

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

March & April 2014 issued June 2014

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Remit of the Complaints and Appeals Board

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

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

All Trustees are members of the Board; Richard Ayre is Chairman. 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 finding

Decision not to remove post from Points of View Message Board

Summary

The complainant contacted the BBC about a debate on the Points of View online message board following the broadcast of *Stephen Fry: Out There*. The complainant alleged that a particular post was homophobic and complained to the Central Communities Team. Dissatisfied with the initial outcome of his complaint, he requested details on how to progress his appeal. He subsequently complained about the handling of his complaint from that point on. Only the complaint-handling element of the appeal was put before the Panel.

The Panel concluded that:

- the BBC had not listened carefully enough to what the complainant was saying and although the BBC's intention may have been to help the complainant by immediately escalating his complaint, it had not treated the complainant fairly, which had resulted in a breach of the Complaints Framework.
- the fact that the Stage 2 response had been supplied to the complainant by those responsible for the response at Stage 1 did not meet the requirements of the General Complaints Procedure.

Finding: Upheld

For the finding in full see pages 4 to 7

Appeal Finding

Decision not to remove post from Points of View Message Board

Background

On 14 October 2013 Stephen Fry presented the documentary *Out There* on BBC Two. In it he visited a number of countries to meet “some of the most notorious homophobes on the planet”.

There was a debate about the programme on the BBC’s Points of View online message board.

Complaint

Stages 1 & 2

The complainant contacted the BBC to complain about a post on the message board. The post related to the programme’s portrayal of NARTH [the National Association for Research and Therapy of Homosexuality]. The complainant felt the post was homophobic. He complained that it breached the BBC’s ‘House Rules’ on offensive content and provided a platform for bigotry.

The BBC’s Central Communities Team stated in reply that they had reviewed the post and did not believe it contravened the BBC’s guidelines on offence. The writer had made a reasoned analysis of the content of the TV programme and the Central Communities Team wanted the message board to be a forum for debate, which meant allowing people to voice their opinions and make reasoned arguments even if they are unpopular or people strongly disagree with them. They suggested that the complainant was welcome to post his own views on the programme.

The complainant replied, stating:

“Please would you advise on how to appeal to the BBC’s Social Media Complaints Group and the timescale for doing so, because your Appeals FAQ does not state this.”

The complainant received the following response from the Central Communities Team:

“Thanks for your email. Please be aware that we have prepared your appeal to go to the Social Media Complaints Group and we will be in touch again shortly.”

The complainant stated in reply, “I asked HOW to appeal to the group and I wished to make additional points about the BBC’s response to my appeal”. The Central Communities Team responded as follows:

“Your appeal has already gone to Stage 2 as that is what you requested previously, so there is no need for further action on your part. However, we will also provide a copy of your latest comments for the BBC’s Social Media Complaints Group to look at as well.”

On 3 December 2013 the Central Communities Team replied to the complainant, stating:

“Your appeal has been reviewed by the Social Media Complaints Group, who have endorsed the reasoning given in our email dated October 18th.”

The Complaints Group acknowledged that the comment in question may cause offence to some users of the site but also recognised that in order to provide a vibrant platform for discussion visitors must be able to express their opinions, provided they did not do so in an abusive manner. The comment in question was a reasoned point for debate and did not breach editorial guidelines so the Complaints Group was unable to uphold the appeal.

The complainant was informed that if he was still unhappy he was able to make an appeal to the Trust and was provided with web links offering more information on how to do so¹.

Appeal to the Trust

The complainant appealed to the Trust on 22 December 2013. There were two points of appeal:

Point (A) The complainant found the post homophobic. He felt it breached the BBC's 'House Rules' on offensive content and provided a platform for bigotry. The BBC Trust's Senior Complaints Adviser decided not to place this point of appeal before Trustees as she did not think it had a reasonable prospect of success.

Point (B) The complainant stated that his complaint had been poorly handled. He raised the following points to support his appeal:

- His request for information on how to appeal was met with the response that the BBC had prepared his appeal.
- He did not have an opportunity to comment on the BBC's reasons for rejecting his initial appeal and was forced to do so urgently, as he had no idea when the appeal the BBC had prepared would be considered.
- When he sent his comments, reiterating that he had merely asked how to appeal, the BBC ignored this comment and stated again that he had appealed. The complainant found this “unnecessarily antagonistic”.
- The BBC said that it had provided a copy of his “latest comments” to the Group. The complainant stated that this gave the impression that the BBC's Social Media Complaints Group was “just a rubber stamp for decisions already taken. It does not instil confidence that the BBC is either listening to the complaint or taking it seriously.”

The Panel's decision

The Panel considered the complaint against the BBC's 'House Rules' for blogs and message boards, the BBC's Complaints Framework and the General Complaints Procedure. In reaching its decision the Panel took full account of all of the available evidence,

¹ <http://www.bbc.co.uk/blogs/moderation.shtml#appealprocess>
http://www.bbc.co.uk/bbctrust/contact_us/complaints/appeal_trust.html

including (but not limited to) the Senior Complaints Adviser's report, and a subsequent submission from the BBC.

The Panel noted the BBC's 'House Rules' for blogs and message boards, which state:

"The BBC has a system of handling complaints and appeals about the moderation and management of our social media sites such as blogs. This is handled separately from complaints about the BBC's editorial output. Both are part of the BBC's overall Complaints Framework"

The Panel noted that under the 'House Rules' a complainant may appeal against moderation decisions to the BBC's Social Media Complaints Group. This group consists of the Managing Editor, BBC Online, the Head of Editorial Complaints, and the Head of Communications & Complaints, MC&A Audience Services & Operations. If the Social Media Complaints Group rejects the appeal, the complainant may make a further appeal to the Trust.

The Panel noted that under the BBC's Complaints Framework, the complainant could have expected any response to inform the complainant of the next step in the process for taking the complaint further.

The Panel noted that the Editor, Moderation Services, had provided a statement which acknowledged that the complainant had not asked for his appeal to be escalated and that the BBC's replies could have better explained the process and could otherwise have been improved. She had apologised for any confusion caused.

The Panel welcomed the apology from the Editor, Moderation Services. The Panel observed that, whilst the BBC had dealt with the complaint in a timely manner, the complainant was not informed of the next step in the process at Stage 1 when he had requested it but instead his complaint had been escalated. Neither had he been told that the initial decision could be reviewed. This resulted in a breach of the BBC's Complaints Framework, which says that complainants should be given guidance explaining how the complaints system works if they require it. It also resulted in a breach of the General Complaints Procedure, which states "Your Stage 1b response will tell you which part of the BBC to write to [at Stage 2], and its contact details"².

The Panel concluded that the BBC was over-zealous in immediately escalating the complaint to Stage 2, when the complainant asked about the appeals process. The Panel noted that when the complainant expressed his dismay at this reply, the subsequent response from the BBC was that the appeal had "already gone to Stage 2 as that is what you requested previously". The Panel concluded that the BBC had not listened carefully enough to what the complainant was saying and so although the BBC's intention may have been to move the complaint on and so help the complainant, they had not treated the complainant fairly, which had resulted in a breach of the Complaints Framework.

The Panel also noted that the Stage 2 response was supplied to the complainant by those responsible for the response at Stage 1. The Panel concluded that this did not meet the requirements of the General Complaints Procedure. The General Complaints Procedure states

"If you are dissatisfied with the reply at Stage 1b, **you** can take the matter further

² General Complaints Procedure, paragraph 4.1

by writing to a Senior Manager in the BBC Division responsible for the matter you are complaining about. **Your Stage 1b response will tell you which part of the BBC to write to [at Stage 2], and its contact details**³ (emphasis added).

The General Complaints Procedure further specifies that at Stage 2, if the Division responsible for the matter that is being complained about decides to investigate a complaint,

“the Division [will] inform... you of its decision, explaining its reasons”⁴ (emphasis added).

The Panel did not consider the complaint had been dealt with in accordance with these requirements.

The Panel noted that the Editor, Moderation Services had said during the course of this appeal that responses would be standardised, Stage 2 of the process would be brought further in line with the BBC complaints procedure, and that resulting information would be provided in FAQs.

Finding: Upheld

³ General Complaints Procedure, paragraph 4.1

⁴ General Complaints Procedure, paragraph 4.8.3

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.

Choice of financial experts

The complainant requested that the Complaints and Appeals Board (CAB), at its March 2014 meeting, review the decision of the Trust Unit that the complainant's appeal did not qualify to proceed for consideration on appeal.

Background

The complainant first contacted the BBC in August 2012. He was concerned about a financial adviser who appeared on *Good Morning Scotland*. The complainant said he had sought advice from him but was unhappy with the service he received. He also stated the adviser's website made inaccurate claims about an award he said he had won.

The complainant was sent a reply which included the comments of the Head of News. He made the following points:

- The adviser's website had been amended to the BBC's satisfaction.
- The adviser appeared irregularly on BBC Scotland, around once every four or five weeks.
- The complainant was pursuing his complaint through the Financial Conduct Authority (FCA)⁵ and the Head of News said he would "await any outcome with interest".

The complainant remained unhappy and renewed his complaint. He repeated his concerns that:

- The adviser had given false information about an award he claimed to have won.
- The adviser was referring to his appearances on the BBC on his website so that it appeared the BBC was endorsing him.
- The complainant had used the adviser's company, but it had not secured him the rate of return he had been led to believe he could expect.

There was some confusion as to whether the initial response had been received by the complainant. However, he remained unhappy and renewed his complaint in December 2012, stating:

- The adviser had given false information about an award he claimed to have won and only changed the claim after the complainant highlighted the error.

⁵ During the course of this appeal, the Financial Services Authority (FSA) was replaced by two bodies, one of which is the Financial Conduct Authority (FCA). All references to the FSA have been changed to the FCA for clarity and consistency.

- The adviser was using his appearances on BBC Scotland to “trade on the BBC name on his website”.

In a subsequent letter, the complainant stated that he considered the BBC should not continue to give the adviser airtime.

The complainant was sent a final stage 1 response on 25 January 2013. This informed the complainant that the Head of News had nothing to add to his earlier correspondence and that the complainant could pursue his complaint with the Head of Public Policy and Corporate Affairs, Scotland.

The complainant did not escalate his complaint to BBC Scotland because he felt the issues he raised were of significance to the Corporation as a whole. He continued to correspond with Audience Services, and made the following points:

- He did not consider the adviser's appearances on *Good Morning Scotland* were “irregular”, but believed he appeared “largely or wholly monthly, which is regular”.
- He was concerned that the adviser referred to the BBC on his website “to generate commercial business”.
- He was concerned that the adviser had wrongly stated he had won a national award on his website. He considered the fact that it had been altered was evidence that it should not have been carried originally
- He questioned whether the BBC should give airtime to the adviser.

The complainant was sent a response which referred him to the earlier reply suggesting he could escalate his complaint to the Head of Public Policy and Corporate Affairs, Scotland.

The complainant wrote again to Audience Services on 8 February 2013. He restated the points he had made previously and said he also had information from a different financial adviser who had previously worked for the same company but who had left it. He said the second adviser, who was also used by the BBC had been critical of the advice the complainant had been given after being contacted by the complainant.

The complainant was sent a further response which referred him to the earlier reply suggesting he could escalate his complaint to the Head of Public Policy and Corporate Affairs, Scotland.

The complainant renewed his complaint with Audience Services and also wrote to the Director-General. His letter to the Director-General included more information about the personal advice he was given and his dissatisfaction with it. He noted that both the adviser who was the subject of the complaint, and the second adviser who had been critical of the advice he had been given, each featured on the BBC and he did not consider they should be given airtime. He renewed his complaint that the adviser who is the subject of this appeal had inaccurately referred to an award on his website. He stated that the adviser claimed to have won the “Fund Manager of the Year” award. He said this was “a figment of [the adviser's] imagination” and that in reality, the adviser had been: “just part of a team that won a lesser award”.

The letter to the Director-General was passed to Audience Services who responded to the complainant informing him that he could escalate his complaint to the Head of Public Policy and Corporate Affairs, Scotland.

The complainant wrote again to Lord Hall and was sent a similar response from BBC Audience Services in May 2013, referring him to the Head of Public Policy and Corporate Affairs, Scotland.

More than three months later, on 11 September 2013, the complainant contacted the BBC Trust to renew his complaint and restated the points he had made previously. He received a reply informing him that his complaint had been passed to Audience Services for a response. He wrote again to the Trust on a further two occasions.

On 27 November 2013, the complainant received a response from the Head of Public Policy and Corporate Affairs, Scotland, after the Trust had forwarded the complainant's concerns to him. The Head of Public Policy and Corporate Affairs, Scotland, included the following points:

- He apologised for the delay in responding.
 - He acknowledged the complainant's contention that a separate financial contributor had been critical of the advice given by the adviser who was the subject of the complaint – but did not believe this meant the adviser “cannot be allowed to broadcast”, as the complainant believed.
- He wrote that, regarding the inaccurate information about the award, the adviser had been “spoken to and his website amended to the satisfaction of the business team”.
- He acknowledged the complainant was pursuing his individual grievance through the FCA and said he would be interested in the results of that complaint.
- He had ascertained that over a 75 week period up to the point when the letter was written, the adviser had appeared 16 times on BBC Scotland's output – a rate of roughly once every four or five weeks.
- He stated that his appearance rate was considerably less frequent than that of other advisers and wrote: “Perhaps the earlier response would have been more accurate if it had referred to [the adviser] as one of the ‘least regular’ of the contributors rather than an ‘irregular’ contributor. However I do not believe there is evidence to suggest that you were deliberately lied to or misled.”
- He assured the complainant that he had sought advice from the BBC Scotland Head of Editorial Standards, who confirmed that the way the adviser had referred to his contributions to the BBC was acceptable.

He stated:

“I am happy to offer you assurance that there is no culture of cronyism at BBC Scotland. We will continue to use contributors to our programmes based on the expertise they bring and the range of perspectives they offer.”

The complainant was advised that if he remained dissatisfied, he could appeal to the BBC Trust.

The complainant remained dissatisfied and replied to the Head of Public Policy and Corporate Affairs, Scotland, on 28 November 2013. He restated the complaints he had made. In particular, he repeated his concern about the reference to the award that had been carried on the adviser's website and, regarding the frequency with which the contributor had appeared on BBC Scotland, he asked:

"...can you confirm that, in reality, [the adviser] actually has a monthly slot with BBC *Good Morning Scotland* - and advise when it appears.

...ie he is, in reality, a monthly contributor?"

The complainant received a further response on 3 December 2013. In terms of whether the adviser was a "monthly contributor" over the 75 week period in question the response stated:

"No, he is not. ... In July 2012 and December 2012 he appeared twice in each month. In January 2013 he appeared once – and not again until June 2013. He did not appear in October or November 2013."

