

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

December 2013 issued February 2014

Remit of the Complaints and Appeals Board	1
Rejected Appeals	3
Decision of BBC Audience Services not to respond further regarding the presenter of a report on BBC Breakfast, BBC One	3
Decision of BBC Audience Services not to respond further regarding the Saturday morning programme on BBC Radio Stoke	7
TV Licensing	12
TV Licensing	16

Remit of the Complaints and Appeals Board

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Rejected Appeals

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

Decision of BBC Audience Services not to respond further regarding the presenter of a report on BBC Breakfast, BBC One

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

Background

The complainant first raised his concerns on 28 August 2013 regarding a news item on that day's BBC Breakfast on BBC One about the 50th anniversary of Dr Martin Luther King's "I have a dream" speech. He said he was disappointed that the BBC had not chosen a reporter from the Afro-Caribbean/African ethnic minority population of reporters on BBC staff to cover the news story which he considered "all indicators must have determined it [would have been] the right thing to do". He asked why the BBC had selected an Asian reporter instead and queried whether there was too high a ratio of Asian reporters to Afro-Caribbean/African reporters. He asked for information about the number of Asian reporters and the number of Afro-Caribbean/African reporters on the BBC's staff and requested that the BBC should undertake to allocate reporters more appropriately to cover ethnic issues/stories in the future.

Audience Services responded on 6 September and stated:

"I understand you were unhappy that the item on Dr Martin Luther King did not feature a reporter from the Afro-Caribbean or African communities.

"We would never condone any form of discrimination as we are committed to equal opportunities for all, irrespective of ethnic or national origins, gender, marital status, sexuality, disability or age. This would extend to choosing which reporters we use. These are decisions which we take very seriously."

The complainant was not satisfied with the response and replied on the same day repeating his two queries as to why an Afro-Caribbean or African reporter had not been chosen to report on the story and what the ratio was between the number of Asian reporters and the number of Afro-Caribbean/African reporters employed by the BBC. He also asked for information about how he could escalate his complaint. Audience Services responded on 20 September and stated:

"Once again, we would like to assure you that the BBC does not operate a policy of discrimination. As a reflection of this, we would never choose a specific reporter to cover a story based on their ethnic origin, as this would be advocating discrimination. Reporters are assigned to news items based on a number of reasons, such as subject specialism, availability etc. Our correspondents are allocated stories based on their ability, not their ethnicity.

"We regret that answering questions about the proportion of our staff from ethnic minorities is not a service that we provide."

The complainant remained dissatisfied and on 22 September complained again. He sought information about escalating his complaint to Stage 2 of the complaints process and additionally stated:

“Both the initial and second BBC responses have referred to discrimination when my complaint made absolutely no reference to discrimination. ... Sadly the two responses received thus far from the BBC demonstrate both a lack of respect and a lack of sensitivity when dealing with matters concerning my community.”

The complainant sought to escalate his complaint to Stage 2 by writing to the Editorial Complaints Unit (ECU). However, the ECU passed the complaint back to Audience Services for a response. Audience Services wrote to the complainant on 28 September to notify him that they had nothing further to add to their previous responses and would not be engaging in further correspondence as they did not consider the complaint amounted to a breach of the Editorial Guidelines.

Appeal

The complainant escalated his complaint to the BBC Trust on 30 September 2013. He stated:

“The two responses received to-date from the BBC have relied on using the avoidance of ‘discrimination’ as their defence. At no point have I suggested that the BBC should discriminate nor has discriminated in this matter and hence I do not see the relevance of that argument.

“In contrast I believe that the BBC has failed to recognise its responsibilities with respect to Diversity and perhaps that is not surprising if it is only concentrating on avoidance of discrimination.”

The complainant considered the BBC had good time in which to prepare its coverage of this story in a way he considered was both sensitive and showed respect to those involved. He considered the use of an Asian reporter showed a lack of respect and sensitivity and noted that his request for statistical information was yet to be satisfied.

