

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

April 2015 issued May 2015

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Remit of the Complaints and Appeals Board

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Summary of findings

Application of the Expedited Complaints Procedure by the BBC Trust

Summary of finding

The complainant appealed against the decision of the Head of Editorial Standards, BBC Trust, to apply the Expedited Complaints Procedure to appeals by him at Stage 3 of the complaints process.

The Panel concluded that:

- the procedural requirements of Annex B to the BBC's Complaints Framework had been complied with.
- the Expedited Complaints Procedure had been correctly applied at Stage 3 and should be applied for a period of two years.

The Panel noted that any future complaint made by the complainant would continue to be reviewed, and if it raised an issue of breach of any of the relevant guidelines or policies, it would be investigated in accordance with the applicable complaints procedure.

Television Licensing Appeal TVL0064: Content of TVL correspondence with cash payment plan customers in arrears; opportunities for arrears negotiations; and trialling of a pay-as-you-go scheme for TV licences

Summary of finding

The complainant stated that:

- A. TVL sent illegal threatening reminder letters referring to debt collection to vulnerable customers;
- B. TVL does not provide appropriate information and opportunities for different ways to pay arrears; and
- C. TVL has ignored the results of a BBC Trust consultation and has failed to trial a pay-as-you-go scheme.

The Trust's role;

- The BBC Trust has a specific function under the BBC's Royal Charter to ensure that arrangements for the collection of the licence fee by the BBC are efficient, appropriate and proportionate.
- the Panel considered whether TVL is acting appropriately and proportionately in its efforts to ensure that customers who pay for their licence through a cash payment plan continue to maintain their agreed payments.

The Panel concluded in relation to point A and B that:

- there had been significant revisions to the reminder letters since the complaint had been made (It noted that the complainant would have received the set of letters which had not been revised.);
- TVL had training initiatives to help agents spot a customer who may be particularly vulnerable. The Panel noted that agents had some discretion to halt arrears action and reschedule payments for vulnerable customers;
- the complainant was not in debt at the point when he received a reminder letter about possible referral to debt collection, although he was behind on his payments to the scheme. However TVL had made recent improvements to the way it monitored customers' payment history which meant it is now able to distinguish between those who are paying in arrears for a licence that has already been issued and those who are saving towards their next licence;
- the improvements had meant that, overall, clearer information was being sent to customers, including customers in the arrears part of the cycle who would get a warning letter saying they will be passed into debt collection. Customers in the advance payment part of the cycle will simply get a message saying they will have to make bigger payments over less time.
- the new letters explicitly state that customers in difficulties should discuss matters with an agent in order to get payments back on track; and
- TVL's use of debt collection agents or the correspondence sent out to customers in arrears warning that a referral to debt collection might follow was not illegal.

FINDING: Resolved

The Panel concluded in relation to point C that:

- a 2009 BBC Trust review of licence fee collection contained no obligation to trial such a scheme. The BBC Executive decided not to proceed with the pay-as-you-go scheme, and the BBC Trust approved the Executive's decision.

FINDING: Not upheld

Addition to Finding

Following the Trustees decision in April 2015, the complainant contacted the BBC Trust regarding a TVL mailing he had received and an ensuing phone call he had had with TVL in which he wanted to take out a new cash payment plan card.

The Panel considered the complainant's points and concluded that:

- the incorrect information he had received had not materially affected the outcome of the complainant's call and TVL had taken steps to prevent the same incorrect advice being given to customers in the future.
- it was not the case that the BBC Executive advised in its previous responses to the Trust that all payment options, including weekly cash payments, would be communicated to customers upon renewal.
- it was not, in principle, acceptable for a fully licensed member of the public to be sent a letter warning of referral to a debt collection agency.
- the BBC Executive will be asked to investigate how its system may be changed to prevent such warning letters being sent to licensed members of the public. The Executive would also be asked to attend the Complaints and Appeals Board to update Trustees.

Television Licensing Appeal TVL0066: No Licence Needed status of property and complaint handling

Summary of finding

The length of time it had taken TV Licensing to resolve issues with the No Licence Needed status of the complainant's property. The complainant also complained that a cheque promised by TVL towards his costs had not been sent.

The complainant's points, in summary were:

- Point (A) the length of time it had taken TV Licensing to resolve the issues with the No Licence Needed status of his property.
- Point (B) the cheque promised by TV Licensing to cover his costs for £35 had not been received at the time the appeal was submitted.
- Point (C) a request for compensation for misinformation, maladministration, harassment, stress and inconvenience.

The Trust's role:

- The BBC Trust has a specific function under the BBC's Royal Charter to ensure that arrangements for the collection of the licence fee by the BBC are efficient, appropriate and proportionate.
- The Panel considered whether the length of time it had taken TV Licensing to resolve issues with the No Licence Needed status of the complainant's property was proportionate. The Panel also considered the point of the appeal around the missing cheques and whether the Executive's approach to the request for compensation was appropriate.

The Panel considered the points of appeal in turn.

- Point (A) - The panel agreed that both the misinformation and the length of time it took to correct it were unacceptable.

Finding on Point (A): upheld

- Point (B) - The Panel noted the complainant's request that this element of the appeal be withdrawn as this point had been rectified. It agreed not to consider this element of the appeal.
- Point (C) - The Panel agreed that the Executive's approach on this matter was appropriate and the amount offered was in line with the inconvenience caused in this case. It also agreed that compensation – as distinct from a goodwill payment – was not appropriate.

The Panel also asked for further evidence regarding the assurance that procedures had been introduced to minimise the risk of planned goodwill payments not being issued.

Finding on Point (C) – not upheld

Finding: partially upheld

Appeal Findings

Application of the Expedited Complaints Procedure by the BBC Trust

A letter was sent from the Head of Editorial Standards to the complainant on 2 February 2015, notifying him of the Trust Unit's intention to apply the expedited procedure.

The complainant had previously complained on the following occasions:

1. BBC's coverage of anti-Monsanto march on 25 May 2013
2. BBC's coverage of anti-Monsanto march on 24 May 2014

On both occasions, the BBC provided Stage 1b responses but declined to enter into further correspondence, and the complainant appealed to the Trust Unit. Following decisions by the Trust Unit not to present the appeals to the Complaints and Appeals Board (CAB) for consideration as, in the Trust Unit's view, the appeals had no reasonable prospect of success, the complainant requested that Trustees review the Adviser's decision. The CAB Panels did not consider either appeal raised a matter of substance. The decision to cover a protest march was a matter of news judgment and, according to the Royal Charter, a matter for the Executive and not the Trust. Despite being informed by the Trust Unit's Complaints Adviser that the Board's decision is final, the complainant continued to address email correspondence to the Trust Unit and Audience Services on this matter, and to copy the Trust Unit into his email correspondence with others.

The Head of Editorial Standards, Trust Unit explained that for a period of two years:

"...any future appeal by you that concerns the BBC's lack of coverage of marches or any other protests against Monsanto, and that meets any of the conditions set out in paragraph 2 of Annex B [of the Complaint Framework], will not be acknowledged and may be rejected without notifying you or providing any reasons.

"During the same period, any future appeal by you that does not concern the BBC's lack of coverage of marches or any other protests against Monsanto and so does not meet any of the conditions in paragraph 2 of Annex B, and that in fact raises an issue of breach of any relevant Guidelines or Policies, will be investigated in accordance with the applicable Complaints Procedure."

Request for review by Trustees

The complainant asked the Trustees to review the decision to apply the expedited procedure on 24 February 2015. He re-stated his concerns about GM crops, and stated of the expedited procedure:

"Such an act would violate Article 11 of the EU Charter of Fundamental Rights – namely freedom of expression and information;..."

The Panel's decision

The Panel was provided with the correspondence between the complainant and the BBC Trust.

In deciding whether the Expedited Procedure should be applied to the complainant's complaints, the Panel considered:

- (a) whether the Trust Unit had followed the process set out in Annex B to the BBC's Complaints Framework;
- (b) whether the conditions relied upon by the Trust Unit had been satisfied; and
- (c) whether, in all the circumstances, it was appropriate to apply the Expedited Procedure.

The Panel noted the arguments set out in the complainant's emails to the Trust. With particular regard to his argument concerning the BBC's censorship of his views, it was noted that the complainant's freedom of expression was not being curtailed – he may express his views to the Trust, but the Trust is not obliged to correspond with him. The Panel therefore considered this argument to be misconceived.

With regard to process, the Panel noted that the Head of Editorial Standards' letter of 2 February 2015 said:

"I have taken the view that conditions (a), (b), (d) and (e) of paragraph 2 of Annex B have been met, in that you have a history of persistently and/or repeatedly making complaints which:

- o are misconceived and repetitious;
- o fail to raise an issue of breach of any relevant Guidelines or Policies;
- o are shown on investigation to have no reasonable prospect of success; and/or
- o after rejection of the complaint at an earlier stage, are persistently and repeatedly appealed unsuccessfully to the Trust.

"I have reached this conclusion on the basis that, between 26 September 2013 and 18 August 2014, you made two unsuccessful appeals to the BBC Trust. I regard your appeals to the Trust as repetitious, in that they both concerned the BBC's decision not to cover marches against Monsanto (relating to genetically modified ('GM') crops)."

The Panel noted that, up to February 2015, the complainant had made two appeals to the Trust. The Trust Unit had decided not to proceed with either, and Panels of the CAB had agreed with both decisions.

The Panel agreed that the procedural requirements of Annex B to the BBC's Complaints Framework had been complied with.

The Panel decided that it was appropriate and proportionate to apply the Expedited Procedure. The Panel noted that any future complaint made by the complainant would continue to be reviewed, and if it raised an issue of breach of any of the relevant guidelines or policies, it would be investigated in accordance with the applicable complaints procedure.

The Committee then considered what would be the appropriate duration for the application of the Expedited Procedure, and could see no reason why the procedure should not be applied for the maximum period of two years from the date of the letter from the Head of Editorial Standards, BBC Trust.

Television Licensing Appeal TVL0064: Content of TVL correspondence with cash payment plan customers in arrears; opportunities for arrears negotiations; and trialling of a pay-as-you-go scheme for TV licences

Background

The appeal concerns the collection of payment for the TV licence and, in particular, correspondence sent by TV Licensing (TVL) to customers who pay for the licence by means of a cash payment plan.

The complainant's points, in summary, are:

- TVL's reference to debt collection in reminder letters is threatening, particularly to vulnerable customers, is wrongly applied, and is even illegal.
- TVL is not providing appropriate information and opportunities for different ways to pay off arrears.
- TVL has ignored the results of a BBC Trust consultation and has failed to trial a pay-as-you-go scheme.

