

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

Complaint handling

The complaint related to an enquiry about when a new poll tracker on the BBC News website was likely to be available and when a temporary page replacing it would be updated with the latest opinion polls. The complainant said it took the BBC four months to respond to his enquiry and believed the BBC failed to deal with the content of his enquiry adequately and responded to it in an impolite manner.

The committee concluded:

- that the BBC had failed to respond in a timely manner.
- that the BBC had not been clear in its explanation for its decision about the complaint.
- that the BBC had not handled the complaint well, but had not treated the complainant impolitely or disrespectfully.
- that the BBC had not acted reasonably in closing down the complaint and deciding not to respond to the complaint further.

The complaint was upheld.

For the finding in full see pages 4 to 6.

Appeal Finding

Complaint handling

1. The complaint

The complainant initially contacted the BBC in October 2012 to ask when a new poll tracker was likely to be available on its website. He received no reply so emailed BBC News again about two weeks later.

Having received no response, the complainant emailed BBC Complaints and then followed up with a telephone call on 21 November 2012. During that telephone call, the complainant told BBC Complaints he was unhappy that the poll tracker on the BBC News website had not been reinstated and updated. The complainant says he was told by the BBC he would receive a reply within 18 days.

Having received no response, the complainant telephoned BBC Complaints again on 23 December 2012 to express his disappointment.

The complainant received an automated response from BBC Complaints on 31 December 2012 to say it would respond further as soon as it could and not to contact BBC Complaints in the meantime.

The complainant telephoned again on 16 January 2013 to chase up his enquiry. BBC Complaints emailed him the next day to apologise for the delay in replying saying it was due to an oversight. It went on to tell him that it had raised his concern with News Interactive. BBC Complaints emailed again on 24 January 2013 to say that his complaint would take longer than ten working days to process and not to contact it until he had received a response.

BBC Complaints emailed again on 5 February 2013 to say that the News Interactive had told them that the poll tracker was being revamped and that it was hoped it would be back in the near future. The complainant replied on 10 February 2013 to say his query had not been answered as he wanted to know why up-to-date opinion polls were not being displayed when it was stated they would be on the website.

BBC Complaints responded on 16 February 2013 to say that BBC News had nothing further to add to its previous response. It also asked the complainant to show where the BBC had been promising something that it had not delivered and it would look into it.

The complainant replied on 18 February 2013 to say he believed he had made it clear that he wanted to know why the BBC promised on its website to publish the details of opinion polls when it had not done so in practice. He also said that he felt the BBC's previous response was high-handed.

BBC Complaints emailed again on 19 February 2013 to say it felt that it had responded as fully as it could, given the nature of the complaint, and to advise that the complainant contact the BBC Trust if he wanted to proceed further with his complaint.

Appeal to the Trust

The complainant emailed the BBC Trust on 19 February 2013. He outlined the details of his correspondence with the BBC and said extreme frustration had driven him to using the

complaints procedure. He said he believed that those managing BBC News could have responded before four months had elapsed and that those in the complaints department should have relayed the full details of his enquiry and pressed for a full response.

2. The Panel's decision

The Panel considered the complaint against the relevant standards, as set out in the BBC Trust's Complaints Framework.

In reaching its decision, the Panel took full account of all the available evidence, including (but not limited to) the Editorial Adviser's report and the subsequent submissions from BBC Audience Services, BBC News and the complainant.

This appeal raised issues requiring consideration of the guidelines relating to the process for handling general complaints as set out in the BBC's Procedure for General complaints and appeals.

Handling of the complaint

The Panel began by looking at the timeliness of the BBC's response to the enquiry. The Panel noted that the complainant's first enquiry about when the poll tracker page would be relaunched was made in October 2012 via the "Contact Us" link at the bottom of this web page.

The Panel noted that, having not received a reply, the complainant emailed BBC News and BBC Audience Services on 14 November 2012 to ask when the poll tracker would be updated. The Panel noted that BBC News said it did not respond to this as it was unclear whose responsibility it was to answer. It acknowledged that BBC News had said it regretted this oversight.

The Panel noted that the complainant then telephoned BBC Audience Services on 21 November 2012 to ask what the timeframe was for the new webpage and when the temporary page would be updated. The Panel noted that his enquiry had been passed on to BBC Online Webmasters, who are responsible for acting on suggested out-of-date or broken websites, but they never replied to the complainant.

The Panel noted that the complainant telephoned BBC Audience Services again on 23 December 2012 and 16 January 2013. The Panel noted that BBC Audience Services sent out an automated acknowledgement on 31 December 2012 following the first call, but that Audience Services did not contact BBC News about these calls until 4 February 2013. The Panel recognised that this delay was due to a backlog of Christmas work and the pressure of other work, but agreed that the delay was unsatisfactory.

The Panel noted that the complainant subsequently received a response from the BBC on 5 February 2013, but that the response only dealt with one of the two concerns the complainant had raised. The Panel agreed that the BBC should have sent a substantive reply before this date and had had opportunities to do so. As a result, the Panel agreed that BBC Audience Services' response was not timely.

The Panel then considered whether the BBC had been clear in its explanation for its decision about the complaint. It noted that in its letter of 5 February 2013 it had stated that the poll tracker was being revamped and that it was hoped it would be back in the near future, but that the Corporation had failed to explain why the temporary page was not being updated with the latest opinion polls.

