adviser responded to say that in her opinion the BBC had provided a reasonable justification for its use of the term "shut" in the traffic reports. The Senior Editorial Strategy Adviser outlined that the BBC's Editorial Guidelines require programmes to use clear and accurate language, and that it was her opinion that Trustees would be certain that listeners would be in no doubt as to the unambiguous meaning of phrases such as "two lanes are shut at junction 4". The Senior Editorial Strategy Adviser also explained that in this context a presenter's particular choice of words is a matter for editorial judgment, and that this is something which lies within the BBC's prerogative, as the following extract from the Royal Charter and Agreement explains:

"The direction of the BBC's editorial and creative output" is specifically defined in the Charter (paragraph 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 relates to a breach of the BBC's editorial standards.

The Senior Editorial Strategy Adviser therefore determined that there was no reasonable prospect of success for the appeal and it would not be appropriate for it to proceed to the Trust for consideration.

The complainant challenged the Senior Editorial Strategy Adviser's decision not to proceed with the appeal, saying that he did not agree with her that his complaint did not raise a matter of substance. He reiterated his belief that the use of the word "shut" in this context was incorrect and asked that the Trustees review the decision.

The Panel's decision

The Panel was provided with the complainant's appeal to the Trust, the response from the Senior Editorial Strategy Adviser and the complainant's letter appealing against her decision.

The Panel noted the complainant's argument that the use of the word "shut" in this context was semantically incorrect. The Panel also noted that the complainant felt that the presenter should not have the latitude to choose to use this word. The Panel agreed that the choice of words used by presenters was an operational issue and therefore not for the Trust to become involved in unless, for example, the Editorial Guidelines had been breached. The Panel agreed that the Guidelines on Accuracy were not engaged by this complaint as the audience's understanding of the traffic bulletin would not be affected in any way by this usage. The Panel concluded that this was not a matter for the BBC Trust.

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

Alleged BBC bias towards towns and cities in the North of England in reports on national issues

The complainant appealed to the Complaints and Appeals Board following the decision of the BBC Trust's Senior Editorial Strategy Adviser that the complainant's appeal did not qualify to proceed for consideration by the Board.

Stage 1

The complainant contacted the BBC to complain that "every single BBC Breakfast programme" had an item about Yorkshire – saying that this demonstrated a bias towards the North of England, and was journalistic laziness. The complainant said that the county was "the most over-represented by far" in every single type of BBC TV programme "...and was narrowing the range of subject matter available".

BBC Audience Services replied by saying that the choice of stories to include in bulletins, the order in which they appeared and the length of time devoted to them was a subjective matter – and they were aware that not every viewer feels they get it right every time.

They explained that a number of factors play a part in deciding the level of coverage given to any story and where it falls within a bulletin – and senior editorial staff, the BBC Executive Committee and the BBC Trust monitor programmes to ensure that standards of impartiality are maintained.

The complainant replied saying that the matter complained of was "demonstrably true" and affected the output and nature of the programme on a regular basis.

BBC Audience Services provided a response from the Editor of BBC Breakfast, who rejected the assertion that there was an institutional bias towards Yorkshire – or that stories were covered there to save money.

The BBC said a review of its use of outside broadcast vehicles for the previous year showed that the programme featured items broadcast live from the west and south west of England on more occasions than from Yorkshire – and that was also the case for the North West of England. The programme had a remit to report the whole of the UK.

Stage 2

The complainant then wrote to the Director of BBC News, saying that previous responses had missed the point of his complaint, which was that the north of England was far and away the most common place chosen "to illustrate general articles on issues that affect the whole of the UK". The complainant emphasised that news items in a specific place that happen to be in the north of England were not what he was complaining about.

The complainant believed that there was a general bias towards the north of England – and that this ran counter to "the very charter under which the BBC was set up" to represent the whole of the UK. The complainant gave a number of examples of cities and regions which he believed were ignored when illustrating wider UK stories. The complainant further believed that, in the case of the Breakfast programme, it was not fulfilling its remit to report the whole of the UK.

The Head of Editorial Compliance and Accountability, BBC News, replied saying that the complainant had not supplied any evidence to support the suggestion that the North of England was over-represented in the way he had claimed and that the complaint was based on his perception of how the BBC covers news.

The Head of Editorial Compliance and Accountability, BBC News, explained that it was BBC policy to illustrate stories of national importance with case studies from around the UK – and to cover interesting stories in their own right, regardless of where in the UK

they occurred. She set out that internal monitoring was undertaken to ensure the spread reflected the perspective of the various audiences.

She then addressed the complainant's specific question as to when the last time it had been that items had been filmed in Northern Ireland, Cornwall, Kent or the Scottish Isles by providing a breakdown of the locations from the previous week. The list included West Wales, London, St Andrews, Bristol, Shropshire, Cheshire, Yorkshire and West Sussex.

The Head of Editorial Compliance and Accountability, BBC News, pointed to four other major national stories where the illustrative material had been filmed in London, Bristol, the Isle of Wight and the West Country.

It was explained that location was not the primary factor in the choice of items: while availability, ease of access or resources played their part, so too did selecting contributors with direct experience or relevant perspective. This enabled the BBC to fulfil its obligations for accurate and impartial content in news items.