In terms of the national award that had been referred to throughout the course of the correspondence, this response clarified that the award had been made by "Moneywise". The Moneywise award had been for "Manager of the Fund of the Year". The letter stated that this:

"...had mistakenly been reported on the company website as Fund Manager of the Year. Once this was pointed out, we understand it was removed from the website."

Appeal

The complainant remained dissatisfied and appealed to the BBC Trust on 24 December 2013. There were four points to his appeal. He alleged:

- The adviser had claimed to have won a national award as "Fund Manager of the Year". The complainant stated that this "was a lie... the entire award had never, ever existed".
- The adviser had not treated his client (the complainant) fairly with the financial services he had given.
 - The adviser had acted in a way which had lost his client (the complainant) money due to low interest returns.
- The adviser had been criticised by a separate financial contributor who had also been used by the BBC. The complainant considered this meant two of BBC Scotland's personal finance contributors were "in direct conflict" and considered that this "clearly makes one of their positions untenable".

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 acknowledged the strength of the complainant's feelings.

In terms of the first element of the complaint, she noted that there had been a mistake about the way an award had been referred to on the financial adviser's website. She noted that the website should have referred to the Moneywise award for "[a former investment] manager of the Fund of the Year" but had wrongly referred to him as the "Fund Manager of the Year". She noted that in the correspondence, the complainant acknowledged that an award had been given, but felt that the financial adviser had been: "just part of a team that won a lesser award".

She was pleased that the complainant had pointed up this error as it was helpful for awards to be referred to clearly. However, she noted that the reference to the award had been "removed from the website" once the mistake had been spotted. She also noted that this was not a BBC website and the BBC was not responsible for its content. She had not seen any evidence that suggested the award had been wrongly referred to by the BBC or on BBC output. Therefore she did not consider it was appropriate for this element of the appeal to be put before Trustees for their consideration.

In terms of the second and third elements of the complaint, the Adviser considered that it was not appropriate for the BBC Trust to consider the services that the complainant had received as a result of seeking personal financial advice. She noted that the correspondence referred to the complaint being pursued through the FCA and considered this was a matter for the complainant. Therefore she did not propose to put these two elements of the complaint before Trustees.

Finally, the Adviser noted the fourth element of the complainant's appeal – that he believed two financial advisers who both contributed to BBC Scotland's output were "in direct conflict" with each other and that he considered this made the continued use of at least one of them untenable.

The Adviser considered that the BBC used a wide array of contributors and there was no requirement or expectation that they should agree with each other – only that it should be clear if they were speaking from a particular organisation or perspective. She did not consider she had seen any evidence that suggested the BBC had failed to do this.

The Adviser considered that the choice of which contributors to use was an editorial one. 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.

The Adviser considered that decisions relating to whether particular financial contributors should be invited to appear on BBC programmes fell within the "editorial and creative output" of the BBC and were the responsibility of the BBC Executive. Therefore the Adviser did not consider it would be appropriate for Trustees to consider this aspect of the appeal and she did not propose to put it before them for consideration.

For all the reasons set out above, the Adviser considered the appeal did not have a reasonable prospect of success and she did not propose to put it before Trustees.

Request for review by Trustees

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

The complainant said that the Financial Conduct Authority (FCA) dialogue was being dealt with separately and was not relevant.

He reiterated his concerns regarding the BBC's use of the financial adviser as a contributor, alleging: he had not treated the complainant fairly; had been criticised by another adviser; had effectively lost money for a client and had been inaccurate about an award.

The Panel's Decision

The Panel considered the complainant's appeal to the BBC Trust, the reply from the Trust's Senior Complaints Adviser, the complainant's request to review the decision and the subsequent correspondence between the Trust Unit and the complainant.

The Panel noted the complainant's concerns about the financial adviser's website. The Panel agreed with the Senior Complaints Adviser that the website was not a BBC website, and therefore the BBC was not responsible for its content. The Panel noted the response by the Head of Public Policy and Corporate Affairs, Scotland, addressing the complainant's point that another financial contributor had been critical of the advice given by the complainant's financial adviser, explaining that this did not mean the BBC could not give either airtime. The Head of Public Policy and Corporate Affairs, Scotland, stated:

"We will continue to use contributors to our programmes based on the expertise they bring and the range of perspectives they offer."

The Panel noted in the complainant's request for the BBC Trust to review the Senior Complaints Adviser's decision, the questioning of the lack of interest shown by the BBC in the character of the financial adviser. The Panel noted the response from the Head of Public Policy and Corporate Affairs, Scotland, who said he would be interested in the results of the outcome of the complainant's case taken to the FCA. The Panel agreed with the Senior Complaints Adviser that it was not appropriate for the BBC Trust to consider the services that the complainant had received as a result of seeking personal financial advice.

The Panel noted the correspondence from the Senior Complaints Adviser to the complainant explaining that the choice of contributors was generally a matter for the BBC, falling within the category of editorial and creative output, and therefore one in which the BBC 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 Panel was satisfied that the complainant had been correctly informed.

The Panel was satisfied that the BBC had provided editorial reasoning in its choice of contributor and had expressed interest in receiving information regarding the complainant's case with the FCA, should it be forthcoming. Consequently, the Panel decided there was no reasonable prospect of success for an appeal against the Senior Complaints Adviser's decision.

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

Documentary

The complainant requested that the Complaints and Appeals Board (CAB), at its March 2014 meeting, review the decision of the Trust Unit that the complainant's appeal did not qualify to proceed for consideration on appeal.

Background

The complainant contacted the Head of Commissioning, BBC Documentaries, on 3 January 2014 about a documentary featuring his [children].

The complainant said the programme contained many lies and, in the interests of enabling his children to learn the truth about what really happened, he would like the BBC "to publish an acknowledgement of the mistake they made in broadcasting such a programme which contained these known lies".

The complaint was passed to the Complaints Management & Editorial Standards Manager, BBC Television, for consideration. He responded:

"You may not be aware, but the BBC's complaints and appeals procedures (similar to the broadcast regulator Ofcom) contains certain requirements with regards to time frames. The BBC's procedures state that '[y]ou should make your complaint within 30 working days of the date on which the content was broadcast' or 'on which the BBC made a decision or acted in a way that gives rise to your complaint.' They continue, '[i]f you write after that time, please explain why your complaint is late. Exceptionally, the BBC Executive may still decide to consider your complaint, but only if we decide there was a good reason for the delay.'

http://www.bbc.co.uk/bbctrust/governance/complaints_framework/

I have read your complaint and I do not believe that it merits an investigation, given that it comes [some time]... after the original broadcast. I can advise that there are no plans to repeat this programme on the BBC, but if it were repeated, the opportunity would then be open for you to pursue your complaint about it, provided you make any complaint within the above 30 day timeframe."

The complainant did not consider this a reasonable response and sent a follow-up complaint on 8 January 2014 asking how a member of the public such as himself would know that there was a 30 day period. He objected to the 30 day time limit. The complainant copied this email to the BBC Trust.

The Complaints Management & Editorial Standards Manager sent a further response on 9 January 2014. He asked the complainant to confirm to the Trust whether he wished to appeal against the BBC's decision not to uphold his complaint.

Appeal

The complainant escalated his complaint to the BBC Trust on 9 January 2014. He said that he continued to be "dumbfounded by the responses I am receiving. It really is a let's bury our heads in the sand attitude". He said he would also be contacting the BBC Director General.

In a further email to the Complaints Management & Editorial Standards Manager, copied to the BBC Trust, the complainant said that he did not believe the normal 30 day time limit applied to his complaint because “with its broadcast, which included the lie, was the implied promise of being able to see my children again. This means I had to make a decision to let the lie go, so that I could have the chance to see my children.” He said that in that situation he felt he had to take the promise held out that he would have the chance for more contact with his children, but that promise had now faded. He was afraid that his children would never know the truth about what happened and therefore would not feel able to contact him.

The complainant said that the BBC was involved with the problem because the BBC had made the broadcast.

Decision of the Senior Complaints Adviser

The Senior Complaints Adviser (the Adviser) watched the programme and carefully read the correspondence that had passed between the complainant and the BBC. She acknowledged the strength of the complainant’s feelings and was sympathetic to the situation he was in.

She noted that the complainant did not consider that the usual 30 day time frame for making complaints should apply to his complaint because, “with [the programme’s] broadcast, which included the lie, was the implied promise of being able to see my children again. This means I had to make a decision to let the lie go, so that I could have the chance to see my children.”

The Adviser noted that the BBC Complaints Procedure allowed exceptions to be made for submitting complaints beyond the 30 day time limit “if there are exceptional reasons for the delay”, which the BBC Executive had decided was not the case in this instance.

She noted that more than a year had passed since the last broadcast of the programme. She noted that the complainant had sought to explain his reasoning for the delay by stating in his email of 10 January 2014 that there had been an implied promise in the programme that he would be able to see his children again if he made the decision “to let the lie go”, but that over time, he had come to realise that the promise had faded and the situation regarding contact with his children had not improved in the way he had hoped it would. The Adviser noted that although the complainant alleged that lies were included in the programme, he did not specify what they were.

The Adviser noted the content of the complainant’s email of 3 January 2014 addressed to the Head of Commissioning, BBC Documentaries. He wrote:

“[The independent production company] persuaded me that if I ignore the truth then eventually the [children] ...will come back to me as I was in favour of the truth. There is no legal reason that the children shouldn’t be FREE but as they don’t have the facts about what happened they will probably never take the leap of faith.”

The Adviser understood the complainant’s reasoning to be that he had made a decision, at the time of the programme’s production, not to express concerns about the veracity of some of what was being said – which would be included in the programme – as he considered that if he ignored some of the points he believed were untrue, his [children] would feel able to come back to him as he was in favour of the truth.

She noted that the documentary itself followed the [complainant and children].

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 the Adviser did not believe Trustees would consider to apply in this case. Decisions relating to the content of a programme fell within the "editorial and creative output" of the BBC and were the responsibility of the BBC Executive.

The Adviser understood that the complainant was extremely disappointed that the situation had not improved in terms of developing greater contact with his children since the programme was last broadcast.

Although she sympathised with the complainant's position, she did not consider that evidence had been presented that would be likely to lead Trustees to conclude that the complainant's recent allegations of factual inaccuracies merited further investigation so long after the broadcast. She considered Trustees would be likely to conclude that the Executive had acted reasonably in not reopening this complaint because it was too long after the programme's broadcast.

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 telephoned the BBC Trust on 19 March 2014. He outlined his disappointment with the programme as broadcast, noting he had only agreed to participate based on the understanding it would bring his family closer together. He says he allowed misinformation to take place to allow it to go ahead. It had cemented a lie and the BBC had a duty to put things right. He stated that the documentary contained a number of implicit "lies". He also noted that he should have raised his concerns at the time of broadcast, but feared that this would result in him not being able to see his children.

The Panel's decision

The Panel reviewed the programme, considered the complainant's appeal to the BBC Trust, the reply from the Senior Complaints Adviser and his request to Trustees to review the Adviser's decision.

The Panel noted all the points which the complainant considered to be untrue in the documentary.

The Panel noted the response from the Complaints Management & Editorial Standards Manager, BBC Television, stating that the timeframe for complaining about the programme had been exceeded. The Panel expressed understanding for the complainant's reasons for not complying with the procedure and noted that in exceptional circumstances, complaints could be considered outside of the stated timeframe.

The Panel recognised the complainant's disappointment that his relationship with his children had not developed as he had hoped since the programme was broadcast.

The Panel sympathised with the complainant's situation. However, the Panel noted that the programme was broadcast a long time ago and that, as stated by the Complaints Management & Editorial Standards Manager, BBC Television, there were no plans to repeat it. The Panel decided that, while it was possible to investigate a complaint outside the stipulated timeframe, the complainant had not provided grounds for an exception to the normal procedure nor was it proportionate to make such an exception.

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

Ability to access BBC iPlayer on different devices

The complainant requested that the Complaints and Appeals Board (CAB), at its April 2014 meeting, review the decision of the Trust Unit that the complainant's appeal did not qualify to proceed for consideration on appeal.

Complaint

The complainant has had an extensive correspondence with the BBC over the last three years. During this time he has raised the following issues about problems he has experienced whilst using the BBC iPlayer on different devices:

- 19 May 2011 Whilst using a Sony Ericsson Xperia Arc the complainant was unable to stream programmes via his 3G network. On 28 February 2012 the complainant reported that this problem had been solved.
- 19 May 2011 Whilst using his Sony Ericsson Xperia Arc the complainant was unable to download programmes via the BBC iPlayer app.
- 22 August 2011 The complainant reported that when he connected his Sony Ericsson Xperia Arc to his LCD TV, he experienced poor picture quality.
- 28 November 2011 Whilst using a Samsung tablet the complainant reported seeing a black triangle during programme playback. The complainant has reported that this problem has been solved.
- 28 February 2012 When searching for Radio 4 programmes on the Radio Player, links connecting to the iPlayer resulted in an error message.
- 28 January 2013 When using the BBC iPlayer app on Samsung Galaxy 10.1 and 2 10.2, there was no option to watch live TV via the iPlayer application.
- 10 June 2013 When watching programmes via the iPlayer application on a Samsung 'smart' television, there was no effective volume control within the application.
- 6 September 2013 The complainant reported that content was not being updated in a timely manner on the BBC iPlayer.
- 6 September 2013 The complainant reported that the system for fast-forwarding programmes within the iPlayer application on a Samsung television was not user-friendly.
- 16 October 2013 The complainant reported that when watching programmes via the iPlayer application on his Samsung television, the picture was very washed out, even when viewed in high definition.

The complainant's appeal relates to the following issues, reported on 6 September 2013 via the BBC website:

- To fast-forward a programme using the BBC iPlayer on a Samsung 'smart' television, users have to press the button once to fast-forward by 30 seconds.

- When viewed on a Samsung television, the volume control within the iPlayer application was not fit for purpose: volume 2 was too quiet and volume 3 was too loud.
- There were delays in updating content on the iPlayer.
- There was no download option on the Sony Xperia T (Android 4.1.2).

The complainant also requested "a meaningful e-mail/communication where the BBC communicates to me so we can discuss and see where all this is going". The complainant stated that there is "zero support and communication from the BBC".

The complainant was sent a final response from the Future Media team on 7 February 2014 which stated:

"The team feel they have addressed the issues you raised in your complaints about the BBC iPlayer on your television as fully as they can and explained that the update planned for the first quarter of this year should resolve them. We will not therefore continue this correspondence further or address new points."

