

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

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Remit of the Complaints and Appeals Board

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

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

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

Television Licensing TVL0046

This complaint was about the amount of refund offered by TV Licensing for duplicate TV licence fees. The complainant had been paying for two TV licences in respect of the same premises for 18 years. The BBC agreed to grant a refund for six years, which is the maximum period that can normally be awarded according to TV Licensing's refund policy. The complainant appealed to the Trust as she argued she should receive a refund for the full 18 years. She also said there had been a lack of responsibility and acceptance of fault for 18 years on the part of TV Licensing.

The Panel concluded that:

- in considering the appeal it would not reconsider the facts and circumstances and substitute its own judgment for that of the Executive, but instead it would take a less interventionist approach and consider whether the Executive has exercised its discretion properly.
- while it was very unfortunate that the complainant had paid for duplicate TV licence fees, there must be some responsibility placed upon the licensee to ensure they are not paying twice unnecessarily, and to contact TV Licensing.
- TV Licensing and the Executive had acted reasonably, taking proper account of all relevant factors and reaching a decision that was within the policy and represented a proper exercise of their discretion.

The complaint was not upheld.

For the finding in full see pages 4 to 7.

Appeal Finding

Television Licensing TVL0046

The complaint

This appeal to the BBC Trust is about the amount of refund offered by TV Licensing for duplicate TV licence fees. In October 2012, the complainant discovered she had been paying unnecessarily for two TV licences for some 18 years. She applied to TV Licensing for a refund and was initially granted a refund for two years (£301), which is in line with TV Licensing's refund policy in a case where there is no fault on the part of TV Licensing. She appealed TV Licensing's decision and was granted a refund for six years (£877), which is the maximum period that can normally be awarded according to TV Licensing's refund policy where TV Licensing has made an error.

Background

In April 1992, the complainant transferred a direct debit arrangement for a TV licence from her previous address to a new address, referred to here as "Flat 2". In August 1994, she set up a direct debit arrangement for a TV licence for what is here referred to as "Ground Floor Flat" at the same premises. The complainant noted that a licence form was probably filled in and returned once she was residing at Flat 2 as she believed it to be an update of information that had been sent following her request to have her licence transferred and updated from her previous address (note: this information was provided by the complainant to the Trust and was therefore not included in the Executive's review of the complaint).

Both the above licences were paid for by direct debit from the same bank account and under the same customer name. A TV licence document and a payment plan were issued for each licence annually (i.e. they were treated as two separate and licensable addresses on the TV Licensing database). It later transpired that Flat 2 and Ground Floor Flat were one and the same flat.

In February 2006, the complainant transferred the TV licence for Flat 2 to a new address. TV Licensing states that she did this using TV Licensing's Voice Recognition system and that the licence was therefore transferred automatically. However, the complainant queried this point, stating that she was certain she didn't use the voice recognition system.

In April 2006, the complainant transferred the Ground Floor Flat licence to the same new address, using a TV Licensing 'change of address' form.

Request to TV Licensing for a refund

In October 2012, the customer discovered she had been paying for duplicate TV licences since 1994 and applied to TV Licensing for a refund.

Because of the time elapsed, TV Licensing stated that it was unable to determine why it had two versions of the address on its database. It stated that most address records are provided by the Royal Mail Postcode Address File, but that customers buying new licences sometimes provide details of an address which TV Licensing was not previously aware of and the address would then be added to its database.

The complainant states that if she had not identified the fact that she was paying for duplicate licences, TV Licensing would have continued taking two licence payments. She stated that she is outraged that *"it is wholly the responsibility of the licensee to pick up on"* what she feels has been a TV Licensing error. She stated that *"even when legally informing the department of change of address, they transferred the TWO licences to ONE address and therefore by tacit knowledge in their actions admitted it was one person/household being charged twice"*

The BBC clarified that even if TV Licensing had been able to identify the fact that two licences were held at the same address, this would not necessarily have raised questions as it is not unusual for a person to require more than one licence at an address, for example when an address is divided into flats/bedsits, lodgers etc.

TV Licensing's refund policy

Section 365(3) of the Communications Act 2003 states that the BBC is entitled, in such cases as it may determine, to make refunds of sums received by way of licence fee payments. The BBC has a refund policy that sets out how it exercises this discretion. The policy states that it:

'..... will be applied in accordance with general administrative law requirements, including considering circumstances, and consequences, being consistent and balancing the interests of those affected when making decisions and listening to arguments as to whether exceptions should be made'

and:

'There are likely to be instances where a decision will need to be made in relation to the specific circumstances of a case'

The policy states that:

'Where there is an error on the part of TV Licensing, a refund for a period of up to six years may be paid. In all other cases, a refund may be paid for:

- *A period of up to two years; or*
- *A period of up to 12 months where the refund is sought due to loss of signal following Digital Switchover.'*

The policy applies to all circumstances but it allows for exceptions to be made in relation to specific circumstances of a case. The Executive stated that the six-year refund policy is set by reference to the limitation period applicable to actions founded on simple contract and actions for sums recoverable by statute, as set out in sections 5 and 9 of the Limitation Act 1980 respectively.

TV Licensing's decision

TV Licensing's Operations Director initially granted the complainant a refund for two years (£301), by reference to their refund policy in a case where there is no fault on the part of TV Licensing. The complainant was unhappy with that decision and in the light of her representations the Operations Director increased the refund, awarding her a refund for six years (£877), which is the maximum period that can normally be awarded according to TV Licensing's refund policy where TV Licensing has made an error. This decision was

reviewed and confirmed by the Head of Revenue Management at the BBC, and then by the BBC's Chief Financial Officer.

Appeal to BBC Trust

The complainant appealed to the Trust as she argued she should receive a refund for the full 18 years. She also feels there has been a lack of responsibility and acceptance of fault for 18 years on the part of TV Licensing.

The Panel's decision

The Panel was provided with copies of the following documents:

- TV Licensing refund policy
- Complainant to TV Licensing, dated 31 October 2012
- Response from Operations Director, TV Licensing, dated 22 November
- Complainant's response, dated 22 November
- Response from Head of Revenue Management, BBC Executive, dated 11 December
- Complainant's responses, dated 11 December
- Response from Executive Board member responsible licence fee collection, dated 4 February 2013
- Appeal to the BBC Trust, dated 4 February
- Email from complainant clarifying the main points of her appeal

The Panel also received confidential and privileged legal advice.

The Panel first considered the basis on which they should approach the appeal. They noted that they have a discretion as to the test to apply in deciding whether to uphold an appeal or not (see Procedure No.3, Television Licensing Complaints and Appeals Procedures, paragraph 3.20) and that it is open to them to reconsider the facts and circumstances and substitute their own judgment for that of the Executive, or to take a less interventionist approach, and consider whether the Executive has exercised its discretion properly. The Panel decided that the latter approach was appropriate, because—

(a) this is a case where the BBC has a discretion under statute (i.e. they are not here applying a Trust policy or guidelines);

(b) it is important that the refunds policy is applied flexibly but consistently; and

(c) the scale of the BBC's licence fee collection activities, and the fact that refunds are an operational matter which can and should be left largely to the Executive (in line with the Charter and Agreement), mean that the Trust should refrain from interfering unless a decision is clearly flawed or otherwise unreasonable.

Accordingly, the Panel went on to consider whether the Executive has (a) made an error of principle in applying any relevant guidelines, policies, or laws; or (b) left out of account

some feature it should have considered, or taken into account some feature that it should not have considered; or (c) made a decision which was wholly wrong or unreasonable.

The Panel agreed that there was no dispute that the complainant has been paying for two TV licences in respect of the same premises for 18 years, and that the issue in the appeal was whether TV Licensing should have detected the error, and notified the complainant.

The Panel considered the complainant's argument that she did not detect the error until she reviewed her Direct Debits for another reason and that "someone [at TV Licensing] transferred two licences to one account holder at the same address a number of times, never notifying [her] which is an error indeed". The Panel also noted that TV Licensing said it could not explain why two versions of the address existed on its database, but that licence fee payers did sometimes supply addresses that are not on the database and which it therefore adds to it. They noted that TV Licensing also said it "would have believed in good faith that the two addresses were separate flats"; that there was no manual check at the time the licences were transferred from one address to another; and that TV Licensing stated it was not unusual for more than one licence to be required at the same address. The Panel also noted that the BBC's Head of Revenue Management and the BBC's Chief Finance Officer also made the point that some responsibility falls on the licence fee payer to realise that they are paying twice over.

The Panel noted that TV Licensing had used its discretion under the refunds policy to refund six years' duplicate licence fees, even though it did not accept it was at fault, and that that decision had been confirmed by both the Head of Revenue Management and the Chief Finance Officer. The Panel also noted that there may be occasions where an address requires more than one licence. The Panel agreed that, while it was very unfortunate that the complainant had paid for duplicate TV licence fees, there must be some responsibility placed upon the licensee to ensure they are not paying twice unnecessarily, and to contact TV Licensing. The Panel agreed that TV Licensing and the Executive had acted reasonably, taking proper account of all relevant factors and reaching a decision that was within the policy and represented a proper exercise of their discretion.

Accordingly, the Panel agreed to not uphold the appeal.

Finding: Not upheld.

Rejected Appeals

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

Choice of content in Antiques Roadshow

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

The complaint

The complainant initially contacted the BBC to complain about the decision by the Antiques Roadshow not to include an update on developments following the discovery of a notebook which mentioned a probable sighting of Glenn Miller's aircraft on the day he went missing whilst flying in bad weather over the English Channel in 1944.

Appeal

The complainant escalated his complaint to the BBC Trust, saying that he was not satisfied with the response of the Series Editor of Antiques Roadshow at Stage 1. He also felt that he had received a very poor Stage 2 response from the Head of In House Features.

Stage One

The original complaint concerned the decision by the Antiques Roadshow not to include, in the 2012 Christmas Special review edition, an update on developments following the discovery of Richard Anderton's plane-spotting notebooks. One of the notebooks mentioned a probable sighting of Glenn Miller's aircraft on the day he went missing whilst flying in bad weather over the English Channel in 1944. The complainant had taken the notebooks to Hartland Abbey to be valued and this had been included as an item on the Antiques Roadshow broadcast on 8 January 2012.

The Antiques Roadshow expert explained on the programme why it was thought the notebooks referred to a probable sighting of Glenn Miller's Norseman aircraft:

"We understand there was only one Norseman that flew that day....the next day Glenn Miller had gone....it puts you in touch with a well-known moment in history."

The complainant said the sighting was later authenticated by the Glenn Miller Archive and the story was featured in the national press. As there had been substantial press interest in the sighting, he was baffled as to why this development was not included in the review edition of Antiques Roadshow at the end of 2012. He wrote to the Series Editor on 29 December 2012, saying that "The kindness and interest shown by Antiques Roadshow was the catalyst for some exciting and dramatic developments". In the wake of the publicity, the complainant quoted the Senior Consultant and Historian at the Glenn Miller Archive, Dennis Spragg, as saying that the observation was "earning its true merit as a confirmed historical detail... the document is very important because it shows the pilot was flying on the right route and was on schedule and did not fly to the east as speculated."

The complainant also mentioned a forthcoming publication by Dennis Spragg about the incident: "Resolved: Glenn Miller and the Events of December 15, 1944".

The complainant stated that "In line with the Antiques Roadshow's request to forward any interesting developments that may allow them to update viewers in future programmes, these dramatic and exciting events were sent to [Researcher/Public Liaison Officer] as they occurred."

In his letter of 29 December 2012 to the Series Editor, and a subsequent letter of 3 January 2013, the complainant expressed his disappointment that these developments had not been included in the Christmas review edition of Antiques Roadshow. He requested that reasons for the exclusion be given to him by the Series Editor.

The Series Editor responded on 10 January 2013, apologising for the delay in replying to the complainant and explaining he had been on extended leave over the Christmas period. He said that he was sorry to read of the complainant's significant disappointment and offered the following explanation:

"I fear you will find the explanation disappointing, but I can assure you in the sincerity of my response. It was my understanding that the linkage of the record in the original plane spotter's book as being the plane likely to have been flown in by Glenn Miller was not a new conclusion when we filmed it at the Roadshow. In other words, we were agreeing with an opinion which had already been formed and largely established. News of the subsequent confirmation by Colorado University was to my mind confirmation of the detail you had already established. With this belief I did not select the item for further coverage on the Roadshow as it seemed to me this was not our revelation and to do so would make such a claim. As it now appears from your substantial correspondence that you believe the Roadshow was a significant "catalyst" for you to take the next steps in verifying the information, it may appear that I was wrong. Apologies for the disappointment this has caused but please be assured of no darker motivation in the lack of inclusion".

The complainant wrote again to the Series Editor on 13 January 2013 expressing bewilderment that the Series Editor's belief and understanding did not accord with his own understanding of the facts disclosed during his appearance on Antiques Roadshow. The complainant stated that he had not known the full significance of the discovery of the notebooks until they had been authenticated following his visit to Antiques Roadshow. He took issue with the Series Editor's understanding that the linkage of the notebook record with Glenn Miller's aircraft was "not a new conclusion" at the time of filming, and he asked the Series Editor for an "explanation for this major anomaly".

The complainant also quoted the antiques expert's statement on the programme that "As far as we understand there was only one Norseman that flew that day." The complainant said that had been a very exciting revelation to the family and gave them the confidence to think that this childhood observation in the notebook may indeed have referred to Glenn Miller's plane.

The Series Editor responded again on 23 January 2013, apologising for the distress felt by the complainant and explaining that due to his workload his response would be brief.

He accepted that there may have been an error of understanding on his part as Series Editor of the programme. He stated that he could not answer the multitude of questions to which the complainant required answers as there was no mystery to uncover. He also said that he did not see merit in further coverage of the matter on Antiques Roadshow.