Appeal to the Trust

The complainant appealed to the Trust saying that he still believed BBC News had shown a demonstrable bias in choosing to cover issues in the North of England – and Yorkshire in particular – when they could have been filmed almost anywhere in the UK. The complainant estimated that "about 65%-70%" of articles on nationally relevant issues were illustrated with location filming in the north of England, with Yorkshire the most frequently featured area.

The complainant believed that since his most recent complaint, the North of England had not featured so often, which he thought was not a coincidence but rather a way of allowing BBC News to cite this in its defence.

The complainant believed he had supplied evidence to support his case and that the BBC procedures for monitoring had not picked up the bias towards the North of England. The complainant still believed that the BBC, in all of its output – comedy, drama, documentaries – favoured the North of England, and provided some examples.

The Senior Editorial Strategy Adviser responded explaining that the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC draw a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General.

She explained that "the direction of the BBC's editorial and creative output" is specifically defined in the Charter (paragraph 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 relates to a breach of the BBC's editorial standards. She did not believe that the complainant had provided evidence of such a breach.

The Senior Editorial Strategy Adviser noted that the responses received from the BBC Executive clearly set out a list of the areas of the country that had been featured recently in live broadcasts and a range of specific locations chosen for the filming of case studies of national issues. The Senior Editorial Strategy Adviser explained that in her opinion Trustees would view this as a comprehensive response from the Executive to the complainant's concerns. With regard to the statistical points made by the complainant, the Senior Editorial Strategy Adviser thought that it was clear from the Executive's responses that, as part of their remit to ensure all audiences are served, BBC News monitor the range of locations used throughout the UK in its output.

The Senior Editorial Strategy Adviser therefore determined that there was no reasonable prospect of success for the appeal and that it was not appropriate for the appeal to proceed to the Trust for consideration.

The complainant challenged the Senior Editorial Strategy Adviser's decision not to proceed with the appeal, reiterating his view that BBC was failing in its duty to represent the whole of the UK and that its programmes and services reflected a bias towards the North of England.

The Panel's decision

The Panel was provided with the complainant's appeal to the Trust, the response from the Senior Editorial Strategy Adviser and the complainant's letter appealing against her decision.

The Panel noted the complainant's view that his own statistical analysis proved that where stories related to the whole of the UK, the majority were illustrated with items filmed in the North of England. The Panel noted the complainant's view that this was due to cost-cutting and "journalistic laziness". The Panel also noted that in his appeal to the Trust the complainant had extended his complaint from just BBC News to all of the BBC's TV output. The Panel was mindful, however, that the original complaint, and the one to which the BBC had responded, was in relation to BBC News output only. The Panel noted that the BBC had provided the complainant with comprehensive replies to his concerns and had gone some way to explain the way it chose to cover news stories. The Panel noted the complainant's view that the BBC was failing to monitor its representation of the whole of the UK. The Panel was satisfied, however, that the BBC's responses to the complaint demonstrated that it monitored the range of locations used throughout the UK in its output. The Panel was mindful that the Trust's impartiality review into BBC network news coverage of the four UK nations identified a need to strengthen the BBC's newsgathering in the North of England¹.

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

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http://www.bbc.co.uk/bbctrust/assets/files/pdf/review_report_research/impartiality/uk_nations_impartiality.pdf

The Story of the Turban, BBC One, 12 April 2012

The complainant appealed to the Complaints and Appeals Board following the decision of the BBC Trust's Senior Editorial Strategy Adviser that the complainant's appeal did not qualify to proceed for consideration by the Board.

The complaint

The complainant said that BBC One's *The Story of the Turban* omitted certain important facts. She highlighted in particular the legitimacy which the change to the law allowing Sikh motorcyclists to wear turbans instead of crash helmets brought to ongoing campaigns at the time, and the leading role played by the complainant's late spouse in the anti-crash helmet campaign. The complainant suggested that BBC journalists had a responsibility to ensure that the facts were correctly and truthfully broadcast, which the complainant felt the BBC had neglected to do on this occasion.

The BBC Executive's reply

In reply, the Head of Television, BBC Religion and Ethics, said that, in a 40 minute programme spanning almost 60 years of the history of the turban in Britain, it was impossible to feature everyone who had fought the anti-crash helmet campaign. The producer of the programme in no way intended to undermine the crucial contribution made by the complainant's late spouse and the BBC regretted any upset caused. The programme featured the story of one campaigner, Mr Sagar, but made it clear that it was not his actions alone which led to the change in the law. While there were omissions, the programme was fair and accurate, given the breadth and depth of the subject matter.

Appeal to the BBC Trust

The complainant appealed to the BBC Trust, accepting that content needed to be accommodated within an allotted time but arguing that, where the subject matter related to a change in the law, inaccuracy in reporting was unacceptable. The complainant said that the programme should have detailed the number of Sikhs who went to prison to change the law and she asked for an independent scrutiny of the complaint. The complainant also pointed out an error in the Executive's response which gave the date of the Act requiring crash helmets as 1975 instead of 1973.

The BBC Trust's Senior Editorial Strategy Adviser replied, stating that the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC draw a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. She explained that "the direction of the BBC's editorial and creative output" is specifically defined in the Charter (paragraph 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 relates to a breach of the BBC's editorial standards.