Appeal

The complainant appealed to the BBC Trust on 7 February 2014. He considered that he had not received a meaningful answer to the questions he had asked. He also stated that the BBC had wasted time on the matter. He did not feel he had been treated well.

Decision of the Senior Complaints Adviser

The Senior Complaints Adviser carefully read the correspondence that had passed between the complainant and the BBC. She acknowledged the strength of the complainant's feelings. However, she did not consider the appeal had a realistic prospect of success.

The Adviser noted that on 22 October 2013 the complainant received a response from BBC Complaints with the following information from the BBC iPlayer development team:

"It is our aspiration to upgrade the 2011 Samsung 6 series devices to a new version of iPlayer which will resolve some of the issues you have reported. The issue you have mentioned regarding the volume levels is due to using playback controlled by the TV itself and the only way to resolve this issue is by upgrading iPlayer to a new version which is pending a technical investigation.

At present we believe the device will be updated in the first half of 2014. I'm sorry we cannot be more precise at the stage.

Delivery of Live Programmes

We are in the middle of updating the systems that deliver iPlayer. During this interim period there may be a noticeable delay in publishing live programmes or programmes that are recorded close to live onto iPlayer.

If a programme had recently been broadcast, another option would be to use the Live Restart function on the live BBC TV streams, where it's possible to rewind a live BBC TV stream back up to 2 hours. For more information, see http://iplayerhelp.external.bbc.co.uk/help/programmes/live_restart

Sony Xperia T, Android 4.1.2

The BBC iPlayer Android App can currently be installed from Google Play by more than 3,000 different phone, phablet and tablet models.

In order to provide value for money to the greatest number of users as quickly as possible, we are working through our extensive video downloads and high quality stream testing program in order of BBC usage and UK device popularity.

We have visibility of the Sony Xperia T and it is now moderately near the top of the queue, but we don't know which issues we may find with the devices that still appear above it in the list, so we are unable to commit to a timescale for when this particular model will enter our testing process to determine whether it can be whitelisted.

The downloads feature will just appear automatically in whitelisted devices, without the need for an app update, and the next time they use the BBC iPlayer app newly enabled users will receive a pop-up message alerting them to the new functionality.

Whilst there is no guarantee that the Xperia T will prove capable of supporting video downloads or higher quality streams, rest assured it will be evaluated in turn.

Background Information can be found on our blog that supports the launch of Android Downloads.

For a list of current supported devices and for more information on the certification process please read:
http://iplayerhelp.external.bbc.co.uk/help/mobile_tablet/Android_Downloads_device

Communicating with BBC

I know it can seem an inconvenience, but it's best to communicate to the BBC via official channels, in this instance the BBC iPlayer Contact form.

This ensures that all correspondence is correctly tracked, that all issues are logged correctly and ultimately it helps hold the BBC to account, as complaints through official channels help form the BBC Annual Report."

The Adviser noted that, following further correspondence between the complainant and the BBC Director-General's Office, the complainant received a further reply from the BBC iPlayer development team in which they confirmed that their planned update to the iPlayer in 2014 should address the issues the complainant was experiencing with his television. The team also noted that the iPlayer was a very complex service serving many millions of people across multiple devices and delivery platforms as well as software systems. The team noted that for this reason the team was only able to provide an online support service and it regretted that it was unable to advise the complainant more specifically about his Samsung products.

The Adviser noted that the complainant wrote to the BBC's Director of Future Media and received a reply on 20 November 2013. The Director said that the BBC could now confirm

that the Samsung TV application would be upgraded in the first quarter of 2014. The complainant was advised that this would resolve the sound level issue and provide a more conventional fast-forward mechanism.

The Adviser noted that the complainant sent a further five emails to the BBC's Director of Future Media and the BBC Director-General. She noted that the complainant received a reply from the office of the Director of Future Media on 7 February 2014, stating:

"Further to your email below to Tony Hall, I am writing on behalf of the BBC iPlayer team. The team feel they have addressed the issues you raised in your complaints about the BBC iPlayer on your television as fully as they can and explained that the update planned for the first quarter of this year should resolve them. We will not therefore continue this correspondence further or address new points."

The Adviser noted that the complainant had been reassured that the problems he had reported with his Samsung television were scheduled to be fixed with updated software in the first quarter of 2014. She also noted that the complainant had been advised that the problems he had reported with delays in the updating of iPlayer were an interim problem and that a workaround had been recommended to him. She noted that the lack of a download option on his Samsung Xperia T was acknowledged by the iPlayer development team and, whilst they could not guarantee this would be fixed, the device was scheduled for evaluation.

The Adviser concluded that the complainant had received detailed replies to the problems he had reported and whilst some problems remained unresolved, they had all been noted by the development team and were scheduled for evaluation and/or new software updates.

The Adviser noted that the iPlayer application was now available in millions of homes in the UK; it had been downloaded 20 million times by October 2013 and was downloaded a further million times over the last Christmas period alone. She noted that iPlayer was now a tremendously complex technology which operated on multiple devices including phones, tablets and smart televisions. She concluded that it was inconceivable that every device would be at the same stage of development at the same time.

The Adviser also noted the BBC's statement that it would not be possible to continue an individual email or telephone dialogue with the complainant on the issues he raised for reasons of cost, and also to ensure that all issues were captured and logged via the online support page. She noted that the complainant had been advised of this policy on several occasions, including: 14 March 2012, 7 May 2012, 9 May 2012, 11 June 2012, 20 August 2012, 25 June 2013, 29 June 2013, 22 October 2013, 13 November 2013, 20 November 2013 and 7 February 2014. She noted that the complainant had been advised to look at the iPlayer help and FAQ pages and to report any faults via the 'contact us' page of the BBC website.

The Adviser concluded that this was a day-to-day operational matter. The Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. "The operational management of the BBC" is specifically defined in

the Charter (paragraph 38, (1) (c)) as a duty that is the responsibility of the Executive Board, and one in which the Trust does not usually get involved unless, for example, it raised broader issues such as a breach of a station's Service Licence.

The Service Licence for the BBC iPlayer can be found here http://www.bbc.co.uk/bbctrust/our_work/services/online/; however, the Adviser considered there was no evidence that the Service Licence had been breached.

The Adviser noted that the Trust would not ordinarily consider an appeal relating to day-to-day operational matters unless it raised significant issues of general importance which was not the case in this instance. The Adviser noted that the complainant had also stated that he was unhappy about the way the BBC had responded to his concerns and believed he had been treated with "complete contempt". The Adviser considered Trustees would be likely to conclude he had been given a series of reasoned and reasonable responses that had sought to answer in some detail the queries that he had raised. She did not consider any of the points of appeal had a reasonable prospect of success and she did not propose to put them 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 stated that there was no BBC support in place for the iPlayer and cited his correspondence with the Director of Future Media which promised an update to the iPlayer during the first quarter of 2014.

The Panel's decision

The Panel was given 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 noted the complainant's correspondence with the BBC on this issue over the last three years about his difficulty using the iPlayer on different devices, specifically the Samsung 'smart' television and the Sony Xperia T (Android 4.1.2).

The Panel also noted that the complainant was frustrated by the way in which his complaint had been handled and with the responses he had received.

The Panel noted that the complainant was told by BBC Complaints on 22 October 2013 that the BBC aimed to update the 2011 Samsung 6 series devices in the first half of 2014. The complainant had also received progress reports on other updates and information about how best to pursue his complaint through established channels.

The Panel noted that the complainant had been informed of the planned update in 2014 on more than one occasion. The Panel also noted that the iPlayer was a very complex service serving many millions of people and that was why the team provided online support and was unable to advise the complainant individually about his specific concerns. The Panel agreed with the Adviser that the complainant had been given a series of reasoned and reasonable responses.

The Panel also noted that the complainant received a response from the BBC's Director of Future Media confirming that the Samsung TV application would be upgraded in the first quarter of 2014 and that correspondence ultimately ceased on the basis of this

information. The Panel noted that this update did not occur in the first quarter as indicated.

The Panel agreed that the updating of the iPlayer fell under the operational management of the BBC and was therefore a matter for the Executive Board. The Panel decided that there was no reasonable prospect of success on appeal.

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

Television Licensing appeal

The complainant requested that the Complaints and Appeals Board (CAB), at its April 2014 meeting, review the decision of the Trust Unit that the complainant's appeal did not qualify to proceed for consideration on appeal.

Background

On 24 September 2012, the complainant purchased a new annual TV licence by debit or credit card via the Television Licensing ('TVL') website. The expiry date was 31 August 2013.

On 21 June 2013, the complainant submitted an application for a refund of his TV licence, together with documentary evidence (in the form of a Notice of Exemption from Council Tax) that he had ceased to live at the licensed property from 23 October 2012.

On 3 July 2013, TVL sent the complainant a cheque for £109.12 in respect of three unexpired quarters of his licence.

Stage 1

On 10 July 2013, the complainant contacted TVL. He stated that the refund was for 9 months, whereas he had used the licence for only 1 month (24 September to 23 October 2012). He requested an additional 2 months' refund.

TVL's Customer Relations Department responded on 15 July 2013, stating that since 1993 TVL's policy had been to allow refunds only on unused quarters of the licence fee, and that the refund sent to the complainant was therefore correct. The response stated that there were no exceptions to the policy, the application of which was audited regularly. Customer Relations incorrectly asserted that TVL's refund policy was "passed by the Government".⁶

In a letter of 17 July 2013, the complainant argued that the renewal date should have been 12 months after the date of purchase (ie, 24 September 2013), and that the additional refund should therefore be for 2 months and 24 days. The complainant did not receive a reply.

Following further telephone and written communications, TVL's Operations Director wrote to the complainant on 21 August 2013. After apologising for a misunderstanding in the handling of the complaint (which had led to the complainant's previous communication being filed without reply), the Operations Director explained that the refund had been calculated in line with TVL's policy of refunding only unused quarters remaining on a licence, and was therefore correct. Nevertheless, in recognition of the frustration caused by the misunderstanding, the Operations Director had arranged for the complainant to receive an additional £24.25, reflecting a 3-month licence period minus the 31 days for which the licence was needed. The Operations Director stated that this was a goodwill gesture and did not reflect any decision to overrule TVL's refund policy.

Stage 2

⁶ In fact, TVL's refund policy was not passed by the Government, but was introduced by the BBC. According to TVL, feedback has been provided to the individual who replied to the complainant.

In a letter of 2 September 2013, the complainant reiterated his earlier arguments and noted receipt of £24.25 as a goodwill gesture. He requested a further refund of £36.38 to cover the “unused quarter”.

The BBC’s Head of Revenue Management responded on 26 September 2013. She stated that a TV licence was a legal permission to watch or record live TV, and that the BBC’s discretionary policy was to refund any unused quarters remaining on the licence. Noting that TVL had sent the complainant a total of £133.37, the Head of Revenue Management could not agree to the complainant’s request for a further refund of £36.38. She explained that TV licences were always dated to expire 12 months from the beginning of the month in which they were purchased, as using daily expiry dates was not cost-efficient and the BBC had a duty to keep costs to a minimum.

Stage 3

The complainant wrote to the Head of Revenue Management on 3 October 2013. He noted that the additional refund of £24.25 was a goodwill gesture, not a refund of the remaining two months of his TV licence. He stated that the Head of Revenue Management had not explained why, having paid for a 12-month licence, he had received only 341 days. According to the complainant, TVL’s website did not make it clear that a 12-month licence might not give 365 days’ cover, which could only be ascertained by checking the licence after purchase. The complainant requested a further refund of £24.25 “to cover the other unused two months” of his TV licence, and that his complaint be passed to the Executive Board member responsible for licence fee collection.

The Managing Director, Finance and Operations, (who was the Executive Board member responsible for licence fee collection) responded on 27 November 2013. Repeating the Head of Revenue Management’s observation that a TV licence was a legal permission to watch or record live TV, the Managing Director stated that, while there was no legislative requirement to refund fees where a licence was no longer needed, the BBC’s discretionary policy was to refund any unused quarters remaining on a licence. In the Managing Director’s view, the payments the complainant had received were fair in the circumstances. The Managing Director concluded by repeating the Head of Revenue Management’s explanation that new licences expired 12 months from the beginning of the month in which they were purchased, and by noting that the majority of TV licences issued each year were renewals and would automatically provide 12 months’ cover.

Appeal

The complainant wrote to the Managing Director, Finance & Operations, on 6 January 2014. He set out a summary of his Stage 4 appeal, to which he requested a definitive response from the BBC Trust. He stated:

- TVL’s payment of £24.25 was a goodwill gesture for the handling of his complaint, not a refund of the remaining 2 months of his licence
- the goodwill payment covered the cost of the complainant’s phone calls and time
- TVL had failed to answer the question of why, when the complainant had paid for a 12-month TV licence, he had received only 341 days
- the Managing Director had stated in her letter of 27 November 2013 that new licences expired 12 months from the beginning of the month in which they were purchased. The complainant queried why this was so, given that

- every other company from which he bought a 12-month service gave him 365 days
- TVL's website did not make it clear that a 12-month licence might not give 365 days' cover; this could only be ascertained by checking the licence after purchase.

The complainant's letter was passed to the Trust on 20 January 2014, and the Senior Editorial Strategy Adviser ('The Adviser') acknowledged receipt on 22 January 2014.

The Senior Editorial Strategy Adviser's decision

In the Adviser's view, this appeal raised three issues:

1. the validity of TVL's policy of refunding only unused quarters remaining on a licence (and, hence, the correctness of the amount of the refund given to the complainant)
2. the validity of TVL's policy of setting monthly renewal dates for new TV licences, (the consequence of which was that new licences expired 12 months from the beginning of the month in which they were purchased)
3. the transparency of the TVL website.

The Adviser considered each of these points in turn.

1. TVL's policy of refunding only unused quarters remaining on a licence

The Adviser noted the complainant's arguments that:

- he should receive a further refund for the remaining quarter of his TV licence, less the month during which he had watched television
- TVL's payment of £24.25 was a goodwill gesture for the "disgraceful" handling of his complaint, not a refund of the remainder of his licence
- the goodwill payment covered the cost of the complainant's phone calls and time.

The Adviser noted TVL's arguments that:

- there was no legislative requirement to refund fees where a licence was no longer needed
- the BBC's policy was to refund any unused quarters remaining on a licence
- the policy was discretionary.

The Adviser believed that Trustees would be likely to take the view that:

- in the absence of any legislative requirement to refund fees where a licence was no longer needed, refunds of portions of the TV licence were in the BBC's discretion
- in view of the costs arising from the administration of refunds, and in order to protect the interests of all licence fee payers, the BBC's policy of refunding only unused quarters of TV licences was a valid one
- the policy had been correctly applied to the facts of this case.

The Adviser therefore concluded that this element of the appeal did not raise a matter of substance, as there was no reasonable prospect that it would be upheld.