The Panel noted that the complainant wrote on 10 February 2013 to point this out but was told, in another letter on 16 February 2013, that BBC News had nothing further to add on the matter.

The Panel then examined the email sent by BBC Audience Services to BBC News summarising the concerns raised by the complainant in his telephone calls of 23 December 2012 and 16 January 2013. The Panel noted that it did not mention the query concerning the failure to update the temporary page. Therefore BBC News was not aware of the second element of the complaint.

The Panel agreed that the failure to communicate this information resulted in the BBC giving an incomplete explanation to the complainant. As a result, the Panel did not think the BBC had been clear in its response and the Panel acknowledged the complainant's frustration at this.

The Panel noted that the complainant had commented that the final response from BBC News had been 'high-handed'. The committee discussed the fact that BBC Audience Services had not informed BBC News about this part of the complainant's enquiry and considered that, under these circumstances, BBC News had not acted in an intentionally highhanded fashion as it was unaware of the complainant's concern about updating the temporary page.

The Panel then considered whether BBC Audience Services had acted reasonably in closing down the complaint in its letter of 19 February 2013 by deciding not to respond to the complaint further.

The Panel acknowledged that to do so was in accordance with the BBC's complaints procedures, but agreed that in this instance the Corporation had still failed to give a clear answer to one of the two concerns raised by the complainant. As a result, the Panel felt that it had not been reasonable to close down the complaint at this stage as the complaint had not been fully answered.

The Panel noted that during the Trust's investigation of the appeal, BBC News had provided an answer to the complainant's original question, which was that the reason the poll tracker had not been updated was due to staffing issues. Before being taken down, the poll tracker website had automatically updated itself. However, the temporary page meant that all content had to be entered manually and News had found it difficult to find the staff to do this. The Committee agreed that this answer should have been provided to the complainant by the BBC at an earlier stage.

The Panel wished to apologise to the complainant for the difficulty he had experienced in obtaining an answer to his questions. The Panel stated that it expected the BBC to learn from the mistakes made on this occasion and which had turned a straightforward enquiry into a complaint.

Finding: 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.

Alleged copyright infringement

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

Complaint and Appeal

The complainant had been engaged in a dispute with the BBC and an independent production company about an alleged copyright infringement relating to a drama series submission, which the complainant said he had released to the BBC in good faith.

Following the outcome of a mediation meeting between the complainant and the BBC on 3 December 2012, the complainant wrote to the Chairman of the BBC Trust on 7 May 2013 about his continuing concerns. He received a response from the Trust Unit on 29 May 2013 which explained that it was open to him either to take legal action or to appeal to the Trust's Complaints and Appeals Board under the BBC's General Appeals procedure.

The complainant appealed to the BBC Trust on 20 June 2013, unhappy with the way in which the mediation meeting had been conducted and did not feel that his complaint had been fully investigated. The complainant requested that the BBC allow him to produce the series or another project. Alternatively, he requested that the BBC settle with him in recompense.

Decision of the Senior Editorial Strategy Adviser

The Senior Editorial Strategy Adviser ("The Adviser") carefully read the correspondence that had passed between the complainant and the BBC, and she acknowledged the strength of the complainant's feelings. However, she noted that the Complaints Framework stated that

"the Trust will not normally consider an appeal that is or has been the subject of legal correspondence with the BBC, or if legal proceedings have been issued, or if the appeal is appropriate for consideration by an external authority (such as the office of Fair Trading)."

The Adviser considered that Trustees would be of the view that the complainant had recourse to the law to pursue his complaint and that it was therefore outside the scope of the complaints framework.

The Adviser noted that the complainant had been in correspondence with a BBC solicitor about his complaint and that a mediation meeting had been held on 3 December 2012 to discuss the issue. Although she appreciated that the complainant was unhappy with the

outcome of that meeting, the Adviser believed Trustees would consider that a re-submission of the complaint fell outside the scope of the Complaints Framework.

The Adviser also noted that the mediation meeting at the BBC took place on 3 December 2012 and she confirmed with the BBC Legal Department that there had not been any further correspondence with the complainant about the matter since that time. The Adviser concluded that the complaint had been submitted beyond the time limit set out in the Complaints Framework which states that complaints should be made to the Trust within 20 working days of the complainant's last correspondence with the BBC, and that no good reason had been provided by the complainant for the delay in referring this matter to the Trust.

For these reasons the Adviser considered that there was no reasonable prospect of success for the appeal and decided that it should not proceed further.

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 noted that the complainant had been offered the general complaints procedure as a route to continue his complaint. The Panel also noted that the complainant had received a response to his letter to the Chairman of the BBC Trust from the Trust Unit on 29 May 2013 and that he had subsequently appealed to the Trust on 20 June 2013; accordingly, the Panel found that the complainant's appeal was within the 20-working-day timeframe imposed by the Complaints Framework.

Accordingly, the Panel asked the Trust Unit to carry out further enquiries as he had been given to understand he could appeal to the Trust. The Panel would return to his complaint at a future meeting.