The Senior Editorial Strategy Adviser considered that, given the breadth of the content covered, the programme gave a reasonable amount of time to the campaign to change the law on wearing helmets. She noted that the programme included the origins of Sikhism, the importance of the turban to Sikhs and the contributions made by Sikhs in the two world wars, for example, as well as other aspects of the struggle for freedom to wear the turban and recent protests to prevent this freedom from being eroded. She noted that the programme referred to the 1973 Act and the change which occurred in 1976. The Senior Editorial Strategy Adviser said that, while the programme focussed on Mr Sagar's role in the anti-crash helmet campaign, it did not say that he was the main campaigner or mainly responsible for securing the change to the law. The Senior Editorial Strategy Adviser pointed out that, as the BBC Executive explained, the programme used his case to illustrate the campaign, making it clear that he was "one of the law breakers" and that it was "the determination of men like him" that led to the law being changed.

With regard to the complainant's argument that the programme should have detailed the number of Sikhs who went to prison, the Senior Editorial Strategy Adviser explained that decisions of this kind about what details to include in a programme and what to leave out come under "the direction of the BBC's editorial and creative output", which is a matter for the Executive rather than the Trust.

The Senior Editorial Strategy Adviser apologised for any confusion caused by the error in the Executive's response regarding the date of the 1973 Act, but explained that it does not affect the fundamental issue which relates to the content of the programme. As decisions relating to content are the responsibility of the BBC Executive rather than the Trust, the Senior Editorial Strategy Adviser therefore determined that there was no reasonable prospect of success for the appeal and it would not be appropriate for it to proceed to the Trust for consideration.

The complainant challenged the Senior Editorial Strategy Adviser's decision not to proceed with the appeal. The complainant clarified that her grievance did not relate to the personal aspect of the fact that her late husband had led the anti-crash helmet campaign. She said that her complaint was driven by a matter of principle. The complainant said that viewers of the programme would be left with the inaccurate view that the law had been changed as a result of Mr Sagar's actions.

The complainant disagreed that the appeal did not raise a matter of substance.

The Panel's decision

The Panel was provided with the complainant's appeal to the Trust, the response from the Senior Editorial Strategy Adviser and the complainant's letter asking the Board to review her decision.

The Panel noted the Executive's response that it was impossible to feature everyone who had fought the anti-crash helmet campaign and that the producer in no way intended to undermine the crucial contribution made by the complainant's late spouse.

The Panel understood the complainant's reasons for believing that a reference to her late husband should have been included in the programme, and it agreed that a more complete picture of this part of the history of the turban would have been given if that had been the case. However, the Panel noted the BBC's responses to the complaint and was satisfied that the programme had been duly accurate. The Panel agreed that this was entirely an editorial and creative decision and did not engage standards issues or issues of accuracy.

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

Fees paid to *Match of the Day* presenters and pundits

The complainant appealed to the BBC Trust's Complaints and Appeals Board following the decision of the Senior Editorial Strategy Adviser that the complainant's appeal did not qualify to proceed for consideration by the Board.

The complaint

Stage 1

The complainant quoted a newspaper article which purported to set out the salaries of a number of BBC TV presenters and panellists from *Match of the Day*, together with salaries of some female TV presenters. The article talked about what it claimed was an inexplicable disparity between them.

The complainant argued that the sums quoted for the football presenters were "inexplicable ... not least when the BBC is being driven to make stringent budget cuts" and suggested some new "key performance parameters" which the BBC could refer to when setting presenters' salaries. The complainant suggested presenters should be required to "meet a defined set of standards for the programme based ... on the contribution of the football knowledge expertise clearly over and above that of the average supporter" and that audience satisfaction and licence payers' views on the salaries being paid should also be taken into consideration.

The BBC replied on 17 April 2012 stating:

"As with professional footballers and other people in the public eye, well-known presenters have a market value and their fees reflect that.

"Newspapers often speculate about the fees the BBC pays to presenters and personalities but the figures quoted are often inflated and inaccurate. We do not discuss publicly the level of those fees because they are commercially sensitive as well as personal and confidential..."

The complainant wrote again to the BBC, complaining that there appeared to be "no justification for the excessively high salaries paid to *Match of the Day* panellists". The complainant asked how it could be possible that these personalities would be paid 3 or 4 times the salary of the new Director-General. The complainant argued that the Executive Board should reduce the salaries in question to be comparable with those in the real world for roles with "comparable company contributions".

BBC Audience Services provided a response from BBC Sport which said: "We never comment on talent pay" and invited the complainant to make a complaint at Stage 2 if still dissatisfied.

Stage 2

The complainant wrote to the Chief Adviser & Business Manager, BBC Sport, on 7 June 2012 saying:

"In simple terms I view the salaries as excessive for the roles occupied and questioned whether they had been compared with roles in the business world with their much greater responsibilities for equivalent salaries."

The Chief Adviser & Business Manager, BBC Sport, responded, urging caution in taking "as given" the claims made in newspapers about BBC fees. He also reiterated that the BBC does not comment publicly on what it pays its presenters and pundits.