Furthermore, the Adviser did not consider it appropriate, proportionate or cost-effective for the Trustees to consider this element of the appeal.

2. TVL's policy of setting monthly renewal dates for new TV licences

The Adviser noted the complainant's arguments that:

- TVL had failed to answer the question why, when the complainant had paid for a 12-month TV licence, he had received only 341 days
- every other company from which he bought a 12-month service gave him 365 days.

The Adviser noted TVL's arguments that:

- a TV licence was a legal permission to watch or record live TV
- using daily expiry dates was not cost-efficient
- the BBC had a duty to keep costs to a minimum.

The Adviser also noted that the validity of the BBC's policy had previously been accepted by a panel of the BBC's Complaints and Appeals Board ('the Panel'). At its meeting on 29 February 2012, the Panel decided that:

- the BBC's policy for setting the renewal dates for new TV licences and for setting monthly renewal dates complied with the relevant regulations⁷ and was consistent with the approach taken to licensing elsewhere
- incurring the additional cost of changing this policy would not be in the interests of licence fee payers as a whole.

A note of the Panel's decision (the "**2012 Decision**") was published online at <http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/appeals/cab/mar.pdf>.

For these reasons, the Adviser concluded that this element of the appeal did not raise a matter of substance, as there was no reasonable prospect that it would be upheld. Furthermore, the Adviser did not consider it appropriate, proportionate or cost-effective for the Trustees to consider this element of the appeal.

3. The transparency of the TVL website

The Adviser noted the complainant's argument that TVL's website did not make it clear that a 12-month licence might not give 365 days' cover; this could only be ascertained by checking the licence after purchase.

The Adviser noted that this issue had previously been adjudicated upon by the Panel:

- In its 2012 Decision the Panel decided that the BBC should make its policy regarding the purchase of new TV licences more clear
- on 23 January 2014 the Panel heard a complaint regarding the extent the 2012 Decision had been implemented by the BBC. (The "2014 Decision")

The 2014 Decision

⁷ The Communications (Television Licensing) Regulations 2004, SI 2004/692.

By way of summary, the Panel decided that, although changes had been made to TVL's website, those changes were not an adequate implementation of the Panel's previous decision. In the Panel's view, the TVL website remained insufficiently transparent, and was in certain respects potentially misleading, to prospective purchasers of first licences. By way of follow up, the BBC will be invited to discuss the 2014 Decision with the Trust. [This took place at a meeting of a Panel of the CAB in April 2014. Changes to the TVL website were implemented in April 2014 to give effect to the Trust's decision.]

The elements of the 2014 upheld decision relevant to this complaint were provided to the complainant. [The relevant finding is in the January 2014 Bulletin of the Complaints And Appeals Board on the Trust website at this link : http://www.bbc.co.uk/bbctrust/our_work/complaints_and_appeals/cab.html]

With reference to the reasoning of the Panel, the Adviser concluded that the complainant's point of appeal regarding the transparency of the TVL website had been adequately addressed by the Panel, and decided that it would not be put to the Panel for further adjudication.

Request for review by Trustees

In an email on 28 March 2014 the complainant said that he was unhappy with the response he had received from the BBC Trust's Senior Editorial Strategy Adviser and with the failure to issue him with a full refund as requested.

The Panel's decision

The Panel was given the complainant's appeal to the Trust, the reply from the Senior Editorial Strategy Adviser, the challenge to the Senior Editorial Strategy Adviser's decision and a copy of a further update by email from the Trust.

The Panel considered each of the three elements of the complaint.

1. TVL's policy of refunding only unused quarters remaining on a licence

The Panel agreed with the analysis undertaken by the Adviser as set out above in respect of TVL's policy of refunding only unused quarters remaining on a licence. The Panel noted that the total sum refunded to the complainant was £133.37, which equated to 11 months of a TV Licence (£109.12 for unused quarters of the TV licence and, additionally, £24.25 reflecting the 3-month licence period minus the 31 days for which the licence was needed). The Panel noted that the payment of £24.25 was a goodwill gesture and did not reflect any decision to overrule TVL's refund policy.

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

2. TVL's policy of setting monthly renewal dates for new TV licences

The Panel agreed with the analysis undertaken by the Adviser as set out above in respect of TVL's policy for setting the renewal dates for new TV licences and for setting monthly renewal dates. The Panel noted the complainant's assertion to the BBC Executive that "you have failed to satisfactorily answer why when I paid for a 12 month TV Licence I have only received 341 days". The Panel noted that the letter from the Head of Revenue

Management dated 26 September 2013 to the complainant explained that using daily expiry dates was not cost-efficient and there was a duty to the general public to keep costs to a minimum. The Panel also noted changes to the TVL website effective April 2014 which include improved licence expiry date information in respect of first TV licences.

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

3. The transparency of the TVL website

The Panel agreed with the Adviser that this third element of the complaint raised a matter of substance. The Panel noted its previous decisions in respect of the lack of transparency of the TVL website and that first licences would give *up to 365 days'* cover as opposed to a full 12 months. The most recent of these decisions had been made in January 2014. The Panel noted that a copy of that decision had already been sent to the complainant. That decision stated "In the Panel's view, the TVL website remained insufficiently transparent – and was in certain respects potentially misleading – to prospective purchasers of first licences [in respect of the expiry date of a first licence]"

The Panel noted changes to the TVL website effective April 2014 which include improved licence expiry date information in respect of first TV licences.

The Panel therefore decided that the element of the complaint regarding the transparency of the TVL website did raise a matter of substance but had been adequately addressed by the Panel previously and did not qualify to proceed for consideration.

Decision of BBC Audience Services not to respond further regarding the poor quality of *EastEnders*

The complainant requested that the Complaints and Appeals Board (CAB), at its March 2014 meeting, review the decision of the BBC Trust's Senior Editorial Complaints Adviser that the complainant's appeal did not qualify to proceed for consideration on appeal.

Background

The complainant contacted BBC Audience Services about the poor quality of *EastEnders*. He felt that storylines were repetitive and the characters were boring.

BBC Audience Services replied, saying that the BBC provided a wide range of programmes, and viewers would not like every programme.

The complainant was not happy with this reply. He wanted *EastEnders* to change. He said it took up too much time and thought it was a waste of money. He thought it was not life-like because people spent too much time in pubs and cafés. He thought they would not do that in real life because it would cost too much.

BBC Audience Services said they had nothing else to say. They said they would only respond to complaints where the BBC had made programmes that did not meet its own standards.

The complainant wrote back saying that there had been a scene in the kitchen of a restaurant which he thought was wrong. It showed people who were not wearing hairnets or a hat and he thought they should have done. He said this was encouraging bad behaviour.

BBC Audience Services wrote back and said that *EastEnders* tried to show things that were like real life. They said that *EastEnders* would not always include "the level of detail that some viewers would like". Although this "can be irritating to some viewers", "an element of dramatic licence is sometimes necessary".

Appeal

The complainant wrote to the BBC Trust as he was unhappy with the response he had been sent. He said:

- *EastEnders* did not show real life as people could not afford to spend as much time in the pub and café as it showed;
- the programme was boring with old characters and storylines;
- it was a waste of the money as too much time was given to *EastEnders* with weekend repeats.

Decision of the Senior Complaints Adviser

The complainant had written to the Trust because he was not happy with *EastEnders*. The Adviser saw, however, that the BBC had stopped replying to this complainant because they had nothing more to say. She thought the point she should think about was whether the BBC had acted fairly in not writing any more to the complainant.

The Adviser carefully read all the letters and emails. She could see the complainant was unhappy about *EastEnders*. She saw from one email to the Trust that the complainant's

mother had died of cancer. She was very sorry to read that. She could see why the complainant was unhappy when people in television programmes also had cancer.

It was important to explain that the BBC and the Trust had different jobs. The BBC decided what should go into television programmes. This was set out in an important agreement made by the Queen. The Trust only got involved if there was a danger the BBC had made programmes that did not meet its standards – the Editorial Guidelines.

This meant it was up to the BBC to decide the storylines and characters in *EastEnders* and how much time they should spend in pubs and cafés.

The Adviser could see that the complainant wanted *EastEnders* to be changed. She thought that millions of people really liked *EastEnders* as it was – they would be unhappy if it changed.

The Adviser believed that Trustees would think Audience Services had explained this fairly to the complainant. She thought it was reasonable for the BBC not to write any more about this. Therefore, she did not think the appeal had a good chance of success and so she did not plan to show it to Trustees.

Request for review by Trustees

The complainant asked the Trustees to look at his complaint. He did not like *EastEnders*. He thought it a waste of money. He thought the acting was poor. The characters spent too much time in the pub and the café. The story lines were not real.

The Panel's decision

The Panel looked at the complaint to the BBC Trust. They looked at the reply from the Adviser. They also looked at his telephone call to the Trust.

The Panel recognised that he did not like *EastEnders* but it thought Audience Services had tried to explain that the BBC was allowed to decide which storylines to follow.

The Panel did not think that this complaint could be taken any further.

Decision of BBC Audience Services not to respond further regarding the use of Jacqui Smith as a contributor, *Daily Politics*, BBC Two, 7 November 2013

The complainant requested that the Complaints and Appeals Board (CAB), at its March 2014 meeting, review the decision of the BBC Trust's Senior Editorial Complaints Adviser that the complainant's appeal did not qualify to proceed for consideration on appeal.

Background

The complainant contacted the BBC about BBC Two's *Daily Politics*, 7 November 2013, on the day of broadcast. He objected to the choice of Jacqui Smith, former Home Secretary, to appear as contributor to the programme, given that she had been involved in expenses scandals during her time in Parliament.

Audience Services responded to the complaint on 20 November 2013 stating:

"As former Home Secretary and a key figure in New Labour, we feel Jacqui Smith offers a unique insight into the workings of the Labour Party and the political machinations of Whitehall as a whole.

We feel her extensive political experience offers a balanced discourse on the pressing matters at hand.

We can only apologise if this is not a view you share, but 'Daily Politics' is committed to featuring contributors who provide the information which will enable viewers to make up their own minds; to show the political reality and provide the forum for debate, giving full opportunity for all viewpoints to be heard."

The complainant was not satisfied with this response and re-stated his concerns. He considered the response he had been sent had not answered his complaint. He felt there were many more trustworthy Labour politicians who could have been featured. He said it was not simply a criticism of the programme, but a moral issue concerning honesty and trust which the BBC needed to address as a public body funded by licence fee payers.

Audience Services sent a response on 15 January 2014, including comments from the Editor of *Daily Politics* who had been consulted about the complainant's concerns. The response stated:

"Jacqui Smith is a former Home Secretary who was a prominent member of the last Government. She remains an active and prominent Labour supporter suited to appearing as a guest on the *Daily Politics*, not least because the record of the last Labour Government remains central to current political arguments around issues including home affairs, foreign policy and the economy.

Ms Smith's expenses claims were covered widely in the media during the course of the controversy around Parliamentary expenses. However, unlike a number of other politicians in both the Lords and the Commons whose expenses were criticised, she has never been convicted or charged with any criminal offences in relation to these claims. We do not believe that her involvement in that controversy should disqualify her from appearing on the *Daily Politics*."

The complainant was not happy with this response and made a further complaint on 16 January 2014, re-stating his concerns.

Audience Services sent a final response at Stage 1b on 17 January 2014, stating that they could not engage in further correspondence on the complaint as they did not consider the points raised suggested a possible breach of editorial guidelines and they had nothing further to add to their previous response.

Appeal

The complainant appealed to the BBC Trust on 17 January 2014 as he was not satisfied with the response received at Stage 1b from BBC Audience Services. He considered his original complaint had not been taken seriously. He was unhappy that the responses he had received had come from Capita and considered the responses he had received had been “quite stock and dismissive”. He said he would like a more considered response 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. She acknowledged the strength of the complainant’s feelings.

She noted that the complainant believed he had not had a considered response to his complaint that the former Home Secretary Jacqui Smith was not a suitable guest to appear on BBC Two’s *Daily Politics*.

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 considered it would be helpful to set out how the complaints process worked. The BBC’s Complaints Framework is set by the BBC Trust and the Trust acts as the third and final stage in the process. Under the Complaints Framework, complaints must be made to the BBC in the first instance and the BBC must finish responding fully before complainants are able to appeal to the Trust. The Adviser hoped the complainant would accept that this was a fair process that allowed the broadcaster to explain its thinking to complainants fully on whatever issue was raised.

The Adviser noted that the BBC received around a million complaints and comments each year which were recorded and, where appropriate, responded to. These initial responses formed the BBC’s Stage 1 response and were generally made by BBC Audience Services – a service which was contracted out to Capita. Where complainants were unhappy with the response they had received at stage 1, they could seek a further response. If the complaint was escalated to stage 2, the BBC could respond either via the Editorial Complaints Unit (which is made up of BBC members of staff but is separate from programme makers and output producers) or a response could be sent from a senior manager of the division responsible for the output that was the subject of the complaint.

However, it was also open to the BBC to consider that it had nothing further to add to the responses that had been sent at stage 1 – and in that instance, the BBC would close down the correspondence and refer the complainant to the BBC Trust. This was the situation which the complainant was in – the BBC considered the stage 1 responses that had been sent by Audience Services had contained all the information they could usefully include and had nothing further to add.

The Adviser noted that, while the responses at stage 1 had been sent by Audience Services, the second stage 1 response had included detailed comments from the Editor of the programme setting out why he considered Jacqui Smith was an appropriate contributor.

The Adviser acknowledged that the complainant disagreed with this view. However, 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 the choice of contributors invited onto a programme therefore fell within the "editorial and creative output" of the BBC and were the responsibility of the BBC Executive and it would not be appropriate for Trustees to consider this point.

The Adviser noted that the complainant felt the responses he had received had been "quite stock and dismissive". However, she also noted that the complainant's point had been addressed in some detail by the programme editor. She considered Trustees would be likely to conclude this was perfectly reasonable and she did not consider this aspect of the appeal had a reasonable prospect of success.

The Adviser also noted the complainant was unhappy that he could not respond directly to the member of Audience Services who had sent him the initial response. She appreciated how frustrating this was, but hoped the complainant would understand that the webform used by the BBC allowed it to monitor and track each individual contact – and helped it to ensure all complaints received a response within reasonable timeframes. She considered the complainant might be reassured to know that the Trust monitored how the complaints system was working and had recently carried out a "mystery shopping" exercise to test the stage 1 responses. The results of this had now been published and could be found via this link:

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

The Adviser considered that Trustees would be likely to conclude that Audience Services had provided a reasoned and reasonable response to the complainant's concerns. She considered the BBC had therefore acted appropriately in declining to correspond further. It followed from this that she did not consider the appeal had a reasonable prospect of success and she did not propose to put it before Trustees.