Decision of the Senior Editorial Complaints Adviser

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

The complainant had appealed on the substance of his complaint; however, the Adviser noted that BBC Audience Services had ceased handling this complaint at Stage 1 and that the complaint had not been considered at 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 responses from Audience Services had explained that the BBC did not allocate reporters according to their ethnic background, but according to other factors such as subject specialism and availability. The Adviser considered that the point being made by Audience Services was that the BBC did not have a policy of allocating reporters to any story according to their ethnic background and did not intend that ethnicity should play a part in the choice of which reporter covered any particular story about any particular issue. On reviewing the item in question she noted the report

included extensive use of archive footage of the "I have a dream" speech and footage from the Lincoln memorial; it included an interview with one of Dr Martin Luther King's sons and comments from black Americans taking part in the commemoration who described the significance for them of the speech. The Adviser did not consider Trustees would be likely to conclude that the news report showed a lack of respect or sensitivity for its audience as a result of being compiled by an Asian reporter.

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 which did not apply in this case. Decisions relating to the choice of reporters for particular news items fell within the "editorial and creative output" of the BBC and were the responsibility of the BBC Executive.

The Adviser considered Trustees would be likely to conclude that Audience Services had provided reasoned and reasonable responses to the complainant's concerns. She did not believe that it was irrelevant for Audience Services to mention discrimination because the point being made in their responses was that ethnicity was not a consideration in the BBC's decisions when it came to allocating reporters from diverse backgrounds to any particular story. This was not intended to indicate a lack of respect for any ethnic minority – quite the opposite – decisions were made according to factors based on an individual reporter's ability or availability to cover a story. The BBC's equal opportunities policy can be found at <http://www.bbc.co.uk/diversity/>.

With regard to the statistics requested by the complainant, the Adviser noted that the BBC was not obliged to provide this information to its audiences and was entitled to decline the request.

Overall, the Adviser considered it was reasonable for the BBC to decline to engage in further correspondence on this issue. It followed from this that she did not consider the appeal had a reasonable prospect of success and it should not therefore be put before Trustees.

Request for review by Trustees

The complainant asked Trustees to review the decision of the Senior Editorial Complaints Adviser not to proceed with the appeal. He reiterated his view that the reporter should have come from the African Caribbean/ African communities. The complainant questioned whether he was to believe the BBC did not have a reporter with the relevant subject specialism from the relevant communities, given the BBC's reasoning that it allocated correspondents on "subject specialism" and "availability". He said that the purpose of requesting the statistics was to throw light on the availability of such a reporter. The complainant concluded that the BBC had a case to answer which the replies had not sufficiently addressed.

The Panel's decision

The Panel was given the complainant's appeal to the Trust, the reply from the Senior Editorial Complaints Adviser, the challenge to her decision and the correspondence between the complainant and the BBC.

The Panel noted the complainant's strongly held view that the news story in question should have been covered by a reporter from the African Caribbean/ African communities. The Panel agreed that the choice of which reporters to assign was a matter of operational management and the BBC was entitled to take into account whatever relevant factors it chose, providing that it operated within the law and the Editorial Guidelines. The Panel did not agree that there was evidence to suggest that the operational decisions which had been taken in this case raised any issues with regard to the Editorial Guidelines. Given this, the Panel agreed that the responses given by the BBC had been adequate and appropriate to the issues raised.

The Panel agreed that it would not be likely to uphold an appeal against the BBC's decision to cease correspondence on this matter.

The Panel therefore agreed that the appeal did not have a reasonable prospect of success and did not qualify to proceed for consideration.

Decision of BBC Audience Services not to respond further regarding the Saturday morning programme on BBC Radio Stoke

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

Background

The complainant raised concerns about the standard of the Saturday morning programme on Radio Stoke on 7 July 2013. He felt that the standard had declined since the presenter took over the presentation of the Saturday morning slot and the format was changed. He was also concerned about the removal of features where listeners could contribute songs.