He explained that the relevant benchmarks for comparison are with the amounts paid by other broadcasters for similar on-air talent. He explained that BBC audience research shows that most viewers want to hear the views of ex-professional sportspeople, and

added that in the case of Premier League football there is a scarcity of such personalities with the credibility and ability to commentate in an informed manner on the sport.

He added that he did not therefore believe that it was appropriate to compare their fees with the salary of the next Director-General and that if the BBC tried to do so it would "jeopardise" its ability to retain and attract the current calibre of on-air talent and therefore the quality of the BBC's output would be impaired.

However, he added that the BBC takes its responsibility for delivering value for money extremely seriously and a recent independent report for the BBC Trust had concluded that there was no evidence that the BBC was paying more than the market price for leading TV talent, and in some cases may be paying less; and also that the BBC had a number of systems in place to ensure that it achieved value for money in its negotiation of talent fees, which had been improved on in recent times.

He added that BBC Sport had been making reductions where possible on costs including fee payments and also informed the complainant that some information on talent payments could be found in the BBC's Annual Report and Accounts on the BBC's website.

Appeal to the BBC Trust

The complainant wrote to the Trust on 26 June 2012 arguing that it was unlikely a newspaper would have printed figures without foundation because this would risk litigation; and that it was "incomprehensible for the BBC to argue that it was not relevant to compare presenters' pay with that of the Director-General". The complainant welcomed the information regarding how the BBC sets its fees but disagreed that the amount currently paid to these sports presenters was appropriate.

Finally, regarding the argument that the BBC was in competition with other broadcasters, the complainant said the BBC was "playing into the hands of agents" and should set its own remuneration levels independently.

The Trust's Senior Editorial Strategy Adviser replied assuring the complainant that value for money in terms of talent pay is something the Trust does understand is a heartfelt issue for licence fee payers. The Senior Editorial Strategy Adviser referred to the Chairman of the Trust's comments that he understands the public do not expect the BBC to pay commercial rewards to people that work for a public service. They do expect the BBC to deliver the highest quality programmes and services. It needs – and indeed it has - excellent people to do that. The challenge is to balance these demands in the right way.

The Senior Editorial Strategy Adviser said that the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC draw a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General.

She explained that "the direction of the BBC's editorial and creative output" is specifically defined in the Charter (paragraph 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 relates to a breach of the BBC's editorial standards.

The Senior Editorial Strategy Adviser explained that decisions relating to on-screen talent, including the amount they are paid, fall within the category of editorial and creative output and are the responsibility of the BBC Executive. The Senior Editorial Strategy Adviser therefore determined that it was not appropriate that the complainant's appeal should proceed to the Trust for consideration.

The complainant challenged the Senior Editorial Strategy Adviser's decision not to proceed with the appeal, saying that he did "not accept that wasteful or exorbitant expenditure is a topic which cannot be pursued by the Trust".

The Panel's decision

The Panel was provided with the complainant's appeal to the Trust, the response from the Senior Editorial Strategy Adviser and the complainant's letter asking the Board to review her decision.

The Panel noted the complainant's concerns but agreed with the Senior Editorial Strategy Adviser's view that presenters' pay was an operational matter which is the responsibility of the BBC Executive and not the Trust. The Panel was mindful of the Trust Chairman's comments and the fact that the Trust has discussed options with the BBC Executive for increased transparency around talent payments. The Panel also noted that, after considering a range of options previously presented by the Executive to the Trust, the Trust agreed in 2011 to publish talent spend in the bands suggested by the Culture, Media and Sport Select Committee. These figures were published in the BBC Annual Report.

The Panel agreed that there would not be a reasonable prospect of success for this complaint on appeal.

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

Absence of coverage of the final weekend of the Six Nations rugby tournament on Radio 4's *Today* Programme

The complainant appealed to the BBC Trust's Complaints and Appeals Board following the decision of the Senior Editorial Strategy Adviser that the complainant's appeal did not qualify to proceed for consideration by the Board.

The complaint

Stage 1

The complainant wrote to the BBC on 19 March 2012 complaining that the *Today* programme had failed in its duty to provide a review of the weekend's most important sporting events by omitting any reference to the finale of the Six Nations' rugby tournament. The complainant contrasted this with the airtime given to a non-news story about future Olympic torch bearers. The complainant questioned whether this omission could have been due to Wales, rather than England, winning the tournament.

The complainant wrote to the BBC again on 23 March 2012 saying that he had made a complaint to the *Today* programme and the BBC Complaints department and had yet to receive a response from either of them.

A senior producer on the BBC *Today* programme replied on 27 March 2012 saying that the programme's sports presenter often chose to look forward in his bulletins. He had, for example, extensively previewed Wales's match against France in his bulletin on Saturday 17 March 2012. The producer also said that the programme did not set out to provide a comprehensive sports results service and that on this occasion it was their editorial decision to reflect on two other sporting stories in the news.

In response the complainant reiterated that he thought the news that Wales had won the Grand Slam, beating every other nation, was worth at least 30 seconds airtime, especially when comparing the time given to an event several months hence.

The *Today* programme producer replied, saying that she accepted that the complainant disagreed with the programme's decision in this instance, and she provided him with details of how he could escalate his complaint.