The complainant wrote again to the Series Editor on 26 January 2013 setting out the thrust of his complaint: "Did Richard's notebooks merit inclusion in the 2012 review show and if they did, why weren't they included"? He said that this complaint was about facts,

not emotion and emotion had not been the motivation behind the letters he had written to the Series Editor.

The complainant alleged that if there was "no mystery to uncover here" as the Series Editor had said, then answering the questions should be quick and easy. He asked to know what the Series Editor's mistaken belief was based on and considered it was telling that it he had not been given a response to this. In summary, the complainant could not understand why the notebooks, which he described as "the most talked about discovery broadcast in 2012", had not been included in the review programme. That decision seemed to him to be illogical and inconsistent. He also said that this unjust treatment of the notebooks had been disrespectful to the memory of the plane spotter.

Stage Two

The complainant escalated his concerns in a letter of 3 February 2013. He enclosed press material giving the background story of the notebooks, their international significance and also included the correspondence between the Series Editor of Antiques Roadshow and himself. He expressed his dissatisfaction and disappointment in the Series Editor's responses, which he found unconvincing.

The Head of In House Features responded to the complainant's letter of escalation on 18 February 2013. He said he would like to apologise for any disappointment caused by the decision not to feature the diaries in the update programme. He explained that the production team face difficult decisions about what to include in one 60 minute review programme at the end of the year. He said that in the six or seven years of update programmes this is the first instance where someone has expressed their disappointment about an item being included.

With regard to the specifics of the complaint the Head of In House Features stated:

"...it appears to me that there was some degree of confusion over what might have been established about the diaries at the point of transmission in January 2012, but the over-riding point is that the programme established that the flight recorded in Richard Anderton's diary was likely that of Glenn Miller's.

As I have already said, decisions about what to include are never easy and I know that you question the validity of other items which did make it into the update programme. I don't think we need to explain why the team deem something of more editorial merit than others because this is largely subjective, but touching on just some examples:

Following broadcast the flag re-captured in the Battle of Singapore is being donated to the National Museum of Singapore.

A rare arts and crafts clock is now on loan to the V&A as a result of curators seeing it on the programme.

Following the showing of the prisoner of war radio story viewers contacted the owner to hold a first meeting of relatives of inmates from the POW camp.

I know that you might argue that an update on the diaries was equally or more important than the aforementioned, but that is not to say that the team were wrong for seeing fit to include these and not the diaries."

The complainant replied to the Head of In House Features on 21 February 2013. He commented that he felt little thoroughness, objectivity or impartiality had been displayed in the stage 2 response to his complaint.

The complainant felt that mentioning Antiques Roadshow's past record had no relevance to the matter in hand.

The complainant also did not agree that he had received an "open and honest" response to his complaint. He did not consider that the probable sighting of Glenn Miller's plane had been a revelation when it was spoken about on the Antiques Roadshow at Hartland Abbey, and he challenged the motivation behind that claim.

The complainant considered that the evidence suggested that the decision not to include the notebooks had no genuine foundation was "untenable".

The complainant said that as the Head of In House Features' response had been a "partial appraisal" of the matter, the complaint would be escalated to the BBC Trust.

Stage 3

The complainant appealed to the Trust on 21 February 2013. He stated that Richard Anderton's notebooks were of international and historic significance but had not been included in the programme.

The complainant included background information on his complaint, and said that the complaint was specifically against the Series Editor.

The complainant felt that the Head of In House Features' stage 2 response had also been poor and he said he was appealing to the Trust for an impartial and objective consideration of the matter.

Decision of the Head of Editorial Standards, Trust Unit

The relevant correspondence was carefully reviewed by the Trust Unit. The Trust Unit's Head of Editorial Standards did not consider that the appeal had a reasonable prospect of success. She decided it should not, therefore, be put before Trustees.

The Head of Editorial Standards 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" is specifically defined in the Charter (paragraph 38, (1) (b)) as a duty that is the responsibility of the Executive Board, and one in which the Trust does not get involved unless, for example, it relates to a breach of the BBC's editorial standards.

The Head of Editorial Standards considered that the decision by the Antiques Roadshow not to include an update on Richard Anderton's plane-spotting notebooks in the 2012 Review episode was an editorial one, over which the Trust had no remit to get involved as no issue had been raised that suggested a breach of the BBC's Editorial Guidelines.

The Head of Editorial Standards considered that the complainant had been given a reasonable editorial explanation as to why an update on the notebooks was not included in the programme. She noted that the response from the Series Editor gave reasons for his decision not to include an update on the notebooks, and had also apologised for a possible error in his understanding:

"It was my understanding that the linkage of the record in the original plane spotter's book as being the plane likely to have been flown in by Glenn Miller was not a new conclusion when we filmed it at the Roadshow. In other words, we were agreeing with an opinion which had already been formed and largely established. News of the subsequent confirmation by Colorado University was to my mind confirmation of the detail you had already established. With this belief I

did not select the item for further coverage on the Roadshow as it seemed to me this was not our revelation and to do so would make such a claim. As it now appears from your substantial correspondence that you believe the Roadshow was a significant "catalyst" for you to take the next steps in verifying the information, it may appear that I was wrong. Apologies for the disappointment this has caused but please be assured of no darker motivation in the lack of inclusion".

The Head of Editorial Standards also noted that the Head of In-House Features had explained to the complainant that decisions on what to include in programmes are the responsibility of the editorial team and can be very difficult and subjective:

"....decisions about what to include are never easy and I know that you question the validity of other items which did make it into the update programme. I don't think we need to explain why the team deem something of more editorial merit than others because this is largely subjective...."

The Head of Editorial Standards considered that she had not seen any evidence that the Guidelines had been engaged. She considered that the issue of what stories should be covered was a matter of editorial and creative freedom. It followed from this that she did not consider the appeal had a reasonable prospect of success and decided it should not be put before Trustees.

Complaints handling

The Head of Editorial Standards noted the points raised by the complainant with regard to the way in which his complaint had been handled at Stages 1 and 2. She noted that the complainant stated in his appeal letter to the Trust that his complaint was specifically against the Series Editor of Antiques Roadshow. She noted the specific complaints and concerns the complainant made about the Series Editor's comments, which the complainant said "troubled" him.

The Head of Editorial Standards also noted that the complainant considered that the Head of In House Features had appraised the situation poorly and was partial in his Stage 2 response.

The Head of Editorial Standards found no evidence that the complainant had been lied to in the responses he had received from the BBC.

She considered that the Series Editor had given a detailed response as to why an update on the Richard Anderton notebooks had not been included in the Antiques Roadshow Review programme. She also noted he had apologised for a possible error in his understanding that the linking of the sighting by Richard Anderton of a Norseman aircraft on the day Glenn Miller disappeared while flying a Norseman aircraft was not a new conclusion and had not come as a revelation to the family during filming.

The Head of Editorial Standards also considered that the Head of In House Features had given a detailed response at Stage 2. She noted he gave the background to the difficult decisions faced by the editorial team when trying to condense 26 hours of material broadcast on the Antiques Roadshow over the year into just one 60 minute update. The Head of Editorial Standards noted the Head of In House Features had also explained that decisions about which items have more editorial merit than others are the responsibility of the editorial team, and as such can be subjective. He had acknowledged that the complainant might argue that the notebooks were equally or more important than other items included in the Review programme, but that did not mean that the editorial team was wrong for seeing fit to include those and not the notebooks.

The Head of In House Features had acknowledged that there had been some degree of confusion over exactly what had been established about the information contained in the

notebook about the recorded Norseman aircraft at the time of the initial broadcast. However, he had gone on to state that the over-riding point was that the programme did establish that the flight recorded in Richard Anderton's notebook was likely to have been that of Glenn Miller's aircraft.

The Head of Editorial Standards considered that the complainant had received detailed responses to his correspondence at Stages 1 and 2. She found no evidence in the correspondence that these responses had not been honest or that the Head of In House Features had been unduly partial.

The Head of Editorial Standards believed that the Trustees would be of the view that on the complaints handling issue, the complainant had received reasoned and reasonable responses to his correspondence. She determined that there was no reasonable prospect of success for this appeal and did not propose to put it before Trustees.

Request to the Panel to review the decision of the Trust Unit

The complainant considered the decision of the Head of Editorial Standards, Trust Unit, showed little thoroughness, objectivity or impartiality and lacked any compelling or convincing evidence or reasoning. He also said key statements made by the Antiques Roadshow were not commented upon.

The Panel's decision

The Panel was given the complainant's appeal to the Trust, the reply from the Head of Editorial Standards, the challenge to the Head of Editorial Standard's decision and copies of the previous correspondence with the BBC.

The Panel agreed that the editorial decision about which stories to feature in the Antiques Roadshow Review clearly fell within the direction of the editorial and creative output of the BBC. They noted this is specifically defined in the Charter (paragraph 38(1)(b)) as a duty of the Executive Board, and is one in which the Trust does not get involved. The Panel concluded that the decision of whether or not to include the story in the programme was, therefore, outside the remit of the Trust.

The Panel considered the complainant's concerns about the handling of the complaint. The Panel agreed that the Series Editor had explained why the update had not been included in the Review. They noted he said he was sorry that the complainant was disappointed it had not been included, and had also apologised for a possible error in his understanding that the link between the record in the notebook and the possibility that the plane was the one flown by Glenn Miller was not the Antiques Roadshow's revelation.

The Panel also agreed that the response given by the Head of In-House Features was detailed and reasoned.

The Panel considered the complainant's criticisms of the Head of Editorial Standards' response. They noted the complainant considered the Head of Editorial Standards' alleged failure and unwillingness to comment on what he considered to be "key statements" about what the Series Editor had said and about the programme's public stated purpose indicated her decision was neither thorough nor impartial. The Panel did not agree with that analysis. The Panel considered that the Head of Editorial Standards had provided a reasoned response and they saw no evidence of bias.

The Panel concluded that the complainant had been provided with reasoned, transparent and polite responses from the Series Editor, the Head of In-House Features and the Trust Unit. They agreed that the complainant's claim that the replies had been dishonest or lacked impartiality had no merit.

The Panel concluded that the appeal did not have a reasonable prospect of success.

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

Television news coverage of Sri Lanka

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

The complaint

The complainant contacted the BBC to complain about the complete "paucity of news coverage by the BBC in regard to the aftermath of the war in Sri Lanka in 2009, such as investigations of genocide at the end of the conflict in May 2009". He mentioned Newsnight in particular and asked why it "has consistently failed to cover the issue even once since the immediate aftermath of the conflict in May 2009". At stage 1, the Executive responded acknowledging the importance and newsworthiness of the situation in Sri Lanka and outlining some of the challenges faced in reporting the issue. The complainant was dissatisfied with this response and escalated his complaint to Stage 2. The Head of Editorial Compliance & Accountability responded, acknowledging again the newsworthiness of the situation in Sri Lanka and providing examples of instances where the BBC had provided coverage across its services on online, television and radio.

Appeal to the Trust

The complainant escalated his complaint to the BBC Trust, saying he was dissatisfied with the response received at Stage 2. He complained about what he considered was the lack of television news coverage of the situation in Sri Lanka across the entire BBC television output, and Newsnight in particular.

The complainant considered this compared unfavourably with Channel 4 which he noted had produced two hour-long documentaries on alleged war crimes by the Sri Lankan government.

The complainant also considered the responses he had received so far had not explained why the BBC had not given this story what the complainant felt was a "due-level of emphasis".

He complained that he had had to wait for more than four months for a response to his complaint at stage 2 and had not been given an explanation for the delay.

The complainant noted that greater emphasis had been given to this story on BBC Radio 4 and considered this indicated there was a "fragmentation of news reporting in both regularity and substance" between the news outlets on the different platforms.

The complainant concluded: *"Any media outlet that was serious about covering international news from across the globe with a consistent assiduity in pursuing the most challenging and emotive news stories – as the BBC claims to attain to doing in its charter - should have rigorously applied such guiding principles to the extent of the human rights catastrophe which occurred during the final months of the conflict in Sri Lanka in 2009."*

Decision of the Senior Editorial Strategy Adviser

The relevant correspondence was reviewed by the Trust Unit.

The Trust's Senior Editorial Strategy Adviser (Trust's Adviser) considered that the complainant's appeal did not have a reasonable prospect of success.

The Trust's 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, the Trust's Adviser noted, specifically defined in the Charter (paragraph 38, (1) (b)) as a duty that was the responsibility of the Executive Board, and one in which the Trust did not get involved unless, for example, it related to a breach of the BBC's editorial standards which did not apply in this case.

The Trust's Adviser considered that decisions relating to how much coverage to provide of international stories such as the post-conflict situation in Sri Lanka fell within the "editorial and creative output" of the BBC and were the responsibility of the BBC Executive. She concluded that it would not, therefore, be appropriate for Trustees to consider the appeal and it should not proceed.

On re-reading the correspondence, the Trust's Adviser noted that the Head of Accountability, BBC News, had clearly explained that news and programme teams made decisions about which stories they would cover, based on their journalistic judgment. Her letter of 7 February 2013 stated:

"As you will appreciate, there is a huge demand for coverage and Newsnight's editorial team has to be selective in terms of where it chooses to deploy. Not only is this a question of resources, but the programme must also balance its foreign and domestic reporting. Its editorial and production teams select stories where they can give added value using correspondents' expertise, be it on a developing and running story or an investigation.

[...] All of these are judgements, which, of course, are subjective, albeit rooted in journalistic knowledge, experience and with the audience at the heart of the decision-making. Editors are well aware that not all in their audiences will always agree with a programme's news priorities; after all, News is not an exact science."