An initial response from Audience Services on 13 July 2013 registered his feedback and acknowledged his concerns about the format and presentation of the show, but said:

"we appreciate that for some listeners it may take some time for a new programme to bed in, however, we feel that [the presenter] brings her warm and bubbly personality to the show. It's a fact of broadcasting life that not every presenter will meet with the approval of all their audience".

The complainant made a follow-up complaint the same day as he felt the reply from Audience Services failed to answer the points he had raised. He said that his query as to why all the request features had been steadily removed since the change of presenter had been ignored.

BBC Audience Services approached Radio Stoke's Managing Editor for further comments on the complaint and these were passed on to the complainant on 21 August 2013:

"Thank you for your comments about Radio Stoke's Saturday Mid-Morning show, which have been shared with the radio station. Radio presenters and programme content are always subject to personal taste. While constructive feedback and opinion is valuable, it would be impossible for the radio station to tailor its programmes to each listener's individual taste. It aims to make programmes that appeal to as many of its target audience as possible. Therefore there will always be some people that don't care for some of the content. While the content of the show in question will inevitably evolve over time, Radio Stoke doesn't currently have any plans to change the presenter."

The complainant made a further complaint to Audience Services on 24 August 2013, saying that his question, "why were all Saturday morning request opportunities cancelled?" had still not been answered. He requested a response which answered that question. He said he had not asked for Radio Stoke to change the presenter of the programme.

BBC Audience Services sent a second stage 1b response on 27 August 2013 saying that they had nothing further to add to their previous response and explaining that they did not consider the points raised in the complaint suggested a possible breach of standards.

Appeal

The complainant appealed to the BBC Trust on 22 September 2013, saying that he was unhappy with the responses received from Audience Services.

The complainant said that “any blame should not be laid at [the presenter’s] door” but with “those who fail ... to adequately mentor their staff”.

He requested an answer to the question he had repeatedly posed: “Why have we now had all our chances to request music taken from us?”

The complainant said that he was concerned that he was told that “we are unable to address any new complaints and questions” as part of his on-going complaint. He felt this demonstrated that the BBC could not defend the level of changes made, and it seemed to him that the BBC wanted to silence any further criticism.

Decision of the Senior Editorial Complaints Adviser

The Senior Editorial Complaints Adviser (“the Adviser”) carefully read the correspondence that had passed between the complainant and the BBC, and she acknowledged the strength of the complainant’s feelings. 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 noted that in his substantive complaint, the complainant raised two main concerns:

1. The poor standard of the presenter’s presentation of the new Saturday morning show on Radio Stoke.
2. A change in format which denied listeners the opportunity to make music requests.

The Adviser noted that both these points were related to the programme team’s editorial decision-making processes. She acknowledged that the complainant wanted to challenge the decision by Audience Services that there had not been a breach of editorial standards which would merit further investigation of the complaint.

All the BBC’s public services have Service Licences which are set by the Trust and establish the nature of the output on each service. The Service Licence for BBC Local Radio was renewed in May 2013 and can be found in full here:
http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/service_licences/radio/2013/bbc_local_radio.pdf.

The Service Licence for Local Radio made the following opening statement:

“The remit of BBC Local Radio is to provide a primarily speech-based service of news, information and debate to local communities across England. Speech output should be complemented by music.

“The target audience should be listeners aged 50 and over, who are not well-served elsewhere, although the service may appeal to all those interested in local

issues. There should be a strong emphasis on interactivity and audience involvement.”

The Adviser considered she had not seen any evidence that suggested Radio Stoke was in breach of its Service Licence.

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 a Service Licence which the Adviser did not consider was the case here.

Decisions relating to programme presentation, style and formats fell within the “editorial and creative output” of the BBC and were the responsibility of the BBC Executive.

The Adviser acknowledged that the complainant had not asked for the presenter to be changed, but had made the point that she should be better managed to improve the quality of her presentation. The Managing Editor of Radio Stoke had acknowledged the complainant’s feedback in this regard but also explained that

“While constructive feedback and opinion is valuable, it would be impossible for the radio station to tailor its programmes to each listener’s individual taste. It aims to make programmes that appeal to as many of its target audience as possible. Therefore there will always be some people that don’t care for some of the content.”