Use of complainant's work on BBC Radio

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

Complaint and Appeal

The complainant complained to the BBC on 10 April 2013 about the way his complaint had been handled by the BBC Trust and about the exposure given to another musician. The complainant also complained that some of his music had been played on BBC radio without the complainant providing the track to the BBC using the facility for uploading music on the BBC Introducing website. The complainant said that he believed the BBC had illegally downloaded his music and then broadcast it.

The Trust Unit responded on 22 May 2013, explaining that complaints must be considered in the first instance by the BBC Executive and notifying the complainant that this element of his complaint had therefore been passed back to the BBC for a response.

BBC Complaints responded on 12 June 2013. Their email included a response from the Content and Schedules Manager who assured the complainant that the presenter of the radio programme in question was "99% sure" he had bought the track from iTunes and: *"says he would never use material without an artist's permission unless he has paid for the track from a commercial source. It definitely was not taken from Soundcloud or any similar site"*.

BBC Complaints also stated that the complainant's correspondence *"now represents a disproportionate use of BBC staff time and ... increasingly limited licence fee resources"*, and in accordance with Annex B of the BBC Complaints Framework, invoked the expedited complaints procedure in respect of complaints *"which relate to the previous responses ... from BBC staff, BBC Introducing, the artist James Welch/Seams or the playing of your music by the BBC"*.

The complainant contacted the BBC Trust on 13 June 2013 to appeal against the BBC's response. He stated that he appealed in respect of *"The Matter ... of The Unauthorised Use and Distribution Of My Copyrighted work on BBC Radio"*. He was also concerned that a second presenter may have played some of his music through the BBC Introducing show.

Decision of the Senior Editorial Strategy Adviser

The Trust's Senior Editorial Strategy Adviser (the Adviser) noted that the complainant had not received a Stage 2 response and that therefore the point she should consider was whether an appeal against the decision of BBC Complaints not to correspond further with the complainant had a reasonable prospect of success.

The relevant correspondence was carefully reviewed by the Trust Unit and the Adviser.

The Adviser noted that, under BBC Introducing Terms and Conditions, the artist submitted his contribution to the BBC and allowed the BBC to use the material in that contribution in any way it might reasonably choose on a free-of-charge basis in any media throughout

the world. The Adviser understood that these were the terms under which the complainant submitted his material to the BBC Introducing server.

Therefore, the Adviser considered that any element of the complaint relating to the use of music by the BBC that had been uploaded to the BBC Introducing server had been provided for the BBC to use free of charge, in accordance with the Terms and Conditions of the site.

She noted the BBC was committed to paying musicians for the use of commercial recordings and noted that, broadly speaking, the BBC used music under blanket agreements with the Music Industry for ease of licence and payment.

She noted that, in the event that the BBC broadcast any commercial recordings or songs which an artist (or a record company or music publisher) retained the rights in, the use of that material was reported to the relevant collecting societies, such as PRS, and subsequent payments were made to the artists.

The Adviser carried out inquiries with the relevant BBC scheduling and copyright departments and could not find a report on the use of the complainant's songs. The only exception to this was in an edition of BBC Introducing in Scotland with Ally McCrae on 16 April 2012.

The Adviser considered that the use of music provided through BBC Introducing was within the Terms and Conditions of the scheme and the complaint did not stand a reasonable prospect of success on this point and therefore should not proceed to be put before Trustees.

She noted that if the complainant considered the BBC had broadcast music that he had produced and which was commercially available; he would need to have information about the time, date, programme and platform it was broadcast on, as well as the song title, artist and composer so that the BBC could check how it had been reported.

The Adviser considered she had not seen any evidence that suggested a BBC presenter had downloaded music for broadcast without paying for it. She noted that where music was commercially available, the BBC would expect to pay the artist for its use and this was done through a collecting society, such as PRS. She noted that the complainant could find further information about PRS – including information about how to join – through the following website: <http://www.prsformusic.com/Pages/default.aspx>

She noted that if the complainant believed the BBC broadcast a recording which the complainant retained the rights over (not on the BBC Introducing server), then he should notify the BBC of the time, date, programme and platform it was broadcast on, as well as the song title, artist and composer, so that enquiries could be carried out into how the music was reported.

The Adviser hoped the complainant would find this information helpful. She did not however consider his 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 Adviser that the appeal should not proceed.

He reiterated his view that the BBC did not have permission to play his work, outside of that provided to the BBC via BBC Introducing. He also stated that the Adviser's response did not address a range of other complaints.

The Panel's decision

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

The Panel noted that, in their response dated 12 June 2013, BBC Complaints had explained that the DJ in question had confirmed that he would *"never use material without an artist's permission unless he has paid for the track from a commercial source"*. The response then went on to apply the expedited complaints procedure under Annex B of the Complaints Framework to *"any complaints you make which relate to the previous responses you have received from BBC staff, BBC Introducing, [an artist in relation to whom the complainant had complained] or the playing of your music by the BBC"* and had added:

"For the period of two years from the receipt of this email, we will continue to read any complaints you submit, whether directly to production teams or via the central BBC Complaints unit, but they will not be investigated unless "they appear to raise a substantive issue or disclose a serious prima facie case of a breach of the Editorial Guidelines where there is a significant prospect that the complaint might be upheld". Full details of the procedure can be found here:

http://www.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2010/e3_complaints_fr_work.pdf

Should you wish, you may write to the BBC Trust within 20 working days to request an appeal against this decision."