In terms of the delay in receiving a response to his complaint at stage 2 the Trust's Adviser noted that the Head of Accountability, BBC News, had addressed this and stated:

"...your complaint to [Director, BBC News] on October 11 was unfortunately not received by her and it's a mystery as to how this happened: we have searched the various email folders to see if it had inadvertently gone elsewhere, but with no success, so please accept my apologies for this delayed reply."

The Trust's Adviser considered that Trustees would be likely to conclude that the complainant had been given the reason for the delay that he had experienced in receiving a response at stage 2. She noted that the Head of Accountability, BBC News, had apologised for this and considered that Trustees would wish her to extend their apologies too. The Trust's Adviser noted that where a delay had been noted and apologised for, Trustees generally considered the matter resolved. On this point, too, the Trust's Adviser considered the appeal did not have a reasonable prospect of success and should not be put before Trustees.

Request to the Panel to review the decision of the Trust Unit

The complainant requested the decision of the Trust's Adviser be reviewed by the Panel. He said that his complaint had not been investigated sufficiently by the Head of Editorial Compliance & Accountability, BBC News. He also said he didn't believe the BBC had acknowledged his main point underlying his contention which was, he said, "the extent of

the human rights catastrophe". He said that the coverage of stories such as what happened in Sri Lanka was of reputational and thus strategic importance to the BBC and so was a matter for the Trust. He believed that the Trust's Adviser was incorrect in her judgement that he had been given the reason for the delay at Stage 2. The complainant said he would, therefore, additionally be making a handling complaint about this particular stage of the complaint process alongside this appeal.

The Panel's decision

The Panel was given the complainant's appeal to the Trust, the reply from the Senior Editorial Strategy Adviser, the complainant's challenge to the Trust's Adviser's decision and previous correspondence with the BBC.

The Panel agreed that editorial decisions about the level of coverage afforded to any particular news story or event, and about which outlet a news story or event should be covered on, clearly fell within the direction of the editorial and creative output of the BBC. The Panel noted this is specifically defined in the Charter (paragraph 38(1)(b)) as a duty of the Executive Board, and is one in which the Trust does not get involved. The Panel also noted that the BBC had provided evidence that the Sri Lankan situation had been covered:

"...BBC News has been the only international broadcaster with a permanent correspondent based in Colombo. Charlie Haviland, who will be in post until the end of next month, has regularly filed for TV, radio and online on news stories from there over the last three years, tracking all the main human rights issues, the legacy of the end of the war and the intensifying centralisation of power in the hands of the presidential family".

The Panel agreed that there was scope for further reporting on events in Sri Lanka but that such decisions were outside the remit of the Trust.

The Panel noted that the complainant felt the response at Stage 2 of the complaint had not sufficiently responded to his concerns. The Panel agreed that the substance of the complainant's issue was the level of coverage afforded to the conflict in Sri Lanka and that the response at Stage 2 had adequately addressed this point.

The Panel noted that the complainant felt he had not received a proper explanation as to why there had been a delay in receiving a response to his complaint at Stage 2. The Panel agreed with the Senior Editorial Strategy Adviser's view that the Executive had provided an explanation, which was that the email was not received by [Director, BBC News]. The Panel agreed it was a mystery as to why the email had gone missing but considered the Executive had explained this to the complainant and had also apologised for the delay at Stage 2 even though the delay may not have been caused by an error by the BBC. The Panel agreed that that aspect of the complaint had, therefore, been resolved.

In relation to the handling of the complaint at Stage 3, the Panel did not agree that the decision by the Senior Editorial Strategy Adviser was incorrect, as the complainant had alleged.

For these reasons, the Panel concluded that the appeal did not have a reasonable prospect of success.

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

Removal of photograph used in online news report

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

The complaint and appeal

The complainant requested the Trust's assistance in getting a photograph of herself removed from an internet search engine. This image had accompanied a BBC News website report about the complainant's court conviction (which she disputed). Following correspondence between the complainant and the Assistant Editor, Editorial Standards, BBC UK Online, the BBC removed the picture as a "gesture of goodwill". The same picture had been used on a blog that was searchable via an internet search engine. The complainant requested that the BBC contact the search engine on the basis that she considered the photograph was BBC copyright. The BBC declined to do this and, following that decision, the complainant appealed to the BBC Trust.

Decision of the Senior Editorial Strategy Adviser

The Trust's Senior Editorial Strategy Adviser (Trust's Adviser) carefully reviewed the correspondence that had passed between the BBC and the complainant. She noted that the BBC had not been obliged to remove the photograph from its news report, but that it had been done so "out of goodwill", and that the Assistant Editor, Editorial Standards, BBC UK Online, had explained this to the complainant on 20 September 2012.

The Trust's Adviser noted that the BBC News Online story had also been amended, as the complainant had requested, so that it carried the outcome of a further court hearing.

The Trust's Adviser considered that the complainant had raised two issues with the BBC Executive; namely, a court hearing which had taken place after the news story had been published and which related to it, and the use of a photograph of the complainant which she was not happy with.

The Trust's Adviser noted that the BBC had explained that its online content was an archive and that it did not generally change its content. In its letter to the complainant of 4 May 2012, the BBC stated:

"The facts were accurate at the time and, irrespective of whether someone feels they have been treated unfairly by the justice system, we abide by the decisions of the courts.

"Of course we understand your concerns about the continued presence of this article, but our policy is firm on this. We are aware of moves elsewhere in Europe to protect online privacy, but at present we are not considering changing our approach.

"As indicated previously, we are happy to update our report with the facts about the subsequent court verdicts. As the other convictions were not mentioned in the original report, it might confuse readers to introduce full details of them now, so we would propose something along these lines:

"Update May 2012: The Court of Appeal overturned [X's] theft conviction at a hearing on [X]. At the same hearing, she was refused leave to appeal against four other convictions."

The Trust's Adviser considered that Trustees would be likely to conclude the complainant had had a reasonable response to her complaints from the BBC.

The Trust's Adviser noted the complainant had contacted the BBC Trust because she wanted the BBC to contact an internet search engine to request it to remove the photograph of the complainant which the BBC had removed from its online news report but which had also been used in a separate internet blog.

The Trust's Adviser noted that the complainant had received a response from the BBC to this aspect of her complaint on 5 November 2012. That response explained:

"... the BBC aren't resourced to follow up every possible breach of our copyright on the web, and in this case... it's debatable whether the use of BBC material on this blog would be a breach of copyright, or if it would in fact fall within the fair dealing copyright exception."

The Trust's Adviser noted that the BBC was required to spend the licence fee resources carefully and the complainant had been advised that the BBC was not able to follow up every possible breach of copyright. She further noted that, in this instance, it was not certain that any breach of copyright had occurred.

The Trust's Adviser considered that it was reasonable of the BBC to decline to pursue this matter with a third party. She considered that Trustees would be likely to conclude that the BBC had responded reasonably to the complainant's concerns as far as they related to the BBC's output. The Trust's Adviser did not, therefore, consider that the appeal had a reasonable prospect of success, and said she did not propose to put it before Trustees.

The Trust's Adviser noted that the Trust was the final stage of the BBC's complaints process and, as noted in the Complaints Framework, covered BBC output. She considered it was not appropriate for Trustees to consider whether the BBC should pursue a complaint with a third party that did not relate to its output and, it followed from that, this element of the appeal should not be put before Trustees.

Request to the Panel to review the decision of the Trust Unit

The complainant considered the decision of the Senior Editorial Strategy Adviser, Trust Unit, should be reviewed by the Panel. She could not see any reason why the BBC could not send the letter to the internet search engine as she had requested. The complainant offered to pay for the letter.

The Panel's decision

The Panel was provided with the complainant's appeal to the Trust, the reply from the Trust's Adviser, the complainant's challenge to the Trust's Adviser's decision, and also the complainant's previous correspondence with the BBC.

The Panel noted that the BBC had explained to the complainant that it was not able to follow up every possible breach of copyright and in this instance it was not certain that any breach of copyright had occurred. The Panel noted that the BBC had removed the picture from its own archive as a gesture of goodwill and that archived news stories had been updated.

The Panel considered that the decision whether or not to contact the internet search engine in this instance was an operational decision which fell within the operational management of BBC. The Panel noted that this is specifically defined in the Charter

(paragraph 38(1)) as a duty of the Executive Board, and is one in which the Trust does not get involved.

The Panel concluded that the appeal did not have a reasonable prospect of success.

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

East Midlands Today and complaint handling

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

The complaint and appeal

The complainant initially contacted BBC Nottingham on 2 October 2012, expressing her concerns about what she alleged were false claims made by a Police Commissioner Candidate.

Specifically, the complainant considered she had a newsworthy story about a care home owned by the candidate and the action taken by the Care Quality Commission (CQC) in respect of the home. The complainant considered the BBC ought to cover this story.

The complainant had a conversation with a Senior Broadcast Journalist from Radio Nottingham. She said she was told by him that information given to the radio newsroom was shared with colleagues in television news.

In her correspondence with the BBC, the complainant referred to a phone-in with Police Commissioner Candidates which had been broadcast on Radio Nottingham. She said this had included a question which referred to a formal warning having been issued to a care home operated by the Police Commissioner Candidate..

The complainant considered that this radio report would have the result of:

"...dramatically creating interest for a later evening TV item telling the whole [care home] story ..., to reach more of the Nottinghamshire electorate in the week before the election."

However, the complainant was disappointed when the story was not featured on the regional television news.

The complainant had a telephone conversation with the Assistant News Editor, East Midlands Today but was not satisfied with the response she was given as to why the item had not been covered on the television news. When the complainant tried to contact the Assistant News Editor to discuss this again further, she was not able to speak to him and he did not return her call. The complainant had another telephone conversation with a different Assistant News Editor. He informed her that the first Assistant News Editor considered he had already answered her concerns. The complainant then complained through BBC Audience Services.

On 27 November 2012, the complainant was sent a response from BBC Audience Services. This stated:

"East Midlands Today would like to reiterate that the fact the CQC had given a poor report on a PCC candidate's privately run care home was not in itself a story for the programme to cover.

The programme has in the past reported on care homes which have been closed following snap inspections by the CQC. The care home in this case was not closed and therefore, the programme did not feel that this story had sufficient editorial newsworthiness.

.... The fact remains that East Midlands Today did not plan to cover this story and would not be deterred or influenced by any 'apology' in any case.

[The Assistant News Editor first contacted] does not agree with your suggestion that you were lied to or were misled in any way. The programme would also like to make it clear that they do not believe you were promised at any time that any report... would be broadcast on television."

The complainant felt this was a newsworthy story worthy of proper investigation and coverage. She did not consider that the BBC had investigated or reported the story properly and she therefore escalated her complaint to Stage 2. The complainant also complained about the way in which her complaint had been handled. She said this had been neither respectful nor professional.

On 10 January 2013, the complainant was sent a response from the Head of Regional and Local Programmes, East Midlands. This stated:

"I am certain we have not avoided reporting [the candidate's] business activities. Where we have found a news story that we believe to be of sufficient interest to our audience, and that we have been able to confirm to our editorial requirements, we have covered it. [The Head of Regional and Local Programmes then included a link to story covered]

If we have not covered a particular aspect or development it would be because a senior member of editorial staff had decided that either (a) the story was not of sufficient interest to our audience or (b) we had not reached the sufficient threshold of proof to broadcast the story. News coverage is a subjective business, and in the end comes down to one person deciding if something is newsworthy enough to make our programmes or bulletins.

Often a story is of interest to a local radio station – covering a single county – but is not judged to be of sufficient interest to make it onto the regional television programme covering several counties. That's why many stories don't make it onto television, even if they've been on our local radio stations.

We have reported on problems in East Midlands care homes a number of times in the last year, it is not a topic we have avoided and we will continue to report on them when we have a story of sufficient interest - and we have the sufficient proof.

Finally, I feel your complaints to BBC East Midlands were handled by staff in a respectful and professional manner, however I was sorry to read you felt otherwise."

The complainant then escalated her complaint to the BBC Trust, saying that she was unhappy with the response received at Stage 2. She also said that the length of time taken by BBC staff to respond to her complaint was unacceptable.

Decision of the Senior Editorial Strategy Adviser

The relevant correspondence was carefully reviewed by the Trust Unit. The Trust's Senior Editorial Strategy Adviser (Trust's Adviser) did not consider that the appeal had a reasonable prospect of success and decided it should not, therefore, be put before Trustees.

The Trust's 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" is specifically defined in the Charter (paragraph 38, (1) (b)) as a duty that is the responsibility of the Executive Board, and one in which the Trust does not get involved unless, for example, it relates to a breach of the BBC's editorial standards."

The Trust's Adviser considered that the decision by the East Midlands Today programme not to run a report as the complainant had requested was an editorial one, over which the Trust had no remit to get involved as no issue had been raised that suggested a breach of the Editorial Guidelines.

The Trust's Adviser noted that the response from BBC Audience Services of 27 November stated:

"East Midlands Today would like to reiterate that the fact the CQC had given a poor report on a PCC candidate's privately run care home was not in itself a story for the programme to cover...."

"The programme has in the past reported on care homes which have been closed following snap inspections by the CQC. The care home in this case was not closed and therefore, the programme did not feel that this story had sufficient editorial newsworthiness."

The Trust's Adviser considered the complainant had been given a reasonable editorial explanation as to why the story was not covered on television. She noted, too, that the response from the Head of Regional and Local Programmes, East Midlands, had explained that choosing which stories to cover was subjective – and that radio and television outlets would make different judgements about the same story. He stated:

"Often a story is of interest to a local radio station – covering a single county – but is not judged to be of sufficient interest to make it onto the regional television programme covering several counties. That's why many stories don't make it onto television, even if they've been on our local radio stations."

The Head of Regional and Local Programmes had drawn the complainant's attention to an online article that had been published by the BBC. The Trust's Adviser also noted he had responded to her complaint about the way in which her complaint had been handled. He said:

"I feel your complaints to BBC East Midlands were handled by staff in a respectful and professional manner, however I was sorry to read you felt otherwise."