Request for review by Trustees

The complainant asked that the complaint be provided to Trustees, observing that the original point of his complaint had been misunderstood. The complainant felt that the issue for consideration was the decision to select Jacqui Smith as a contributor when the complainant considered that she had shown herself to be untrustworthy.

The Panel's decision

The Panel considered the complainant's appeal to the BBC Trust, the reply from the Senior Complaints Adviser and the request to review the Senior Complaints Adviser's decision. The complainant's previous correspondence with the BBC was made available to the Panel.

The Panel noted the complainant's views on the choice of Jacqui Smith as a contributor. The Panel also noted his points regarding the way in which his complaint had been handled.

The Panel appreciated the complainant was concerned about morality and ethics but agreed with the Senior Complaints Adviser that decisions relating to the choice of contributors fell within the category of editorial and creative output and were the responsibility of the BBC Executive.

With regard to the complaints-handling aspect of this appeal, the Panel noted that the complainant had been unable to contact the same member of Audience Services with whom he had initially corresponded at Stage 1 and had chosen to write to the Chairman of the BBC Trust. The Panel sympathised with the complainant's frustration, but noted the complaints process and the reasons behind it had been explained to him by the Senior Complaints Adviser.

The Panel agreed there was no reasonable prospect of success for an appeal against BBC Audience Services' decision to cease corresponding with the complainant on this issue

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

Decision of BBC Audience Services not to respond further regarding *Strictly Come Dancing*

The complainant requested that the Complaints and Appeals Board (CAB), at its March 2014 meeting, review the decision of the BBC Trust's Senior Editorial Complaints Adviser that the complainant's appeal did not qualify to proceed for consideration on appeal.

Background

The complainant had first contacted the BBC on 2 December 2013 regarding *Strictly Come Dancing*. He complained that the audience would clap rhythmically along with the music – but were often out of time. He noted that “Come Dancing” used to include spontaneous applause after a particularly difficult sequence, but considered this was different and was an unwelcome intrusion. He queried whether it was possible to have a version of the programme available on Red Button that was free of clapping. He also requested information about the number of complaints that had been received on the subject.

The complainant received a response the same day, but remained unhappy and renewed his complaint. He was sent a final response by Audience Services on 17 December 2013 informing him that it would not respond further as it had nothing to add to its earlier correspondence.

Appeal

The complainant appealed to the BBC Trust on 23 December 2013 as he was not satisfied with the response received at Stage 1b from the BBC.

The complainant appealed on the substance of his complaint which was about the

“rhythmic clapping on the *Strictly Come Dancing* programme, which is not in sequence with the music being played and occasionally drowns it out. Part of watching the programme is to feel the rhythms of the orchestra and the impact any change in rhythm has on the dancers. The audience clapping to their own rate is distracting.”

The complainant also requested information on the total number of complaints made on this subject.

Decision of the Senior Complaints Adviser

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

The complainant had appealed on the substance of his complaint which was that he objected to the rhythmic clapping of the audience during the programme. The Adviser noted, however, that BBC Audience Services had ceased handling this complaint at stage 1 and that the complaint had not gone to stage 2. She therefore decided that the point she should consider was whether an appeal against the decision of BBC Audience Services not to correspond further with the complainant had a reasonable prospect of success.

The Adviser noted the response of Audience Services of 2 December 2013 which stated:

“We understand you feel the audience is too noisy during the programme. ‘Strictly Come Dancing’ is a live show for which many thousands of people apply for tickets. The lucky ones that do make it into the audience are inevitably very excited to be there and this comes across by their reactions. We would like to assure you that we in no way add to this and it certainly isn’t staged.

We’ve registered your concerns on our audience log. This is a daily report of audience feedback that’s made available to many BBC staff, including members of the BBC Executive Board, programme makers, channel controllers and other senior managers.

The audience logs are seen as important documents that can help shape decisions about future programming and content.”

The Adviser noted that this response did not address the complainant’s specific concern that he found the rhythmic clapping distracting, and nor did he receive an answer to his question about the number of complaints received on this topic.

However, she noted that the choice of the producers to allow the audience to clap to the music was an editorial one. 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 whether the audience should be encouraged to clap in time to the music fell within the “editorial and creative output” of the BBC and were the responsibility of the BBC Executive. Therefore the Adviser did not consider it would be appropriate for Trustees to consider this aspect of the appeal and she did not propose to put it before them for consideration.

The Adviser acknowledged the complainant’s dissatisfaction at not receiving a response from the BBC to his request for information about the number of complaints on this issue. However, she noted that there was no obligation for the Executive to respond to requests for information of this kind. For completeness, the Adviser looked at the log of audience responses at the time when the complainant had first contacted the BBC. She noted a range of complaints had been registered about *Strictly Come Dancing*, including:

- Complaints regarding a comment about the weight of one contestant
- Complaints about the choice of presenter
- Complaints about the voting system
- Complaints that a dancer was described as coming from Grimsby
- Complaints that the programme was generally of a poor quality

The issue of clapping had not featured on this summary of complaints although the Adviser acknowledged that it may have featured at another time.

Although she acknowledged the complainant’s dissatisfaction with the responses he had received from Audience Services, she considered Trustees would be likely to conclude

that Audience Services had given a reasoned and reasonable response to the complainant and had acted appropriately in closing down the correspondence. 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 that the complaint be provided to Trustees. The complainant expressed his disappointment that the aspect of his complaint relating to rhythmic clapping was not being progressed and stated he would like to pursue his request for the total number of complaints received since the start of the *Strictly Come Dancing* series. He felt his request had significant support elsewhere and pointed to newspaper columns, social media forums and *Points of View*.

The Panel's decision

The Panel considered the complainant's appeal to the BBC Trust, the reply from the Senior Complaints Adviser and the request to review the Senior Complaints Adviser's decision. The complainant's previous correspondence was made available to the Panel.

The Panel agreed that decisions relating to whether the audience should be encouraged to clap in time to the music fell within the "editorial and creative output" of the BBC and were the responsibility of the BBC Executive and not the Trust.

The Panel noted that the complainant requested information on the total number of complaints made on the subject of clapping when complaining about *Strictly Come Dancing*.

The Panel noted the Senior Complaints Adviser's observation that the responses from Audience Services did not address this specific concern and her point that there was no obligation for the BBC to respond to requests for information of this kind.

The Panel noted that the Senior Complaints Adviser did undertake some research into this matter and provided this to the complainant. The Panel was aware that the Senior Complaints Adviser's investigation was not exhaustive, but considered it was not proportionate to require the BBC to research the number of complaints on this issue over the series to find the cumulative total of complaints.

The Panel agreed there was no reasonable prospect of success for an appeal against BBC Audience Services' decision to cease corresponding with the complainant on this issue.

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

Decision of BBC Audience Services not to respond further regarding the use of 'terror suspects' in BBC output

The complainant requested that the Complaints and Appeals Board (CAB), at its March 2014 meeting, review the decision of the BBC Trust's Senior Editorial Complaints Adviser that the complainant's appeal did not qualify to proceed for consideration on appeal.

Background

The complainant contacted the BBC on 14 October 2013 because he was unhappy about the general use of the term 'terror suspects' in BBC output. He wanted the term 'terrorism suspects' to be used as this was more accurate. He said that terror was not a crime, and no-one had been arrested on suspicion of terror.

BBC Audience Services responded on 24 October 2013, stating:

"It is unclear from your correspondence exactly which BBC programme or service you are referring to, or if this is a general observation.

However, we feel that the phrase 'terror suspects' is appropriate and a commonly used term to describe those suspected of terrorist activities."

The complainant made a follow-up complaint on 9 November 2013 stating:

"Please read the description of 'terror' in any dictionary and then please explain to me why the phrase 'terror suspects' should be considered 'appropriate' in the circumstances. It may be 'commonly used' however it is both grammatically and factually incorrect. The people referred to are not 'suspected of being extremely afraid'. Nor are they 'suspected of extreme fear'.

Perhaps a more understandable explanation would be that your description is similar to referring to 'wrong suspects'. Whereas you are intending to refer to 'wrong-doing suspects'."

Audience Services sent a further response stating that they had nothing further to add to their previous response, and that in order to use licence fee resources appropriately, they would not be investigating the complaint further as they did not consider the points raised suggested a possible breach of Editorial Standards.

The complainant appealed to the BBC Trust as he was not satisfied with the response received at Stage 1b from BBC Audience Services. He appealed on the substance of his complaint which was that he did not find it acceptable for the BBC to "substitute the word 'terror' for the word 'terrorism'". He said that 'extreme fear' could not be used in any context in place of 'an organised system of intimidation' to provide the same meaning.

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 acknowledged the strength of the complainant's feelings.

The complainant had appealed on the substance of his complaint which was that he did not find the BBC's general use of the term 'terror suspects' an acceptable alternative for what he felt was the more appropriate term, 'terrorism suspects'. The Adviser noted, however, that BBC Audience Services had ceased handling this complaint at stage 1 and that the complaint had not gone to stage 2. She therefore decided that the point she should consider was whether an appeal against the decision of BBC Audience Services not to correspond further with the complainant had a reasonable prospect of success.

The Adviser noted that the complainant was concerned that the term 'terror suspects' was an inappropriate way to describe people suspected of terrorism and quoted the dictionary definition of the word 'terror' in support of his view. She noted that the term 'terror suspects' was used widely across the media as an alternative for 'terrorist suspects' or 'terrorism suspects', and that this was an editorial preference as a shorthand way of describing people suspected of causing terror. The Adviser also noted that for newsreaders, 'terror suspects' was a less cumbersome verbal juxtaposition of words when speaking at speed during a live broadcast.

The Adviser noted that the complainant understood the term 'terror suspects' was in common usage, but his complaint was that it was "both grammatically and factually incorrect". He stated:

"It may be 'commonly used' however it is both grammatically and factually incorrect. The people referred to are not 'suspected of being extremely afraid'. Nor are they 'suspected of extreme fear'."

The Adviser appreciated that the suffix "-ism" was used to show that terror was not simply being caused, but was being pursued as a political or philosophical strategy. While she had a good deal of sympathy for the complainant's wish to preserve this term, she considered that the phrase "terror suspects" was widely used in the media and well understood by audiences. She noted that the complainant had not referred to any specific use of the term by the BBC, but was complaining about its use generally.

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 language used in BBC content fell within the "editorial and creative output" of the BBC and were the responsibility of the BBC Executive.

The Adviser noted the Complaints Framework stated:

At all stages of this Procedure, your complaint may not be investigated if it:
1.7.1 fails to raise an issue of breach of the Editorial Guidelines

The Adviser considered that Trustees would be likely to conclude that there was no evidence of a breach of the BBC editorial standards and that Audience Services had provided a reasoned and reasonable response to the complainant's concerns. She considered it was therefore appropriate 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 she did not propose to put it before Trustees.

Request for review by Trustees

The complainant asked that the complaint be provided to Trustees, reiterating his views regarding the incorrect usage of the phrase 'terror suspects'.

The Panel's decision

The Panel considered the complainant's appeal to the BBC Trust, the reply from the Senior Complaints Adviser and the request to review the Senior Complaints Adviser's decision. The complainant's previous correspondence was made available to the Panel.

The Panel understood that this was a complaint regarding the BBC's use of the phrase "terror suspects" in general, rather than in relation to one particular piece of output.

The Panel noted the response from Audience Services explaining that the phrase was commonly used and understood to describe those suspected of engaging in terrorist activities.

The Panel noted the grammatical points outlined by the complainant and appreciated his position regarding the definition of the word. However, the Panel agreed with the Senior Complaints Adviser that decisions relating to programme content fell within the category of editorial and creative output and were the responsibility of the BBC Executive.

The Panel agreed there was no reasonable prospect of success for an appeal against BBC Audience Services' decision to cease corresponding with the complainant on this issue.

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

Decision of BBC Audience Services not to respond further regarding the scheduling of the Archers Omnibus, Radio 4

The complainant requested that the Complaints and Appeals Board (CAB), at its March 2014 meeting, review the decision of the BBC Trust's Senior Editorial Complaints Adviser that the complainant's appeal did not qualify to proceed for consideration on appeal.

Background

The complainant had made a number of complaints about this issue since December 2010, but had not received a response which he found satisfactory. His complaints were primarily about the scheduling of *The Archers Omnibus* repeat on Sunday mornings, which he considered to be a time slot better suited to new programme content of higher quality.

He considered that a good deal of the output scheduled on Saturdays – including *From Our Own Correspondent* – was of a high quality but was likely to be missed by potential listeners as Saturdays were likely to be busier. He considered that Sunday mornings were more leisurely and that it would be more appropriate to schedule the new output on a Sunday, moving *The Archers* to a Saturday transmission slot.

Prior to the most recent correspondence, the complainant had received four substantive responses from BBC Audience Services which acknowledged his strong feelings about the Radio 4 schedule. These explained that scheduling was a complex process and that even popular programmes faced competition for a place in the peak time schedule. They also acknowledged that, despite the efforts of schedulers, it was likely that some listeners would remain disappointed. In December 2010, the complainant was informed:

“Our aim is to provide a range of programmes for our audience at times which are convenient and we have to cater for people who want to listen to different programmes at different times of day.

Scheduling is a complex process and we understand that some people may be disappointed with the placement of a programme.”

The complainant pursued his complaint with Audience Services, the Director- General and with Radio 4's programme *Feedback*.

On 2 April 2013, he renewed his complaint to the Controller, Radio 4, after a gap of approximately a year. BBC Audience Services responded on 23 April 2013 stating:

“The BBC is a publicly-funded broadcaster serving the whole of the United Kingdom providing programming to a hugely diverse audience with differing tastes and preferences. There'll always be some programmes that don't appeal to some people and this is the nature of broadcasting whereby we're serving many different people with many different expectations.

We're sorry that this particular programme isn't to your own liking, but would say that it represents one individual show and therefore just one small part of a very wide range of programming across our output.”

Audience Services also thanked him for his “valuable feedback which helps us to get a snapshot of our audiences’ tastes and preferences and will help us shape decisions on future programming”.

The complainant made a follow-up complaint on 27 April 2013 and received a stage 1b response from Audience Services on 14 May 2013 which explained that they could not engage in further correspondence on the issue as they did not consider the points he raised suggested a possible breach of standards and they had nothing further to add to their previous response.

On 23 May 2013 the complainant wrote to the BBC’s Director-General about the issue. It appears that this letter was passed to Audience Services for response, and they sent a reply on 26 June 2013, reiterating their previous response and suggesting that the complainant write to the BBC Trust, as previously advised, if he wished to escalate his complaint.