The Panel noted that the complainant had contacted the BBC Trust on the following day, 13 June 2013, to raise a complaint regarding *"The Matter ... of The Unauthorised Use and Distribution Of My Copyrighted work on BBC Radio"*.

The Panel accepted that BBC Complaints had stated clearly that they had decided to apply the expedited procedure to the complainant and had explained the consequences of this decision, and that the complainant's email to the BBC Trust on the following day did not make reference to the expedited procedure. The Panel therefore considered that the complainant had not sought to challenge the decision of BBC Complaints to apply the expedited complaints procedure at stage 1 of the complaints process. The Panel further noted that, notwithstanding the application of the expedited procedure, BBC Complaints are nevertheless obliged to investigate any future complaints that in fact raise an issue of breach of any relevant guidelines or policies, in accordance with the complaints procedures.

The Panel thus agreed with the Adviser that the question to be considered was whether an appeal against the decision of BBC Complaints not to correspond further with the complainant had a reasonable prospect of success.

The Panel noted that inquiries with the relevant BBC scheduling and copyright departments had not found any use of the complainant's songs, with the exception of one track submitted to BBC Introducing.

The Trustees agreed that the terms under which music is submitted to BBC Introducing were clear and allowed the BBC to use the material in that contribution in any way it might reasonably choose on a free-of-charge basis in any media throughout the world.

The Trustees noted that where music was commercially available, the BBC would expect to pay the artist for its use and this was done through a collecting society, such as PRS. The Trustees noted that the complainant had been provided with details of the PRS website.

The Trustees agreed that unless the complainant could notify the BBC of the time, date, programme and platform his work had been broadcast on, as well as the song title, artist and composer, no further enquiries could be carried out.

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

White City reception

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

The complaint and appeal

The complainant contacted the BBC to complain about the way in which he was spoken to by a BBC Receptionist on duty at White City.

His allegations with regard to the behaviour of the Receptionist were:

- She did not direct her full attention towards the complainant because she was on the phone at the same time.
- She behaved rudely towards the complainant by inviting him to speak, first by raising her eyebrows and later by saying "can I help you?", but then raising her hand to indicate he should stop speaking while she returned her attention to the phone call she was engaged in.
- When she finished the call she was still doing other things while the complainant was speaking to her and this continued during the conversation.
- She was unable to help with his query about the Digital Switchover Help Scheme and was unable to direct his query to anyone else who could speak with him about it at that time.
- She did not apologise for her lack of ability to help with the query.
- She responded rudely towards the complainant by saying:

"no there is nobody here connected with that" [DSHS was at that time based in that building]

"I do not know what that is, or who that person is, and there is nobody here to help you with that enquiry" [on being shown a letter]

"There are so many things connected to the BBC; am I supposed to know them all?"

"I know you. You have been here before." The complainant said he had not visited any part of the BBC before but she did not then apologise for this remark.

- When he tried to answer her questions she interrupted him asking questions which it was not her job to ask and which demonstrated she had not been listening to him:

"The switchover has not happened yet."

"Has anybody come to your place to connect the Digital Box?"

- Following the complainant's request to speak to her manager, the Receptionist tried to put a call through, but the manager was in a meeting. She asked if the complainant

would like to wait until the manager was free in approximately half an hour's time, but the complainant said he was too exhausted and upset by what had occurred to wait around but asked for the manager's phone number so that he could call the manager himself later. The Receptionist said she could not give out the phone number for security reasons but said she could ask her manager to ring the complainant. However, the phone call which the complainant received a few hours later was from the Central Support and Feedback Manager from the Digital Switchover Help Scheme. He was told the name of the responsible manager which was 'Tony'. The complainant was unhappy that he had not been phoned by the Receptionist's own line manager as he wished to complain directly about her behaviour towards him.

In this same letter of complaint to Audience Services the complainant asked for the following information:

- The name of the Receptionist, the reasons why she did not know anything about the Digital Switchover Help Scheme, and whether she had the right to refuse to give him the information he had asked for.
- The full name of the Receptionist's manager and the reason why the manager had not rung him as requested.
- Confirmation that, if their names could not be revealed, this was for security reasons.

He was of the view that the BBC's recruitment procedure must be at fault.

BBC Audience Services responded on 26 June 2012, acknowledging that the complainant felt poorly treated and apologising for the fact that his experience had fallen short of the BBC's expectations of its staff in terms of courtesy and helpfulness and that the Receptionist appeared off-hand and rude. The letter stated that the complainant's comments had been passed on to senior staff as important feedback. The letter also explained that the number and variety of visitors and enquiries the BBC receive are huge and although Reception staff have some knowledge of general BBC issues, detailed enquiries are often beyond their level of knowledge and they are trained to direct such enquiries to the appropriate department - as is the case with the Digital Switchover Help Scheme.

Audience Services confirmed that the Receptionist had followed the correct procedure for dealing with Digital Switchover Help Scheme complaints in getting the Customer Service and Feedback Manager from the Digital Switchover Help Scheme to contact the complainant, and also confirmed that the BBC does not give out full names and direct phone numbers for staff in line with normal company security policy.