The Trust's Adviser considered she had not seen any evidence that the Guidelines had been engaged. Therefore, the issue of what stories should be covered was a matter of editorial and creative freedom and it was not appropriate for the appeal to be put before Trustees on this point. It followed from this that she did not consider the appeal had a reasonable prospect of success and it should not be put before Trustees.

Complaints handling

The Trust's Adviser noted the points raised by the complainant with regard to the way in which her complaint had been handled at Stages 1 and Stage 2 by Audience Services and the Executive. She noted in particular that the complainant was unhappy about a delay of more than two months between her first contacting the BBC and her receipt of a substantive response at Stage 2. The Trust's Adviser noted the complainant had made an initial complaint by phone to BBC Nottingham in November 2012 and the letter from the Head of Regional and Local Programmes, East Midlands was dated 10 January 2013.

However, the Trust's Adviser noted from the correspondence that the complainant had had telephone conversations with two members of the editorial team before complaining via BBC Audience Services on 15 November 2012. She received a response from Audience Services on 27 November 2012 – which was within the ten day timeframe set down by the Complaints Framework. The Trust's Adviser noted too that BBC Audience Services had taken up the complaint with the editorial team of East Midlands Today in order to respond to the complaint substantively.

The Trust's Adviser noted that the complainant was not satisfied by this response and renewed her complaint at stage 1 on 6 December 2012. The complainant received a final Stage 1 response on 19 December 2012 informing her how she could escalate her complaint.

In his letter to the complainant of 10 January 2013, the Head of Regional and Local Programmes, East Midlands gave a further substantive response to the issues raised. He also said that he felt the complainant's concerns had been handled by staff in a respectful and professional manner, but he was sorry to learn the complainant felt otherwise.

The Trust's Adviser believed that the Trustees would be of the view that on the complaints handling issue, the complainant had received reasoned and reasonable responses to her correspondence within the accepted time frames.

The Trust's Adviser determined that there was no reasonable prospect of success for this appeal and decided it was not appropriate for the appeal to proceed to the Trust for consideration.

Request to the Panel to review the decision of the Trust Unit

The complainant requested the decision of the Trust's Adviser be reviewed by Trustees. In her letter challenging the Trust's Adviser's decision, she raised a number of points. These included a complaint about the way her appeal had been handled by the Trust Unit and that aspect of her challenge letter was passed to the Director of the Trust Unit for reply. The complainant also referred for the first time to the Election Guidelines for Police and Crime Commissioners (the Election Guidelines). In addition, the complainant said that in her correspondence to the Executive, and in her appeal, she had complained about alleged inaccuracy in an item broadcast on East Midlands Today on 22 October 2012. She said that this complaint had not been addressed by either the Executive or the Trust Unit. Finally, the complainant took issue with what she described as the Trust's Adviser's 'misrepresentation' of the Radio broadcast.

The Panel's decision

The Panel was given the complainant's appeal to the Trust, the reply from the Trust's Adviser, the challenge to the Trust's Adviser's decision and also the complainant's previous correspondence with the BBC.

The Panel agreed that editorial decisions with regard to which news items to feature in local bulletins and how much detail to include on any particular topic clearly fell within the direction of the editorial and creative output of the BBC which is specifically defined in the Charter (paragraph 38(1)(b)) as a duty of the Executive Board, and is one in which the Trust does not get involved, unless there is a suggestion of a breach of the BBC's Editorial Guidelines. The Panel noted that the complainant's correspondence with BBC Audience Services and her letter to the Trust requesting an appeal had not suggested a breach of the BBC's Editorial Guidelines. The Panel agreed that, in the absence of a suggestion of a breach of the Editorial Guidelines, decisions about which stories to include in a programme were the editorial responsibility of the Executive and outside the remit of the Trust.

The Panel noted the complainant's concerns about the handling of her complaint at Stages 1 and 2. The Panel also noted the general criticisms of the revised Complaints Framework raised by the complainant. The Panel was of the view that the complainant had received reasoned and reasonable responses to her correspondence within reasonable time frames. It did not consider that this aspect of the complainant's appeal had a reasonable prospect of success and did not consider it proportionate to consider these aspects of her complaint on appeal. .

The Panel noted that in her challenge letter the complainant had alleged that the Executive and the Trust's Adviser had failed to address her allegation of inaccuracy in an item broadcast on East Midlands Today.

The Panel noted that this complaint about alleged inaccuracy in the East Midlands Today programme was made directly to BBC Nottingham but was not raised by the complainant in her Stage 1 complaint to BBC Audience Services on 15 November 2012. The Panel noted that under the Complaints Framework, Stage 1a complaints should be made to BBC Audience Services. If a complaint is not sent to BBC Audience Services, the Complaints Framework explains that the BBC cannot guarantee that the complaint will be replied to. The Panel noted that in her later correspondence to BBC Audience Services, the complainant did not explain that she wished to complain about inaccuracy in BBC output. The Panel also noted that it was not clear from the complainant's appeal letter to the Trust that she wished to make an inaccuracy complaint. They also noted that the complainant had not complained that BBC Audience Services had failed to address this point.

The Panel agreed that a complaint about inaccuracy in BBC output should be made to BBC Audience Services within 30 Working Days of the output complained of. In this case, the complainant made no apparent inaccuracy complaint in her correspondence to BBC Audience Services. The Panel did not, therefore, consider there was evidence to support an allegation of failure in complaints handling by either the Executive or the Trust Unit in this respect.

The Panel noted that in her challenge letter to the Trust, the complainant had for the first time referred to the Election Guidelines for Police and Crime Commissioners. The Panel noted the complainant's allegations in respect of these Guidelines were not clearly explained or substantiated. The Panel further noted that the complainant had not raised these points with the Executive at Stages 1 and 2, and that they had not been raised within the time limit set by the Complaints Framework. The Panel agreed that these were fresh allegations and could not be considered by the Trust at this stage. (The Panel noted that section 38(1)(d) of the BBC's Charter provides that complaints other than those about the Trust must be considered by the Executive before they can be considered by the Trust.)

Finally, the Panel also noted that in her challenge letter the complainant had objected to the Trust's Adviser's description of the item broadcast on Radio Nottingham. The Panel agreed they had seen nothing to suggest the Trust's Adviser had misrepresented the Radio Nottingham broadcast as alleged.

The Panel concluded that the appeal did not have a reasonable prospect of success.

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

Request for investigation

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

The Complaint & Appeal

The complainant contacted the BBC Trust to ask for an investigation to be commissioned into the complainant's treatment by the BBC. The complainant requested the Trust investigate his allegations concerning (i) the circumstances in which his contract as a presenter came to an end; (ii) an incident at a charity event which resulted in injury to the complainant; and (iii) the conduct of a member of BBC staff.

The Trust's Adviser responded to explain that in her view it would not be appropriate for the Trust to investigate these matters. The Trust's Adviser noted that under the BBC's Royal Charter, the Trust may

Where appropriate, [conduct] investigations into any area of activity of the BBC which it has grounds to suspect does not comply with requirements supervised by the Trust.

The Trust's Adviser further noted that all of the issues which the complainant had requested the Trust investigate had been the subject of legal claims which had concluded. The Trust's Adviser therefore did not consider it was appropriate for the Trust to investigate them now and he referred, by way of analogy, to Annex A to the BBC's Complaints Framework, which lists certain types of complaint that are outside the scope of the complaints framework, including—

Complaints where there is recourse to the law

1. For some categories of complaint there may be legal remedies available to complainants. If a complainant makes a legal complaint against the BBC (including its employees and commercial subsidiaries) at the same time as making a complaint via the Complaints Framework, both the BBC Executive and the Trust may decline to accept the complaint via the Complaints Framework or may stop the complaints handling procedure.

If a complainant resubmits a complaint to the BBC after a legal complaint has been responded to by the BBC's Legal Department or legal proceedings have concluded, the BBC will not generally reconsider any aspects of complaints that have already been considered or adjudicated upon (including but not limited to by a Court or tribunal)

The Trust's Adviser explained that the Charter stipulates that the Trust's function is to set the BBC's strategy, supervise the Executive and hold the Executive to account. Within the terms of the Charter, the Executive is responsible for the day-to-day operational management of the BBC. The Trust's Adviser said that it was her view that the matters raised were operational ones, and it would not be an appropriate exercise of the Trust's functions to intervene.

Request to the Panel to review the decision of the Trust Unit

The complainant wanted his file to be reviewed by the Panel. He noted the BBC's announcement "regarding bullying, abuse & harassment within the Corporation". He did not believe the outcome of the complainant's legal claims excused the behaviour he complained of. He considered that exposing his allegations would prevent them from happening to other BBC staff and would give him "great peace of mind". The complainant also reiterated his concerns regarding a BBC manager.

The Panel's decision

The Panel was given the complainant's appeal to the Trust, the reply from the Trust's Adviser, the challenge to the Trust's Adviser's decision and also the complainant's previous correspondence with the BBC.

The Panel considered the nature of the issues raised by the complainant in his request for an investigation. It agreed with the view of the Trust's Adviser that these issues were operational matters for the Executive and not the Trust. The Panel agreed that given the serious nature of certain of the complainant's allegations and the nature of what he was requesting (an investigation into those allegations), it was appropriate for members to assure themselves that the Executive had considered properly the concerns the complainant had raised in his appeal to the Trust. The Panel therefore agreed it could not make a final decision on the complainant's request for a review without confirmation of that point.

The Panel subsequently received from the Executive a copy of a letter sent to the complainant on 21 April 2011. Panel members considered this letter (which was supplied to them via e-mail after the meeting) and agreed that this showed the Executive had addressed and investigated the complainant's concerns in full.

The Panel therefore concluded that it was not appropriate for the Trust to intervene in what it decided was an operational matter which had been considered in full by the Executive.

The Panel therefore agreed that the request for an investigation did not qualify to proceed for consideration.

Contributor's fee

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

The complaint & appeal

The complainant initially contacted the BBC to raise his concern about the repetition worldwide of a documentary he had featured in. The complainant said that if he had been aware of the level of distribution worldwide, he may have reconsidered his involvement in the programme. The complainant also said that the contract that he had agreed to take part in the programme did not cover such distribution. The BBC Executive replied to say that the complainant had been informed of the terms and conditions of participation and that the complainant had agreed the level of payment. The Executive also said that the complainant had agreed to the BBC's Terms of Engagement which include the option for the BBC to distribute a programme globally. The complainant disputed this. The complainant said that the distribution worldwide had had a detrimental effect on his ability to seek other work. The Executive replied saying that the complainant had been sent the Terms of Engagement and that the complainant had indicated he was happy with the agreed fee and that he had been aware it may be distributed and re-edited for a foreign audience. The Executive also said there was no evidence to suggest opportunities for further work had been reduced by his involvement in the programme. The Executive also referred to internet sites which it said indicated that the complainant was aware of the global distribution of the programme and was pleased with the exposure this was providing. The complainant contacted the BBC again to escalate his complaint to Stage 2. The Executive's responded at Stage 2 saying there was nothing further they could add.

The complainant appealed to the BBC Trust on 20 March 2013. He said that he was the main contributor to and subject of a programme first broadcast on 17 April 2012. The complainant said he had been informed by the programme's production staff that it would be broadcast a maximum of seven times. However, he believed it had since been transmitted across the world and he said he had not given his permission for this distribution. The complainant stated that, had he known this would happen, he would not have accepted such a low contributor's fee. The complainant said that the widespread broadcast of the programme meant he could not make documentaries for other countries and had caused him to suffer a loss of income which he wished to recoup from the BBC. The complainant stated that the production team did not inform him there was a possibility of international distribution and he also said that he had not been provided with any documentation that set this out.

Decision of the Senior Editorial Strategy Adviser

The relevant correspondence was carefully reviewed by the Trust Unit.

The Trust's Adviser decided that the complainant's appeal did not have a reasonable prospect of success and she did not consider it appropriate for the complaint to be put before Trustees.

The Trust's 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. She noted

“The operational management of the BBC” was 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 did not usually get involved.

The Trust’s Adviser noted that the BBC had responded in some detail to the complaint. The Trust’s Adviser also noted that the BBC had not accepted that the complainant was misinformed about the basis of the BBC’s agreement with him. The Trust’s Adviser referred to an email exchange in which the complainant had accepted the disturbance fee that had been offered to him. She also noted that both the BBC and the complainant recalled a conversation which described how the programme might need to be reedited in order to be shown in Japan. The Trust’s Adviser noted that the BBC had informed the complainant he was free to make documentary programmes in other countries. She further noted that the complainant had not brought forward any evidence that suggested he had lost any earnings as a result of appearing in the programme.

The Trust’s Adviser considered that Trustees would be likely to conclude that the Executive had provided reasonable responses to the complainant’s concerns and, this being an operational matter, she did not consider it appropriate for the complaint to be put before Trustees.

Request to the Panel to review the decision of the Trust Unit

The complainant requested the decision of the Trust’s Adviser be reviewed by the Panel. He alleged he had been promised something which he said had been found to be a lie, and said he had lost out as a result. The complainant also said he had witnesses. The complainant said he wanted an investigation, the alleged omission to be noted, and a letter of acceptance and an apology issued.

The Panel’s decision

The Panel was provided with the complainant’s appeal to the Trust, the reply from the Trust’s Adviser, the challenge to the Trust’s Adviser’s decision and also the complainant’s previous correspondence with the BBC.

The Panel agreed that operational decisions such as the level of disturbance fees and contractual arrangements with contributors fell within the operational management of BBC which is specifically defined in the Charter (paragraph 38(1)) as a duty of the Executive Board, and is one in which the Trust does not get involved. It therefore agreed that this issue was an operational one and outside of the Trust’s remit.