The Adviser considered that Trustees would be of the view that Audience Services and the Managing Editor of Radio Stoke had provided reasoned and reasonable responses to the complainant’s concerns.

While the Adviser noted that the BBC Executive had not answered the complainant’s specific question as to why the format of the programme had been changed, the Adviser noted that it was not a requirement of the Guidelines that the BBC should discuss its internal editorial decision-making processes with complainants. She did not therefore consider that there was any reasonable prospect of success for an appeal on this issue.

With regard to the complainant’s concern that he was not able to introduce new complaints and questions during the investigation of his current complaint, the Adviser noted that this was a requirement stipulated in the BBC complaints framework and was intended to ensure an efficient use of licence fee payers money, as introducing new elements at the later stages of the complaints process led to more costly, time-consuming and protracted correspondence as additional points were raised and investigated.

The Adviser believed that Trustees would consider it was reasonable for the BBC to decline to engage in further correspondence on the issues raised by the complainant. It followed from this that she did not consider the appeal had a reasonable prospect of success and it should not therefore be put before Trustees.

Request for review by Trustees

The complainant asked Trustees to review the decision of the Senior Editorial Complaints Adviser not to proceed with the appeal. He repeated his view that the BBC’s responses to

his complaint had not been adequate, and that his complaints about the removal of listener features and errors had not been answered.

The Panel's decision

The Panel was given the complainant's appeal to the Trust, the reply from the Senior Editorial Complaints Adviser, the challenge to her decision and the correspondence between the complainant and the BBC.

The Panel considered the correspondence between the complainant and the BBC and agreed that the complainant did not appear to have raised any issues which engaged the BBC's Editorial Guidelines or the BBC's Service Licences, and that the matters he had raised appeared to relate to day-to-day operational management. The Panel was satisfied that the BBC had responded appropriately in explaining that the appreciation of a presenter's style was a matter of personal taste. The Panel agreed with the complainant, however, that his questions about the decision to remove the listener request features had not been addressed in the BBC's replies.

The Panel noted that the question before it was whether it agreed with the decision of the Senior Editorial Complaints Adviser that the complainant's appeal against the decision of BBC Audience Services not to correspond further did not have a reasonable prospect of success; and reminded itself that it had not yet examined the merits of the complainant's complaint. The Panel further noted that, having decided that the complainant's appeal against the Stage 1B decision did have a reasonable prospect of success in one respect, namely the complainant's question about listener phone-in requests, the usual next step would be for the Panel to hear this aspect of the complainant's appeal against Audience Services' decision to close his complaint down and that, in the normal course, the BBC Executive would be invited to comment on their decision not to correspond further. However, the Panel observed that this course of action could be regarded as a disproportionate use of the licence fee, in light of its tentative view that the complainant had not raised any issues which engaged the BBC's Editorial Guidelines or the BBC's Service Licences. The Panel had regard to the duty of the BBC Trust under the BBC Charter in upholding the interests of licence fee payers¹ and the following section of the general complaints and appeals procedure:

"5.20 The Charter and Agreement give the Trust a range of options in deciding the approach to take in investigating and deciding appeals. The nature of the appeals that come before the Trust varies widely and different appeals call for different approaches. For example, sometimes the Trust will find it necessary to look in detail at the background to a complaint and any factual issues it raises, and may appoint independent advisers to help it. It is up to the Trust to decide which approach is appropriate, proportionate and cost-effective in relation to your appeal, and in making that decision it will take account of all relevant circumstances, including its role as the final arbiter in appropriate cases, its duty to exercise rigorous stewardship of public money, and its duty to hold the BBC Executive to account for the BBC's compliance with applicable regulatory requirements and the general law."

The Panel noted that it had discretion under the general complaints and appeals procedure to determine which approach to take when investigating and deciding appeals.