Under the cash payment plan scheme, the customer pays for a TV licence six months in arrears and six months in advance. The structure of the scheme is specified in Regulations and approved by Parliament. Weekly or monthly payments can be made by phone, online or at a PayPoint outlet and are designed to spread the cost of a licence into manageable instalments. The payment cycle is as follows:

- **Year 1, first six months:** the customer is issued with a full year's licence at the start, which is paid for over six months, so the customer is in **arrears** for the first six months, at the end of which the Year 1 licence is fully paid for.
- **Year 1, second six months:** the customer makes half-rate payments and is now saving towards the Year 2 licence, so is paying in **advance**. By the end of the second six months, the customer has paid for half of the Year 2 licence.
- **Year 2, first six months:** the customer is issued with a full year's licence at the start, but has paid for only half of it, so is paying in **arrears**. The half-rate payments continue and at the end of the six months, the Year 2 licence is fully paid for.
- **Year 2, second six months:** the customer starts saving towards the Year 3 licence, continuing with the half-rate payments, so is paying in **advance**. By the end of the year, half of the Year 3 licence will have been paid for, and so on.

Customers who fall behind with payments will get arrears letters and may also get phone calls and texts from Capita agents acting on behalf of TVL. If arrears are not forthcoming, a customer may be passed to Capita's debt collection agency, Akinika, which does not buy the debt but manages it on behalf of TVL.

TVL had conducted a major overhaul of all its communications with customers. Readability levels of letters to cash payment plan customers have been improved, with more direct encouragement to customers to get in contact if they are in difficulties.

The new letters were rolled out to payment card customers during June/July 2014. This complaint originated in November 2013 and so predates the redesign.

The complaint

The complainant contacted TVL on 9 November 2013 to complain about a letter he had received which had said he could be referred to a debt collection agency without further notice, and he had received this letter despite not having been in arrears with his TV licence payments.

The complainant said he wanted to see references to debt collection agencies removed from TVL letters because of the effect they could have on vulnerable people. The complainant said that the law had already restrained water companies from issuing such letters. The complainant also asked what had happened to a promised trial of a pay-as-you-go scheme for TV licences.

Further correspondence followed. TVL's Head of Revenue Management did not uphold the complaint (8 April 2014). She apologised for the delay in answering and shortcomings in the quality of some of the responses the complainant had received. She said she was sorry that the complainant had been unhappy with the wording on a reminder which stated that arrears might be passed to a debt collection agency. She said she could appreciate the complainant's concern but she thought it was reasonable to mention the possibility that this might happen. The Head of Revenue Management said that the complainant's comments would be taken into account when the letters were next reviewed. She added that a pay-as-you-go scheme had been considered but rejected.

The complainant wrote on 11 April 2014 reiterating his complaint, and saying that the reference to debt collectors on a second reminder letter was "extreme and no doubt could cause considerable stress/worry/upset to anyone let alone a person with special needs or senior citizen. Also an ill person".

The complaint was not upheld (June 2014). The BBC's Managing Director of Finance and Operations said she was "satisfied that TV Licensing can legally pass arrears to our debt collection agency and it is therefore reasonable to state that this is a possibility in a reminder letter".

Appeal to the Trust

The complainant appealed to the Trust on 12 June 2014 and there were some follow-up questions and a phone conversation with the Trust Unit to clarify his points of complaint.

The BBC Trust has a specific function under the BBC's Royal Charter to ensure that arrangements for the collection of the licence fee by the BBC are efficient, appropriate and proportionate.

In relation to this function, the Panel considered whether TVL is acting appropriately and proportionately in its efforts to ensure that customers who pay for their licence through a cash payment plan continue to maintain their agreed payments.

The Panel's decision

The Panel reviewed the various letters sent out by TVL to its cash payment plan customers. It noted that there had been significant revisions to the suite of reminder letters since the complaint had originated and it therefore reviewed both "old" and "new" versions. The Panel noted that the complainant would have received the "old" set of letters.

The complainant, the Panel noted, said that TVL threatened to refer customers to debt collectors in its second reminder letter, and that the letter stated this could be done without further notice. Looking at the example letters ("old" version), the Panel concluded that it was generally the third reminder before debt collectors were mentioned, but that it depended on the individual customer's payment record.

However, in the "new" payment reminder letters, the possibility of debt collection is usually raised in the second reminder, though it is the third reminder before it is stated that this could be done without further notice. Again, the Panel noted that the letters sent out would depend on the customer's payment record.

The Panel considered the complainant's point that the reference to debt collection could have a damaging effect on vulnerable customers, for example those who are elderly, sick or who are in financial difficulties. The complainant said that TVL is sending out these letters without taking into consideration the circumstances of the recipients.

While TVL, the Panel noted, did not have a policy document as such relating to the management of vulnerable customers, and there were no plans to draw one up, the Panel took some assurance from the information it reviewed regarding: various training briefings for agents; documents available to agents to help them spot a customer who may be particularly vulnerable; and quarterly listening sessions, attended by the BBC, to review a sample of calls involving customers with disabilities. These had resulted in a number of improvements. The Panel noted that agents had some discretion to halt arrears action and reschedule payments for vulnerable customers.

There had been no complaint in relation to this appeal about activity by or correspondence from the debt collection agency used by TVL (Akinika); nevertheless, for the sake of completeness, the Panel reviewed some of Akinika's policy documents and considered that they appeared to be in line with general industry practice.

The Panel noted that the complainant said that, in any event, customers paying with cash plans are paying in advance for their licence and so will not be "in debt" for the payment of their licence, even though they might be behind in their payments to the cash scheme.

Looking at the details of how the scheme works (see Background, above), the Panel concluded that it depends on where the customer is in their payment cycle as to whether they are in debt for their TV licence, or whether they are paid up for the licence but just behind in their scheme payments.

The Panel noted that it was apparent from the correspondence that the complainant was correct to say he was not in debt for his licence at the point when he received a reminder letter about possible referral to debt collection, although he was behind in his payments to the scheme.

The Panel noted that TVL stated that recent improvements to the way it monitored customers' payment history meant that it is now able to segment the data on arrears more precisely, allowing it to distinguish between those who are paying in arrears for a licence that has already been issued and those who are saving towards their next licence.

Letters, said TVL, can now be tailored appropriately: customers in the arrears part of the cycle will get a warning letter saying they will be passed into debt collection; while customers in the advance payment part of the cycle will simply get a message saying they will have to make bigger payments over less time. The Panel noted that, according to TVL, these customers would not now be passed into debt collection.

The Panel noted the development in the segmentation of arrears data, as reported by TVL, and the potential for this to improve the service to customers and aid the more efficient collection of the licence fee.

The Panel also noted the improvements in the “new” reminder letters, compared with the “old” ones the complainant would have received. It noted that the language used in the “new” letters was more direct and understandable, and now included more explicit instructions about whom to contact if a customer were encountering difficulties in keeping up with their payments. Again, the Panel thought these changes would potentially improve customer service and payment collection.

The Panel considered the complainant’s allegation that TVL is not providing cash scheme customers with appropriate information and opportunities for different ways to pay off arrears but, instead, was just sending out letters asking for the full arrears to be paid off.

This was another area where the Panel considered that the “old” reminder letters had not been ideal but had now been improved with the rolling out of the “new” suite of correspondence which made it explicit that customers in difficulties should ring to discuss matters with an agent with the aim of getting payments back on track.

The Panel was assured by TVL that, in practice, even when the “old” letters were in use, customers who were in arrears and contacted TVL on the number given, or who had been called by TVL, would have been able to negotiate how to catch up by making larger payments in subsequent weeks. The Panel could see that the “new” letters make it much clearer that this is a possibility and the encouragement to ring TVL is now direct and prominent.

The Panel understood that Capita agents have flexibility to spread the arrears over the remaining plan period, and TVL said that some back office agents and all team managers can re-plan over a longer term in special circumstances, for example in relation to vulnerable customers. There is further flexibility when the arrears are with the debt collection agency.

It was noted that the TVL website contains details of where to get further advice on debt, but the TVL “old” reminder letters did not. In the suite of “new” letters, the third (this is sometimes the second) reminder says the following: “You can get free, confidential and impartial debt advice from not-for-profit organisations like Citizens Advice, Money Advice Service, National Debtline and StepChange Debt Charity.”

TVL said that consideration was given to putting in phone numbers and website details for these organisations on arrears letters. However, at this stage, the objective of the letter was to get the customer to make up their missed payments and get back on track, so the messaging was focused on getting the customer to pay what they owe or, if they are having problems, to ring up so that a plan could be discussed. The Panel noted that if the customer were passed to debt collection, the reverse of all subsequent correspondence contained full details of organisations that could give independent debt advice.

The Panel was grateful to the complainant for bringing to its attention the content of various letters sent out by TVL to its cash payment plan customers. The Panel was assured that TVL had, independently of this complaint, reviewed and improved letters sent out to cash payment plan customers. The improvements had meant that, overall, clearer information was being sent to customers, including customers in the arrears part of the cycle who would get a warning letter saying they will be passed into debt collection. Customers in the advance payment part of the cycle will simply get a message saying they will have to make bigger payments over less time.

FINDING: Resolved

Finally, the Panel examined the complainant's allegations that TVL was acting illegally in its correspondence in relation to debt collection correspondence, and had failed to trial a pay-as-you-go scheme for licence fee collection, as promised in a review by the BBC Trust.

The Panel did not agree with the complainant that there was anything illegal about TVL's use of debt collection agents or the correspondence sent out to customers in arrears warning that referral to debt collection might follow.

On the trialling of a pay-as-you-go scheme, the Panel noted that a 2009 BBC Trust review of licence fee collection contained no obligation to trial such a scheme. It noted that a trial was considered by the BBC Executive but, having considered the benefits and risks, the decision had been not to proceed. That decision had been approved by the BBC Trust.

FINDING: Not upheld

Addition to Finding

Following the Trustees decision in April 2015, the complainant contacted the BBC Trust regarding a TV Licensing mailing he had received and an ensuing phone call he had had with TV Licensing in which he wanted to take out a new cash payment plan card.

The complainant alleged that he had been given incorrect information during that phone call and that the 'ways to pay' mailing he had received did not include weekly payment options. In his view, the BBC told the Trust that at renewal, all the ways to pay for a TV Licence would be given.

At its May meeting, the Panel was advised by the Trust Unit that the call had been correctly routed. The complainant was given incorrect information during the call but this had not materially affected the desired outcome of the complainant's call which was to sign up to a cash payment plan. The Panel noted that TVL had taken steps to prevent the same incorrect advice from being given to customers in the future.

The complainant's initial appeal was about letters to customers already on the cash payment plan system. In April 2015, the complainant was contacted about renewing his licence when he was not on the scheme (as he always cancels the scheme once he has paid for his licence up front). The Panel considered that the circumstances were different. It was not the case that the BBC Executive advised in its previous responses to the Trust that all payment options, including weekly cash payments, would be communicated to customers upon renewal.

The complainant then contacted the BBC Trust again in early May 2015. This second contact was because he had received a letter warning of referral to a debt collection agency for non-payment of instalments of his new cash payment plan. Instalments started in advance of the start date of the new licence. In this specific instance, the complainant's previous TV Licence was valid at the time the letter referring to debt collection was sent.