The Panel considered that the Executive had provided reasonable and detailed responses to the complainant’s concerns at each stage of the complaints process. The Panel also noted that the complainant had accepted the disturbance fee that had been offered to him and the terms of that fee saying *“The money for both me and the [workplace] is fine and they’re really happy too.”*

Additionally, the Panel noted that the complainant was aware of overseas showings in July and had expressed no unhappiness. He had not made his complaint until December.

For these reasons, the Panel concluded that the appeal did not have a reasonable prospect of success.

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

Complaint handling

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

The complaint & appeal

The complainant initially contacted the BBC to complain about alleged bias in an edition of Watchdog Daily. The complainant was dissatisfied with the BBC's reply and contacted the Head of Audience Services by telephone. The complainant was unhappy with the conversation and subsequently attempted to contact the Director of Marketing and Audiences by telephone. The complainant was unable to do so and registered a further complaint about this with BBC Audience Services. The Director of Marketing and Audiences replied by post addressing the complainant's concerns about his call with the Head of Audience Services and explaining the complaints procedure. The Director of Marketing and Audiences offered an escalation of the complaint about the handling of the complaint to the BBC Trust.

The complainant then wrote to the Trust on 14 February requesting an appeal about the handling of his complaint to the BBC.

In his appeal to the Trust, the complainant made the following points:

He said that two telephone conversations with BBC Complaints in which he had sought to understand when he might receive a response to his complaint had been unsatisfactory. The complainant had then spoken to the Head of Audience Services and had sought a time frame within which his complaint might receive a response. The complainant said he had not expected the Head of Audience Services to know his case history but he had expected her either to provide an approximate time frame or to offer to return to him with a time frame within a few days after having reviewed his case. The complainant had postulated to the Head of Audience Services that a response might arrive between "six and three months". He considered the phone call was badly handled and said he had been interrupted with the words "enough, enough" when he had sought clarification for when his complaint might be answered. He also said the call ended with the complainant having the phone hung up on him.

In pursuing his complaint, the complainant had spoken to switchboard operators whom he said had told him they did not hold up-to-date records of phone extensions. The complainant considered this, if true, to be administrative incompetence on the part of the BBC.

The complainant thought a comment by the Director of Marketing and Audiences that "switchboard operators were not in a position ..." might mean switchboard operators were deliberately not putting him through. One switchboard operator had told him she was not allowed to put his call through to the person he wished to speak to. The complainant considered that if that were the case, the information he had previously been given – that switchboard operators did not have access to up to date telephone numbers was possibly untrue and he considered he might have been deceived. The Complainant said this was a breach of the Guidelines on Honesty and also was in breach of the BBC's Charter.

The complainant considered the BBC's complaints procedure was unfair because a significant percentage of households did not have internet access yet people were

told they had to lodge a complaint by using the internet or use it to find information on how to progress a complaint.

The BBC Complaints website was, the complainant said, not clear about how to complain and about the BBC's Charter and Guidelines. He suggested an easy to read 'how to' summary of the major complaints routes and methods should be included with any initial response.

The complainant also said that the BBC's telephone line was not well designed for those ringing to complain. Callers had to wait for forty seconds before being instructed what to do and were, the complainant considered, likely to have registered their views as 'comments' rather than 'complaints' as that option was given earlier in the automated system.

Decision of the Senior Editorial Strategy Adviser

The relevant correspondence was reviewed by the Trust Unit and an independent editorial adviser. The BBC Trust inquired as to whether there was a tape of the phone conversation between the complainant and the Head of BBC Audience Services. However, because the conversation had not been recorded, no tape was not available.

The Senior Editorial Strategy Adviser (the Trust's Adviser) decided that the complainant's appeal did not have a reasonable prospect of success.

She noted that the Director of Marketing and Audiences in his letter of 22 January 2013 had acknowledged that a telephone call between the complainant and the Head of BBC Audience Services had been difficult. He said that the call had not been resolved in a manner that was satisfactory for either party and that he regretted this. The Trust's Adviser also expressed her regret that this call had been unsatisfactory for the complainant.

However, the Trust's Adviser also noted that the Director of Marketing and Audiences had said that the Head of BBC Audience Services had advised the complainant several times that she would have to terminate the call if he continued to interrupt her and that this was standard industry practice. As the BBC had followed industry practice, and as the Director of Marketing and Audience had both acknowledged the issues with the call and expressed his regret, the Trust's Adviser considered Trustees would conclude that the termination had been conducted appropriately and that issues with the tone and content of the call had been resolved by the response from the Director of Marketing and Audiences.

The Trust's Adviser then noted that the Director of Marketing and Audiences had explained that the BBC complaints process had been set up after extensive public consultation and that its aim was to make the experience easier for the public and ensure their complaints were handled in the most appropriate fashion. She noted that this had included face to face audience research. She also noted that the complainant had been sent a link to the BBC website explaining the complaints process. She attached a link to the conclusions of the Complaints Framework Review which includes information about the audience research carried out about the complaints process:
http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/our_work/complaints_framework/2012/complaints_framework_review.pdf

The Trust's Adviser further noted that the Director of Marketing and Audiences had made clear that people could contact the BBC to lodge a complaint either by internet, phone or post and this was also made clear on the BBC website.

She noted that the Director of Marketing and Audiences' response stated:

"In order to help us report and handle complaints efficiently, we ask people to contact us using our central website, phone number or postal address. This enables us to ensure their complaint is being handled by the right people. If someone chooses not to go via that route and attempts instead to contact a member of staff directly, we cannot guarantee that they will receive a reply. It is for this reason that our switchboard operators were not in a position to put your call through to me when you later tried to call my direct number."

The Trust's Adviser felt that the BBC had given the complainant a clear, comprehensive explanation of its complaints process and how it sought to make this process accessible to all.

The Trust's Adviser noted, too, that the BBC received more than a million contacts each year and that it was in the interest of all licence fee payers that it had a system in place that could track and respond to those contacts. She considered the BBC's website set out clearly how people could complain and that a link to the complaints website was on the front page of the main BBC site. All initial responses from the BBC were expected to include the website link which could be accessed via public libraries for those who had no internet access. Audience Services also told complainants how to progress their complaints to stage 2 (the BBC) or stage 3 (the Trust) when Audience Services had nothing further to add. The Trust's Adviser also said the BBC would advise people by phone or letter as to how to progress their complaint if the member of the public wrote or called the BBC to ask for assistance.

The Trust's Adviser therefore considered complaints about the complaints service did not have a reasonable prospect of success and it should not be put before Trustees.

The Trust's Adviser noted the complainant's concerns that the automated telephone line left callers waiting for more than forty seconds before they were directed as to how they could complain. The Trust's Adviser said she would ensure that this feedback was passed on to Audience Services and Trustees.

Turning to the complaints regarding the switchboard operators, the Trust's Adviser noted that the Head of BBC Audience Services had moved buildings recently as the BBC had vacated BBC White City. The Trust Unit had confirmed that the number for the Head of BBC Audience Services was incorrectly noted on both of the BBC's internal systems. The Trust's Adviser also noted that the Head of BBC Audience Services was not expected to take calls directly from the public as, in order to route and handle complaints effectively, the public were directed to use a central phone number. This also enabled calls to be recorded. The delay in updating the internal systems therefore did not affect the quality of service provided by Audience Services to the public. The Trust's Adviser considered that both explanations given to the complainant were correct and concluded that there was no reasonable prospect of success for this element of the complaint.

The Trust's Adviser hoped that any remaining concerns of the complainant would be addressed in some measure by the fact that complaints handling was a matter that the Trust was keeping under close review. The Complaints Framework was revised last year (http://www.bbc.co.uk/bbctrust/governance/complaints_framework/framework.html), its operation was reviewed after six months and the Trustees conclusions would be published

this summer. There will also be a "mystery shopping" exercise looking at how the new framework is working later this year.

Request to the Panel to review the decision of the Trust Unit

The complainant requested the decision of the Trust's Adviser, Trust Unit, be reviewed by Trustees. He said he did not wish to take the issues regarding his telephone conversation with the Head of Audience Services any further. However, he did raise a number of other points about why he wanted the decision reviewed. The complainant firstly noted that he considered the time constraints for complainants to provide responses to the BBC were intended to minimise and obstruct complaints. The complainant also questioned whether standard industry practice (terminating calls after warning the caller) was acceptable practice. He commented upon the failure to update the switchboard numbers and noted that there was no clear denial of lying. The complainant was dissatisfied with the reliance on internet links to explain the complaints procedure. He noted the Trust's Adviser had also not commented upon his suggestion that a summary of the complaints procedure should be enclosed in the responses sent to complainants.

The Panel's decision

The Panel was provided with the complainant's appeal to the Trust, the reply from the Trust's Adviser, the complainant's challenge to the Trust's Adviser's decision and also the complainant's previous correspondence with the BBC.

The Panel agreed that the complainant had been provided with a clear and comprehensive explanation of the BBC's complaints process and how the BBC sought to make this process accessible. The Panel noted the explanations as to how the switchboard operates and agreed with the Adviser that the explanations given to the complainant on this point were correct. The Panel saw no need to further investigate the issue. The Panel noted that a delay in updating phone numbers in this case had not impacted upon complainants. The Panel further noted that there were several on-going strands of work to monitor the complaints process and ensure its continued improvement. The Panel agreed that there needed to be a sense of proportionality when considering complaints about the handling of complaints and in particular, recognition of the need to use licence fee money appropriately, proportionally and efficiently. The Panel agreed that the complainant had been provided with a full and reasonable explanation both with regard to the handling of his complaint and the work that was being done on the Complaints Framework as a whole.

The Panel concluded that the complainant's appeal did not have a reasonable prospect of success and that it would not be proportionate to consider the matter further.

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

BBC's coverage of climate change

The complainant requested Trustees review the decision at Stage 1b of the BBC's complaints process not to engage in any further correspondence with the complainant on the same issue.

The complaint and appeal

The complainant contacted the BBC alleging that the BBC failed to report on the issue of climate change in a fair and impartial manner and that this was a breach of the Charter. The complainant raised specific concerns about a seminar held in 2006. The BBC responded, providing details around the context of the seminar and explaining that the Information Tribunal had upheld the BBC's decision to withhold disclosure of the seminar's attendees. The complainant contacted the BBC again to say that he was aware of the decision but that the names were in the public domain. The complainant said that he was of the understanding that the seminar contributed to BBC policy on reporting of climate change. The complainant also questioned the appropriateness of the choice of author of a review on impartiality which had been adopted by the BBC. The BBC responded at stage 1b providing further information on the context of the review and the seminar. The Executive said that the review's conclusions acknowledged that "impartiality always requires a breadth of view: for as long as minority opinions are coherently and honestly expressed, the BBC must give them appropriate space". The Executive said that they could not engage in any further correspondence about this complaint as they did not consider the points raised suggested a possible breach of standards and they had nothing further to add to their previous responses.

The complainant appealed to the Trust. His complaint related to the BBC's approach to covering climate change. In his appeal to the Trust, the complainant queried the independence and expertise of the author of the impartiality report, *From Seesaw to Wagon Wheel, Safeguarding Impartiality in the 21st Century*. This report was authored by John Bridcut and adopted by the Trust and Executive Board in 2007.

In his request for an appeal, the complainant alleged that:

The Trust had unquestioningly accepted Mr Bridcut's report which the complainant said informs the current BBC Guidelines on impartiality.

The statement made in Mr Bridcut's report that the seminar held by the BBC in 2006 included 'some of the best scientific experts' is inaccurate, and BBC Complaints had failed to address this point.

The complainant challenged Mr Bridcut's credentials to pass what the complainant considered were his judgments on matters of science.

The complainant alleged that Mr Bridcut could not be considered "independent" because he had previously worked for the BBC for 12 years.

The complainant considered the report to be "seriously flawed" because the author lacked scientific expertise.

Finally, the complainant also said that BBC Editorial policy, which he said derives its legitimacy from the report, is therefore flawed.

Decision of the Senior Editorial Strategy Adviser

The Trust's Senior Editorial Strategy Adviser (Trust's Adviser) noted that the complainant had contacted BBC Audience Services on 19 December 2012. He had complained about the BBC's approach in covering climate change and stated that he considered it was in breach of its Charter because he considered it was no longer impartial. The Trust's Adviser noted the complainant referred to the impartiality review *From Seesaw to Wagon Wheel, Safeguarding Impartiality in the 21st Century* and that he drew particular attention to an impartiality seminar which the author of the review had stated included "some of the best scientific experts". The complainant disputed that statement

The Trust's Adviser noted that the complainant considered that the conclusions of the impartiality review relied on the input of the attendees at the seminar. He stated that the result of this was "the BBC's decision to breach its Charter and abandon impartiality on the subject of climate change and instead provide a highly biased and alarmist presentation of the science of climate change, without any attempt at counterbalancing argument, let alone 'equal space'".

The Trust's Adviser noted that BBC Complaints had responded on 26 January 2013 and had stated that an Information Tribunal had upheld the BBC's decision not to release the names of the attendees of the impartiality seminar in response to a Freedom of Information request. The letter also stated:

"We understand you believe the BBC has breached the terms of its Charter by failing to report on the issue of climate change in a fair and impartial manner. We note your specific concerns about a seminar held to discuss the matter.

"The seminar in question was one in a series of seminars for BBC editors and managers. They were a forum for free and frank discussion of global issues and not created to produce programming nor set story direction. They involved external contributors from business, science and academia. Seminars such as this don't set editorial policy. They can, over time and along with many other elements, help inform our journalism through debate and access to expertise, but the setting of our editorial policies is a formal process involving BBC Boards and the BBC Trust."