The Panel therefore resolved to ask BBC Audience Services that this element should be returned to Stage 1 for a further response. The Panel was satisfied that it would be

¹ BBC Charter, Art. 22.

appropriate, proportionate and cost-effective to adopt this approach and that it was consistent with the BBC Trust's role under the BBC Charter in upholding the interests of licence-fee payers.

The Panel agreed that it was not likely to uphold an appeal against the BBC's decision to cease further correspondence on the remaining matters.

The Panel therefore agreed that, with the exception of the matter relating to listener requests, the appeal did not have a reasonable prospect of success and did not qualify to proceed for consideration.

TV Licensing

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

Complaint and Appeal

The complainant appealed to the BBC Trust by a letter dated 23 April 2013, having received a letter rejecting his complaint from the BBC's Chief Financial Officer dated 16 April 2013. The Trust noted that the appeal request was brought within the time-limits set out in the TV Licensing Complaints Procedure (i.e. within 20 working days of receiving a response at Stage 2).

The complainant had first contacted the BBC on or about 12 November 2010 and continued contact over subsequent months. The complainant stated that the only television receiving equipment that he possessed was incapable of receiving UK broadcasts and would never be used for watching or recording UK television. He further stated it would be used only for watching a particular Italian satellite channel to learn the Italian language. It would, he contended, be unfair and illogical for a person in his position to be required to have a TV licence. He argued in a letter of 3 January 2012:

"The licence money received in the UK is used to finance UK programmes and transmissions. I do not receive these in any medium whatever. Surely it is a matter of common sense that UK Television has no equitable right to my money."

He stated that the legislation was in very general terms and did not answer the specific question as to whether a person is liable to buy a television licence in these circumstances, and that it was incumbent on the BBC – as a matter of logic and fairness – to exercise the "reasonable freedom of interpretation" that the legislation allowed to exempt him and others in his position from the requirement to have a licence.

TV Licensing responded to the complainant that:

"if you receive or record live any live or near live television broadcasts, via any means, either from within or outside of the UK, you will need to be adequately licensed [and] the Licensing Authority is satisfied that [the legislation] has been interpreted correctly."

Subsequent replies from the BBC expressed the same conclusion. These letters added that the service which the complainant watched is a television licensable content service and so falls within the definition of a "television programme service" for the purposes of the regulations defining a "television receiver".

In making his appeal to the Trust the complainant summed up his argument as follows:

"UK legislation on television licensing is worded very generally. Nowhere does it even raise the question of licence liability when watching foreign programmes and transmissions in the context of inability to receive UK television. Therefore there is scope for interpretation which would exclude licence liability in my case. I refer only to scope – the legal room for manoeuvre when interpreting.

"It would be logical and just to take advantage of this scope by excluding someone who physically cannot tune in to UK television broadcasts, who greatly

dislikes television and who watches a single Italian channel in order to learn the Italian language.”

The complainant did have a television licence and did not contend that the BBC is acting unlawfully; rather, to demand a licence fee from him was in his view “patently and deeply illogical and unjust”.

Decision of the Senior Editorial Strategy Adviser

The Senior Editorial Strategy Adviser (“the Adviser”) noted that the Charter requires the Trust to play a role as final arbiter in the case of appropriate complaints. Under the Agreement, the Trust must ensure that all appeals that raise a matter of substance are subject to a right of appeal to the Trust, and that the Trust is final arbiter if any question arises as to whether or not an appeal is for the Trust. More generally, the Trust must hold the BBC Executive to account for its compliance with regulatory requirements and the general law (although the Trust cannot rule definitively on the meaning of legislation, as a court can). The Trust must also ensure that arrangements for the collection of the licence fee are efficient, appropriate and proportionate.

The Adviser considered the correspondence from 11 May 2011 onwards from the complainant, TV Licensing, the Licence Fee Unit and the Chief Financial Officer and took legal advice which is confidential and legally privileged.