The Panel decided that this was not, in principle, acceptable. The circumstances were different but a fully licensed member of the public should not be sent a letter warning of referral to a debt collection agency. The Panel decided to ask the BBC Executive to investigate how its system may be changed to prevent letters warning of referral to a

debt collection agency being sent to customers whose previous TV Licence had not yet expired, taking into account the resource implications of such a change. The Executive would be asked to attend the Complaints and Appeals Board to update Trustees.

Television Licensing Appeal TVL0066: No Licence Needed status of property and complaint handling

The complainant requested that the Complaints and Appeals Board (CAB) review his appeal about the length of time it had taken TV Licensing to resolve issues with the No Licence Needed status of his property.

Complaint

The complainant's points, in summary were:

Point (A) the length of time it had taken TV Licensing to resolve the issues with the No Licence Needed status of his property.

Point (B) the cheque promised by TV Licensing to cover his costs for £35 had not been received at the time the appeal was submitted.

Point (C) a request for compensation for misinformation, maladministration, harassment, stress and inconvenience.

The complaint was about a second property which did not have a television. Before his first complaint in 2011 the complainant had written and called TVL on several occasions to inform them that no licence was needed for this second property.

In such situations TVL policy is to write to all addresses where there is no record of a TV licence to clarify the situation. If they are told that a property is empty or that no licence is needed, they will stop further correspondence for a period of two years. After this period, TVL will contact the property again to check that the circumstances remain unchanged. When a response is received, TVL will then write to the property again to confirm that no licence is needed. Further correspondence will only be triggered if there is a response to the letter of confirmation that suggests circumstances have changed.

The BBC TVL No Licence Needed Policy states that:

"It is the BBC's view that two years is a reasonable length of time for residential guards, given that residential circumstances frequently change. For example, occupiers may move house or decide to watch live TV programmes on a computer... latest figures show that a quarter of such addresses are found to need a licence when TV Licensing makes contact with them, hence it is important to ensure TV Licensing's data is accurate in order to assist in the efficient use of the licence fee."

The complainant had requested that TV Licensing correspondence relating to the second property be redirected to his first property. TV Licensing told the complainant in May and again in August 2011 that they did not have the facility to redirect correspondence to a contact address if no licence was on record.

In August 2014 the Head of Revenue Management confirmed that had been the case in the past but that it had changed. The new system had been introduced in March 2010, that is before the complainant contacted TVL. She explained that in the past TVL had been unable to redirect correspondence to a contact address if no licence was on record; however, this had since changed and TVL had now recorded that all letters relating to this second property should be sent to the complainant's primary address.

During the investigation carried out by the independent adviser on behalf of the Trust, TV Licensing confirmed that in the complainant's case a dual address (DUAD) had not been set up until April 2014:

"Prior to March 2010 the NLN [no licence needed] process was known as 'unconfirmed no set'. Following the introduction of NLN, a DUAD could be put in place for a NLN declaration. We can only presume the Customer Relations advisors who dealt with the responses in 2011 were not aware that a DUAD could be actioned. Following the contact from the complainant this year the Customer Relations teams at both sites were re-briefed that this is possible."

In her letter of August 2014, the Head of Revenue Management acknowledged the difficulties the complainant had experienced which had led to the guard being cancelled and multiple enquiry letters being sent to the complainant's second property. She acknowledged this inconvenience and said TVL would send a cheque for £20 to cover postage and photocopying.

In September 2014 the complainant contacted the Head of Revenue Management saying that no cheque had been received. The following month he requested that his complaint be escalated to Stage 3. He requested costs of £28.

In November the Managing Director, Finance and Operations replied to the complainant. This letter again explained the TVL policy where no licence is required and confirmed that all future correspondence would be redirected to the complainant's primary address. She said she had asked TVL to send a cheque to the complainant for £35 to cover his costs and that this should arrive within ten working days.

Appeal to the Trust

In December 2014 the complainant appealed to the Trust, stating that he had yet to receive this cheque. The Trust asked the Executive what had happened to the cheque. The Executive replied in January 2015 and said that due to another administrative failure, the cheque for £35 had only just been issued. They said that TV Licensing had assured them that they would put better systems in place to monitor and track payments. However, in recognition of the delay TV Licensing would send a further cheque for £15 to the complainant under separate cover.

In his letter of appeal the complainant asked for compensation for the long delay, misinformation, maladministration, harassment, stress and inconvenience. As the Executive had not had an opportunity to respond to this request for compensation, the BBC Trust felt it appropriate they should do so.

The Executive responded that they would have to decline the request for compensation. They added that generally goodwill payments were offered where out of pocket expenses had occurred.

In the complainant's comments on the appeal paperwork, he stated that he wished to withdraw Point (B) of his appeal as the cheque for £35 had been received since he submitted his appeal. The complainant also advised that a cheque for £5 which had been promised in May 2014 had also not arrived.

In its comments on the appeal paperwork circulated to the complainant and the Executive, the Executive informed the Trust that TV Licensing has now been asked to provide both the £15 cheque and £5 cheque. The Executive also noted that procedures were introduced in November 2014 to minimise the risk of agreed goodwill payments not being made to complainants.

The Panel's decision

The Panel reviewed the background and considerations note provided by the independent adviser together with all associated paperwork put before it. It then considered the points of appeal in turn.

- Point (A) the length of time it had taken TV Licensing to resolve the issues with the No Licence Needed status of his property.

The Panel noted the fact that in 2011 the complainant was given inaccurate information by TV Licensing about its facility to redirect correspondence and that this misinformation was not corrected until 2014. It also noted that the Executive acknowledged that it had given out incorrect information and the significant period of time that it had taken to rectify. The panel agreed that both the misinformation and the length of time it took to correct it were unacceptable.

Finding on Point (A): upheld

- Point (B) the cheque promised by TV Licensing towards costs for £35 had not been received at the time the appeal was submitted.

The Panel noted the complainant's request that this element of the appeal be withdrawn as this point had been rectified. It agreed not to consider this element of the appeal.

- Point (C) a request for compensation for misinformation, maladministration, harassment, stress and inconvenience.

The Panel considered the complainant's request for compensation. It also considered the Executive's point that it could not agree to compensation, but that it was prepared to make a goodwill payment for out of pocket expenses. The Panel agreed that the Executive's approach on this matter was appropriate and the amount offered was in line with the inconvenience caused in this case. It also agreed that compensation – as distinct from a goodwill payment – was not appropriate.

The Panel asked that the Trust Unit make inquiries to ensure that the Executive had sent out the cheques for £5 and £15 as promised to the complainant. [The Trust Unit confirmed with the Executive that the cheques had been sent out in March 2015.]

The Panel also noted the Executive's assurance that procedures had been introduced to minimise the risk of planned goodwill payments not being issued. It agreed that it would invite the Head of Revenue Management to attend CAB to discuss the new procedures that had been put in place and to seek assurance that the sending out of all payments due was monitored effectively. The CAB also asked that an audit be carried out on cheques offered in similar circumstances for an appropriate period in the last year to identify whether there was a systemic issue that had led to other cheques not being issued and to carry out a spot check on the system for a suitable period post November 2014.

Finding on Point (C) – not upheld

FINDING: Partially upheld

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.

The Fixer (Series 3), BBC Two

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

Complaint

The complainant and his wife took part in the Channel 5 series, *The Hotel Inspector*. The complainant initially contacted the BBC in autumn 2013 when he became aware that the same production company and presenter were producing the series, *The Fixer*, for BBC Two. He described his unhappy personal experience during the making of *The Hotel Inspector* and stated that, whilst he understood that the BBC was in no way responsible for the Channel 5 production, he did not believe the BBC should show *The Fixer* as the BBC's values would be compromised in doing so. The complainant corresponded at the time with the Commissioning Editor and with the Director-General's office to raise his concerns.

Appeal

The complainant appealed to the BBC Trust on 11 November 2014. He was unhappy with the response he had received at Stage 2, in which the Commissioning Editor of *The Fixer* said he stood by the editorial integrity of the series. The complainant also wished to know why the series had been stopped after only two of the scheduled six programmes had been transmitted.

Decision of the Senior Complaints Adviser

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

The Adviser was sorry to hear of the distressing experiences of the complainant and his family during the making of *The Hotel Inspector*. She noted that the complainant had contacted the BBC in November 2013 to raise his concerns and that he wished to save the BBC from embarrassment should any similar issues arise during the making of *The Fixer*.

She noted that the complainant accepted that the BBC could not be held responsible for the Channel 5 programme but that he believed the series should not be shown because of his previous negative experiences with the same presenter and production company.

She noted that the BBC's Commissioning Editor had replied at Stage 2 of the complaints process, saying that:

"All BBC programmes must adhere to the BBC Editorial Guidelines and *The Fixer* is no different. I appreciate that you had a negative experience of working on a Channel Five series, which also featured [the presenter], but I stand by the

editorial integrity of our series. If you have a complaint following our broadcast you need to use the following line www.bbc.co.uk/complaints to lodge this, and it will be dealt with accordingly."

The Adviser noted that the complainant had not raised any specific point relating to a breach of editorial standards in the transmitted episodes of *The Fixer*, and she noted that decisions relating to the choice of presenter fell within the "editorial and creative output" of the BBC and were the responsibility of the BBC Executive.

The Adviser noted that the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. "The direction of the BBC's editorial and creative output" was specifically defined in the Charter (paragraph 38, (1) (b)) as a duty that was the responsibility of the Executive Board, and one in which the Trust did not get involved unless, for example, it related to a breach of the BBC's editorial standards which did not apply in this case.

The Adviser noted that the complainant had contacted the BBC on 8 October 2014 to ask why the series had been removed from the schedules after only two of the anticipated six programmes had been transmitted. She noted that the relevant Commissioning Editor had replied, stating:

"The decision to stop showing series 3 of 'The Fixer' has nothing to do with the issues you raised about your previous involvement in a Channel Five series. As I made clear to you previously, I stand by the editorial integrity of our series. The decision to postpone the series run was requested by the BBC Two channel team who were unaware of the issues you raised and who were entirely responding to practical schedule considerations. They had to accommodate a couple of short turnaround topical programmes like the Horizon on the Ebola outbreak and The Fixer was the series that moved as it was doing less well in the Monday 9pm slot than it had in its traditional Tuesday 8pm home."

The Adviser noted that the complainant had suggested there was another reason relating to a court case. He stated his belief that the Commissioning Editor had misled him as to the real reason for the postponement of the series.

The Adviser noted that decisions relating to a change in schedules are day to day operational matters and are the responsibility of the BBC Executive. The "operational management of the BBC" is specifically defined in the Charter (paragraph 38, (1) (c)) as a duty that is the responsibility of the Executive Board, and one in which the Trust does not usually get involved unless, for example, it raised broader issues such as a breach of a Channel's Service Licence – which was not the case here.