Stage 2

The complainant wrote to the BBC's Director of BBC News saying he was not satisfied with the BBC's responses to date. The complainant repeated his view that the climax of the Six Nations' rugby tournament was an important sports story which the programme should have reflected in its Monday coverage. The complainant questioned whether the BBC was really committed to fair and equal coverage of the Celtic home nations compared with that of England, quoting the remarks of the TV sports' presenter John Inverdale during coverage of the penultimate weekend of the Six Nations' tournament. The complainant said that, in previewing the final weekend, John Inverdale had commented "It's all about England now".

The complainant wrote again to the BBC's Director of News on 21 May 2012 saying he had not received a response to his complaint.

The Head of Editorial Compliance and Accountability, BBC News, replied saying that the earlier letter had not been received, and that she was sorry that the BBC's responses to date had not assuaged his concerns about the *Today* programme's sports desk and its editorial priorities.

She said she had spoken to the Head of Sports News who said that they always sought to fairly reflect the whole of the United Kingdom in their coverage. He also said that the comments of the presenter, John Inverdale, were "tongue-in-cheek" and there was

absolutely no intention to appear biased towards England. The Head of Editorial Compliance and Accountability said that if the complainant remained dissatisfied with this response he could appeal to the BBC Trust.

Appeal to the BBC Trust

The complainant wrote to the BBC Trust to escalate his complaint that the decision to ignore a major domestic sporting story was a serious error of judgment, and at odds with the BBC's claim to reflect the sporting successes of all the Home Nations.

The Trust Unit's Senior Editorial Strategy Adviser replied, saying that in her view the BBC Executive had provided a reasonable explanation of the editorial remit of the *Today* programme's sports desk, and that she believed Trustees would agree that it is entirely the programme's decision as to which sports stories to cover.

The Senior Editorial Strategy Adviser explained that the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC draw a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. She explained that "the direction of the BBC's editorial and creative output" is specifically defined in the Charter (paragraph 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 relates to a breach of the BBC's editorial standards.

The Senior Editorial Strategy Adviser said that decisions regarding prioritisation of sports stories fall within the category of editorial and creative output and are the responsibility of the BBC Executive. The Senior Editorial Strategy Adviser therefore determined that there was no reasonable prospect of success for the complainant's appeal and it would not be appropriate for the appeal to proceed to the Trust for consideration.

The complainant challenged the Senior Editorial Strategy Adviser's decision not to proceed, saying that the omission of news on the Six Nations results on the *Today* programme represented a "breach of the BBC's editorial values".

The Panel's decision

The Panel was provided with the complainant's appeal to the Trust, the response from the Senior Editorial Strategy Adviser and the complainant's letter asking the Board to review her decision.

The Panel understood the complainant's frustration that, although the programme had previewed the match, it contained no reference to the result. However, the Panel did not accept that there was evidence to support the complaint that this was motivated by, or resulted in, bias. The Panel therefore agreed that the complaint did not engage the BBC's Editorial Guidelines and was a legitimate use of editorial judgement by the programme makers.

Although the Panel had some sympathy with the complainant's frustration, it agreed that, as responsibility for editorial and creative decisions rests with the BBC Executive, it would not be appropriate for this appeal to proceed for consideration.

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

Absence of horse racing coverage

The complainant appealed to the BBC Trust's Complaints and Appeals Board following the decision of the Senior Editorial Strategy Adviser that the complainant's appeal did not qualify to proceed for consideration by the Board.

The complaint

Stage 1

The complainant raised several instances of what he perceived as bias in the BBC's programming regarding a lack of coverage of horse racing, and contrasting this with that of other sports including "minority" sports such as rowing.

The complainant felt that the BBC effectively operated a bias against what he described as "the Sport of Kings", and he repeatedly complained about specific programmes which he said had failed to cover aspects of horse racing adequately.

BBC Audience Services responded to the complaints, explaining that decisions on what sports to cover and in how much detail was essentially a judgement call for editorial staff. BBC Audience Services appreciated that the complainant may not be content with these decisions, and it said that the complainant's views would be added to the audience log.

Stage 2

The complainant escalated his complaint to the Head of News. The Head of Editorial Compliance and Accountability, BBC News, replied explaining that sports news is just one area of news which the BBC is required to deliver in order to provide comprehensive news coverage. The Head of Editorial Compliance & Accountability recognised that horse racing is an important component of the general news agenda but there is limitation on the duration of the sports bulletin and editorial decisions on the amount of coverage to afford any given sport or story must be made. The Head of Editorial Compliance and Accountability also pointed out that the BBC has a dedicated racing correspondent in Cornelius Lysaght, a dedicated website racing page, daily coverage of racing on 5 live and BBC Radio 4's *Today* programme, plus live coverage of major races on television, radio and online.

Appeal to the BBC Trust

The complainant appealed to the BBC Trust escalating his complaint about BBC Breakfast News's lack of coverage of horse racing, and contrasting this with that of other sports including minority sports. The complainant also provided examples of specific programmes which had, in the complainant's view, failed to cover aspects of horse racing adequately.

The Senior Editorial Strategy Adviser replied explaining her view that the BBC had provided a reasonable explanation of the editorial remit of Breakfast News and its sports desk, and had given examples of how it does provide regular coverage of horse racing as part of its editorial mix. The Senior Editorial Strategy Adviser also referred to the examples of the BBC's coverage outlined by the Executive.