The Adviser concluded, first, that even if the legislation does not raise the issue of foreign broadcasts, it did not necessarily follow that such services were intended by Parliament to be outside the relevant definitions: it is equally possible that they are to be taken at face value with no geographical restrictions. But she also considered that, in fact, there are indications in the relevant legislation that a receiver capable of receiving only foreign channels did indeed fall within the definition of a “television receiver” in the Communications (Television Licensing) Regulations 2004, and so did require to be adequately licensed.

The Adviser noted, in particular, the argument of the Licence Fee Unit that the service watched by the complainant is defined by the Communications Act 2003 as a television licensable content service, which can include services broadcast from abroad (e.g. a satellite service uplinked from a foreign country). This is consistent with provisions of the Communications Act 2003 requiring Ofcom to regulate all television services within the UK’s jurisdiction under EU law, wherever they are broadcast from. The Adviser concluded, therefore, that “television licensable content service” must include foreign services, both in that context and in the context of defining a “television receiver” for television licensing purposes.

Accordingly, the Adviser did not accept the complainant’s argument that the BBC has “scope” for interpreting the legislation in the way the complainant would see as “logical” and “fair”. She took account of the fact that the BBC has a duty to collect the licence fee (regarded by the Treasury as a tax) from all those who are obliged to pay it, according to a proper interpretation of the legislation. She saw no grounds for concluding that TV Licensing or the Licence Fee Unit had misinterpreted or misapplied the legislation in the case of receivers capable only of receiving foreign channels.

Therefore the Adviser considered the case did not have a reasonable prospect of success and should not be put before Trustees.

The complainant requested that Trustees review the decision of the Adviser that the appeal should not proceed. He stated his reasons as follows:

"I claim the decision is based on what current general legislation merely 'can' be seen to include if one so wishes (which is not disputed), and not on whether the wording gives scope or freedom for seeing it in another, more ethical and logical way. It therefore misses the point.

"I claim the decision is also based on an injection of assumptions into the actual words of the legislation. Furthermore, that injection is presented misleadingly to suggest, incorrectly, that the inclusions are in the text of the legislation itself."

The complainant's request for review was made considerably outside of the timeframe he had been given to challenge the Adviser's decision. However, the Panel noted the explanation offered by the complainant and considered that this amounted to a good reason to excuse the delay. They therefore agreed to consider the challenge.

The Panel's decision

The Panel was given the complainant's appeal to the Trust, the reply from the Trust's Senior Editorial Strategy Adviser, the challenge to her decision, and legal advice which the Panel noted was confidential and legally privileged.

The Panel concluded that the complainant's arguments had no reasonable prospect of success. It considered it adequately clear that a person who installs or uses apparatus capable of receiving only a foreign satellite service must have a TV licence. It acknowledged that the Trust cannot rule definitively on the law – only the courts can do that – but considered that to decide whether the appeal should proceed it was open to it to express its view of the law.

The Panel noted that a person who installs or uses a "television receiver" which is not authorised by a TV licence is guilty of an offence: Communications Act 2003, s.363. A television receiver is defined by regulations made under the Act, and encompasses any apparatus installed or used to receive any "television programme service". Such a service is defined in Part 3 of the Act as consisting of certain kinds of television services (s.362) including a television service delivered and received by satellite, which is a "television licensable content service" (see s.232).

The Panel considered the complainant's arguments but concluded that the legislation should be taken at face value, with no geographical restriction: satellite TV, by its very nature, can be broadcast from one country and received in several others, so it does not follow that Parliament did not intend such services to be included in the definition. In the Panel's view, had Parliament wished to exclude from liability a person in the complainant's position it is likely that it would have done so explicitly. It noted, also, that the legislation contains power for the Secretary of State to exempt them specifically, in regulations, but that had not been done.

Nor did the Panel consider it self-evident that this is an illogical or unfair position. The licence fee attaches to the installation and use of a particular kind of apparatus; it is not connected to the use or enjoyment of particular services. The policy is that the BBC (and, since April 2013, S4C) should be funded by the licence fee, and that rationale is as valid in the case of a person who watches only foreign-based television as it is in the case of a person who never watches BBC (or S4C) television but watches other UK-based channels. The Panel took account, too, of the problems of enforcement in a system whereby the liability to pay depends upon the technical capabilities of particular equipment.