The Adviser therefore decided that decisions about who should present programmes and decisions about scheduling were both matters that rested with the Executive and it would not be appropriate for Trustees to consider them. She therefore did not consider the appeal had a reasonable prospect of success and she did not propose to place it in front of Trustees.

Request for review by Trustees

The complainant asked that Trustees review the decision of the Senior Complaints Adviser that his appeal should not proceed for consideration. He reiterated his concerns regarding his experience in making a previous programme and supplied many emails regarding *The*

Hotel Inspector, and from members of the BBC Executive regarding *The Fixer*. He restated his opinion that the BBC risked reputational damage by showing *The Fixer*.

The Panel's decision

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

It was noted that decisions concerning what programmes to broadcast, who should present and make them and when they should be scheduled are for the Executive to take. As the Royal Charter (Article 38(1)(b and c)) sets out, "the direction of the BBC's editorial and creative output" and its "operational management" are specifically defined as the responsibility of the Executive Board.

The Panel noted the material provided by the complainant. Trustees agreed that there can be several reasons to move a series and there is no obligation to publish them or give information about them. Trustees noted the complainant had been given reasons for the mid series break and information about the practical scheduling considerations. There was no reason to think that the reasons mentioned were not true.

The Panel noted the strength of the complainant's feelings, but agreed that the debate centred around matters of editorial choice and operational management and that therefore there was no reasonable prospect of success for this appeal as these were not matters for the Trust.

The Panel very much regretted that the complainant was dissatisfied but felt his concerns fundamentally related to the programme he had taken part in for Channel 5. A line had to be drawn on this matter in fairness to other licence fee payers. The Panel saw no reason for the BBC to continue to correspond on these matters.

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

Removal of post from BBC News website

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

Complaint

This complaint relates to an article on the BBC news website entitled "Analysis: Can extremism plan work?" The article examined Government plans to seek to introduce new powers to ban extremist groups and to curb the activities of individual extremists.

The article can be found here: <http://www.bbc.co.uk/news/uk-politics-29427807>

The complainant had posted several comments on the article. During a thread which was discussing Islamic State (IS), the complainant had posted a reference to a verse from Sahih Bukhari, a collection of sayings and deeds of Prophet Mohammed:

"Check your facts. Islam does allow killing of anyone who 'offends'

"http://www.sahih-bukhari.com/Pages/Bukhari_4_52.php

"Book 53 verse 271. The IS are simply doing what Islam tells them to."

Another commenter had responded:

"As any Muslim or non-Muslim scholar who studied Islam knows, there are different interpretations of that verse."

In response to this thread, the complainant had posted a further comment in which he abbreviated the name Mohammed and said he had authorised killing.

This comment by the complainant had been removed by the moderator.

The complainant contacted the Central Communities Team on 29 October 2014 to appeal against the decision of the moderator to remove this comment. The complainant asked for clarification as to why the post had been removed.

The Central Communities Team responded on 30 October rejecting the appeal and saying that the comment had been removed because abbreviating the name of the Prophet Mohammed is potentially offensive to some people. They also said that the comment was off topic for the article.

The complainant responded on 30 October stating his dissatisfaction with the reply. He linked events in Iraq and Syria to the historical record about Mohammed and argued that saying he was off topic was frivolous as debates change direction. He complained that a valid posting had been removed because he had abbreviated the name Mohammed.

On 3 November the complainant escalated his appeal to the BBC Social Media Complaints Group. He disagreed that the post had been offensive, and said that he himself was insulted and offended at the removal of "a valid post".

The appeal was not upheld.

Appeal

The complainant escalated his complaint to the BBC Trust, saying that he was unhappy with the response received from the BBC. The complainant said in his appeal that the moderators were unable to locate a single example of the use of an abbreviated name for Mohammed as being offensive. He said that the moderators did not like the factually accurate content of the postings and so used the phrase "may cause offence" as a pretext to censor the post. He said that the moderators were not acting with a fair or balanced judgement.

Decision of the Senior Complaints Adviser

The Senior Complaints Adviser (the Adviser) carefully considered the article and the many comments on it and read the correspondence that had passed between the complainant and the BBC. She decided that the complainant's appeal did not have a reasonable prospect of success.

The Adviser noted the House Rules for BBC message boards which can be found at: <http://www.bbc.co.uk/social/moderation/house-rules#faqitem-4-7> and which include the following information regarding offensive comments:

"We reserve the right to fail comments which:

1. Are offensive
Comments that contain offensive content are not allowed on the BBC website. Racist, sexist, homophobic, disablist, sexually explicit, abusive or otherwise objectionable material will be removed and if extreme will result in immediate and permanent restriction of your account."

The Adviser noted that the stated aim of the moderator was to "allow as much freedom as possible to have relevant debate on our website" but to ensure that "discussions stay polite, safe and relevant and do not violate any laws or the BBC's Editorial Guidelines... moderation is necessary so all users can participate without fear of intimidation by other users or being subjected to offensive content".

The Adviser therefore considered whether the moderator on this occasion had exercised reasonable and appropriate discretion in removing the comment.

The Adviser noted the complainant's view that to refer to the Islamic prophet Mohammed in abbreviated form was not "potentially offensive" and that the moderators had not provided a single example of where it was considered offensive.

The Adviser then noted the response from the BBC Social Media Complaints Group which had drawn a distinction between using the abbreviated form of Mohammed and using it to describe others who share the same name and agreed that it:

"...was indeed likely to cause offence to some users of the site and a breach of our House Rules. The suggestion that referring to others who share the name Mohammed in this way would not cause offence was not considered to be a comparable analogy."

The Adviser noted the complainant's view that the moderators "did not like the factually accurate content of the postings" and therefore the comment "may cause offence" had been used as a pretext to censor the post. However, she noted the BBC reply which had

made clear to the complainant that it was the terminology used rather than the content of the post which had been deemed likely to cause offence to some users:

“The group noted that it would have been possible to make the point in reference to the subject of the article without using terminology that had the potential to cause any unnecessary and unintended offence. In future you would be welcome to repost the comment, removing any content that was deemed to break the House Rules.”

The Adviser considered therefore that the moderator had made a balanced judgment. She noted that the complainant had been advised that he could have made a posting that included the same substance, without referring to the Prophet Mohammed in abbreviated form, which the moderator considered might cause offence to some readers. She considered the Trustees would be likely to conclude that in this case the moderator had exercised reasonable and appropriate discretion and that this matter had not raised such serious issues that further action would be required. She therefore decided the complainant’s appeal did not have a reasonable prospect of success.

Request for review by Trustees

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

The complainant stated that the appeal submitted was not read, and contained legal points which were not addressed, so that it was absurd to reject it. The complainant felt falsely accused of breaking the house rules, and that he deserved to be told how many people had complained about his post, and maintained that the use of the abbreviation was not offensive. He commented:

“As the BBC have consistently failed to provide evidence of wrongdoing, let alone guilt, then there was never a valid reason for the censoring [of] my postings.”

The Panel’s decision

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

The Panel agreed with the decision of the Senior Complaints Adviser.

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

Trustees agreed that moderating message boards was an operational matter for the BBC. Therefore this would only be a matter for the Trust to take if it raised significant issues of general importance (General Complaints and Appeals Procedures¹ 5.9).

Trustees noted the issue raised was whether the BBC had made a reasonable decision in line with its own complaints procedures. It seemed to the Trustees that it was evident

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

that it had. Therefore this appeal did not raise a significant issue of general importance. The BBC's Editorial Guidelines did not apply in this case but set out some helpful pointers about religion. There is a sensitivity regarding the use of names at the heart of different faiths. Religious beliefs are central to many people's lives and arouse strong emotions. Freedom of expression is important but so is not denigrating other's beliefs.

The Panel noted that the BBC Social Media Complaints Group had agreed that using the abbreviated form of Mohammed:

"...was indeed likely to cause offence to some users of the site and a breach of our House Rules..."

Trustees considered this was a reasonable interpretation of the House Rules for BBC message boards regarding offensive comments, and Trustees noted that the BBC had reserved the right to fail comments which breached house rules.

Users of the BBC Message Board did not have an automatic right to publish their comments there. This did not curtail their freedom of expression as they were free to post them elsewhere. Furthermore the BBC Social Media Complaints Group

"...noted that it would have been possible to make the point in reference to the subject of the article without using terminology that had the potential to cause any unnecessary and unintended offence."

Trustees noted that the complainant felt the process had been tardy but agreed that the procedure was weighted so that matters which did have a reasonable prospect of success were given priority. This inevitably meant that other complaints were dealt with more slowly. This was in keeping with the Trust's decision when it reviewed the BBC's Complaints Framework in 2012 to target resources where they were most needed.

Trustees did not consider that it was appropriate or proportionate to take this matter on appeal because the complaint was not a matter for the Trust. In other words, this appeal did not raise a matter of substance and it did not have a reasonable prospect of success.

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

Top Gear Patagonia Special

A complainant requested that the Complaints and Appeals Board (CAB) review the decision of the BBC Trust's Head of Editorial Standards that the complainant's appeals did not qualify to proceed for consideration on appeal.

There were a number of complaints on the same matter, for which consolidated responses were provided.

Complaints

The complainants contacted the BBC to express their concern about the *Top Gear Patagonia Special*, which at that time had been filmed but had not yet been broadcast. They made the following points:

- They did not believe that the car number plate "H982 FKL" shown in the programme was a randomly allocated number; they believed it was a deliberately chosen reference to the Falklands War fought in 1982.
- Two complainants felt that the decision to air the programme as a "Christmas Special" was particularly offensive.
- Two complainants felt that it was not relevant whether the number plate was deliberately chosen or was the result of a coincidence. They said that the connection with the Falklands War would have been clear to the producers and it should have been changed.
- Two complainants wanted the BBC to apologise to Argentina for any offence caused, one of whom mentioned the outtake with the use of the n word and said on that occasion there had been an apology and one should be given here too whether offence was meant or not.
- One complainant suggested there had been a "cover-up" and said the BBC needed to see evidence of the purchase of the car and its prior number plate to prove the "amazing coincidence". He asked how the production team came to have a set of "other plates" ready.

The BBC received a great deal of feedback in response to the publicity surrounding the filming of the programme before it was broadcast and a consolidated response was sent to complainants by the BBC Complaints Management & Editorial Standards Adviser. The Stage 1 response included the blog written by the Executive Producer of *Top Gear* which denied allegations that the number plate had been deliberately chosen by the production team and sought to impress upon complainants that the BBC had treated the matter with the utmost seriousness.

The response also acknowledged that the complainants might have been hoping for more personalised responses, but explained that in the interests of efficient complaints handling and the need to ensure appropriate use of licence fee funded resources, the BBC's Complaints Procedure permitted the same response to be sent to each complainant.

The complaints were subsequently investigated by the Controller, Entertainment Commissioning and were not upheld.