The complainant did not respond to the letter of 26 June 2012 from Audience Services until 18 February 2013, and gave the following reasons for the delay:

- He did not receive the letter of 26 June 2012 until he was sent a response from the BBC Trust (dated 21 November 2012) regarding a separate substantive complaint about the Digital Switchover Help Scheme, to which was attached a copy of the Audience Services' response to his complaint about the Receptionist. It appeared that Audience Services had, in error, omitted the first two lines of the complainant's address, and this was the reason why he had not received their letter.

- The complainant did not then immediately respond to Audience Services in November because he assumed his complaint about his experience during, and following, his visit to White City would be dealt with by the Digital Switchover Help Scheme Adjudicator as part of his substantive complaint.
- Since receiving the letter the complainant had had a number of very pressing issues to take care of urgently and could not deal with it until February 2013.
- The complainant suffers from poor health and in particular has difficulties with activities related to mental and visual focus. He acknowledged that the Trust Unit had said that he could dictate his response on the phone to the Trust's Adviser, but he said he could not keep concentration and stamina for long periods of time, particularly when it related to phone calls.
- The complainant decided to wait and see what the final decision of the Trust on the substantive Digital Switchover complaint would be before proceeding further with his complaint about the member of Reception staff, but as that complaint had so far not been resolved, he decided to write to Audience Services on 14 February 2013.

In this follow-up complaint to Audience Services of 14 February 2013 (date stamped as having arrived at the BBC on 18 February), the complainant stated his dissatisfaction with the failure of Audience Services to check the address before posting their original response to him. He also considered that the reply showed that the writer's knowledge of the DSHS was "almost as non-existent as the receptionists" [sic].

He considered the response to his complaint to be lax and laidback. He considered that Audience Services had only paid lip-service to his complaint by saying that they had passed it as feedback to senior staff.

He said that although he was not expecting the Receptionist to have an in-depth knowledge of the Digital Switchover Help Scheme, he would have expected her to have some knowledge about it, whereas she indicated to the complainant that she had no knowledge about it at all.

The complainant considered that the response he had received from Audience Services did not sufficiently acknowledge the alleged rude verbal and behavioural treatment he received from the Receptionist. He felt that it would have been an easy matter for her to acknowledge her lack of knowledge of the DSHS with a courteous apology and re-direct his enquiry to someone who could help him further. He considered that he had been insulted and verbally abused by the Receptionist and wanted action taken. He did not consider she should work at the BBC.

The complainant was also dissatisfied with the response he had received regarding the BBC's security policy in terms of divulging names and contact details of staff. He felt the policy was unnecessary and that there would be no danger or security risk in revealing those details.

He noted the letter did not address the reason the manager had not contacted him.

Audience Services responded at stage 2 on 27 February 2013 (seven working days later):

- They explained they were sorry her remained so unhappy and said whilst they cannot go back and make things right they would do their best to address his points.
- They apologised for their administrative error in not completing the complainant's address when it was entered in the system resulting in their letter not reaching him for 5 months. They explained the letter writer would not have seen the letter which would have been produced automatically.
- They explained that the complaint about the Digital Switchover Help Scheme and the complaint about the Receptionist would have to be dealt with separately by different departments, and they could only respond to the latter complaint.
- They pointed out that the follow-up complaint regarding the Receptionist had been made outside the normal timeframe, and they would be unable to investigate the matter as fully as they would normally, especially as the events which were the subject of the complaint had occurred 12 months previously. However, they acknowledged the complainant's particular circumstances, and the fact that their administrative error had delayed receipt of their previous response by several months; therefore they were replying as fully as they could. However, given the length of time which had passed and the fact that Reception staff deal with hundreds of people every day, they said it would be unfair to expect Reception staff to remember verbatim in June a specific incident which had occurred four months earlier.
- They acknowledged that it would have been helpful for the stage 1 Audience Services respondent to have replied in more detail. For example the complainant had mentioned that the receptionist was both on the telephone and indicating to the complainant that she was ready to assist and that he had felt this was rude and unprofessional. The BBC acknowledged this point of view but said this reflected the pressures upon staff and explaining that it would appear that she was endeavouring to 'multi-task' and she evidently was hoping that she would be able to assist the complainant whilst on hold on the telephone. It was noted that she wouldn't have set out to be rude or to cause offence. It was noted that the BBC is an exceptionally complex, fast-paced and busy organisation with thousands of people in countless locations thus the front line team will juggle different things at the same time. The BBC said it was very sorry that the complainant was unhappy with this approach, but that the receptionist was trying to help him as quickly as she could and it was unfortunate timing that at that very moment, the call was connected
- They reiterated the previous response with regard to security procedure and also the level of knowledge expected of Reception staff about general BBC issues, such as the Digital Switchover Help Scheme. They also said that it would have been helpful for the complainant to have made an appointment before making an unannounced visit. His complaint was complex and the receptionist would always have been on the back foot.
- They said they would be unable to establish exactly why the Receptionist's manager did not call back as promised. They noted that over time personnel changed and the White City building was being closed down. They apologised for the breakdown in communication noting that the receptionist had done her best to try and assist by asking the Help Scheme to call the complainant back.