Additionally, the Panel was not persuaded that the legislation is silent on this question, and did not believe it was (as the complainant argued) open to the BBC to interpret it as excluding foreign services. Noting that (as pointed out in the Executive's earlier correspondence) the service watched by the complainant was a "television licensable content service", it took the view that the legislation must include services broadcast from abroad, because if it did not the provisions in the Communications Act 2003 defining Ofcom's remit would not comply with EU law: the Audiovisual Media Services Directive² deals with the issue of cross-border services through rules of jurisdiction based on where a service is "established" (in particular, where the head office and workforce are located and where editorial decisions are taken)³, rather than the place from which it is broadcast. For example, a satellite TV service established in the UK but uplinked⁴ (say) from France would be likely to be regulated by Ofcom. If the definition of a television licensable content service did not include services broadcast from abroad, Ofcom could not regulate it and so the UK could not comply with the Directive.

In conclusion, the Panel noted that the BBC is under a legal obligation to collect the licence fee from any person who uses or installs a television receiver, even if it is capable only of receiving Italian channels. There are no grounds for concluding that TV Licensing or the Licence Fee Unit in the Executive has misinterpreted or misapplied the law. That was enough to dispose of this appeal.

The Panel therefore agreed that the appeal did not have a reasonable prospect of success and did not qualify to proceed for consideration.

² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:095:0001:0024:EN:PDF>

³ Article 2.

⁴ I.e. transmitted to the satellite.

TV Licensing

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

Complaint and Appeal

The complainant appealed to the Trust on 1 October 2013 regarding the decision of the BBC's Managing Director, Finance and Operations of 9 August 2013 to reject his complaint.

In the course of correspondence with TV Licensing throughout 2012 regarding a complaint about a TV Licensing Savings Card⁵, the complainant had raised a complaint about the envelopes TV Licensing had historically sent him which he said had included aggressive messages on the outside. He requested all correspondence from TV Licensing be sent in plain envelopes. In reply the BBC Executive and TV Licensing explained they could not give such an undertaking and that the text carries key messages (e.g. that the letter is urgent or that it is simple and quick to renew a licence) so that customers did not ignore correspondence. It was important TV Licensing did all it could to help a person avoid the possibility of prosecution action. The communications used by TV Licensing help discourage evasion, which is in the interests of all Licence Fee Payers.

On 1 October 2013 the complainant wrote to the Trust Unit requesting an appeal and explaining that his request was "late ... due to my wait for a reply [from the Executive]". He explained that he was not happy with the responses he had received. His view was that "...if someone is determined to evade the licence fee then they will – regardless of what is on the envelopes".

Decision of the Senior Editorial Strategy Adviser

The Senior Editorial Strategy Adviser ("the Adviser") noted the Trust must ensure that arrangements for the collection of the licence fee are efficient, appropriate and proportionate.⁶

The Adviser considered the correspondence from 2012 onwards from the complainant, TV Licensing, the Licence Fee Unit and the Managing Director, Finance and Operations.

The Adviser noted that the TV Licensing complaints and appeals procedure⁷ states:

"TV Licensing appeals procedure (Stage 4)

If you are dissatisfied with the reply at Stage 3, you can request an appeal to the BBC Trust **within 20 working days** of the date on which you received the response at Stage 3. If you write after that time, please explain in your letter why

⁵ The complainant held a TV Licensing Savings Card, which is issued to customers in order to enable them to save towards a future TV licence.

⁶ http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/about/how_we_govern/charter.pdf

⁷ Available at

http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2012/complaints_fr_work_tv_licensing.pdf

your complaint is late. Exceptionally, the Trust may still decide to consider your complaint, if it decides there was a good reason for the delay.”

The Adviser noted that, whereas the time limit for appeal is 20 working days from the date of the final Stage 3 response, the Trust Unit did not receive an appeal from the complainant until 37 days after the final Stage 3 response, almost twice the allowable timeframe. The Adviser considered the complainant’s appeal was therefore well outside the time limit.