Appeals

The complainants escalated their complaints to the BBC Trust prior to the programme's broadcast. They reiterated their concerns:

One complainant stated that he did not believe that the car number plate could have been a coincidence. He said that as the BBC was now aware of the offence and embarrassment that would be caused by broadcasting the programme, irrespective of whether or not the choice of number plate was deliberate, the only appropriate action would be to pull the scheduled programme. As an alternative, he suggested that the BBC should at least mask the number plate to minimise the offence.

One complainant felt that original documentation regarding the origin of the car number plates and log books should be published. If that evidence showed that the plates were not "random" but contrived (for example, because the person who was responsible for sourcing the car had a grudge against Argentina), apologies and penal recompense should be made to Argentina. Even if the evidence did not show deliberate intention, apologies should still be given.

One complainant stated that he was not questioning whether the number plate was deliberately chosen or not; he thought that an apology for "any offence caused" would have been appropriate whether or not it was a deliberate action. He compared the lack of an apology in this instance to a previous apology given for "any offence caused" in relation to a past complaint regarding offensive language in BBC output. He asked why an apology had been given in that instance but not given for the current complaint about *Top Gear*; he felt it amounted to double standards.

Decision of the Head of Editorial Standards

The Head of Editorial Standards, BBC Trust, carefully read the correspondence that had passed between the complainants and the BBC.

The Head of Editorial Standards, BBC Trust, noted that the Executive had issued, prior to broadcast of the programme, detailed responses explaining that the number plate controversy which occurred during filming in Argentina was the result of an unfortunate coincidence, and the cars were neither chosen for their registration plates, nor were new registration plates substituted for the originals.

At Stage 2, the Controller of Entertainment Commissioning stated in his consolidated response:

"Maintaining the reputation and integrity of the BBC is paramount to us. The BBC would never seek to deliberately offend any Argentinian citizen, and I assure you that BBC Management has treated the issues you have raised by the Top Gear filming very seriously. As with all incidents of this nature, BBC Television conducted a full internal operational assessment. To date, there is nothing that we have seen or read since the team returned which supports the view that the number plates in question were deliberately employed, which is in-keeping with what production staff and the presenters have said."

The Head of Editorial Standards, BBC Trust noted that the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. The "direction of the BBC's editorial and creative output" and "the

operational management of the BBC" are specifically defined in the Charter (Article 38, (1) (b and c)) as the responsibility of the Executive Board.

The Head of Editorial Standards, BBC Trust was of the view that Trustees would consider that decisions relating to the broadcast and scheduling of programmes were day to day operational matters for which responsibility rested with the BBC Executive rather than the Trust. Similarly the investigation of events during filming of this nature which had given rise to press speculation was also an operational matter. No evidence had been presented which demonstrated that the use of the number plate was a deliberate reference to the Falklands War and that therefore the Executive's investigation had been flawed. In the view of the Head of Editorial Standards these appeals did not raise a significant issue of general importance which was the threshold at which the Trust would become involved in considering an operational complaint.

The Head of Editorial Standards noted that one complainant had suggested that, if the BBC would not consider dropping the programme from its schedules, the offensiveness he considered was caused by the use of the number plate might be mitigated by masking the car number plate in question. She also noted that other complainants had stated that whether or not the number plate had been deliberately included in the programme, the BBC should have issued an apology for any offence caused.

She noted that the programme had not yet been broadcast at the time of either of the original complaints. Suggestions that the number plate should be concealed were not a matter for the Trust. Likewise in the absence of any evidence that the choice of number plate was deliberate it was a matter for the Executive as to whether they wished to apologise.

The Head of Editorial Standards, BBC Trust believed that the appeals did not have a reasonable prospect of success and she did not propose to put them before Trustees.

Request for review by Trustees

One complainant asked that Trustees review the decision of the Head of Editorial Standards, BBC Trust, that his appeal should not proceed for consideration.

The points on which he based his request were as follows:

- He had appealed to the Trust after the programme was broadcast and therefore there was an error in the letter he had been sent.
- He was not so much unhappy with elements of the programme but with the conduct of the BBC and its employees in their decision not to apologise for any offence caused and the unwillingness to explain the reasons for this.
- The decision had not addressed his complaint

The Panel's decision

The Panel reviewed the complainant's appeal to the Trust, the reply from the Head of Editorial Standards, BBC Trust, and the request to review her decision.

The Panel agreed with the decision of the Head of Editorial Standards, BBC Trust.

Trustees noted that in his original appeal the complainant was not questioning whether the use of the number plate was deliberate or not. He queried why an apology had not been offered for any offence caused as it could be seen why the Argentine people would be seriously offended by a number plate which they believed referred to the Falklands War. He had noted that an apology for offence caused had been made previously by Mr Clarkson on a different occasion. Both incidents were accidental so he queried why the response was different.

It was observed that the Royal Charter sets out a division of responsibility between the BBC Executive and the BBC Trust. Trustees agreed that the decision to offer an apology (in the absence of evidence that the use of the number plate was deliberate) was a decision for the BBC Executive. As the Royal Charter (article 38(1)(c)) sets out, the BBC's "operational management" is specifically defined as a responsibility of the Executive Board and one in which the Trust does not get involved.

Trustees noted this had been addressed in the decision from the Trust Unit:

"...in the absence of any evidence that the choice of number plate was deliberate it was a matter for the Executive as to whether they wished to apologise."

Trustees noted that the complainant was concerned that the Trust Unit had made an error and had said that the appeal had been made to the Trust before *Top Gear* was broadcast when in fact the appeal was made after broadcast. Trustees wanted to reassure the complainant that the Trust Unit decision had referred to the original complaint and so was correct.

Finally, Trustees agreed that the BBC had been open about its investigation and that amounted to explaining why the BBC would not be apologising.

The Panel did not consider that it was appropriate or proportionate to take this matter on appeal because the complaint did not raise a matter of substance and therefore was not a matter in which the Trust would get involved. As such, the Panel did not consider that the complaint would have a reasonable prospect of success on appeal.

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

Radio 4, the commissioning and cancellation of a documentary

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

Complaint

The complainant contacted the BBC News on 21 November 2014 to request a review of the process by which a radio documentary he had been commissioned to make on Pakistan's street children crisis came to be cancelled.

The complainant included a time line of events and some recent media reviews to support his complaint, and he outlined his key concerns:

- The volume of work that went into the project was substantial and he was led to believe by several BBC staff that this documentary was a commissioning priority, especially in the context of diversity and broadening BBC engagement with British Muslim communities and wider reporting of issues in Pakistan.
- The actions of BBC staff went against BBC policy of good practice, fairness and transparency in commissioning and how they treated small BME media projects.
- It undermined BBC policies on diversity and platforming new voices from BME communities, as publicly stated by the BBC Director-General.
- He was concerned about a policy that meant only ex-BBC production staff were suitably qualified to produce BBC radio productions in Pakistan, but then the programme was cancelled because the budget for the commission could not afford to employ such staff. Such a policy put severe restrictions on new BME talent and voices, especially from the British Pakistani community.
- He was concerned about the BBC Radio Current Affairs Editor's "very arbitrary dismissal" of the skilled production team put together by the complainant to work within the very tight budget set by the BBC. He did not believe it was a properly considered decision.
- He believed the cancellation raised wider issues about how the BBC engages with both the British Muslim and the British Pakistani communities.
- He and the Trustees of the [Name] media project felt strongly that their concerns should be placed on record and that they should challenge the way the project was treated by the BBC.
- He requested the decision to cancel the project be reversed and a budget be assigned to the project which would enable the documentary to be made to the required standard as originally commissioned.
- Alternatively, he requested a full review of BBC staff conduct in connection with the project via the BBC complaints process.

The Head of Editorial Standards, BBC News, responded on 21 November 2014 and made the following points:

- He said he had established from the Editor, Radio Current Affairs, that although it was a story Radio Current Affairs wanted to cover, and spent much time encouraging, it became clear that the programme was likely to go over budget, and that became a more acute issue as the security situation in Karachi deteriorated. A subsequent detailed estimate showed that the project would be at least £5,000 over budget and it could not be cross-subsidised from other funding streams.
- He acknowledged that the complainant had very generously offered to waive his own fee, but even then the project was still substantially over-budget. He also acknowledged that the complainant had suggested the names of freelance producers in Pakistan who could produce the project but the Editor, Radio Current Affairs, felt it was clear that neither of them had the necessary experience of producing long-form radio.
- He confirmed that the Editor, Radio Current Affairs, was particularly sorry that the programme could not be made and that so much time had been expended on the project by the complainant and his foundation; however, the project could not be made without the necessary funding. He hoped the complainant would understand that the BBC entered into the project with the utmost good faith and hoped that a way could be found to work together again in the future.

In response to a follow-up complaint, the Head of Editorial Standards, BBC News, considered the complainant's concerns at Stage 2 of the complaints process. Having discussed the matter further with the Editor, Radio Current Affairs, he said he had little to add to his previous response. He found that the project was curtailed for understandable budgetary reasons and that the other factors the complainant wished to be investigated were not relevant to the decision to cancel the programme commission.

He also addressed the complainant's concern that the security issue in Karachi had not changed over the previous two years, noting that the BBC's journalists were required to take advice from the BBC's High Risk team.

He decided that there had not been a breach of the BBC Editorial Guidelines.

Appeal

The complainant appealed to the BBC Trust on 29 December 2014. He said he was writing to request a review of the process by which BBC Radio 4 handled the commission and abrupt cancellation of the documentary on Pakistan's street children crisis. He reiterated the concerns expressed previously at Stage 1 and also made the following points:

- In follow-up correspondence at Stage 2 with the Head of Editorial Standards, BBC News, the reason given for the cancellation of the commission "switched away from the flawed budget, staffing and production commission process followed by BBC Radio 4 staff, to reasons of security concerns..."
- With regard to security, he pointed out that he had provided and received security approval from Radio 4 and was asked to undertake a health and safety course, which he was told would be sufficient to meet full security compliance procedures for the making of the programme.

- He felt it was unfair to cite security as a “one size catch up all excuse” when the real issue was a lack of planning and resources from Radio 4.

Decision of the Senior Complaints Adviser

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

She acknowledged the complainant’s view that security concerns had been used as a new “excuse” at Stage 2. She noted that the Head of Editorial Standards, BBC News, had quoted the Editor, BBC Radio Current Affairs as stating:

“...it became clear to me, as acting head of the department, that the project was likely to go over budget. This became more acute as the security situation in Karachi deteriorated.”

She thought it was reasonable for the Editor to consider security as a contributing factor in the budgetary concerns which led to his decision to cancel the commission. She noted that the complainant then took up the point of security in his follow-up complaint of 24 November stating:

“I am very aware of the safety issues in Karachi, as I am currently here ...working with some of the groups the programme was to feature. The security situation now is not different from last year or year before”.