Appeal

The complainant wrote to the BBC Trust on 13 November 2013 and expressed his concern at the way audience correspondence was handled.

He said that

“whilst some people may occasionally have actual complaints, I am sure that most of us are writing to raise issues that deserve to be dealt with properly by the people concerned. However the only responses that I have been getting to a couple of questions I have been asking over the last 3-4 years have been pointless, futile, irrelevant, unsigned letters from ‘Complaints’ received some 3-4 months later.”

He said he objected to being treated with such disdain, and although his letter of appeal might not be in accord with BBC protocols, he hoped that “in a new, more sensitive, intelligent and much improved environment, I may at last get a proper response”.

He also raised new points about the commissioning of drama and literary works.

He repeated his concern that it was unacceptable for the omnibus repeat of *The Archers* to take up so much of peak listening time on Sunday mornings. He felt that “like any other repeat this should surely be broadcast off peak or preferably on long wave, thus allowing millions of people with leisure time on Sunday to listen to so much of the excellent new material that we miss during the week”.

He said he had raised this issue many times over the previous few years but had never had a reply from those people responsible for scheduling; all he received was “fatuous, pointless, non-answers from Complaints”. He said that he had received one response which attempted to justify the scheduling by saying that *The Archers Omnibus* attracted an audience of 1.9 million listeners. He said that he had responded by saying that *Desert Island Discs* which immediately follows the omnibus enjoys an audience of 2.9 million, but he heard nothing more. He felt that some people were missing *Desert Island Discs* because they switched off *The Archers Omnibus* which preceded it. He felt it was time that the management of Radio 4 concentrated more on “nurturing and promulgating all the brilliant stuff that this station has to offer”.

The complainant received a response from the Trust Unit which informed him that he was out of time to escalate his complaint and invited him to state whether there were exceptional reasons that would explain the delay.

The complainant wrote on 10 December 2013 and said that when his complaint had first been closed down in spring 2013 this had coincided with a bereavement and he had not pursued his complaint at that time. He repeated his principal point that he considered *The Archers Omnibus* should not be transmitted on Sunday morning.

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 was pleased that he enjoyed so much of Radio 4's output and acknowledged the strength of the complainant's feelings in relation to *The Archers*.

She noted that the appeal had originally been responded to by the Trust Unit on 29 November 2013, and that the complainant had been informed that his appeal had been submitted beyond the usual timeframe of 20 working days following the stage 1b response. However, the Trust Unit had invited the complainant to submit his reasons for the delay. The complainant explained in his letter of 10 December that he had had a bereavement and this had prevented him from pursuing his complaint at that time. The Adviser was extremely sorry to learn of the complainant's bereavement and the request for a review of his complaint was accepted.

The complainant had appealed on the substance of his complaint, which was that *The Archers Omnibus* was scheduled at an inappropriate time on Radio 4 on Sunday mornings, and should be replaced in that time slot by new material of higher quality. The Adviser noted, however, that BBC Audience Services had ceased handling this complaint at stage 1 and that the complaint had not gone to stage 2. She therefore decided that the point she should consider was whether an appeal against the decision of BBC Audience Services not to correspond further with the complainant had a reasonable prospect of success.

The Adviser noted that the complainant had sent correspondence to the BBC about the same issue over the last few years, but had never received a reply which he found satisfactory. The Adviser studied the correspondence and observed that the responses he had received explained in general terms the BBC's responsibilities to its hugely diverse audience which was made up of people with very differing tastes and preferences. His specific complaint about *The Archers Omnibus* had not received an individualised response from the BBC's scheduling management team.

The Adviser noted that in his appeal the complainant said that not only were the responses he received from the BBC unsatisfactory, but that they arrived after a 3-4 month delay. The Adviser looked at the correspondence and noted the response times to the complaints. She saw that, though unsatisfactory to the complainant, they had generally been written within a much shorter space of time than that specified in the appeal. She also noted that if Audience Services thought they might not be able to issue a response within the target timeframe, they had usually sent a "holding" letter explaining that it might take them longer than the target 20 working days to respond. She noted, however, that in some instances, the complainant had written directly to senior members of the BBC Executive, such as his letter to the Director- General dated 23 May 2013, received on 30 May 2013. The letter had then been sent on to Audience

Services, in accordance with the BBC's published complaints process, and this may have added to a delay in receiving a response. She did not believe that Trustees would consider there had been an unacceptable delay in responding to the complaints, or that this matter raised such serious issues that further action would be required.

For completeness, the Adviser noted that The Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General.

"The operational management of the BBC" is specifically defined in the Charter (article 38, (1) (c)) as a duty that is the responsibility of the Executive Board, and one in which the Trust does not usually get involved unless, for example, it raised broader issues such as a breach of a station's Service Licence. Decisions relating to programme scheduling are operational matters and are the responsibility of the BBC Executive.

The Adviser appreciated that the complainant would find the Trust's response disappointing and she sympathised with his frustration at being unable to convince the BBC of the merits of changing the scheduled slot of *The Archers Omnibus*. However, given the huge diversity of the BBC's audience, and the difficulties in meeting all the expectations of that audience in terms of the scheduling of their favourite programmes, the Adviser considered that Trustees would be of the view that it was reasonable for Audience Services to say they could not engage in further correspondence with the complainant 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. The Adviser hoped the complainant would, however, take advantage of Radio 4 making a large part of its output available either as podcasts or through iPlayer so that he could listen to programmes he might have missed at a time that suited him.

She noted that the complainant had raised concerns about the complaints process, and noted that he did not feel that people who would like to pose questions to the BBC's management teams, or make suggestions concerning the BBC's output, should be treated in the same way as people making complaints. He also objected to the fact that he had received letters from Audience Services which were unsigned above the typed name, a practice which he found ill-mannered.

The Adviser noted that the BBC received around a million complaints and comments each year and used a system which allowed them to be acknowledged and responded to appropriately within a reasonable time frame. While she regretted that the complainant objected to receiving correspondence that was unsigned, she noted that there was no requirement within the Complaints Framework for correspondence to be signed by the writer. She did not consider this element of the appeal had a reasonable prospect of success and did not propose to put it before Trustees.

She thought the complainant might be interested to be aware that complaints handling was a matter that the Trust was keeping under close review. She explained that a "mystery shopping" exercise into how the complaints process had been operating since it was revised in 2012 was conducted in 2013 and the results of this would soon be published. [Now available at http://www.bbc.co.uk/bbctrust/news/press_releases/2014/mystery_shopping_2014.html]

Request for review by Trustees

The complainant asked that the complaint be provided to Trustees, reiterating his views regarding the scheduling of *The Archers Omnibus* on Sunday mornings on Radio 4.

The Panel's decision

The Panel considered the complainant's appeal to the BBC Trust, the reply from the Senior Complaints Adviser and the request to review the Senior Complaints Adviser's decision. The complainant's previous correspondence was made available to the Panel.

The Panel noted the number of complaints made by the complainant since 2010.

The Panel noted his comments regarding the scheduling of *The Archers Omnibus* and suggestions for changes.

The Panel agreed with Audience Services that the BBC was obliged to try and cater for a diverse audience who wants to listen to different programmes at different times of the day.

The Panel agreed with the Senior Complaints Adviser that the operational management of the BBC, under which programme scheduling falls, is a matter for the BBC Executive.

The Panel decided that there was no reasonable prospect of success for an appeal against BBC Audience Services' decision to cease corresponding with the complainant on this issue.

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

Decision of BBC Audience Services not to respond further regarding the amount of coverage given to Nelson Mandela's funeral

The complainant requested that the Complaints and Appeals Board (CAB), at its April 2014 meeting, review the decision of the BBC Trust's Senior Editorial Complaints Adviser that the complainant's appeal did not qualify to proceed for consideration on appeal.

Complaint

The complainant contacted the BBC on 15 December 2013. He considered there had been excessive coverage of Nelson Mandela's funeral and, in particular, he queried why the funeral was shown on both BBC One and on the BBC News channel. He did not dispute the significance of Nelson Mandela but considered this was excessive and considered it was "arrogant" of the BBC to broadcast in this way, despite having received a large number of complaints on the subject.

The complainant was sent a response on 19 December 2013 from Audience Services which stated:

"Nelson Mandela was one of the most important world leaders of the 20th century whose long and complex life story represented a moment of historical change for people in South Africa and around the world.

His funeral was the concluding event in a series of tributes and commemorations in South Africa and around the world, and as such we felt it was appropriate to cover it live and in full.

Our regular Sunday morning news and current affairs programming continued on BBC Two, with Breakfast and the Andrew Marr show being shown as normal. The BBC News Channel, with its brief to cover major live events, showed the funeral before returning to its normal schedule of headlines, news reports and feature programming as soon as it concluded.

We acknowledge that an overrun on the event in Qunu meant this happened slightly later than planned (by 11am) but did not feel it was appropriate to leave the event while it was still under way."

The complainant remained dissatisfied and contacted the BBC Trust on 10 January 2014. He considered it was pointless to show the funeral simultaneously on BBC One and the News Channel and also noted that, as football had transferred to BBC Two between 8am and 9am, there had been no news output during that period. He received a response from the Trust Unit on 17 January noting that, according to the complaints process, the BBC needed to be given a further opportunity to respond. The Trust Unit returned the complaint to Audience Services for a response. The complainant received a further response from Audience Services which included the following statement from the Controller, BBC News Channel:

"The BBC News Channel has a remit to cover significant live and developing news – and its regular audience has an expectation that it will see events of this scale covered on the channel, as they are on other 24 hour news networks. However on

a small number of very high-profile occasions though the BBC also decides to provide coverage of an event on BBC One where it can reach a wider general audience. In order to be cost effective this means there is occasionally a simulcast of the same event coverage on both networks – as there was in the case of Margaret Thatcher’s funeral as well as Nelson Mandela’s. We would like to reassure you though that if there had been significant breaking news away from the funeral we retained the ability to break away and cover it. We also made sure there was a Breakfast programme and Andrew Marr show – including news bulletins - on BBC Two at the usual times for a Sunday morning.”

The complainant was informed in the same response that BBC Audience Services had nothing further to add to its responses and would not correspond further on this matter. The complainant was informed that he could appeal against this decision to the BBC Trust.

Appeal

The complainant appealed to the BBC Trust on 26 January. He did not consider the responses he had received addressed his concerns. He made the following points:

- The BBC had stated that the funeral had been broadcast on BBC1 to bring it to a wider audience, however, viewers would in any event have had access to the BBC News Channel – so it was not the case that transmitting it on both channels would bring it to a wider audience.
- The complainant believed the BBC was wrong and that there was “a long period” when BBC2 would be covering football, so that BBC Breakfast was notably shorter than usual.

The complainant also stated that he considered the Executive should require permission from the BBC Trust before it could broadcast the same material across two channels and he also considered the extent to which the BBC had editorial control over its output was too great – and meant that the vast majority of complaints about output were likely to fail. In particular he felt there was too much entertainment news broadcast on *Newswatch*, (News Channel).

Decision of the Senior Complaints Adviser

The Senior Complaints Adviser carefully read the correspondence that had passed between the complainant and the BBC and the relevant correspondence was also reviewed by the Trust Unit. The Senior Complaints Adviser (the Adviser) acknowledged the strength of the complainant’s feelings.

The Adviser decided that the complainant’s appeal did not have a reasonable prospect of success.

She noted that the complainant believed he had not had a considered response to his complaint about the BBC’s decision to simultaneously broadcast coverage of Nelson Mandela’s funeral across both BBC1 and the BBC News Channel. 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 all BBC output was expected to comply with the values and standards set out in the Editorial Guidelines which, for completeness, could be found here: <http://www.bbc.co.uk/editorialguidelines/>. The Adviser noted that the BBC said that Mr Mandela was one of the most important world leaders of the 20th century and considered that his death was of sufficient significance to justify the degree of coverage it had 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 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 she had not seen any evidence that suggested the BBC's output had been in breach of the Editorial Guidelines. She therefore considered Trustees would be likely to conclude that it was a matter for the BBC to decide how it would cover Nelson Mandela's death and it would not be appropriate for Trustees to consider this broad point.

While she appreciated the complainant's view that audiences could choose to watch the funeral coverage on the News Channel so that it did not need also to be broadcast on BBC1, she noted that BBC1 had a higher default audience, so the decision to broadcast across both channels would have been likely to lead to the funeral coverage being seen by more people than if it had only been covered on the BBC News Channel.

She considered that Trustees would be likely to conclude that BBC Audience Services had given a reasoned and reasonable response to the complainant to set out why it considered there was an editorial justification for the decision and had also informed him that there was a financial element to the decision. Therefore, she did not think this point of appeal had a reasonable prospect of success and she did not propose to put it before Trustees.

On the complainant's second point, she noted that he disputed the BBC's description of the schedule and stated that there was a "long period" when BBC2 was broadcasting football so that there would have been no regular TV news bulletins.

The Adviser noted that the BBC Trust was not responsible for day-to-day editorial decisions taken by the BBC Executive. This would include the decision to simultaneously broadcast Mr Mandela's funeral on both BBC One and the BBC News Channel. The Trust did, however, set a service licence for each of the BBC's public services. These were publicly available and could be viewed on the Trust website (link below) and were supported by regular service reviews:

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

The service licence for BBC One required it to "be the key provider of news for all UK audiences" and says that it "should collaborate with BBC News 24 [now BBC News Channel] ... in the coverage of breaking news, as appropriate".

The Adviser noted that the BBC said that Mr Mandela was one of the most important world leaders of the 20th century and that his funeral was of sufficient profile to justify covering it live and in full. The Adviser considered that the Trustees would conclude that showing the funeral in full on BBC One was consistent with the channel's service remit to be the key provider of news for all UK audiences and that a simulcast with the BBC News Channel was consistent with the service licence for the respective channels. She noted there had been precedents for this, including coverage of Margaret Thatcher's funeral and Breakfast programme simulcasts.

The Adviser noted the complainant's point that there had been a change in schedule and a shortening of the Breakfast programme. However, she did not consider this raised an issue that might be a breach of the Service Licence or of the Editorial Guidelines and noted that other news sources were available through the BBC, for example radio and online.

She considered that overall, Trustees would be likely to conclude the complainant had received reasoned and reasonable responses from the BBC explaining its decision to cover Nelson Mandela's funeral in the way it had. She therefore considered the appeal did not have a realistic prospect of success and therefore she did not propose to put it before Trustees.

The Adviser noted the additional points the complainant had made on appeal – firstly, that he considered the BBC had too great a degree of editorial control over its output and secondly that he considered there was too much entertainment news broadcast on *Newswatch*.