- They acknowledged that “things went wrong on the day” but stressed that Reception staff are extremely busy and under enormous pressure. They also acknowledged that the Receptionist should have been in a position to help by at least redirecting the complainant’s query to someone with more knowledge of the DSHS, or to explain more fully why she was unable to assist herself and apologised for that.
- They again apologised for the complainant’s experience when visiting White City in 2012; for their own administrative error which so severely delayed receipt of their previous response; and also for the fact that the previous response should have more fully addressed the complainant’s concerns.

The complainant wrote to the Trust on 8 May 2013 to appeal Audience Services’ stage 2 letter of 14 February 2013. The complainant repeated his allegations about the rudeness of the Receptionist. He felt the latest response to his complaint had used exaggeration and over-emphasis to “inflate BBC’s Audience Services tasks and belittle my complaint”, as well as failing to address his concerns. He felt that too much emphasis had been given to the “passage of time” factor when making the decision not to try and further investigate his complaint about the Receptionist. He felt that it was inappropriate to suggest that he should have made an appointment before visiting White City, and that Audience Services had no basis for saying that the Receptionist “was on the back foot and was trying to assist” the complainant. He felt that Audience Services had tried to “second guess” what happened at the Reception desk, and said he demanded to be compensated for the “abusive and offensive treatments” he had received. He noted that the latest letter had not dealt with the allegation that the Receptionist had told him, “I know you, you have been here before”.

Decision of the Head of Editorial Standards, BBC Trust

The Head of Editorial Standards, BBC Trust, was sorry that the complainant had found his visit to White City so upsetting, and that he felt that he had not received a proper response to his complaint. She considered the issues relating to the complainant’s experience at BBC’s White City Reception desk, and also the issues relating to the subsequent handling of the complainant’s concerns about that experience. She considered whether the complaint should be put before the Complaints and Appeals Board of the BBC Trust. She noted that the complainant’s concerns about the Digital Switchover Help Scheme were being addressed separately.

Delay

The Head of Editorial Standards noted the complainant’s strength of feeling about the treatment he had received and that the matter had not been resolved to his satisfaction. She noted that his complaint had initially been lodged with the BBC four months after the incident complained of and outside the period given for lodging complaints. She noted that the reply from Audience Services was sent on the tenth working day in line with the target set out for responding to complaints.

She also noted that an error on the part of Audience Services in addressing their initial response incorrectly had caused a delay of some months in him receiving their reply which had eventually been provided to him by the Trust Unit.

She was extremely sorry for this error and was sure that the Trustees would want her to apologise on their behalf to the complainant. However she noted that the BBC had apologised for their error in not completing the complainant's address correctly, resulting in their letter not reaching him for 5 months. Where the BBC have admitted their error and apologised for it, Trustees usually consider the matter resolved. She did not think therefore that there was reasonable prospect of success for this aspect of the complainant's appeal.

The complaint had then taken some months before escalating the complaint to the Trust on 8 May 2013. However she noted that the complainant was in poor health and that it was difficult for him to respond fully within the time frames set out in the complaints procedure.

The conduct of the Receptionist

With regard to the conduct of the Receptionist, the Head of Editorial Standards 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.

The "operational management of the BBC" is specifically defined in the Charter (paragraph 38, (1) (c)) as a duty that is the responsibility of the Executive Board, and one in which the Trust does not usually get involved.

As decisions such as those relating to the BBC's Reception staff are day to day operational matters, they are the responsibility of the BBC Executive. This was not a matter which the Trust should be involved in.

She therefore decided that there was no reasonable prospect of success on the point of appeal relating to the conduct of the Receptionist and it was not appropriate that the appeal should proceed to the Trust for consideration.

Complaints handling by Audience Services

The Head of Editorial Standards noted the points raised by the complainant with regard to the difficulties he had experienced in obtaining a satisfactory response to his complaint and that he was not happy with the way the Audience Services responses were written. However, she believed that the Trustees would be of the view that Audience Services had provided a reasoned and reasonable response to the complaint.

She noted the complainant's dissatisfaction with some of the explanation he had received - for example that the BBC successfully handled millions of items of correspondence a year. She noted that Audience Services deal not only with letters but also with ticketing and other requests and confirmed that the phrase 'millions of items' is not an exaggeration. She also noted that the Trust undertakes mystery shopping to ensure that complaints are dealt with correctly and that a further exercise in mystery shopping would take place in 2013.

The Head of Editorial Standards, BBC Trust, confirmed that the complainant had received the correct information about the BBC's security policy.

Turning to the responses by Audience Services with regard to the alleged rudeness of the Receptionist, the Head of Editorial Standards, BBC Trust, noted two of the complainant's concerns which he felt had not been dealt with:

a) The complainant said that the Receptionist had said that she had encountered the complainant on a previous visit, when in fact it was his first visit to the BBC. This had not been separately addressed or apologised for.

The Head of Editorial Standards was of the view that this was covered by the first response given to his allegation that the receptionist had been rude to him when Audience Services apologised for the fact that his experience had fallen short of the BBC's expectations of its staff in terms of courtesy and helpfulness and that the Receptionist appeared off-hand and rude.

b) No definite reason had been given as to why the Receptionist's manager did not contact the complainant as he had been led to expect on the day of the incident.