The Adviser noted that the Head of Editorial Standards, BBC News, then addressed the complainant’s point about security in his Stage 2 response of 12 December:

“There is one subsidiary point on which I should perhaps elaborate. You commented in your email of 24 November that you are ‘very aware’ of the safety issues in Karachi and that the security situation is no different from previous years. I am very happy to take your word for it but as you might expect our journalists are required to take advice from the BBC’s High Risk team, rather than acting on a more informal basis. In fact, the BBC’s Hostile Environment’s Country page for Pakistan states that in October the Ministry of Foreign Affairs specifically included all foreigners in its previous warning to Karachi-based diplomats to restrict their movements in the city and to avoid shopping centres.”

She did not consider there was evidence to suggest that by directly addressing the “subsidiary point” of security the Head of Editorial Standards was indicating a “switching away” from the original financial constraints which had been stated as the prime reason for the cancellation to an alternative “excuse”.

She noted that the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. “The operational management of the BBC” is specifically defined in the Charter (Article 38, (1) (c)) as a duty that is the responsibility of the Executive Board, and one in which the Trust does not usually get involved unless, for example, it raised broader issues such as a breach of a station’s Service Licence which was not the case in this instance. She believed that Trustees would consider that decisions concerning programme commissions were the responsibility of the BBC Executive rather than the Trust.

She acknowledged the complainant's disappointment and noted that the Executive had also stated that the cancellation of the commission was very regrettable; however, she considered Trustees would be likely to conclude that the appeal was about an operational matter that was the responsibility of the Executive rather than the Trust and it was not appropriate for it to be put before Trustees on appeal.

Request for review by Trustees

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

The complainant felt that the following issues in his original complaint were not engaged with sufficiently by the Senior Complaints Adviser, and therefore requested that they be put before the Trustees and an independent editorial adviser:

- The worrying implications on programming range, reporting and diversity that only ex-BBC production staff are qualified to produce BBC radio productions in Pakistan;
- The then abrupt cancellation of the commission, being that the budget simply could not afford, to employ ex-BBC production staff in Pakistan – in effect a restriction on new voices and talent being able to work from the British Pakistani community in relation to Pakistan.
- The severe restrictions this puts on new BME and also Muslim voices, especially from small British Pakistani production companies making radio programmes for the BBC.

The Panel's decision

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

The Panel agreed with the decision of the Senior Complaints Adviser.

The BBC is committed to employing new and diverse talent and the Director-General introduced specific initiatives in the last year to further that aim. The paperwork seen by the Trust did not suggest that it was a lack of ambition to hire diverse and new talent that lay behind the BBC's decision. The BBC had provided a reasonable response which explained that because of cost and security concerns, the programme would no longer be commissioned.

It was observed that the Royal Charter sets out a division of responsibility between the BBC Executive and the BBC Trust. Trustees agreed that the decision whether or not to commission a programme was a decision for the BBC Executive. As the Royal Charter (article 38(1)(b) and article 38(1)(c)) set out, "the direction of the BBC's editorial and creative output" and its "operational management" are specifically defined as responsibilities of the Executive Board and ones in which the Trust does not get involved, unless, for example, they relate to a breach of the BBC's standards.

The Panel did not consider that it was appropriate or proportionate to take this matter on appeal because the complaint was not a matter for the Trust. In other words, this appeal did not raise a matter of substance and it did not have a reasonable prospect of success. However, the Panel hoped that the producer and the BBC would be able to work together again in the future despite the decision to cancel this commission.

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

Reporting of complaints figures

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

Complaint

The complainant had previously made a Freedom of Information request to the BBC asking for figures to be released to him concerning the number of complaints about BBC bias raised by the 'Yes' side of the independence vote, and had this request turned down. He contacted the BBC again on 6 October 2014 to complain that after the Alex Salmond and Alistair Darling debate, the BBC released a figure of 130 complaints for the 'No' side. He said this was a contradiction because he had been told that the BBC could not give him the figures for the 'Yes' complaints on the grounds that the BBC had to remain impartial, but then broadcast the figure for the 'No' side. He wanted to know why this happened. He said he was not so much unhappy that his FOI request concerning the 'Yes' complaint figures had been turned down, as by the contradiction demonstrated by the BBC later broadcasting complaint figures for the 'No' side when he had been told that none of the figures could be released. He felt this contradiction indicated bias against the 'Yes' campaign.

The complaint was investigated at Stage 2 by the Head of Public Policy & Corporate Affairs, BBC Scotland, who did not uphold a complaint of bias. He stated:

"In terms of FOI, I would note that it is not the case that the BBC is unable to provide statistics but rather that, relative to an enquiry such as yours, which requested "the number of complaints of political bias against the yes campaign the BBC has received in the last 12 months", it is not, under the terms of the Act, obliged to do so and, on that occasion, chose not to do so. The reasons why the BBC did not choose on that occasion to supply the information requested is detailed within the FOI response..."

The Head of Public Policy & Corporate Affairs, BBC Scotland said he could not agree that taking such an approach meant that the BBC was guilty of bias.

Appeal

The complainant appealed to the BBC Trust on 6 January 2015. He made the following points and posed additional questions:

- In response to his FOI request, he had been told that complaints numbers would not be released as it would interfere with the BBC's impartiality and leave it open to action from pressure groups,
- He was surprised that the BBC had released the number of complaints raised by the 'No' side of the Scottish Referendum Campaign after the BBC Salmond/Darling debate.
- He asked why that information was released just prior to the referendum on 18 September 2014, which was during the "purdah" period. He said this was very unusual and no figures had previously been released for either side of the campaign; it was the first and only instance of the numbers of complaints being released.

- What was the purpose of immediately releasing the numbers of the 'No' side complaints after the debate? He believed that they were released at that point to put political pressure on BBC Scotland and for maximum propaganda effect against the 'Yes' campaign.
- Why did the BBC not formally report that they had received numerous complaints about bias against the 'Yes' campaign when complaints of bias from the 'No' campaign were reported?
- Why did the BBC refuse to release data on the numbers of complaints from the 'Yes' side?
- Why was the 'Yes' campaign seen as a pressure group whereas the 'No' campaign was not?
- He believed the BBC's reporting of the figures on this issue were in breach of Editorial Guidelines on Accuracy and Impartiality.
- He believed the BBC Complaints service had demonstrated bias by firstly ignoring and losing his original response raised in the days following the debate, and secondly, by "avoiding the central issue when raised on a further two complaints on the same issue".
- He was very concerned that the response to his complaints from the Director of Public Policy & Corporate Affairs, BBC Scotland, was not from the regular complaints system and was therefore not directly traceable back to his original complaints and did not explicitly refer to the complaint numbers, which he believed was highly irregular.
- He believed the BBC had not been fair and open to his complaints, and had been deliberately obstructive beginning with a deliberate mis-spelling of his name on the first FOI and then by mis-handling his subsequent complaints.

Decision of the Senior Complaints Adviser

The Senior Complaints Adviser (the Adviser) carefully read the correspondence that had passed between the complainant and the BBC.

She noted that the Head of Public Policy & Corporate Affairs, BBC Scotland, had explained in his response of 28 November 2014 that the BBC was exercising a legitimate choice in terms of which figures it chose to release or report on this subject. With regard to the reporting of the 'No' figures following a leaders' debate, he noted that the...

"...BBC does, on occasions, choose to publish additional information about programme output. In this respect, and again, as noted within the FOI response...outside the Act the BBC proactively publishes public responses to recent issues of audience concern which have caused a significant number of complaints, or to any significant issue raised by complaints received."

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

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

The Adviser noted that the Trust and the BBC were committed to openness and, to that end, published a good deal of information about complaints – including main themes of complaints and information about complaints that had been upheld. She noted that the complainant had been directed towards the website where this information could be found.

However, she considered that Trustees would consider that a decision about the release of specific complaints figures was an operational matter that was the responsibility of the BBC rather than the Trust.

The Adviser noted that the BBC received around a million complaints and contacts a year and needed to have a complaints system that allowed them to be dealt with in a reasonable and efficient way. The complaints process had three stages, most complaints were dealt with at Stage 1 by Audience Services. Where complainants remained dissatisfied they could escalate their complaint to Stage 2 – this was a response either from a senior manager within the appropriate division or, if the complaint related to a specific element of output, the Editorial Complaints Unit. An appeal to the Trust was the third stage of the process, and Trustees only considered complaints after the Executive had finished responding.

The Adviser noted that the complainant had raised additional queries in his appeal that had not been part of his earlier complaint to the BBC. She considered it would not be appropriate for Trustees to consider those elements of the appeal that had not been addressed to the BBC and to which he had not therefore had a response from the Executive.

With regard to the handling of the complaint, the Adviser noted that the complainant did not believe due process had been followed by the BBC's Complaints service because a response had been issued by the Head of Public Policy & Corporate Affairs, BBC Scotland, which did not contain reference numbers traceable to his original complaints.

She noted that reference numbers were used by BBC Audience Services to track the progress of complaints and facilitate responses at Stage 1 of the complaints process. She noted that the response from the Head of Public Policy & Corporate Affairs, BBC Scotland, had come from a senior manager after the complainant had renewed his complaint and was a Stage 2 response.

The Adviser did not consider that the omission of complaint reference numbers meant that any irregularity of handling had occurred; nor had she seen evidence to suggest that a misspelling of the complainant's name was deliberate – although she acknowledged it was clearly regrettable.

The Adviser also noted that the complainant believed his central issue had been ignored by Audience Services at Stage 1 of the complaints process and that his complaint had at first been ignored and a follow-up complaint subsequently lost. The Adviser was not able to ascertain whether a complaint had been made prior to the telephone complaint initiated on 6 October 2014. She noted, however, that the complainant did refer to a previous request for the release of figures in his complaint of 6 October 2014, and in their response of 12 October 2014, Audience Services said they could not find records of this request. The Adviser believed that the request referred to by the complainant in this instance may have been his FOI request which would have been handled separately and would not have formed part of his Stage 1 complaints correspondence.

She decided that the correspondence she should consider in terms of the handling of the complaint began with the complainant's telephone call of 6 October 2014. She noted that responses were issued by Audience Services on 12 October, 21 October, 24 October and 1 November 2014 and did not indicate an "avoidance of the central issue", although some of them indicated that the complaint was being referred to the relevant staff for response and warned of a possible delay in order for an appropriate reply to be issued.

The Adviser appreciated that the complainant did not feel that the responses he received from Audience Services addressed his main points, but considered that Audience Services had appropriately referred his complaint to the Head of Public Policy & Corporate Affairs, BBC Scotland, for a more detailed response to his substantive concerns.

She saw no evidence of deliberate mishandling of the complaint and considered that Trustees would be of the view that Audience Services had followed the BBC Complaints Procedure appropriately.

She also considered that the complaint had been handled appropriately by the Head of Public Policy & Corporate Affairs, BBC Scotland, and believed Trustees would be of the view that the BBC's decision to release complaint figures for the 'No' side of the campaign was an operational decision for which responsibility rested with the BBC Executive rather than the Trust. It followed from this that she did not consider that the appeal had a reasonable prospect of success and she decided it should not be put before Trustees.