The complainant contacted BBC Complaints again on 26 January 2013 and stated that the response had not answered his concerns. He also challenged the partiality of attendees on the issue climate change. The complainant considered that the conclusions of the impartiality review *From Seesaw to Wagon Wheel, Safeguarding Impartiality in the 21st Century* relied on the input from the impartiality seminar. He thought the BBC was no longer impartial and was in breach of its Charter.

The Trust's Adviser noted that BBC Complaints replied on 11 February 2013 and stated:

"It is important that, in order to achieve an understanding of where due weight might lie in an argument, the BBC establishes what the prevailing consensus on an issue is and we understand that the seminar was part of that effort. The Bridcut Report itself was commissioned by the BBC Governors and the BBC Executive but was an independent report by Mr Bridcut. He concluded that the Seminar included 'some of the best scientific experts'. His report was presented to the BBC Trust, which accepted the report, agreed the principles outlined within it and approved the recommendations for the Trust.

You have quoted from the Bridcut Report on the seminar but you will also be aware that the Report went on to make the following point: "But these dissenters (or even sceptics) will still be heard, as they should, because it is not the BBC's role to close down this

debate. They cannot be simply dismissed as 'flat-earthers' or 'denier', who 'should not be given a platform' by the BBC. Impartiality always requires a breadth of view: for as long as minority opinions are coherently and honestly expressed, the BBC must give them appropriate space."

New editorial guidelines were published in 2010. The current BBC Guidelines state that, "Impartiality does not necessarily require the range of perspectives or opinions to be covered in equal proportions either across our output as a whole, or within a single programme, web page or item. Instead, we should seek to achieve 'due weight'. For example, minority views should not necessarily be given equal weight to the prevailing consensus."

BBC Complaints also stated that they would not correspond further with the complainant as they had nothing further to add to their responses and did not consider the complainant was raising an issue that was a potential breach of the Guidelines.

Having carefully read the correspondence between the complainant and the BBC, the Trust's Adviser considered the complainant had been given a full and reasoned response to his query. She considered that Trustees would be likely to conclude that the BBC had responded as fully as it could do and therefore had acted reasonably in notifying the complainant that it would not correspond further. For these reasons the Trust's Adviser did not believe that the complainant's appeal had a reasonable prospect of success and did not propose to proceed with it to appeal.

The Trust's Adviser noted that if the complainant considered there were specific instances in the future where he felt the BBC was in breach of the Editorial Guidelines on Impartiality, he should complain within 30 working days of an item being published or broadcast through www.bbc.co.uk/complaints.

Request to the Panel to review the decision of the Trust Unit

The complainant requested the decision of the Trust's Adviser be reviewed by the Panel.

He reasserted his concerns about the independence and expertise of the Report. The complainant also said that the Trust had a case to answer as although the seminar did not take place when the Trust was in existence, the seminar was informing current editorial decisions. The complainant added that as the Report had been 'approved and adopted by both the BBC Trust and the BBC Executive Board', this was clearly a matter for the Trust to consider.

The Panel's decision

The Panel was given the complainant's appeal to the Trust, the reply from the Trust's Adviser, the complainant's challenge to the Trust's Adviser's decision and also the complainant's previous correspondence with the BBC.

The Panel noted that the substance of the complainant's complaint was that the Editorial Guidelines on Impartiality breach the Charter because they are based on what the complainant considered to be a flawed report, which is in turn informed by a seminar whose participants did not sufficiently represent the range of scientific opinion on the matter. On reviewing the correspondence, the Panel agreed that the BBC had responded appropriately to the substance of the complaint. They noted that the BBC had explained that seminars such as the one referred to do not set editorial policy and that the setting of the Editorial Guidelines is a formal process involving BBC Boards and the BBC Trust. The Panel concluded that there was no reasonable prospect of success for an appeal

against the decision of BBC Audience Services to end its correspondence with the complainant on this issue.

The Panel noted the concerns raised by the complainant in his correspondence to the Trust. Specifically:

- The Panel noted the complainant's view that Mr Bridcut was an inappropriate choice to author the review as he lacked scientific credentials and independence from the BBC. The Panel agreed that the purpose of the Report was to explore a set of principles of impartiality and to identify a list of broad implications for the BBC, and that the Report was not intended to be a scientific Report. The Panel also agreed that Mr Bridcut was appointed for his programme-maker's experience of the challenges of achieving impartiality, and not because of his expertise in any of the areas covered by the Report, which included science, the arts, religion and sport.
- The Panel noted the complainant's concern regarding the wording that the Trust had 'approved and adopted' the Report. The Panel agreed that although the Trust had indicated that it agreed the principles outlined in the report, the detail of the report was authored by an independent programme-maker and was therefore an independent report. The Panel agreed that approval of the report (which included the reference to the seminar) did not amount to adoption of any particular editorial policy. It noted the principles in the report did not override the then current Editorial Guidelines (set in 2005). The current version of the Editorial Guidelines, was last consulted on and published in 2010.
- The Panel also noted the complainant's concerns that the author of the Report described participants at the seminar as "some of the best scientific experts". The Panel considered that the accuracy of the statement was immaterial to the point being made by Mr Bridcut in this part of the Report that, regardless of the consensus, "dissenting" views should still be heard.
- Finally, the Panel noted the complainant's concerns that the BBC's editorial policy derives 'its legitimacy from this report'. The Panel agreed that, as had been explained to the complainant, seminars such as the one in question do not set editorial policy and neither did the Report. The Panel agreed that the Report proposed recommendations for the BBC to draw upon as it wished. It noted that the setting of editorial policies is a formal process involving the BBC Executive Board and the BBC Trust, and that impartiality is key to BBC reporting and the subject of continuous scrutiny by the BBC and the Trust.

For the reasons explained above, the Panel agreed that the complainant's appeal had no reasonable prospect of success.

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

Commissioning of The Hour

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

Appeal

The complainant escalated her complaint to the BBC Trust, saying that she and three co-signatories to her appeal were requesting the BBC to reverse its previous decision and commission a third series of The Hour.

The complainant asked the BBC to review its decision in the light of production circumstances which she believed would probably have changed since the decision not to commission a third series was reached.

The complainant made her case for the re-commissioning of The Hour based on what she believed had been the excellence of the writing, acting and directing. She argued that there had been great enthusiasm for the series from critics and fans. She pointed out that the series had been nominated for 19 awards and that a petition requesting a reversal of the decision not to re-commission the series had been signed by over 15,000 people.

The complainant believed the decision not to re-commission a series of such good quality was illogical and was already regretted by millions of viewers. She believed that it was a decision the BBC would probably also regret in the fullness of time.

Decision of the Senior Editorial Strategy Adviser

The Senior Editorial Strategy Adviser appreciated that the complainant was very disappointed by the BBC's decision not to commission a third series of The Hour, but she noted that decisions about the commissioning of programmes relate to the direction of the BBC's editorial and creative output and are the responsibility of the BBC Executive.

She explained that the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC draw a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General.

She said that "the direction of the BBC's editorial and creative output" is specifically defined in the Charter (paragraph 38, (1) (b)) as a duty that is the responsibility of the Executive Board, and one in which the Trust does not get involved unless, for example, it relates to a breach of the BBC's editorial standards.

The Senior Editorial Strategy Adviser believed that the Trustees would be of the view that the BBC Commissioning Editor had provided a reasonable response to the complaint at stage 2 on 1 March 2013:

"Programme commissioning is an often complicated process involving discussions at various levels between channel controllers, commissioners and the programme-makers themselves. Details of such discussions are commercially sensitive so I cannot go into detail about the full decision-making process but in truth, there is often no single reason behind the decision not to re-commission a series. We regularly have to make difficult decisions and unfortunately sometimes they will

prove to be unpopular with sections of the audience. I can only apologise again for any disappointment caused by our decision to pursue other drama projects rather than a further series of The Hour”.

The Senior Editorial Strategy Adviser was sorry for the disappointment caused by the BBC’s decision not to commission a third series of The Hour, but for the reasons outlined she considered there was no reasonable prospect of success for this appeal and it was not appropriate that the appeal should proceed to the Trust for consideration.

Request for review by Trustees

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

The complainant said that the Trust’s Adviser had misread her attempt to persuade the BBC to commission a third series of The Hour. She said that the Trust’s Adviser had considered only the emotional aspects of the complainant’s argument, and she had overlooked the professional judgements. The complainant restated her credentials as an established film and media critic and provided detailed arguments to support her professional judgement that a third series of The Hour should be commissioned. The complainant concluded by offering to visit London to present her ideas in person. The complainant enclosed letters of support and endorsement from two publishers of books on film and television studies written by the complainant.

The Panel’s decision

The Panel was given the complainant’s appeal to the Trust, the reply from the Trust’s Adviser, the challenge to the Trust’s Adviser’s decision and also the complainant’s previous correspondence with the BBC.

The Panel agreed that under the BBC’s Royal Charter and accompanying Agreement there is a clear division of responsibility between the Executive Board and the Trust. The Panel further agreed that the direction of editorial and creative output is a matter for the Executive Board, not one in which the Trust normally gets involved.

The Panel noted the complainant’s credentials and the endorsements that had been given by her publishers. The Panel agreed, however, that no matter how well supported or well-argued the reasons put forward by the complainant were, the decision not to re-commission The Hour fell within the direction of editorial and creative output and was not a matter for the BBC Trust but rather for the Executive Board, which had given the complainant its final response on the matter. The Panel did not agree that the matters raised by the complainant were so serious as to warrant the Trust becoming involved in what was an operational matter for the Executive.

The panel concluded that the appeal did not have a reasonable prospect of success.

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

BBC TV live news reports

The complainant requested that Trustees review the decision at Stage 1b of the BBC's complaints process not to engage in any further correspondence with the complainant on the same issue.

The complaint and appeal

The complainant appealed to the Trust as he was not satisfied with the response received at stage 1b from BBC Complaints who stated that they could not engage in any further correspondence about his complaint as they did not consider the points he raised suggested a possible breach of standards and they had already responded as fully as they could.

The complainant originally contacted the BBC on 25 October 2012 in relation to what he considered the "mis-use of live reports on BBC TV news." He stated that live reporting should be used only where it genuinely added to a story. Where it added nothing to a story, the complainant felt it cheapened the concept of live reporting and was also a waste of money. He gave four examples of live reports on BBC London News which he felt were unnecessary. The complainant also asked how much it cost to send crews out on location and keep them there for an extended period of time in order to broadcast follow-up reports live from that location.

BBC Audience Services responded to the complainant on 3 November 2012 and explained that live news reports were used because the BBC considered they enhanced "...the quality of journalism for [news teams] to go out and about – seeing things first hand, rather than doing everything indirectly – and that doing so informs reports for the better." BBC Complaints also stated there was a policy of not disclosing the costs involved in making particular programmes or news reports, but noted that each BBC department was aware of its responsibility towards licence fee payers and the necessity to be cost conscious while providing high quality.

The complainant contacted the BBC again on 7 November 2012. He considered the initial response had missed his main point; namely, he had not suggested that it was pointless for a reporter to visit the scene of an event, but was concerned that a reporter and film crew had to remain in the area, apparently for some hours, in order to provide a live insert into a news programme which he did not believe added anything to the quality of the reporting. He requested a response giving an explanation of why in such instances it was considered that live reporting added to the quality of the broadcast news package.

BBC Complaints gave a final response on 29 November 2012 which referred in detail to one example the complainant had raised regarding a proposed high speed rail link (HS2). The response stated:

"We do believe live reports add to a story for a number of reasons. Editorially, it allows the reporter to probe local opinion on a subject, or add a visual aspect to a story. Taking the HS2 piece into consideration, the reporter spoke of local opposition he heard first hand from Perivale residents. He physically pointed to where the proposed line would run through, highlighting a block of flats marked for demolition.

Please be assured that decisions to feature such live reports are made with value for licence fee payers' money prominently in mind. For example, by staying in the

area, live reports prevent reporters from travelling to and from the studio and location.”

The complainant wrote again on 7 January 2013 and said he had seen further examples of what he felt were “pointless live reports following up pre-packaged reports in the same programme that added nothing to the report but wasted money”. He gave one example associated with a fatal police crash and requested an explanation as to “why money was wasted keeping a full film crew on site for 3 hours, 24 hours after the event.”

BBC Complaints sent a further final response to the complaint on 5 February 2013. This stated that they were mindful of using licence fee resources appropriately, that they did not consider there was evidence of a breach of the Editorial Guidelines and that there was nothing they could add to their previous correspondence.

The complainant appealed to the BBC Trust on 23 February 2013, stating that the BBC had failed to address the substance of his complaint and that he was concerned at the way his complaint had been handled. He said that although BBC Complaints made reference to the Editorial Guidelines in terms of closing down his complaint, the underlying point he was making was not concerned with Editorial Guidelines but with expenditure of public money which meant that his complaint came into the area of General complaints. He felt that an assumption had been made about which area he wanted his complaint to be considered in and that this assumption had had the effect of enabling the complaints handler to avoid addressing his complaint. The complainant believed that his complaint did raise a “matter of substance” about how the BBC spent its publicly-derived income.

Decision of the Senior Editorial Strategy Adviser

Having read the correspondence between the complainant and BBC Complaints, the Senior Editorial Strategy Adviser (the Trust’s Adviser) noted that the complainant did not feel he had received a response which addressed his substantive issue.

With regard to the complainant’s concern in his appeal letter that BBC Complaints had failed to refer to the underlying point of his complaint, which he stated was the “appropriate expenditure of public money”, the Trust’s Adviser noted that in his email of 7 November 2012 to BBC Complaints, the complainant did not express dissatisfaction with the response from BBC Complaints (3 November) in terms of the cost, but stated his main point of complaint (which he felt BBC Complaints had not addressed) was the following:

“I am not complaining that having a reporter visit the scene of an event is pointless, but that having them report to the studio live AFTER recording and transmitting their report is. Again, how did the presence of the reporter at the HS2 protect site hours AFTER reporting add anything? Please re-read my complaint and respond properly explaining why in these and other like instances the live report added to the quality of the package demonstrably.”