The Head of Editorial Standards, BBC Trust, thought the Trustees would be likely to conclude that Audience Services were entitled to write to the complainant and explain that too much time had passed to be able to investigate the incident fairly when the complainant first contacted the BBC (4 months after he visited White City Reception) and to attempt to explain what may have happened. She also noted that the Audience Services were entitled to say that it would have made matters easier if the complainant had rung and asked for an appointment though she noted that in all probability the Scheme would have sought to deal with the matter by phone.

The Head of Editorial Standards noted that Audience Services has fed back the complainant's comments to senior staff which meant that any learnings were disseminated at the first opportunity. This was appropriate action. She also noted that Audience Services had issued apologies to the complainant at both stages 1 and stage 2 whilst explaining that they could not fully investigate what had occurred. This was in fact an operational matter for the Executive (and not the Trust) but in complaints handling terms where the BBC has admitted error and apologised for it Trustees usually consider complaint handling had been satisfactory. For those reasons she did not believe the appeal had a reasonable prospect of success.

The Head of Editorial Standards noted that Trustees were not able to award compensation for alleged failures by the BBC. The complaint about the conduct of the White City receptionist was a separate matter to the service provided by the Digital Switchover Help Scheme.

Request for review by Trustees

The complainant reiterated the grounds of his complaint against the receptionist and also BBC Audience Services. The complainant said that if he had known the timeframes for handling complaints then the BBC would not be able to use this as an excuse not to reply to his concerns. The complainant said that the responses he had received from the BBC implied that he was at fault and that the use of the word 'alleged' implied that the complainant was making events up.

The complainant said that as the BBC could not ascertain why the manager had not called him back it was also not possible for them to say with certainty that the receptionist had been busy with other tasks at the time of the incident.

The complainant said that the Head of Editorial Standards had merely tried to excuse the BBC's responses to his complaint and that he did not agree with her assessment. The complainant asked that the issue be put to Trustees.

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 Standards' decision and also the complainant's previous correspondence with the BBC.

With regard to the substance of the complainant's concerns about the receptionist, the Panel agreed that, as specified in the Charter, the operational management of the corporation, including the management of staff such as those at BBC White City reception, was a matter for the BBC Executive and not the Trust. The Panel noted that, while the complainant considered the receptionist's comments rude, it would be impossible to establish the precise details of the conversation the complainant had with her and that Audience Services had attempted to address the complainant's concerns as fully as possible. The Panel agreed that it would be disproportionate to try to investigate further. The Panel noted that the complainant felt Audience Services had responded rudely and dismissively but it agreed that the responses the complainant had received were polite and attempted to address his concerns as far as possible.

The Panel agreed that it had been a clear failure of process when Audience Services had incorrectly addressed the initial response to the complainant. The Panel noted that the complainant had already received an apology for this error.

The Panel agreed that as the basis of his complaint was a matter for the BBC Executive and that the complainant had received an apology for the mistakes in the handling of his complaint, there was no reasonable prospect of success on appeal.

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

Decision taken at Stage 1 not to respond further regarding BBC decisions on crisis appeals

The complainant requested that Trustees review the decision at Stage 1 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 initially contacted the BBC to complain that the fact the BBC had decided to broadcast the Syria Crisis Appeal and yet in 2009 had not broadcast a similar appeal for Gaza, was evidence that the BBC was biased against Palestine. BBC Audience Services replied to explain that each request to transmit a Disasters Emergency Committee appeal is judged individually and that the Syria appeal differed editorially from the 2009 Gaza request. The complainant was not satisfied with Audience Services' response but was told by Audience Services that the BBC had nothing further to add. The complainant then appealed to the Trust with regard to Audience Services' decision.

Decision of the Senior Editorial Strategy Adviser

The Trust's Senior Editorial Strategy Adviser (the Adviser) noted that the complainant had not received a Stage 2 response and that therefore the point she should consider was whether an appeal against the decision of BBC Audience Services not to correspond further with the complainant had a reasonable prospect of success.

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

In reviewing the correspondence, the Adviser considered the BBC had given a reasonable explanation of why the BBC broadcast an appeal for Syria. She noted that the BBC had stated that decisions relating to emergency appeals were taken on a case-by-case basis and that the final decision rested with the Director-General. She noted that the BBC had also outlined why it considered the circumstances around the situation in Syria were different from those that had existed in Gaza; in the case of Syria, the DEC was able to deliver aid to people on both sides of the conflict, inside and outside of Syria, whereas in the case of Gaza, the DEC appeal was for aid on behalf of one side of the conflict only. The Adviser appreciated the complainant felt strongly on this issue but decided that, in its responses to the complainant at stage 1, the BBC had in effect explained to the complainant why in its view his complaint on this point was misconceived and so had not progressed the complaint further within the BBC Executive's complaint system.

The Adviser also noted that decisions relating to crisis appeals were day-to-day matters for the Executive. 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. Likewise, the "operational management of the BBC" was defined in the Charter (paragraph 38(1)(c)) as a duty that was the responsibility of the Executive Board, and ones in which the Trust would not usually get involved unless, for example, they raised broader issues such as a breach of a station's Service Licence or of the BBC's Editorial Guidelines.