Request for review by Trustees

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

The complainant disagreed that his complaint constitutes an "operational issue" for the BBC Executive and therefore not covered by the BBC Trust.

He made the following points:

- The complaint was serious as he believed the BBC had breached the requirement for impartiality set out in the Royal Charter and Agreement between the Secretary of State and the BBC by siding with the No campaign during the Scottish Independence Referendum. Therefore, this was a matter for the BBC Trust.
- The immediate release of 130 complaints numbers by the No side after the Salmond/Darling debate was a clear breach of the Agreement. There was no "operational" reason for it.
- As part of his evidence he noted that no complaints numbers were released regarding the complaint about the report by Nick Robinson about Alex Salmond. Although he noted the BBC Trust had published the number which had appealed to the second stage and which were partially upheld (42).

The Panel's decision

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

The Panel agreed with the decision of the Senior Complaints Adviser.

The Panel observed that the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. "The operational management of the BBC" is specifically defined in the Charter (paragraph 38, (1) (c)) as a duty that is the responsibility of the Executive Board, and one in which the Trust does not usually get involved unless, for example, it raised broader issues such as a breach of a station's Service Licence.

The Panel did not consider that it was appropriate or proportionate to take this matter on appeal. A decision about the release of specific complaints figures was an operational matter that was the responsibility of the BBC Executive rather than the Trust. Trustees noted the complainant's concern that this amounted to bias but did not agree that a case had been made out for the Executive to answer on this point.

The Panel agreed that this appeal did not raise a matter of substance and it did not have a reasonable prospect of success.

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

Decision of BBC Audience Services not to respond further to a complaint about the *Countryfile* production team

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

Complaint

The complainant originally wrote to the Director-General on 10 November 2014. He complained that he had contacted *Countryfile* about an item they had broadcast, but had not received a satisfactory response.

In June 2014, he had emailed the programme, seeking information about where to buy a bee box which had featured in its broadcast of 25 May 2014. He had received an automatic response which had included Frequently Asked Questions, but did not answer his query. Under the section headed "Programme ideas and Press Information", it stated that the programme could not respond to all individual contacts, but all emails were passed on to the programme's researchers and they would contact the enquirer if they wished to discuss the issue or idea further. Also stated in that section was the assurance that all emails received were read and considered by the appropriate members of the team.

He contacted the programme again in July, August and October via the same email address but had not received a substantive response from the programme team. Frustrated by the lack of response he made a formal complaint to the Director-General and requested an apology for *Countryfile's* failure to respond to his query, plus a direct answer to his original query about the bee box.

The complaint was passed to Audience Services who replied on 24 November 2014. They said that the Director-General was unable to answer letters personally because of the volume of correspondence he received and that the *Countryfile* team was:

"...not obliged to provide a personalised response via their email address. All queries, comments and complaints must be directed through BBC Audience Services.

I have acknowledged your initial enquiry about the oblong wooden box that featured on *Countryfile*. We have looked into this and it seems you are referring to an episode broadcast on 25th May. This episode saw the team visit Andy Parfitt at an RAF base where he was installing new bee barracks. Andy Parfitt designed this bee box and you can contact him via his email address which is published online: Andrew.parfitt599@mod.co.uk."

The complainant was not satisfied with this response and wrote again to the BBC Director-General on 1 December 2014. He objected to being told by Audience Services to where he "must" direct his complaints; nor, he said, did he need "patronising advice" on how busy the Director-General was. He said the reply sent to him by Audience Services was a "complete affront" and did not include an apology. He said his complaint should now be considered as a complaint against Audience Services as well as the *Countryfile* team. He also requested compensation for the amount of time, paper, printing and postage taken up on his complaint.

The complainant's letter was passed on to Audience Services for a further response which was sent on 22 December 2014. Audience Services said they were sorry to tell the complainant that they had nothing to add to their previous reply. They did not believe the complaint had raised a significant issue of general importance that might justify further investigation and would not correspond further on the matter.

Appeal

The complainant appealed to the BBC Trust on 1 January 2015. He reiterated the core issues of his first formal complaint which were:

- The *Countryfile* programme administration set-up provided a clear "get-out" opportunity to do nothing in terms of responding to email communications received by the programme customer contact operations.
- He considered it was a first principle of formal communication that direct questions and requests must always be addressed in any form of civilised and civil correspondence.
- He considered the responses he had received at stage one were unsatisfactory for a number of reasons.

In conclusion he said that only "lip service" had been paid to his complaint.

Decision of the Senior Complaints Adviser

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

The complainant appealed both on the handling of his complaint by Audience Services and on the substance of his original complaint, regarding the failure of the *Countryfile* team to respond to his enquiry about a bee box.

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

The Adviser acknowledged the complainant's frustration² to this in not receiving an individual response from the *Countryfile* team. She noted that the automated response he had been sent stated:

"Due to the large number of emails received at this address, we are sorry that we cannot reply to every email individually but we hope the following information will help."

The "following information" specified by the *Countryfile* automated email response related to programme information requests, programme ideas, and press releases. Enquirers about programme information were asked to look on the *Countryfile* website: bbc.co.uk/countryfile – although the Adviser understood that the information sought by the complainant could not be found on the website.

² In his reply the complainant objected to the reference to frustration.

The Adviser noted that the BBC received around a million complaints and contacts each year and needed to have a complaints system in place which allowed complaints to be tracked properly and answered reasonably within an appropriate timeframe. She also noted that the complaints process needed to operate proportionately in the interests of all licence fee payers. She noted that initial complaints – that is, those at Stage 1 – were generally answered by Audience Services.

Having reviewed the correspondence that had passed between the BBC and the complainant, the Adviser could not agree that the responses from Audience Services were rude or inappropriate. She also noted that under the Complaints Framework, it was open to the BBC to decline to continue to investigate a complaint:

Complaints that the BBC may not investigate

1.7 At all stages of this Procedure, your complaint may not be investigated if it is trivial, misconceived, hypothetical, repetitious or otherwise vexatious.

She also noted that the Trust too was required to consider whether it was “appropriate, proportionate and cost-effective” to consider an appeal. In this instance, the Adviser believed that Trustees would be of the view that the substantive matter did not raise a significant issue of general concern. She also considered Trustees would be likely to conclude that Audience Services had given reasoned and reasonable responses to the complainant, and his complaint about complaints handling did not have a reasonable prospect of success. She did not therefore propose to put the appeal before Trustees for their consideration.

Request for review by Trustees

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

The complainant disagreed with the Adviser’s focus on the question of whether BBC Audience Services were justified in declining to respond further. Rather, the main thrust of his complaint was two-pronged:

1. Formal complaint about customer contact administration within the *Countryfile* set-up and
2. Formal complaint about “BBC Audience Services”.

The complainant felt that the Adviser’s response did not sufficiently address both issues.

The complainant raised the following points:

- He disagreed with the Adviser’s reference to his “frustration”, and felt that this error of judgement merited an apology from the Trust.
- The automated responses from *Countryfile* were wholly inadequate and did not address his request.
- The reference to cost effectiveness was a “flawed justification”.
- The replies from Audience Services were “rude and inappropriate”.

- The *Countryfile* auto-response constituted a “‘get-out’ opportunity to do absolutely nothing”. He wanted it changed.
- Questions should be answered.
- He wished to lodge a formal complaint about complaints handling by the Trust against the Trust for its appeal handling deficiencies.
- He requested compensation for the 14.75 hours spent dealing with the complaint thus far and for the material he had used.
- He also wanted a formal written apology at senior level with regard to the three complaints.
- He wanted communications from Audience Services to include an acknowledgment that they were from Capita.

The Panel’s decision

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

The Panel agreed with the decision of the Senior Complaints Adviser.

The Panel noted that the BBC received over a million complaints and contacts a year through Audience Services. The BBC replied to these but did not commit to reply to contacts outside that system. This had been approved by the Trust in 2012 in order to ensure that contacts were centralised, tracked and dealt with. In this instance the complainant had received information about the Bee box and how to contact Andy Parfitt about it in a response from Audience Services. The *Countryfile* automated response had been clear and there was no requirement to change it. The wording of the auto-reply was in any event an operational matter for the BBC Executive and not the Trust.

The Panel did not think it was “appropriate, proportionate and cost-effective” to consider this matter on appeal as it did not raise a significant issue of general concern.

In relation to the two handling complaints, Trustees concluded that Audience Services had given reasoned and reasonable responses to the complainant as had the Trust Unit. Therefore his complaints about complaints handling also did not have a reasonable prospect of success. The Trustees noted that the complainant wanted the BBC to include a reference to Capita in Audience Services replies at Stage 1 but considered this was a matter for the BBC and not the Trust. The information that Capita provided this service to the BBC was available in the public domain.

In these circumstances an apology was unnecessary. The Trust is the guardian of the licence fee. It was not appropriate to use it to recompense the members of the public for the cost of complaining to the BBC.

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

Decision of BBC Audience Services not to respond further to a complaint about the scheduling of *The One Show*

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

Complaint

The complainant originally contacted the BBC on 3 February 2014 because *The One Show* frequently started about two minutes early. He was unable to record the complete programme without an accurate start time.

BBC Audience Services replied on 6 February explaining that schedule listings worked in five minute blocks for easy reference and programmes did not always start exactly at the billed time. The BBC considered that allowing a small amount of flexibility was a reasonable approach to programme transmission and was common practice.

The complainant renewed his complaint the same day. He said no specific reason had been given for *The One Show* starting regularly before its billed time and said the response did not address the problem this caused with timed recordings.

Audience Services responded again on 7 February. They had put his concerns to the scheduling team who provided the following response:

"With specific regard to *The One Show* starting early, this programme is aired third in a line of live programmes (BBC News at Six and regional news preceding it) and so the start time may vary slightly depending on the durations of these and other programmes. Some years ago, BBC One introduced an extra 90 second News bulletin at 8pm and we need to make room for this in the schedule. In order to accommodate this we tend to start the 7pm and 7:30pm programmes slightly early so that the News bulletin can run at 8pm without pushing the subsequent programmes later, which would have the knock-on effect of delaying BBC News at 10pm every night."

Audience Services acknowledged that the complainant might not agree with that decision, but hoped it went some way towards answering his concerns.

The complainant made a further complaint on the same issue on 12 January 2015, stating that *The One Show* still started early and that on 12 January 2015 it started nearly three minutes early. He said that as it was his third complaint with no result, he would like the matter referred to the BBC Trust.

Audience Services responded on 13 January 2015 and gave the following explanation:

"'The One Show' is a live programme and follows our 'BBC News at Six' and regional news programmes – the finish time of news programmes can be hard to predict and if they finish a minute or two early – we run with 'The One Show'."

This also allows for trails, short news bulletins and announcements without disruption to the schedule for the rest of the evening.