The Senior Editorial Strategy Adviser said that the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC draw a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. She explained that "the direction of the BBC's editorial and creative output" is specifically defined in the Charter (paragraph 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 relates to a breach of the BBC's editorial standards.

The Senior Editorial Strategy Adviser said that decisions relating to levels of coverage afforded to particular sports fall within the category of editorial and creative output and are the responsibility of the BBC Executive. The Senior Editorial Strategy Adviser therefore determined that there was no reasonable prospect of success for the appeal and it would not be appropriate for the appeal to proceed to the Trust for consideration.

The complainant challenged the Senior Editorial Strategy Adviser's decision not to proceed. He reiterated his complaint that the BBC was failing to include regular coverage of horse racing in its television output.

The Panel's decision

The Panel was provided with the complainant's appeal to the Trust, the response from the Senior Editorial Strategy Adviser and the complainant's letter asking the Board to review her decision.

The Panel agreed that the level of coverage which the BBC decided to afford to horse racing in its television output was an editorial and creative matter and was therefore not a matter for the BBC Trust. The Panel noted the complainant's strength of feeling about horse racing, and that his complaint was concerned specifically with television coverage. The Panel considered that the information provided by the BBC regarding its coverage on Radio 4 and the website was relevant as it supported the BBC's position that horse racing was not ignored.

The Panel concluded that, while it was evident that there were people who would prefer greater coverage of horse racing on BBC television, this was not a matter which fell within the Trust's remit to consider on appeal.

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

The decision that Alex Salmond, First Minister of Scotland, should not appear as part of coverage of the Six Nations Rugby Match between Scotland and England (the Calcutta Cup) broadcast on 4 February 2012

Two complainants appealed to the Complaints and Appeals Board (CAB) following the decision of the BBC Trust's Head of Editorial Standards that their appeals, which had been consolidated, did not qualify to proceed for consideration by the Board.

The Complaints

Complaints to the Executive

Complainants wrote to the BBC regarding the decision of the BBC that Alex Salmond, First Minister of Scotland, should not appear as part of coverage of the Six Nations Rugby match between Scotland and England (the Calcutta Cup) broadcast on 4 February 2012. The BBC received a total of 115 complaints regarding this issue.

Executive response

The BBC Executive posted a response from the Director-General on the BBC's Complaints website on 8 February 2012, and this was provided by email to complainants. The response read as follows:

"Whenever politicians of any party ask to go on non-political BBC programmes, as was the case with the First Minister's office before Saturday's Calcutta Cup match (or, on other occasions, when such programmes decide they want themselves to invite politicians) there is an obligation under the BBC's Editorial Guidelines to consult the Chief Political Adviser (CPA) for advice before a decision is taken. This is to ensure that all parties are treated with due impartiality and that one particular party does not receive undue prominence, or indeed that a party does not receive too little coverage in comparison to others.

In advising programme-makers about whether such appearances are appropriate, the CPA has to take account of the political context at the time. It is part of the BBC's normal editorial process in its task of ensuring that political impartiality is achieved across all its output.

On this occasion, having been approached by the First Minister's office, BBC Sport asked for advice and with the full agreement of both the Head of TV Sport and the Director of BBC Scotland, the judgment was made that the Scotland-England match was not an appropriate setting in which to give one single political leader that level of prominence. The topicality of the current political debate over the future relationship of Scotland with the rest of the UK – and with England in particular – was one of the factors taken into account.

A similar suggestion that the First Minister might take part in BBC Radio Scotland's rugby coverage had already been declined. Radio Five Live also turned down the offer of an interview with the First Minister following advice from the CPA.

The key factor, in advising on such occasions, is the importance of ensuring that other political parties have the opportunity to receive coverage of appropriate prominence over a reasonable timescale. That timescale can be affected by the proximity of elections, when such appearances would certainly not normally be

appropriate.

Given the singularity and high profile of the Calcutta Cup match, as well as the fact that it is now less than two months away from the election period before local government elections throughout Scotland, it was clear that leading politicians from other parties in Scotland would not have been able to enjoy coverage of appropriate prominence in the circumstances.

I am satisfied that the judgment made on this occasion by BBC Sport and BBC Scotland, acting on the CPA's advice, was consistent with similar editorial judgments which are regularly taken in relation to other political parties and other political leaders by programmes across the BBC."

Appeals to the BBC Trust

A number of complainants escalated their complaint to the BBC Trust. On appeal complainants said:

- they were not happy with the BBC response to their complaint
- the decision making of the Chief Advisor, Politics, was questionable and the BBC production team had been happy for the programme to go ahead
- the decision showed political bias (anti Scottish National Party) or anti-Scottish bias
- the BBC is inconsistent in its application of impartiality rules (in that Prime Minister David Cameron will be featured on BBC output talking about the Olympics for example)
- this was a light-hearted, non-political programme
- the First Minister had assured the BBC no political or constitutional points would be raised and the BBC had already agreed this
- the First Minister was not treated with the respect his office deserves
- the BBC has provided a different account of the decision to the Scottish Government

The Trust's Head of Editorial Standards replied to the complainants, explaining that the Trust did not adjudicate on every appeal that was brought to it, and part of her role was to check that appeals qualify for consideration by the Trust (or one of its complaints committees) under the Complaints Framework. The Head of Editorial Standards explained that the Trust had received a number of appeals on this matter which raised the same substantive issues and that she had read each appeal and considered their respective merits individually in deciding whether each qualified for consideration by the Trust. The appeals had been consolidated in order to ensure administrative and cost efficiency and she considered that the appeals did not have a reasonable prospect of success and should not proceed to the Trust's CAB.