The Adviser therefore went on to consider whether there was “good reason” for the delay in the complainant appealing to the Trust. The Adviser noted that the complainant’s stated reason for appealing out of time was that he had written to the Executive on 28 August following his receipt of the Stage 3 response but that his letter had apparently been returned to him and marked “addressee gone away”. He therefore stated:

“This letter, late as it may be according to your rules but due to my wait for a reply, is to request that my complaint be escalated to the BBC Trust for further investigation.”

The Adviser was unsure why the complainant’s letter should have been returned to him in this fashion since, according to the copy which the complainant had forwarded to the Trust, it had been addressed correctly. The Adviser appreciated that this must have been frustrating for the complainant. The Adviser also noted that the Executive’s Stage 3 response had asked the complainant to inform them if he wished his complaint to be forwarded to the BBC Trust for consideration, and the complainant’s response of 28 August – which was not delivered to the BBC – had apparently (amongst other matters) confirmed that he wished for this to take place.

Nevertheless, the Adviser noted that the Executive’s final Stage 3 response also included the words:

“If you do wish to escalate your complaint, please write to the BBC Trust Unit, within 20 working days of receiving this response, at the following address: [Trust Unit address]”

The Adviser therefore considered that, notwithstanding the fact that the Executive had offered to escalate the complaint on his behalf and had not received his confirmation that this was his wish, the complainant had been provided with the correct information regarding how to escalate his complaint himself. The Adviser considered that Trustees would agree with her view that the complainant had not provided good reasons why he had been unable to escalate the complaint to the Trust himself within the given timescale.

Despite her view that the complaint had been made out of time, the Adviser nevertheless went on to consider whether the complaint was so serious that it should have been placed before the Trustees even though it was out of time.

The Adviser noted that the Executive had provided the complainant with an explanation of the strategy for including key messages on envelopes, namely the fact that their experience had shown that without a strong message, some customers would often ignore correspondence. The Executive had also highlighted that the communications used by TV Licensing helped discourage evasion, which was in the interests of Licence Fee Payers. The Adviser considered that Trustees would be of the view that a reasonable explanation had been provided to the complainant of the Executive’s reasons for including the messages on envelopes. This was an operational matter and so a matter for the Executive and not the Trust as it did not raise a significant matter of general importance.

The Adviser considered that the complaint did not raise issues of seriousness such that the exceeding of the timeframe should be overlooked.

For the reasons stated above, the Adviser therefore concluded that the case did not have a reasonable prospect of success and should not be put before Trustees.

Request by the complainant to the Trust to review the decision of the Senior Editorial Strategy Adviser

The complainant requested that Trustees review the decision of the Adviser that the appeal should not proceed. Specifically the complainant asked "whether any of the Trust Members or Executive have ever actually seen the range of envelopes sent out by Capita in their efforts to collect the licence fee?"

The Panel's decision

The Panel was given the complainant's appeal to the Trust, the reply from the Trust's Senior Editorial Strategy Adviser, the challenge to her decision and copies of envelopes which the complainant had included with previous correspondence to the BBC Executive. The Panel agreed that the complaint had been made out of time and that the complainant had not provided good reasons for why he had been unable to escalate the complaint to the Trust himself within the given timescale. In particular, the Panel noted that, although the Executive had offered to escalate the complaint on the complainant's behalf and had not received his confirmation that this was his wish, the complainant had been provided with the correct information regarding how to escalate his complaint himself.

The Panel agreed that a reasonable explanation had been provided to the complainant of the Executive's reasons for including the messages on envelopes and the Panel referenced the examples of envelopes they had been shown. The Panel also agreed that this was an operational matter and so a matter for the Executive and not the Trust as it did not raise a significant matter of general importance.

In conclusion, the Panel agreed that the complaint did not raise issues of seriousness such that the exceeding of the timeframe should be overlooked.

The Panel therefore agreed that the appeal did not have a reasonable prospect of success and did not qualify to proceed for consideration.