The Trust’s Adviser noted that BBC Complaints had explained in its first response of 3 November 2012 that the BBC did not disclose the costs involved in making particular programmes or reports, but each department was aware of its responsibility towards the licence fee payer and the need to be cost conscious while providing high quality.

The Trust’s Adviser considered that Trustees would be of the opinion that the BBC had responded appropriately with regard to the complainant’s request for information on costs associated with the production of TV news bulletins.

The Trust's Adviser noted that in their response of 29 November, BBC Complaints had given a more detailed reply on the editorial decisions associated with the inclusion of live reports in TV news bulletins than in their first response of 3 November, and they referred in particular to one of the examples given by the complainant – the HS2 story.

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

She said that "the direction of the BBC's editorial and creative output" is specifically defined in the Charter (paragraph 38, (1) (b)) as a duty that is the responsibility of the Executive Board, and one in which the Trust does not get involved unless, for example, it relates to a breach of the BBC's editorial standards. Decisions relating to the editorial style of news broadcasts fell within the category of editorial and creative output and are the responsibility of the BBC Executive.

In this case, the Trust's Adviser considered that Trustees would be likely to conclude that BBC Complaints had responded reasonably to the complainant and had given information about the editorial thinking behind the use of live reports and had also explained the policy about not releasing information on the costs of news production. She therefore considered Trustees would be likely to conclude that BBC Complaints had behaved appropriately in deciding they would not correspond further on this issue.

For these reasons the Trust's Adviser did not believe that the complainant's appeal had a reasonable prospect of success and she did not propose to proceed with it to appeal.

Request for review by Trustees

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

He said that, if he understood the reasoning correctly, the Trust does not consider complaints covering editorial content unless such content breaches editorial guidelines, and the spending of licence fee money does not come under these guidelines. The complainant said that if this was the case there was no mechanism short of the National Audit Office or the Public Accounts Committee for this to happen, and none that the public can use.

The complainant said that the subject of his complaint was a matter of substance as it related to the "waste of public money incurred in providing a live update to an already-delivered pre-recorded report, where that live update adds no new information and is only achievable by keeping a crew on the scene to deliver it". The complainant said he had provided at least five examples of this and had received no valid explanation for any of them.

The Panel's decision

The Panel was given the complainant's appeal to the Trust, the reply from the Trust's Adviser, the challenge to the Trust's Adviser's decision and also the complainant's correspondence with the BBC.

The Panel noted that the thrust of the complaint was that it was not an efficient use of the licence fee to maintain a live news crew at a location in order to deliver subsequent updates on an a previously recorded report.

The Panel noted that the request for an appeal was against the decision of BBC Complaints not to provide any further responses to the complainant. In considering whether this appeal should proceed, Trustees therefore considered whether there was a reasonable prospect of success for an appeal against the BBC's decision to cease correspondence.

The Panel noted that the complainant had been told by BBC Complaints that "we will normally investigate where evidence is provided to suggest a possible breach of Editorial Guidelines but otherwise we will not normally investigate further." The Panel agreed that the complaint did not raise a breach of the Guidelines but was mindful that there is a General Complaints Procedure for handling other types of complaint. The Panel therefore noted that it is not the case that there was no mechanism for members of the public to pursue complaints which are not covered by the Editorial Guidelines.

The Panel noted that BBC Complaints had replied at Stage 1b saying it had responded as fully as it could and did not have more to add. It noted that at Stage 1a the complainant had been told that each department in the BBC was aware of the necessity to be cost conscious while providing high quality and, whilst the BBC appreciated the complainant felt live aspects were unnecessary, it considered they enhanced the quality of BBC journalism. The Panel further noted that at Stage 1b the BBC had explained to the complainant that "decisions to feature such live reports are made with value for licence fee payer's money prominently in mind" and the BBC had also provided the complainant with some of the editorial justifications which were taken into account when deciding whether to leave a live news crew at a location. The Panel agreed that the responses from the BBC had been appropriate and proportionate. It further noted that audience research shows that viewers place a high value on reporters being seen to be on location.

The Panel therefore agreed that the appeal did not have a reasonable prospect of success. Trustees agreed, however, to draw the complainant's attention to the public consultation which would begin later in the summer on the Trust's service review of News. This would be an appropriate route by which the complainant could bring his views to the Trust.

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

Great British Menu Does Comic Relief

The complainant requested that Trustees review the decision at Stage 1b of the BBC's complaints process not to engage in any further correspondence with the complainant on the same issue.

The complaint and appeal

The complainant wrote to the BBC Trust on 16 March 2013 seeking to appeal against BBC Audience Services' decision not to respond further to the complaint because they had nothing to add to their previous correspondence and did not consider the matter that was being raised suggested a breach of the Guidelines.

The complaint concerned an episode of Great British Menu celebrating 25 years of Comic Relief's Red Nose Day in which a competitor served frog legs. In her appeal to the Trust, the complainant stated that: "*Comic Relief's main work is trying to stop children getting malaria and yet chefs in the Great British Menu are using frog legs which by killing frogs for this has increased insect-borne diseases.*" The complainant considered this was an inconsistent approach. The complainant stated that she had made the same point in her earlier complaint to the BBC, but had not received a reply which addressed it. The appeal also included information about the killing of frogs and the effect that their deaths had on the environment.

Decision of the Senior Editorial Strategy Adviser

The Senior Editorial Strategy Adviser (the Trust's Adviser) noted that the complainant had initially contacted the BBC on 11 February 2013 and had raised concerns about the cruelty of using frogs' legs in Great British Menu and about the environmental impact of their use. BBC Audience Services had responded on 7 March 2013 and included comments from the programme makers, who stated:

"There is currently no ban on the use of frogs legs and many people do enjoy eating them. As long as frogs legs remain legal and freely available it remains a possibility of being included on cookery shows - just as it remains on restaurant menus around the world. If frogs legs were to become banned we would of course no longer allow it to be used within our programme.

Great British Menu showcases the talents and creativity of some of the nation's finest chefs. It is up to each individual competitor to decide how to interpret the competition brief."

The Trust's 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.

She said "The direction of the BBC's editorial and creative output" is specifically defined in the Charter (paragraph 38, (1) (b)) as a duty that is the responsibility of the Executive Board, and one in which the Trust does not get involved unless, for example, it relates to a breach of the BBC's editorial standards – which was not the case in this instance.

The Trust's Adviser considered that decisions such as what format a cookery programme should take were editorial decisions that rested with the Executive. She noted that BBC Audience Services had explained that contestants were free to use the ingredients they

chose and noted that the complainant had been advised that frogs' legs had not been banned.

The Trust's Adviser acknowledged the strength of the complainant's feelings about this matter. However, while she noted the environmental issues that the complainant had raised in her appeal, she did not consider that it was inconsistent for the BBC to raise funds through Comic Relief while also allowing a cookery programme to use ingredients which were available. She noted that other ingredients also resulted in an environmental impact – for example the greater resources needed to farm livestock for food rather than grow crops – however she considered cookery programmes had editorial freedom to use the ingredients they wished.

The Trust's Adviser considered that Trustees would be likely to conclude that BBC Audience Services had responded reasonably to the complainant's concerns and had therefore acted appropriately in closing down the correspondence when there was nothing further they could add.

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

Request for review by Trustees

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

The complainant stated three points of her complaint:

- What have frogs' legs got to do with a Great British Menu?
- There is nothing witty or humorous about cutting creatures' legs off
- The dish was on a programme to promote Comic Relief. It was inconsistent with the aims of Comic Relief because catching frogs increases the number of insect borne diseases, such as malaria.

The Panel's decision

The Panel was given the complainant's appeal to the Trust, the reply from the Trust's Adviser, the challenge to the Trust's Adviser's decision and also the complainant's correspondence with the BBC.

The Panel noted that the request for an appeal was against the BBC's decision at Stage 1b of the complaints process not to provide any further responses to the complainant. In considering whether this appeal should proceed, Trustees therefore considered whether there was a reasonable prospect of success for an appeal of the BBC's decision to cease correspondence.

The Panel noted that the original complaint made to the BBC was that the use of frogs' legs was cruel and should not have been included in Comic Relief Does Great British Menu. The complainant was concerned about the environmental impact and asked why frogs' legs were used on the Great British Menu.

The Panel noted that the complainant had been provided with a response from the programme team, explaining that frogs legs are legal and freely available. The Panel noted that the reply also explained that Great British Menu showcases the talents and creativity of some of the nation's finest chefs; the chefs were not challenged to create

singularly British dishes, and neither was there a restriction on whether or not ingredients had to be in season.

The Panel agreed that the complainant had received appropriate and proportionate responses from the BBC. The Panel concluded that there was no reasonable prospect of success for an appeal against the BBC's decision to stop responding to this complaint. `

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

Scheduling and Promotion of *Why Poverty?*

The complainant requested that Trustees review the decision at Stage 1b of the BBC's complaints process not to engage in any further correspondence with the complainant on the same issue.

The complaint and appeal

The complainant appealed to the BBC Trust after BBC Audience Services declined to correspond further with her regarding her complaint.

The complainant's underlying complaint was that the BBC had not scheduled or promoted the *Why Poverty?* series of programmes adequately and "did not take this series seriously". She considered programmes had been "tucked away" in late night slots or shown at irregular times and days. She considered the BBC had not promoted or linked the series so that the audience could easily find the output and she complained that they were available on iPlayer for only "a very short time". The complainant also said the series was not adequately commented upon within BBC output.

The complainant requested that the Trust should:

- ensure the programmes were rescreened on a main channel – for example BBC1
- ensure they were promoted by every means at the BBC's disposal
- ensure the programmes' purpose would be clearly explained and the broadcasts well signposted
- ensure people from all walks of life were drawn into a global debate
- make follow-up programmes about how the series was made
- report on the global response
- maintain the series as part of coverage of "poverty, inequality, and exploitation of people and planet."

The complainant also complained about the complaints process.

Decision of the Senior Editorial Strategy Adviser

The Senior Editorial Strategy Adviser (the Trust's Adviser) noted the strength of the complainant's feelings, however she did not consider the appeal against had a reasonable prospect of success and did not propose to put it before Trustees.

The Adviser noted the complainant had raised her complaint initially with the Chairman of the BBC Trust on 31 December 2012. She had had a response on 16 January, notifying her that her complaint had been forwarded to the BBC Executive for a response as the Complaints Framework made clear that all complaints had to be addressed by the BBC in the first instance.

On 18 January, the complainant was sent a response from BBC Audience Services. This stated:

"I understand you were concerned by the scheduling and promotion of this programme.

"In catering for audiences of many millions, we cannot accommodate every individual preference, either in the programmes we produce or their scheduling.

Scheduling is a complex process and we understand that some people may be disappointed with the placement of a programme or series but we do appreciate viewer feedback on such matters.

"More information on the programme can be found on our website below, if you're interested: <http://www.bbc.co.uk/programmes/b01pblv4>"

The complainant did not consider her complaint had been adequately answered and renewed her complaint on 26 January. After receiving holding response on 3 February, she received a substantive response on 12 March 2013 which stated:

"I'm sorry you seem to have the impression that we feel the Why Poverty campaign and series 'would be of interest to only a few'. I can't see where you may have got that idea and I'm unaware of any other complaints raising the same concerns you have. The BBC was at the forefront of this campaign and debate which involved the Open University and more than 70 broadcasters around the world.

"You can find more information on this and just some examples of the efforts of promotion on the following websites:

<http://www.bbc.co.uk/programmes/p010n7vq>

<http://www.bbc.co.uk/programmes/b01pblv4/features/about>

<http://www.open.edu/openlearn/society/international-development/ou-on-the-bbc-why-poverty>

<http://www.bbc.co.uk/blogs/aboutthebbc/posts/Storyville-asks-WHY-POVERTY>

"As you can see it was promoted across the BBC and via the Open University and the programmes were made available on BBC iPlayer after broadcast. The issue was also covered on BBC News and programme details were released via the BBC Press Office website. You also mention the Radio Times. While you would need to contact them for their own response I can tell you that the first programme in the series, Four Born Every Second (which we broadcast on our flagship channel BBC One,) was Radio Times' 'Pick of the Week' that week and also received a write up in their Pick of today's TV section."

The Trust's Adviser considered that Trustees would be likely to conclude BBC Audience Services had given a helpful and reasonable response to the complaint. They had set out the BBC's commitment to the project and directed the complainant to further information about the series and where it had been promoted and picked up. Therefore, the Adviser considered the appeal against Audience Services' decision not to correspond further did not have a realistic prospect of success and should not be put before Trustees.

The complainant also raised concerns about the complaints process. The Trust's Adviser, having carefully read through all the correspondence, considered the BBC had responded to the complaints within the time frames set out in the complaints framework and had

given helpful and full responses to the complainant's queries. She noted that when the complainant had initially complained to the Trust rather than the BBC, her complaint had been sent to the right department for a response and the complainant had been kept informed of the process. Therefore, the Trust's Adviser did not consider this element of the appeal had a reasonable prospect of success and she did not propose to put it before Trustees.

The complainant raised a series of questions which she asked the Trust to address in terms of ensuring future output on the BBC and how it was promoted, scheduled and reported.

The Trust's Adviser noted that the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. "The direction of the BBC's editorial and creative output" was specifically defined in the Charter (paragraph 38, (1) (b)) as a duty that was the responsibility of the Executive Board, and one in which the Trust did not get involved unless, for example, it related to a breach of the BBC's editorial standards which did not apply in this case. Decisions relating to the commissioning, promotion and scheduling of programmes fell within the "editorial and creative output" of the BBC and were the responsibility of the BBC Executive. Therefore it would not be appropriate for Trustees to consider these aspects of the complaint.