The Head of Editorial Standards explained that the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew a critical distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. She explained that decisions relating to who to include in programmes fell within the category of decisions relating to editorial and creative output and were the responsibility of the BBC Executive. This was the basis of her decision that there was no reasonable prospect of success for the appeals and it was not appropriate that they should proceed to the Trust for consideration.

However, the Head of Editorial Standards also went on to address the points raised on appeal individually.

Regarding the complainants' dissatisfaction with the BBC response, the Head of Editorial

Standards confirmed that the BBC's complaints framework set out that:

"5.2 (c) If a large number of complainants complain about a specific action, the BBC's Executive may compile a summary of the range of issues raised by the complaints. The complaints will then be considered together across the full range of issues identified."

The BBC Executive in this case received 116 complaints by 12 February, and she therefore believed they acted correctly and proportionately in publishing a public statement on the BBC complaints website and providing this to complainants.

Regarding the decision-making of the BBC and allegations of anti-Scottish bias and inconsistent decision making, the Head of Editorial Standards explained the course of events. She said that the office of the First Minister had offered the First Minister for interview as part of the BBC's pre-match coverage of this Six Nations Rugby Match in a telephone call to the Editor of TV Sport on Thursday 2 February. Following further contact from the First Minister's office by email assuring that political and constitutional points would not be raised, Mr Salmond was provisionally booked by email. However the email, whilst setting out the time, place and content for the appearance, also made clear that a referral would be made to BBC Editorial Policy.

"I've been having a little think and I'd like to ask if the First Minister would take part in our six nations challenge [practical detail] I think this would be a great way of us involving the First Minister in the BBC's TV coverage. We'd be doing this live in the West Car Park, it would be live around 1.45. Happy to discuss any of this. I am currently checking this out with our editorial policy team but we don't anticipate any problems."

This was in accordance with the BBC's Editorial Guidelines on Impartiality, as follows:

- 4.3.3 *Any proposal to invite a politician to be a guest on a programme or area of content where to do so is the exception rather than the rule, must be referred to Chief Adviser Politics. (repeated in 10.4.5)*
- 10.4.6: *Except for brief news interviews gathered on the day without pre-arrangement any proposal to interview or profile any of the main party leaders in the UK must be referred in advance to Chief Adviser Politics. Similarly offers of interviews from the parties must be referred before they are accepted.*
- 4.4.24: *Special considerations apply during the campaigns for elections and referendums and in some cases the period running up to campaigns will involve greater sensitivity with regard to due impartiality in all output genres,. Chief Adviser Politics will offer specific advice.*

The Head of Editorial Standards confirmed that a referral to Editorial Policy did not amount to bias but was mandatory in these cases.

The Head of Editorial Standards quoted from the BBC Executive's response, which gave an account of the BBC's decision. Whilst she understood that there had been concerns about whether the two accounts matched, it seemed to her that any apparent discrepancies appeared on closer examination to be the same events told from the two different perspectives: that of the First Minister's office and that of the BBC. For example, she noted that the First Minister's office had said that Mr Salmond was invited to appear on the programme and the BBC had said that the First Minister's office approached the

BBC. Both appeared to be correct. The First Minister's office approached the BBC and offered him for interview. He was then provisionally booked to appear on the pre-match programme but the offer was conditional on taking advice for BBC Editorial Policy. All individuals appeared to have been acting in good faith. It seemed that the attempt by BBC sport to ensure that in a short timescale practical arrangements would be possible and the positive wording of the email meant that the First Minister's office gained the impression that the appearance would be confirmed.

The Head of Editorial Standards noted that there still remained concern that the Chief Adviser, Politics had not spoken to the Director of BBC Scotland despite the fact that the BBC confirmed in its response that the Director of BBC Scotland had been contacted by the Chief Adviser, Politics. However, the Head of Editorial Standards said she had spoken to both the Chief Adviser, Politics and to the Director of BBC Scotland and both confirmed that the Chief Adviser, Politics spoke to the Director of BBC Scotland on Friday 3 February in the morning.

Turning to the actual decision of the Chief Adviser Politics, the Head of Editorial Standards appreciated that complainants considered that this amounted to bias against Scotland or was disrespectful to Mr Salmond. However in her view:

- a) It was a reasonable decision of the Chief Adviser, Politics that there was a risk to the impartiality of the BBC by the appearance of Mr Salmond and of no other leading Scottish politician in this programme even if politics was not to be discussed. She took this view given: firstly the context of the programme – comments on the England-Scotland Rugby match – this had a particular resonance in the current political climate even though politics were not to be discussed and it was to one complainant a light hearted programme; secondly the recent high profile news stories in January about the offer by the UK Government to legislate to give the Scottish Parliament power to hold a referendum with conditions and the decision by the Scottish government to decline the offer and announce that it would hold a referendum in 2014 on the issue of independence; thirdly the consultations regarding the referendums (UK Government 11 January to 9 March and Scottish Government 25 January to 11 May); and fourthly the upcoming Scottish elections. She noted some complainants had pointed out that those elections were to take place in May. However the BBC was correctly alert to the risk of possible bias with regard to pre-election coverage in the months leading up to the official election period at the end of March where the BBC was required by law to publish and abide by a code to ensure impartiality in election coverage.
- b) The omission of Mr Salmond discussing the upcoming match did not make the programme that was broadcast biased.