She noted that these were new points which had not been raised earlier in the complaints process and therefore it would not be appropriate for them to be put before Trustees. However, she considered that licence fee payers as a whole greatly prized the BBC's editorial independence and that it was the role of the Trust to help to safeguard its independence. In terms of its editorial output, this meant that the Trust only had a role if output did not meet the standards set out in the Editorial Guidelines or if one of the public services failed to meet the requirements of its service licence. While she sympathised with the complainant's views about celebrity news, she noted that judgements about what was "newsworthy" were to some extent subjective and that the BBC produced a wide range of news programmes across many different outlets. She hoped the complainant could find a news programme that he preferred. The Trust was currently carrying out a performance review of the BBC's news output. Unfortunately, the complainant's letter had been received too late to be fed into that review; however, the Adviser considered he might be interested in its results. It was due to be published by early summer and would be available via the Trust's website: www.bbc.co.uk/bbctrust.

Request for review by Trustees

The complainant asked that the complaint be provided to Trustees, reiterating his view that the coverage of Nelson Mandela's funeral was excessive. The complainant argued that the News Channel was in breach of its licence conditions by failing to cover other breaking news during the period of the funeral, such as the floods. He did not consider the Executive should simulcast News without the Trust's consent. He noted that there were many complaints to *Newswatch* about excessive entertainment news coverage by the BBC.

The Panel's decision

The Panel considered the complainant's appeal to the BBC Trust, the reply from the Senior Complaints Adviser and the request to review the Senior Complaints Adviser's decision. The complainant's previous correspondence was made available to the Panel.

The Panel noted the complainant's view that, while he accepted Nelson Mandela was a significant figure, the BBC's coverage had been excessive.

The Panel noted the response from the Controller, BBC News Channel, citing the remit of the BBC News Channel. He explained that the decision to cover a high-profile story did not preclude coverage of other significant stories, should the need arise.

"The BBC News Channel has a remit to cover significant live and developing news – and its regular audience has an expectation that it will see events of this scale covered on the channel, as they are on other 24 hour news networks. However on a small number of very high-profile occasions though the BBC also decides to provide coverage of an event on BBC One where it can reach a wider general audience. In order to be cost effective this means there is occasionally a simulcast of the same event coverage on both networks – as there was in the case of Margaret Thatcher's funeral as well as Nelson Mandela's. We would like to reassure you though that if there had been significant breaking news away from the funeral we retained the ability to break away and cover it. We also made sure there was a Breakfast programme and Andrew Marr show – including news bulletins - on BBC Two at the usual times for a Sunday morning."

The Panel noted that the complainant felt the editorial freedom granted to the BBC Executive in the Charter was "too wide". However, the Panel acknowledged that both the BBC and the BBC Trust were bound to act in accordance with the Charter and as such, decisions relating to editorial output were the responsibility of the BBC Executive.

The Panel agreed with the Senior Complaints Adviser that the BBC had provided editorial reasoning with regard to the breadth of its coverage of Nelson Mandela's funeral.

The Panel agreed there was no reasonable prospect of success for an appeal against BBC Audience Services' decision to cease corresponding with the complainant on this issue

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

Decision of BBC Audience Services not to respond further regarding the amount of coverage given to Nelson Mandela's death and general BBC bias

The complainant requested that the Complaints and Appeals Board (CAB), at its April 2014 meeting, review the decision of the BBC Trust's Senior Editorial Complaints Adviser that the complainant's appeal did not qualify to proceed for consideration on appeal.

Complaint

The complainant contacted the BBC on 15 December 2013. He considered the BBC's coverage of Nelson Mandela's death was "ridiculous" and was "symptomatic" of a general left-wing bias at the BBC.

He considered that the BBC did not provide news or information that was unbiased and accurate. To support his complaint, he stated that the BBC recruited its staff from the *Guardian* and *New Statesman*; the BBC advertised for staff in the *Guardian*; its staff was biased and he referred specifically to a number of presenters, programmes and panellists. He also referred specifically to *Question Time* after 9/11. He stated all the BBC's economics coverage was "uniformly from the left".

He received a response from BBC Audience Services on 27 December 2013. This set out the editorial thinking behind the coverage that had been given to Nelson Mandela's death and also stated:

"I understand you feel the coverage given to the death of Nelson Mandela was biased towards him, which you believe is indicative of the BBC's left wing bias.

Impartiality is the cornerstone of all our news and current affairs output and we ensure all our correspondents and production teams are aware of this to help us deliver fair and balanced coverage for all the stories we report.

...We believe we reflected the range of reactions to his death in an impartial manner.

I can assure you that we're committed to honest, unbiased programme making, we would never knowingly mislead our audiences with our content and accuracy along with impartiality forms the cornerstone of our information programmes.

We do strive to maintain the highest of journalistic standards and we're sorry if you feel we fall short."

The complainant remained dissatisfied. He renewed his complaint on 31 December. He considered the response he had been sent misrepresented his complaint and he stated that his central complaint was about BBC bias. He considered the "excessive coverage" of Nelson Mandela's death was an example of the left-wing bias he believed existed. He noted in particular that the Chancellor's Autumn Statement had taken place on the same day that Nelson Mandela had died. He stated: "This was ignored post-Mandela, but has FAR greater effect on the lives of Britons than anything Mandela did."

He received a further response on 21 January 2014 which stated:

"We reported extensively on the Chancellor's Autumn statement across our news bulletins and programmes, this included criticism of the Labour Party's response and proposed economic policies. BBC News did explore what affects [*sic*] the Chancellor's statement would have on the wider UK population.

We believe we have outlined the editorial reasons for the widespread coverage of Nelson Mandela's death. We feel we have explained the position as clearly as we could and do not have more to add."

The complainant was informed in the same response that BBC Audience Services had nothing further to add and would not correspond further on this matter. The complainant was informed that he could appeal against this decision to the BBC Trust.

Appeal

The complainant appealed to the BBC Trust on 26 January 2014. He considered his complaint had been misrepresented and stated that the BBC had "refused" it. He stated:

"The manner in which the BBC covered Mandela's death was an excellent example of the approach of the BBC to its responsibilities. There is a culture within the BBC of a 'right-thinking' view, and this has been settled within the BBC as being that of the liberal left. It is apparent in the BBC's approach to almost everything - the economy, immigration, the EU and so on. It is not the BBC's remit to propound any particular view, but to report accurately and fairly on all aspects of any particular topic. The treatment of Mandela's death illustrates many of these failings."

The complainant stated the coverage of Nelson Mandela's death was excessive because it occupied "the entire 10 o'clock news... (with extra time added)" with the result that other items were not covered, including the Autumn statement, where "any investigation of Osborne's plans was ignored".

The complainant believed that the BBC "has been captured by the liberal left and is therefore failing under the terms of its charter to be fair and balanced". He added that the BBC needed to eliminate nepotism.

Decision of the Senior Complaints Adviser

The Senior Complaints Adviser carefully read the correspondence that had passed between the complainant and the BBC and the relevant correspondence was also reviewed by the Trust Unit. The Senior Complaints Adviser (the Adviser) acknowledged the strength of the complainant's feelings.

The Adviser decided that the complainant's appeal did not have a reasonable prospect of success.

She noted that the complainant had written to the Trust on the basis of his underlying complaint – namely, that he considered the BBC showed a left-leaning bias, and that its coverage of Nelson Mandela's death was evidence of this. 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 the Complaints Framework stated that complainants should identify what output they were complaining about, giving details of when it was broadcast and on which service. It also stated:

“You should make your complaint within 30 working days of the date on which the content was broadcast ...

Your complaint should be limited to a single item broadcast or published by the BBC unless it is about more than one item but your points relate to the same issue. This is because if a complaint is about two unconnected items (for example, offensive language in a comedy programme and bias in a news programme), they will need to be treated as separate complaints...

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

She noted the only example cited by the complainant within the previous thirty working days had related to the death of Nelson Mandela. She noted that BBC Audience Services had responded to the complainant both in terms of setting out its editorial justification for the way it had covered Nelson Mandela’s death and also in terms of responding to the complainant’s view that the BBC was biased generally.

The Adviser noted that all BBC output was expected to comply with the values and standards set out in the Editorial Guidelines which, for completeness, could be found here: <http://www.bbc.co.uk/editorialguidelines/>. Impartiality was of fundamental significance to the BBC and the Trust took seriously allegations that the BBC was failing to broadcast within the requirements of the Editorial Guidelines.

However, she noted that, aside from the coverage of Nelson Mandela’s death, the complainant had not given examples of output that he considered was biased. She did not consider that general references to programme teams, individual reporters, contributors, or to the various other elements cited by the complainant amounted to evidence of bias. In the absence of any evidence of bias, she considered Trustees would be likely to conclude that Audience Services had acted reasonably by reassuring the complainant of the importance to the BBC of impartial reporting – while noting that it considered there was strong editorial justification for the way Nelson Mandela’s death had been covered.

For completeness, the Adviser noted that Mr Mandela died earlier in the evening on 5 December 2013 at approximately 1900 GMT and that the news of his death was announced by President Zuma of South Africa less than half an hour before the start of that evening’s BBC1 *News at Ten*. She considered that this was a breaking news story with reactions and comments gathered while the programme was on air, including reactions from world leaders during the first hour and a telephone interview with former President FW de Klerk shortly after 11pm.

She also noted that the BBC had broadcast reports on the Chancellor’s Autumn Statement across other news bulletins and programmes earlier in the evening and online, including

criticism of the Labour Party's response and proposed economic policies and exploration of the effects of the Chancellor's statement on the wider UK population.

The Adviser considered that the Trustees would be likely to regard the editorial team's decision to focus on the death of Mr Mandela and the global reaction to it on a flagship news programme following so closely after the announcement of his death as reasonable.

The Adviser noted that the BBC said that Mr Mandela was one of the most important world leaders of the 20th century and considered that his death was of sufficient significance to justify the degree of coverage it had received. That is, the BBC's position was that there was strong editorial justification for the news decision that had been made.

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 she had not seen any evidence that suggested the BBC's output had been in breach of the Editorial Guidelines. She therefore considered Trustees would be likely to conclude that it was a matter of the BBC's editorial judgement for the BBC to decide what subjects were newsworthy and how they would be covered.

The Adviser noted the complainant's concern that the BBC "has been captured by the liberal left". She did not consider the complainant had provided evidence that supported this view. She also noted the complainant had, on appeal, introduced a complaint about nepotism. She noted that the Complaints Framework made clear that all elements of a complaint had to be made at Stage 1. She considered this was done with good reason in that it allowed the BBC to respond properly to the concerns that were being raised and prevented complaints accreting new points as they progressed through the system. She therefore did not consider it was appropriate for Trustees to consider this point of appeal.

The Adviser considered that Trustees would be likely to conclude there was no evidence that the Editorial Guidelines had been breached and Audience Services had therefore acted appropriately in closing down the correspondence. It followed from this that she did not consider the complaint had a reasonable prospect of success and she did not propose to put it before Trustees.

The Adviser considered the complainant would be interested to know that the Trust had recently completed an impartiality review into the breadth of opinion of the BBC's output, which had had particular reference to religion, immigration and the EU. She noted that the latter two topics had been given as examples of biased coverage by the complainant and thought he might wish to see the full report:

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

Request for review by Trustees

The complainant asked that the complaint be provided to Trustees. He stated that his initial complaint about the coverage of Nelson Mandela's death had been misunderstood:

"I was not complaining about the content of the BBC's coverage, rather the huge quantity"

He thought this misunderstanding was deliberate.

The complainant reiterated his view that the quantity of coverage reflected the BBC's "institutional liberal-left bias".

The Panel's decision

The Panel considered the complainant's appeal to the BBC Trust, the reply from the Senior Complaints Adviser and the request to review the Senior Complaints Adviser's decision. The complainant's previous correspondence was made available to the Panel.

The Panel noted that the first response from Audience Services did not address the quantity of coverage of Nelson Mandela's death.

However, the Panel noted that the second reply from Audience Services addressed the issue. The Panel agreed that from time to time the thrust of a complaint was misunderstood and that the point of having a system which offered audience members a further reply from Audience Services was to rectify errors of this nature. There was nothing to suggest the misunderstanding had been deliberate.

The Panel noted the complainant's view that the quantity of BBC coverage of Nelson Mandela's death was "symptomatic" of a general left-wing bias.

The Panel noted that Audience Services had sought to reassure the complainant of the BBC's commitment to impartiality. The Panel agreed that the BBC had responded as fully as possible, offered editorial reasoning and provided examples of reporting of events which the complainant believed had not received attention due to the coverage of the death of Nelson Mandela.

The Panel agreed with the Senior Complaints Adviser that the decision to focus on the death of Mr Mandela on a flagship news programme which closely followed the announcement of his death, had strong editorial justification. The Panel agreed that this decision fell within the category of editorial and creative output and was therefore the responsibility of the BBC Executive.

The Panel agreed that, aside from the coverage of Nelson Mandela's death, the complainant had not given examples of output that he considered was biased. The Panel agreed with the Senior Complaints Adviser that general references to programme teams, individual reporters, contributors, or to the various other elements cited by the complainant did not amount to evidence of bias. The Panel also agreed that it would be likely to conclude that Audience Services had acted reasonably by reassuring the complainant of the importance to the BBC of impartial reporting – while noting that it considered there was strong editorial justification for the way Nelson Mandela's death had been covered.

The Panel agreed that there was therefore no reasonable prospect of success for an appeal against BBC Audience Services' decision to cease corresponding with the complainant on this issue.

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 BBC News coverage

The complainant requested that the Complaints and Appeals Board (CAB), at its April 2014 meeting, review the decision of the BBC Trust's Senior Editorial Complaints Adviser that the complainant's appeal did not qualify to proceed for consideration on appeal.

Complaint

The complainant raised concerns with BBC Audience Services on 14 January 2014 about his belief that the BBC effectively censored coverage of news issues of national importance by its selective reporting.

BBC Audience Services responded on 19 January 2014, stating that although not everyone agrees with the editorial choices made on which stories to cover, and the prominence given to them, they were subjective decisions made by news editors.

The complainant made a follow-up complaint on 19 January 2014 as he was not satisfied with that response. He said the failure to report on the issues he had raised was not about editorial subjectivity, it was editors hiding facts from the public. He said the BBC had a history of hiding news.

Audience Services sent a second and final response on 20 January 2014, stating that they would not be investigating his complaint further as they did not consider the complaint raised a possible breach of the BBC's Guidelines. They advised the complainant he could appeal against this decision.

Appeal

The complainant appealed to the BBC Trust as he was not satisfied with the response received at Stage 1b from BBC Audience Services. The complainant appealed on the substance of his complaint which concerned his belief that the BBC was failing to report on some issues of national importance.

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 acknowledged the strength of the complainant's feelings.