Request for review by Trustees

The complainant requested that Trustees review the decision of the Senior Editorial Strategy Adviser that the appeal should not proceed. She gave the following reasons:

1. She said she had become aware that the BBC changed its mind about the scheduling and promotion of the project at the last moment.
2. The decision to make this change was made with the knowledge that it would not engender the degree of learning and debate required by the matters that were the subject of the series.
3. Viewing figures showed a disparity between audience figures nationally and internationally. The viewing figures for the programmes broadcast on BBC World News were higher than those broadcast on BBC One and BBC Four and this proved beyond all doubt a failure of commitment on the part of the BBC towards the project.
4. The complaint is a matter of what is morally right and it raises significant issues of general importance.
5. To reduce the complaint to a question of whether it raises "a matter of substance" is offensive.
6. Audience Services had not considered the substance and significance of the complaint.

The Panel's decision

The Panel was given the complainant's appeal to the Trust, the reply from the Trust's Adviser, the challenge to the Trust's Adviser's decision and also the complainant's correspondence with the BBC.

The Panel noted that the General Complaints Procedure provides that the BBC may, at any stage of the complaints process, decide not to investigate a complaint “if it is trivial, misconceived, hypothetical, repetitious or otherwise vexatious”.

The Panel noted the responses that Audience Services had given to the complainant. Trustees agreed that this showed the series had been promoted across the BBC and via the Open University, and by the BBC Press Office as well as being covered on BBC News. The Panel noted that the first programme had been broadcast on BBC One, the BBC’s flagship channel.

The Panel agreed that there was no reasonable prospect of success for an appeal against the BBC’s decision to cease correspondence on this complaint. The Panel agreed that the responses from the BBC had been appropriate and proportionate, and had demonstrated the complaint to be misconceived.

The Panel noted that the complainant had argued her underlying complaint raised significant issues of general importance and therefore would meet the criterion to be considered by the Trust on appeal. The Panel was mindful that it was not the substance of the complaint that was being appealed to the Trust, but the application of the complaints procedure by BBC Audience Services to stop handling the complaint. However, the Panel agreed that it must be up to the Executive Board to decide its scheduling priorities and that this was not a matter for the Trust.

The Panel noted that the complainant was offended by the Trust’s Adviser’s use of the term “matter of substance”. Trustees noted that the Trust will consider an appeal only if it raises a matter of substance, and the Charter and Agreement provide that the Trust has a role as final arbiter in appropriate cases, and must provide a right of appeal in cases that raise a matter of substance. The Trustees considered that the question was whether the appeal against the decision of Audience Services to stop handling the complaint raised a matter of substance, and the Trust’s Adviser had not been referring to the subject matter of the programme in question.

The Panel noted the additional information the complainant had provided to support her underlying complaint about the scheduling of the series. Trustees were mindful that the matter before it was the decision by BBC Audience Services not to respond further, and this information had been provided after BBC Audience Services had taken that decision. The Panel was satisfied, however, that none of the further allegations made by the complainant in her appeal constituted sufficient grounds to conclude that the BBC was wrong to cease correspondence.

The Panel noted that the complainant had raised a series of questions which she asked the Trust to address in terms of ensuring future output on the BBC and how it was promoted, scheduled and reported. The Panel was mindful that the Agreement accompanying the Royal Charter is clear in separating the responsibility for “the creative and editorial direction” of the BBC from the duties of the BBC Trust. The Panel considered that matters such as scheduling and promotion were part of the creative and editorial direction of the BBC and were matters for the Executive Board, not the Trust.

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

BBC Online Grand Prix coverage

The complainant requested that Trustees review the decision at Stage 1b of the BBC's complaints process not to engage in any further correspondence with the complainant on the same issue.

The complaint and appeal

The complainant appealed to the BBC Trust after BBC Audience Services decided to stop handling the complaint at Stage 1 of the process.

The underlying complaint related to the BBC's decision to put highlights of a Formula One Grand Prix on the website in advance of a television programme that would carry highlights of the same race. The complainant also complained about the BBC reporting the results of the Grand Prix before the highlights had been shown on television.

In his appeal to the Trust against the decision of BBC Audience Services to stop responding to his complaint, the complainant complained about the way in which his complaint had been handled. He disputed that staff at BBC Audience Services had tried to call him at the times they had stated, he complained that the calls he had received had come from lines where the number had been withheld and he had not been given a phone number that he could return calls on. He did not believe it was acceptable to have to use a web-form each time he wished to continue his complaint as it meant having to answer the same questions and enter the same information with each contact.

Decision of the Senior Editorial Strategy Adviser

The Senior Editorial Strategy Adviser (the Trust's Adviser) noted that the complainant had first contacted the BBC on 17 March 2013 by telephone. She noted that he made a further five phone calls to BBC Audience Services chasing a response to his complaint up to 4 April 2013. The BBC sent a substantive response on 5 April 2013 which acknowledged there had been a delay in responding to the complainant's concerns but which also referred to other phone calls that had not been logged in the complaints system which the complainant had made to the BBC. BBC Audience Services wrote:

"...it does appear that we suffered from unfortunate and regrettable human error along the way at our end resulting in confusion as to who was handling and responding to your original complaint about online video F1 highlights being made available before BBC One's subsequent television highlights of the race. That said, we fear the mass of duplicated calls to the Switchboard and elsewhere in the meantime may have contributed to the overall misunderstanding here, which is regrettable."

In terms of the substance of the initial complaint, BBC Audience Services stated:

"The Australian Grand Prix took place on the morning (UK time) of 17th March. Sky held the live television broadcasting rights for this race thus they had live television coverage on their Sky Sports F1 channel from 6am that day, meaning the BBC had the rights to show pre-recorded highlights thereafter. [...]"

"To explain, in these situations where one broadcaster has the live rights and another broadcaster has the subsequent highlights rights, there is normally a two-hour window between the two, i.e. in this case the BBC could only start showing

highlights following a two-hour period after Sky's live coverage had drawn to a close at the conclusion of the live race itself.

"BBC One scheduled a highlights programme for the afternoon of 17th March at 2:20pm. This is obviously some time after the two-hour window had elapsed, but we could never possibly create such a long and complex television programme in such a short space of time, because doing so is so complicated and time-consuming. [...]"

"As you can appreciate, once something has actually happened it becomes a fact in the public domain and thus it will be reported upon by news organisations. Thus once the actual F1 race had finished, the result of it was in the public domain and therefore was reported in many and various news bulletins and suchlike across the BBC and elsewhere."

The Trust's Adviser noted that the complainant renewed his substantive complaint on 7 April 2013 and was sent a further response on 8 April 2013. On 9 April the complainant made a complaint about the way his complaint had been handled and the delay he had experienced. The Trust's Adviser noted that a Senior Manager at BBC Audience Services, had written to the complainant on 9 April 2013 and stated:

"I can see from my investigation that initially your complaint was sent to the wrong BBC Sports department ... This initially led to some delay in a response being provided. I am sorry that this was the case and we have re-briefed staff about the correct escalation route for this type of complaint. ... I apologise for the mishandling of your initial complaint and the delay this caused."

The Trust's Adviser noted that the BBC had acknowledged where there had been a mistake and had apologised for it. She noted that, where this occurs, Trustees generally consider the matter to be resolved.

The Trust's Adviser noted that BBC Audience Services had addressed a complaint about handling in a response to the complainant sent on 9 April:

"You specifically complain about one of our managers [...] and how he handled your complaint follow up call. I have listened to this call and [the manager] made every effort to assist you. I can tell you were frustrated which seems to have lead [sic] to you speaking over [the manager] and not giving him the opportunity to help. [The manager] did not evade every question you asked, and at one point when [the manager] starts to explain you state that you were not listening. To help you [the manager] did have to explain some context around our processes for handling escalated complaints, as we have also included in our written responses. I did not find your interaction with [the manager] to be satisfactory but more because he was not given the opportunity to help."

The Trust's Adviser noted that the complainant made a further six telephone calls on 9 April to BBC Audience Services. She noted that the Head of Communications and Complaints had written to the complainant on 10 April 2013, saying:

"You have however now complained to the BBC at least 14 times since 17 March and on one occasion contacted our contact centre staff six times within the space of thirty minutes (on 9 April). These many calls have been distressing to staff and they complicate handling. In his written reply to you, [the Senior Manager] explained that he listened to the call you complained about with one of the

managers and explained to you that the manager was not given sufficient opportunity to help you further.

"[...] We have, in my view, already fully addressed the issues raised in your complaint and explained that we do not have more to add to the replies you have already received. We have also endeavoured to call you, but you declined to take the call despite it being made at the time requested and we were subsequently unable to get through when calling again. For these reasons we cannot now consider this matter further and I must request that you stop calling us about it. We cannot devote further licence fee resources to this issue and if the calls on this matter persist we may need to consider all legal remedies available to us in order to protect our staff."

The Trust's Adviser noted that the BBC received more than a million comments and complaints each year and was required to have a process that would allow those contacts to be managed speedily and efficiently. She noted that the BBC's Head of Communications and Complaints had written to the Complainant on 10 April and had stated:

"...complaints are managed through the BBC's website, postal address or central complaints telephone number and our complaints website explains why we cannot provide a specific email address (www.bbc.co.uk/complaints/handle-complaint/). Complaints are not accepted through the BBC's switchboard or through Capita plc's headquarters (Capita manage our contact centre in a partnership with us)."

The Trust's Adviser noted that the complainant was advised that BBC Audience Services would not correspond further because they had nothing to add to their earlier correspondence, and it was open to the complainant to appeal against that decision to the BBC Trust.

The Trust's Adviser said that an independent editorial adviser who had listened to the telephone calls for the purpose of considering the appeal request advised that he shared the view of the Senior Manager of Audiences Services. In his view, staff had been polite and patient and, where they had terminated phone calls, this had been reasonable and appropriate.

The Trust's Adviser noted that the BBC considered it had fully answered the complainant's substantive complaint in relation to its Formula 1 coverage. She noted too that matters such as whether race highlights were put on the internet before a television broadcast were editorial considerations. 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 (paragraph 38, (1) (b)) as a duty that was the responsibility of the Executive Board, and one in which the Trust did not get involved unless, for example, it related to a breach of the BBC's editorial standards which did not apply in this case.

The Trust's Adviser said she appreciated that the complainant was unhappy with the response he had been given by Audience Services, but she considered Audience Services had acted reasonably in the way it had sought to answer the complaints that had been made.

The Trust's Adviser noted the complainant's lengthy chain of correspondence by telephone and email, and considered that Trustees would be likely to conclude that the BBC had acted reasonably and in accordance with the published guidelines governing

complaints handling. The BBC had explained that there was an established procedure to deal with complaints in a cost-effective and timely manner, and that it was not possible to put complainants directly through to programme makers or senior management.

The Trust's Adviser shared the BBC's view that it was not appropriate for complainants to be able to circumvent the complaints system by seeking to reach individuals directly via the BBC Switchboard or Capita. In this context the specific point raised in the appeal to the Trust about who had called the complainant, when and whether a time had been pre-agreed, and why they had not been provided with a direct line to facilitate a call-back, was not considered a significant issue in determining whether the BBC had handled the complaint appropriately.

She considered that Trustees would be likely to conclude that Audience Services had acted reasonably in closing down the complaint and therefore this aspect of the appeal did not have a reasonable prospect of success.

Request for review by Trustees

The complainant requested that Trustees review the decision of the Senior Editorial Strategy Adviser not to proceed with the appeal.

The complainant said that the Trust's Adviser had not answered his specific complaint concerning his allegation that BBC Complaints had not called him when they said they would, and that he was not given a telephone number or email address so that he could return the call which he had missed. He generally considered the BBC's response that it was not a proportionate use of the licence fee to keep on responding to him was unreasonable given various payments to staff which had been made by the BBC.

The Panel's decision

The Panel was given the complainant's appeal to the Trust, the reply from the Trust's Adviser, the challenge to the Trust's Adviser's decision and also the complainant's correspondence with the BBC.

The Panel noted the initial delay in BBC Audience Services' response to the complaint, and it noted that the BBC had acknowledged, explained and apologised for this error. The Panel agreed that it did not see any additional benefit to be gained from the Trust investigating or considering this matter further.

The Panel noted that the General Complaints Procedure provides that the BBC may, at any stage of the complaints process, decide not to investigate a complaint "if it is trivial, misconceived, hypothetical, repetitious or otherwise vexatious".

The Panel agreed that the complainant had received a detailed and reasonable response to the underlying issue at Stage 1 and that despite this he had made numerous follow up calls within a very short space of time. The Panel agreed that BBC Audience Services had dealt appropriately and proportionately with a demanding level of contact from the complainant. The Panel considered that the underlying complaint had been addressed in depth by the BBC at Stage 1 and that, in the light of the repeated follow up contacts from the complainant, the complaint had become repetitious and vexatious.

The Panel noted the specific complaint made in the appeal to the Trust regarding the alleged failure of BBC Audience Services to return a call to the complainant at a specified time. The Panel was satisfied that the lengths to which BBC Audiences had gone in

handling the complaint, especially when taking into account the substance, went beyond what could be reasonably expected. The Panel agreed, therefore, that the way the complaint had been handled at Stage 1, including the decision to stop handling the complaint, had been appropriate and there would be no reasonable prospect of success for an appeal against that decision.

The Panel noted the complainant's view that the BBC's response that it was not a proportionate use of the licence fee to keep on responding to him was unreasonable given other expenditure by the BBC. The Panel considered that the fact the complainant considered money to have been wasted elsewhere by the BBC was not relevant to a consideration of whether the level of resources demanded by this complainant in the handling of his complaint was fair to other licence fee payers.

For the reasons given above, the Panel agreed that the appeal had no reasonable prospect of success.

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