Some complainants had said that the BBC would act differently by, for example, allowing Prime Minister David Cameron or London Mayor Boris Johnson to appear on programming about the Olympics. The Head of Editorial Standards noted that the BBC had previously delayed a scheduled documentary (*Who Do You Think You Are?*) about Boris Johnson which was due to be broadcast eight months before the London Mayoral election in 2008 and it was not broadcast until after polling day. She said that all cases must be judged on their own merits and that it was not disrespectful for the BBC to decide not to include a politician in a broadcast programme on the basis that the BBC considers it must take this action in order for the BBC to comply with its Editorial Guidelines.

Two complainants requested that the Trustees review the Head of Editorial Standards' decision not to proceed with the appeals. They raised the following points:

- that the Head of Editorial Standards had not addressed allegations regarding an apparent lack of impartiality by the Executive or its employees in the exercise of their functions. The issue was not whether the programme was biased, but whether there was the appearance of the absence of impartiality in the making of the decision. It was noted that the First Minister of Wales appeared as a rugby pundit without any such ban as occurred regarding the Calcutta Cup.
- that the Executive's public statement had failed to address matters raised by some complainants, and thus did not cover the "full range" of issues identified (in contravention with article 5.2 (c) of the BBC's complaints framework). It was simply a blanket response.
- that the reasons given by the Executive at the time were not consistent with the way that programme was subsequently handled nor with the BBC's track record. If the BBC were so sensitive about the current constitutional debate they should not have permitted individual broadcasters to present "a spurious version of history which referred to a preservation of the very Union that the BBC were supposed to be at pains to be avoiding any reference to on that occasion."
- that the Head of Editorial Standards had not addressed examples one complainant had provided of other non-political programmes where the BBC had not been "evenhanded" in dealing with the topic of the Union.
- if the BBC were being sensitive about the current constitutional debate, why did the programme not steer clear of the topic rather than allowing John Inverdale to present a "version of history which referred to a preservation of the very Union that the BBC were supposed to be at pains to be avoiding any reference to on that occasion"?

The Panel's decision

The Panel was provided with the decision of the Head of Editorial Standards and the complainants' letters asking the Trustees to review the Head of Editorial Standards' decision.

The Panel noted that one of the two complainants who had responded to the Head of Editorial Standards' decision had said that his complaint was not that the BBC had excluded Mr Salmond but that the reasons for excluding him had not been applied consistently to the rest of the programme and to other "non-political programmes where the BBC had not been "evenhanded" in dealing with the topic of the Union". The Panel noted that these were points which the Executive had not responded to.

The Panel was informed that these points had been sent to the Executive for an initial response. The Panel agreed that any appeal against the Executive's response to these points should be considered as the basis for a new appeal request separate from the issue under consideration in this consolidated appeal request.

The Panel noted that the Trust's Head of Editorial Standards had explained that the direction of the BBC's editorial and creative output is the responsibility of the Executive Board, and one in which the Trust does not normally get involved. The Panel agreed that decisions relating to who to include in programmes fell within the category of decisions relating to editorial and creative output and were the responsibility of the BBC Executive.

The Panel also agreed with the Head of Editorial Standards that any apparent

discrepancies between the two accounts of events appeared to be the same events told from the two different perspectives and that all individuals appeared to have been acting in good faith. They also agreed that there was no evidence that the actual decision of the Chief Adviser Politics amounted to bias against Scotland or was disrespectful to Mr Salmond. The appearances of other politicians in other sports content were separate matters and each case should be considered separately on its facts. On examination of the facts in this case there was no evidence of a lack of impartiality by the BBC Executive or its employees as they exercised their functions. The Panel agreed that there was no reasonable prospect of success for the appeal and it should not proceed to the Trust for consideration.

The Panel noted the complainant's argument that the Executive's public statement was a blanket response which did not cover specific points that he had made in his complaint. The Panel noted that by 12 February the BBC had received 116 complaints on this issue. The Panel noted that the Director-General's statement covered the general point made by complainants regarding the consistency of the BBC's decision in this case. The Panel agreed that in order to cover the "full range" of issues it was not necessary to provide a specific response to each individual argument made by complainants who were making the same general point. The Panel was satisfied that there was not a reasonable prospect of success for an appeal on the grounds that the handling of the complaint had not been in accordance with the published complaints procedure.

Finally, the Panel noted comments from one complainant that he felt he had been required to communicate with the BBC by post prior to appealing to the Trust, which he considered to constitute "potential discrimination against people on the basis of age or disability." The Panel noted that complainants were not required to communicate with the BBC by post and could communicate by email or telephone if preferred. It was noted that this would be made clearer under the new complaints framework procedure, which was due to be published later in the month.

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