The complainant had appealed on the substance of his complaint which concerned his allegation that the BBC was failing to report issues of national importance.

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 the complainant's strong belief that BBC News should have covered the stories he had referred to in his complaint. However, 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.

The Adviser considered that decisions relating to which stories should be included in the BBC's reporting fell within the "editorial and creative output" of the BBC and were the responsibility of the BBC Executive. She noted too that BBC Audience Services had explained to the complainant that news judgements were subjective and had stated:

"We know that not everyone will agree with our choices on which stories to cover, and the prominence that we give to them. These are subjective decisions made by our news editors, and we accept that not everyone will think that we are correct on each occasion."

The Adviser considered Trustees would be likely to agree with this and would consider that Audience Services had given the complainant a reasonable response to his concerns.

The Adviser considered that she had seen no evidence that suggested the BBC had failed to be impartial or had not covered stories because it was "being controlled by some outside force" as the complainant believed. She therefore considered Trustees would be likely to conclude that 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 she did not propose to put it before Trustees.

Request to review the decision of the Senior Complaints Adviser

The complainant emailed the BBC Trust twice on 18 March 2014. He was concerned that his appeal to the Trust had not been passed to Trustees but had been reviewed by the Senior Complaints Adviser, and at the time that had been taken to reply to him. He requested that his complaint be provided to and reviewed by Trustees, reiterating his view regarding omissions in reporting by the BBC suggesting there had been a failure to uphold the BBC value of truth and accuracy.

The Panel's decision

The Panel considered the complainant's appeal to the BBC Trust, the reply from the Senior Complaints Adviser and the request to review the Senior Complaints Adviser's decision. The complainant's previous correspondence was made available to the Panel.

The Panel noted the complainant's concerns that the BBC was selective to the point of censorship in its news coverage.

The Panel noted the response given by Audience Services that:

"These are subjective decisions made by our news editors, and we accept that not everyone will think that we are correct on each occasion."

The Panel noted the complainant's view that the matter went beyond editorial decision-making and was tantamount to information being hidden or suppressed.

However, while acknowledging the complainant's position, the Panel felt that decisions about which stories to cover was an editorial one, and as such, fell under the remit of the BBC Executive.

The Panel noted that the Adviser had seen no evidence that suggested the BBC had failed to be impartial or had not covered stories because it was "being controlled by some outside force" as the complainant believed. The Panel agreed that it would be likely to conclude that it was reasonable for the BBC to decline to engage in further correspondence on this issue.

For this reason, the Panel agreed there was no reasonable prospect of success for an appeal against BBC Audience Services' decision to cease corresponding with the complainant on this issue

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

Decision of BBC Audience Services not to respond further regarding the proportion of Irish reporters used by the BBC

The complainant requested that the Complaints and Appeals Board (CAB), at its April 2014 meeting, review the decision of the BBC Trust's Senior Editorial Complaints Adviser that the complainant's appeal did not qualify to proceed for consideration on appeal.

Complaint

The complainant contacted the BBC on 12 January 2014. He stated that BBC News featured a "preponderance of Irish reporters out of proportion to the racial balance of the nation".

BBC Audience Services responded on 18 January 2014 acknowledging his concerns and explaining the BBC's policy with regard to the engagement of reporters. They also pointed out that audience opinions on individual presenters can vary considerably. Their response stated:

"I understand you feel there are too many Irish reporters on BBC News to the detriment of representing other home nations.

The range of tastes and opinions held by our audience is so diverse that it's inevitable some viewers/listeners will dislike or disapprove of certain presenters. It's a very rare TV or radio personality who meets with everyone's approval, and it's clear that opinions on individual presenters can vary considerably.

Programme contributors are appointed on the basis of their experience and talent, but judgements are often subjective and we would never expect everyone to agree with every choice we make.

We don't engage any reporter unless we believe they're competent and can meet the specific demands required of them. Part of our remit is to seek out and foster new talent, but sometimes it can take time for viewers/listeners to get used to a particular individual's style of presentation."

The complainant did not feel this response addressed the issue. In his follow-up complaint of 18 January he said the BBC's response implied that his view was simply a matter of taste, and that his concern was about the number of Irish reporters compared with the number of reporters "representing other home nations". He said he found the response to be "racist in itself as you infer I wish to see and hear persons from the home nations".

He reiterated his concern that the BBC had "a clear preponderance of ethnic Irish reporters" in its news teams, and considered that the balance of news teams "does not reflect the ethnic mix of our multicultural society". He asked what steps the BBC was taking to address the imbalance.

Audience Services sent a second and final response at Stage 1b on 23 January 2014 and stated:

"You twice refer to a 'preponderance' of Irish reporters within BBC News in your correspondence without citing any numerical evidence in support of this assertion.

We can only reiterate our first response in that programme contributors are appointed on the basis of their experience and talent and we can't agree that 'the balance of your news team does not reflect the ethnic mix of our multicultural society' as you suggest."

In the absence of evidence which suggested a possible breach of Editorial Guidelines, they explained that they would not normally investigate further. They informed the complainant they did not propose to engage in further correspondence on this subject and notified him that he could appeal against this decision to the BBC Trust.

Appeal

The complainant appealed to the BBC Trust on 23 January 2014 as he was not satisfied with the response received at Stage 1b from BBC Audience Services. The complainant appealed on the substance of his complaint and made the following points:

- There was a disproportionately high level of "ethnic Irish" in BBC news reporting teams and that was not an accurate reflection of the true ethnic mix of the UK's multicultural society.
- The BBC purported to be committed to non-discriminatory employment practices but the preponderance of a single ethnic group violated all currently accepted equality and diversity criteria.
- He wished to know what action the BBC intended to take to redress the imbalance he had described.

Decision of the Senior Complaints Adviser

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

The complainant had appealed on the substance of his complaint which was about the number of "ethnic Irish" reporters working for BBC News which, in his view, was not a proportionate reflection of the UK's multicultural society. The Adviser noted, however, that BBC Audience Services had ceased handling this complaint at Stage 1 and that the complaint had not gone to Stage 2. She therefore decided that the point she should consider was whether an appeal against the decision of BBC Audience Services not to correspond further with the complainant had a reasonable prospect of success.

The Adviser noted that Audience Services had explained to the complainant that the BBC did not appoint reporters according to their ethnic background, but according to their experience and talent.

The Adviser noted that diversity was an important issue for the BBC and it was of great value to the broadcaster to have a diverse workforce. She noted that the broadcaster had set targets across its divisions and considered the complainant might be interested in further information about this, which could be found through the following link:

<http://www.bbc.co.uk/diversity/workforce.html>

She also 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.

The Adviser considered that decisions relating to the choice of BBC reporters fell within the "editorial and creative output" of the BBC and were the responsibility of the BBC Executive.

The Adviser noted that the complainant provided clarification [of his complaint] by stating that "the balance of your news team does not reflect the ethnic mix of our multicultural society".

She considered that, overall, Trustees would be likely to conclude that Audience Services had sought to answer the complaint that had been made and that, as there was no evidence of a breach of the BBC's editorial standards, Audience Services had acted appropriately in closing down the correspondence. It followed from this that she did not consider the appeal had a reasonable prospect of success and she did not, therefore, propose to put it before Trustees.

Request to review the decision of the Senior Complaints Adviser

The complainant asked that the complaint be provided to Trustees, summarising his position:

"... does the ratio of ethnic Irish in your news team reflect the ethnic balance of the United Kingdom? If it does not, why does it not and what positive steps will the BBC take to have a properly balanced mix of ethnicity?"

The Panel's decision

The Panel considered the complainant's appeal to the BBC Trust, the reply from the Senior Complaints Adviser and the request to review the Senior Complaints Adviser's decision. The complainant's previous correspondence was made available to the Panel.

The Panel noted the complainant's view that the number of "ethnic Irish" reporters on BBC News did not reflect the "ethnic mix" of the UK.

The Panel noted there was no requirement for the ratio of reporters to reflect the diverse ethnic make-up of the United Kingdom.

The Panel agreed that the choice of reporters was a matter relating to the operational, creative and editorial direction of the BBC and so was a matter for the BBC Executive and not the Trust.

The Panel agreed there was no reasonable prospect of success for an appeal against BBC Audience Services' decision to cease corresponding with the complainant on this issue.

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

Decision of BBC Audience Services not to respond further regarding the broadcast of promotional trails and information trails by the BBC

The complainant requested that the Complaints and Appeals Board (CAB), at its April 2014 meeting, review the decision of the BBC Trust's Senior Editorial Complaints Adviser that the complainant's appeal did not qualify to proceed for consideration on appeal.

Complaint

The complainant contacted BBC Audience Services on 2 January 2014 to complain about the number of promotions on BBC output which he referred to as adverts. He said that:

- the BBC was supported by licence fee payers as an "advert free" broadcaster, and he felt that by not sticking to that remit, the BBC was "stealing our money" and abusing the opportunity to provide "advert free" content.
- the BBC's research must indicate that no-one watched the promotions, otherwise the BBC "wouldn't have people talking over the Credits, saying what they used to say between programmes when there was a gap".

Audience Services responded on 10 January 2014. They stated:

"With an increase in viewer choice and a dramatic fragmentation of the market, we have a duty to let the audience know about the choices available to them regarding the BBC's output which is funded by the licence fee. Therefore, we use trails to flag up content which our audience may find of interest.

As the BBC is a public funded organisation, we are not allowed to advertise non-BBC products or merchandise. In reference to the BBC Trust, this was a trail for our audience to participate in a survey about our output."

The complainant made a follow-up complaint on 15 January 2014, saying that Audience Services had provided an excuse, not a reason, for "stealing" viewers' money and he did not accept it.

He also said that by not responding to his supposition that audiences ignored the BBC's 'adverts' for its programmes, Audience Services had proved him right in that respect.

Audience Services sent a Stage 1b response on 16 January 2014 explaining that they had nothing further to add to their previous response and could not engage in further correspondence on the issue as they did not consider the points raised by the complainant suggested a possible breach of editorial standards.

Appeal

The complainant appealed to the BBC Trust on 16 January 2014 and asked for a review of the decision by Audience Services not to investigate his complaint further.

He appealed on the substance of his complaint regarding the amount of promotional material broadcast by the BBC.

Decision of the Senior Complaints Adviser

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

The complainant had appealed on the substance of his complaint which was about the number of promotions transmitted by the BBC which he considered were 'adverts' and were not appropriate for inclusion in an 'advert free' broadcaster's output. The Adviser noted, however, that BBC Audience Services had ceased handling this complaint at Stage 1 and that the complaint had not gone to Stage 2. She therefore decided that the point she should consider was whether an appeal against the decision of BBC Audience Services not to correspond further with the complainant had a reasonable prospect of success.

The Adviser noted that Audience Services had explained the BBC's marketing policy in their initial Stage 1 response:

"With an increase in viewer choice and a dramatic fragmentation of the market, we have a duty to let the audience know about the choices available to them regarding the BBC's output which is funded by the licence fee. Therefore, we use trails to flag up content which our audience may find of interest.

As the BBC is a public funded organisation, we are not allowed to advertise non-BBC products or merchandise."

The Adviser noted that the type of promotional content which the complainant referred to as 'adverts' was aired by all broadcasters, and for commercial broadcasters was additional to, and separate from, their commercial advertising. The products described by the complainant such as books and DVDs were promoted as programme support material likely to be of interest to viewers who had enjoyed the programmes to which they related.

With regard to the information trail for the BBC Trust which the complainant mentioned in his original complaint, the Adviser noted that this was an invitation for viewers to participate in a survey about BBC output, as explained by Audience Services in their initial response of 10 January 2014. She thought the complainant would be interested to know that the Trust sought feedback from licence fee payers as part of its work overseeing how the BBC provided its services. At the time that the complainant raised this point with the BBC, he might have seen information trails either about the BBC's news coverage (which were shown on the BBC News channel and near to news bulletins) or information trails on any of the four TV networks for the Trust's review of the performance of BBC1, BBC2, BBC3 and BBC4. She noted that the information trails were carefully placed to reach the audience who would be most likely to want to have an input into the review and considered they were a valuable way of finding out the views of licence fee payers.

The Adviser noted that there were Editorial Guidelines which limited the BBC's freedom to promote commercial products that were related to BBC output. The Guidelines related to Editorial Integrity and Independence from External Interests can be found at <http://www.bbc.co.uk/editorialguidelines>.

The Adviser noted that the complainant had not specified any particular trail or element of output which he considered would be in breach of this Guideline and did not, therefore, consider she had seen any evidence of a possible breach of the Editorial Guidelines on this point.

The Adviser noted that the complainant had written extensively to the BBC about this subject from the autumn of 2011 onwards and had received a number of responses from BBC Audience Services which sought to explain the thinking behind the use of promotional and information trails and about the use of "squeezed" programme credits to give information about other BBC output. She considered that in the past and in the most recent correspondence, Audience Services had explained the reasoning behind the operational value of using the information trails and promotional trails.

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 does not apply in this instance. Decisions relating to the scheduling of promotional content across the BBC's output are day to day operational matters and are the responsibility of the BBC Executive.

The Adviser considered that Trustees would be of the view that Audience Services had provided a reasoned and reasonable response to the complainant's concerns. She considered it was appropriate 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 she did not propose to put it before Trustees.

Request to review the decision of the Senior Complaints Adviser

The complainant asked that the complaint be provided to Trustees, reiterating his dislike of promotional trails or 'adverts' and his view that it was the BBC's responsibility to spend the licence fee as licence fee payers would wish.

The Panel's decision

The Panel considered the complainant's appeal to the BBC Trust, the reply from the Senior Complaints Adviser and the request to review the Senior Complaints Adviser's decision. The complainant's previous correspondence was made available to the Panel.

The Panel noted the correspondence from the complainant outlining his objection to the promotional material broadcast on the BBC and his view that it was an abuse of the licence fee. The Panel accepted that he felt very strongly about the issue and was perturbed by what he saw as commercials on the BBC.

The Panel agreed that the BBC had responded as fully as possible in providing an explanation for the need for broadcasting trails:

"With an increase in viewer choice and a dramatic fragmentation of the market, we have a duty to let the audience know about the choices available to them

regarding the BBC's output which is funded by the licence fee. Therefore, we use trails to flag up content which our audience may find of interest."

The Panel noted the response from Audience Services which explained that the BBC was not allowed to carry commercial advertisements and only BBC-related products were promoted which it hoped was of interest to audiences.

The Panel considered that decisions pertaining to the promotions related to the operational and creative and editorial management of the BBC and were therefore the responsibility of the BBC Executive.

The Panel agreed there was no reasonable prospect of success for an appeal against BBC Audience Services' decision to cease corresponding with the complainant on this issue.

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