Audience Services also explained that they could not consider the current complaint as a "return" complaint as it fell outside the time limit specified in the BBC Complaints Procedure for return complaints.

Appeal

The complainant appealed to the BBC Trust on 13 January 2015. He made the following points about his complaint:

- He had complained several times about this, but had only received "fatuous and condescending replies" and wanted the Trust to review his complaint.
- Timed recording needed an accurate start time – he considered the latest excuse from the BBC indicated that this did not matter to them.
- He believed the BBC felt it was too much trouble to use fillers after the local news and found it easier to move *The One Show* to a non-scheduled time.

Decision of the Senior Complaints Adviser

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

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

The Adviser noted that the BBC Complaints Procedure stated:

"If you are dissatisfied with our reply you should re-contact us in writing within 20 working days explaining why. You may be able to take the issue further to stage 2 and if so we will explain how. This is normally either to the independent Editorial Complaints Unit or relevant senior management. We publish the findings of complaints upheld or resolved by the Editorial Complaints Unit and those considered at stage 3 on appeal by the BBC Trust in Complaints reports."

The Adviser noted that the time frame between the complainant's second complaint and his third complaint was 11 months and she considered Trustees would be likely to conclude that Audience Services had acted reasonably by stating that it should be considered as a new complaint. If the complainant wished to make a further complaint on the issue, it would need to be submitted in accordance with the BBC's published complaints procedure, which, as stated by Audience Services in their response of 13 January 2015, could be found at http://www.bbc.co.uk/bbctrust/contact_us/making_a_complaint

The Adviser considered that Trustees would be likely to conclude that Audience Services had correctly assessed the complaint to be outside the time limit for a return complaint. She therefore decided that this appeal did not have a reasonable prospect of success and should not proceed further.

Request for review by Trustees

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

He stated that he did not expect any result from his complaint about “a ‘wrong’ situation” but did not expect the “pedantic” use of time limits in order to dismiss the complaint. He asked for the Trust to consider his challenge and to watch *The One Show* and acknowledge that it starts and finishes two or three minutes early.

The Panel’s decision

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

The Panel agreed with the decision of the Senior Complaints Adviser.

The Panel observed that the Royal Charter sets out a division of responsibility between the BBC Executive and the BBC Trust. Trustees agreed that the decisions about scheduling were for the BBC Executive. As the Royal Charter (article 38(1)(c)) sets out, the BBC’s “operational management” is specifically defined as a responsibility of the Executive Board and one in which the Trust does not get involved.

The Panel did not consider that it was appropriate or proportionate to take this matter on appeal because the complaint was not a matter for the Trust. The Panel also noted that the complaint was out of time. In other words, this appeal did not raise a matter of substance and it did not have a reasonable prospect of success. Finally the Panel suggested that a simple solution would be to set his recording five minutes earlier to deal with the fluctuations in the start time.

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

Decision of BBC Audience Services not to respond further to a complaint about the recommissioning of *The Voice*

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

Complaint

The complainant contacted the BBC on 5 January 2015 to complain that the BBC had commissioned a fourth series of *The Voice*. He said that the show should not be re-commissioned. It was not good value for money. He said the purpose of the show was to "showcase possible star quality" and, where none had been found, it should be considered a failure.

BBC Audience Services responded on 13 January 2015 acknowledging his view and stating the BBC's commitment to providing value for money in its programme production. They explained that it was inevitable that not all programmes would appeal to all audiences when the BBC was serving many different people.

The complainant renewed his complaint. He said the BBC had not attempted to explain why it had commissioned a fourth series. He considered *Fame Academy* had been more successful than *The Voice*, yet had been cancelled after only two series; he could see no justification to spend such a large sum of money on another series.

Audience Services responded again on 16 January 2015 stating that they had nothing further to add to their previous reply as they did not believe the matter raised a significant issue of general importance.

Appeal

The complainant appealed to the Trust on 16 January 2015 requesting a review of the decision by Audience Services to close down his complaint. He was dissatisfied with both the content and tone of the responses he had been sent, which he believed "bordered on military style". He said he had not had an explanation why *The Voice* had been recommissioned for a fourth series.

Decision of the Senior Complaints Adviser

The Senior Complaints Adviser (the Adviser) carefully read the correspondence that had passed between the complainant and the BBC, and acknowledged that he felt *The Voice* had not been a success. However, she decided that the appeal did not have a reasonable prospect of success.

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

The Adviser acknowledged that the complainant believed *The Voice* was not a successful production and that he felt he should have been given an explanation by the BBC of why they were prepared to spend money on additional series.

She noted that the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. "The direction of the BBC's editorial and creative output" was specifically defined in the Charter (Article 38, (1) (b)) as a duty that was the responsibility of the Executive Board, and one in which the Trust did not get involved unless, for example, it related to a breach of the BBC's editorial standards which did not apply in this case. Decisions relating to which programmes should be commissioned or re-commissioned for production fell within the "editorial and creative output" of the BBC and were the responsibility of the BBC Executive.

The Adviser also noted that the complainant was not happy with the manner of the response he received from Audience Services and found it "military" in style. She appreciated that the style of complaint responses could be quite formal, but she did not consider that the response was impolite. She acknowledged that the complainant wanted an explanation for why the BBC was re-commissioning a programme but she noted that the programme's lack of success was his opinion. She noted that Audience Services had informed him that his feedback had been circulated as part of the daily report to senior managers and had pointed out that such feedback was valuable in helping the BBC to gain a snapshot of audiences' tastes and preferences and helped the BBC shape decisions on future programming.

She believed Trustees would be of the view that Audience Services had provided a reasoned and reasonable response to the complaint and that it was appropriate for them to close down the correspondence at Stage 1b. For this reason, she did not believe the appeal had a reasonable prospect of success and she decided that it should not proceed further.

Request for review by Trustees

The complainant asked that Trustees review the decision of the Senior Complaints Adviser that the appeal should not proceed. He re-stated his opinion that the programme was not value for money.

The Panel's decision

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

The Panel agreed with the decision of the Senior Complaints Adviser.

The Panel observed that the Royal Charter sets out a division of responsibility between the BBC Executive and the BBC Trust. Trustees agreed that the decision whether to re-commission a programme was a decision for the BBC Executive. As the Royal Charter (article 38(1)(b) and article 38(1)(c)) set out, "the direction of the BBC's editorial and creative output" and its "operational management" are specifically defined as responsibilities of the Executive Board and ones in which the Trust does not get involved, unless, for example, they relate to a breach of the BBC's standards.

The Panel did not consider that it was appropriate or proportionate to take this matter on appeal because the complaint was not a matter for the Trust. The Panel concluded that,

were the complaint to come to it on appeal, there would be no reasonable prospect of it upholding the complaint.

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

Decision of BBC Audience Services not to respond further to a complaint about reporting economic growth in relation to climate change

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

Complaint

The complainant contacted the BBC on 5 October 2014. He considered the BBC was pushing a message that was shared by businesses and political parties, namely that economic growth was considered essential for the creation of jobs and was promoted as a "good thing". He considered that the environmental impact of most economic growth was not given the same weight. He stated: "the green agenda is being buried by growth propaganda".

Audience Services sent an initial response the following day which stated:

"The time given to each issue or report in the news is frequently a very difficult decision for our editors. Our audiences don't look at events in the same way and there's no one universal news agenda that applies to all. The time given has to be selective and no matter how carefully such decisions are made, news editors are always aware that some people may disagree with them.

"Essentially this is a judgement call rather than an exact science but BBC News does appreciate the feedback when viewers and listeners feel we may have neglected a story or focused too much on a particular story or item."

The complainant renewed his complaint. He took issue with the phrase "judgement call rather than an exact science" and queried what this phrase related to.

Audience Services sent a further response which stated: "We would only mention environmental issues during a report on business/economic issues, if it was relevant to that particular report."

It also advised the complainant that it would need to have information about specific output in order to investigate the complaint further.

The complainant sent two further responses to the BBC which made general points about environmental coverage and did not refer to any specific output. BBC Audience Services informed him on 5 January 2015 that it would not correspond further on this subject and that he could appeal against that decision to the BBC Trust.

Appeal

The complainant appealed to the BBC Trust on 28 January 2015. He appealed on the substance of his complaint that most of the UK's GDP caused pollution which in turn led to climate change. He considered the BBC was "continually exalting economic growth, without making this clear". He also considered the BBC's reporting on the subject was misleading in that it suggested: "...that consumption and associated pollution cannot be reduced without creating unemployment".

He noted that Audience Services had said his complaint had not raised a “significant issue of general importance” and sought an explanation why the connection between climate change and the economy was not a significant issue.

Decision of the Senior Complaints Adviser

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

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

She noted that the complainant had made a general point about the BBC’s coverage of economic growth and how that growth might have an impact on climate change. She noted that the complaint had not related to any specific output and that Audience Services had informed the complainant that decisions about what stories to cover and how to cover them were matters for individual programme editors and these were the “judgement calls” which they had referred to in their first substantive response. She noted the second substantive response had given further information and stated that the environmental agenda would be reflected in business reports on those occasions where it was considered relevant.

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

The Adviser considered that decisions about what stories to cover and which angles to pursue were matters of editorial judgement that rested with the BBC. She noted that the complainant had not identified any specific output during his complaint. She considered that Trustees would be likely to conclude Audience Services had sent reasonable and reasoned responses to the general concerns that had been raised and had acted appropriately in deciding to close down the correspondence. She therefore did not consider the appeal had a reasonable prospect of success and she did not therefore propose to put it before Trustees.

Request for review by Trustees

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

He said:

- 1) All BBC business output promotes growth.
- 2) No BBC business output notes its climate dangers.

He also enquired if he should complain about a few business programmes at random.

He objected to the BBC Audience Services' stance whereby they wrote to him:

"We can only investigate complaints when we are given a specific example of when a said incident occurred on output produced by the BBC. If you would like to give us a specific example of a story on economic growth that we covered (transmission date, programme etc), where you feel it would have been relevant to the story to mention environmental issues, we can investigate and respond in detail."

He stated that his complaint is that:

"The BBC never mentions the economic causes of the environmental disaster that is clearly on the horizon. Even if this disaster is not clear to the BBC, it is clear to many scientific observers, who deserve a mention. Does the requirement to give a specific example of something that never happens, mean that it is impossible to make a complaint to the BBC on this issue?"

The Panel's decision

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

The Panel agreed with the decision of the Senior Complaints Adviser.

The Panel then noted that the choice of news content was for the Executive to determine. As the Royal Charter (article 38, (1) (b) and article 38, (1) (c)) sets out, "the direction of the BBC's editorial and creative output" and its "operational management" are specifically defined as duties of the Executive Board and ones in which the Trust does not get involved, unless, for example, they relate to a breach of the BBC's standards. In this case, the Panel did not consider the complainant had raised any evidence that there had been a breach in the BBC's standards by making a very general assertion without referring to any content, and therefore the Panel did not consider that his complaint raised a matter for the Trust.

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

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