She noted that the Panel had already considered the DEC Gaza issue and that a finding had been published, which can be found at:

http://www.bbc.co.uk/bbctrust/our_work/complaints_and_appeals/dec_gaza/appeal_findings.html

In the Gaza finding, the Panel recognised that “the Director General’s decision not to broadcast the Gaza Crisis Appeal was a matter of great controversy for many members of the public. However, having carefully considered the Director General’s reasons, the Trust believes the Director General acted correctly throughout, and we are satisfied that the decision the Director General took was reasonable having regard to the importance of preserving the reputation of the BBC for impartiality”.

The Adviser concluded that Audience Services had provided a reasoned and reasonable response to the complainant’s concerns. She considered it was acceptable for the BBC to decline to engage in further correspondence on this issue. It followed from this that she did not consider the appeal had a reasonable prospect of success and it should not therefore be put before Trustees.

Request for review by Trustees

The complainant said that he had still not received a satisfactory response from the BBC with regard to the comparison between the Gaza and Syria appeals. The complainant asked that the decision whether or not to continue with his complaint be put to Trustees.

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 decisions relating to crisis appeals were day-to-day matters for the Executive and ultimately the Director-General to decide. The Panel recognised that such sensitive decisions about appeals were finely balanced and agreed that in the case of the Gaza appeal the then Director-General had explained the reasoning behind his decision clearly.

The Panel noted the complainant’s strength of feeling about the issue but agreed that the BBC had given a reasonable explanation of why the BBC broadcast an appeal for Syria and had explained the differences between this and the Gaza appeal in 2009.

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

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

Decision taken at Stage 1 not to respond further regarding the BBC's use of Kelvin MacKenzie as a contributor

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

Complaint and Appeal

The complainant had first contacted the BBC on 15 April 2013 to complain that the BBC's decision not to play the song 'Ding, Dong, the Witch is Dead' in its entirety on *The Official Chart with Jameela Jamil* was inconsistent with the BBC's use of Kelvin MacKenzie as a contributor on BBC programmes. BBC Audience Services replied to the complainant on 1 May 2013 to say: the BBC uses a range of guests and contributors; appearances are decided on a case-by-case basis; and they did not see how his use as a guest of contributor is comparable to the *Official Chart* topic.

In the same letter, the complainant was advised that the BBC had nothing further it wished to add to the correspondence and that the Complainant could appeal to the Trust about this decision.

The complainant appealed to the Trust on 19 May 2013, accusing the BBC of "*glossing over the cusp of* [his] *actual complaint*". . He said he thought he had made it "*very clear*" that his complaint was about the "*double standards*" of the BBC in refusing to play the 'Ding, Dong' song (because it "*may have offended people*") while continuing to allow Mr MacKenzie (who "*also offends people*") to appear on BBC output.

Decision of the Senior Editorial Strategy Adviser

The Trust's Senior Editorial Strategy Adviser (the Adviser) noted that the complainant had not received a Stage 2 response and that therefore the point she should consider was whether an appeal against the decision of BBC Audience Services not to correspond further with the complainant had a reasonable prospect of success.

The Adviser carefully read the correspondence that had passed between the complainant and the BBC.

She noted that Audience Services had responded to the substantive point of the complaint with regard to Kelvin MacKenzie, explaining that it used a range of guests and contributors and that appearances were decided on a case-by-case basis. The BBC had not accepted the complainant's argument that there was a parallel between the two issues he had raised which he considered related to the BBC's willingness to risk offending a proportion of its audience. The BBC's response stated: "...we do not see how his use as a guest of contributor is comparable to *The Official Chart* topic."

In his appeal to the Trust, the complainant had referred to the BBC's decision to continue to use Kelvin MacKenzie as a contributor and had stated: "*putting that man on television also offends people*".

The Adviser noted that the BBC had explained that its decision not to play 'Ding, Dong, the Witch is Dead' in full had not only been a matter of not causing offence generally, but had also taken into account the risk of causing offence specifically to Lady Thatcher's family in the days immediately after her death. She noted that the blog by Radio 1 Controller, Ben Cooper, had stated: "Nobody at Radio 1 wishes to cause offence"; he had explained that the decision had been a difficult one and stated: "Above all, in the middle of this furore is a grieving family."

The Adviser considered the Executive had sought to explain a decision that had been taken in a specific set of circumstances and considered she had not seen evidence that suggested those specific circumstances were replicated in the general use by the BBC of a particular contributor. She considered therefore that Trustees would be likely to conclude BBC Audience Services had given a reasonable response to the complainant in stating that decisions about which contributors to use in programmes were made on a case by case basis. The Adviser considered the appeal did not therefore have a reasonable prospect of success and should not proceed to the Trust for consideration.

Furthermore, the Adviser noted that the Royal Charter and the accompanying Agreement between the Secretary of State and the BBC drew a distinction between the role of the BBC Trust and that of the BBC Executive Board, led by the Director-General. "The direction of the BBC's editorial and creative output" was specifically defined in the Charter (paragraph 38, (1) (b)) as a duty that was the responsibility of the Executive Board.

Decisions relating to programme presenters and contributors fell within the category of editorial and creative output and were the responsibility of the BBC Executive. Therefore, the Adviser considered it would not have been appropriate for Trustees to have considered the underlying complaint that an individual contributor should not be used by the BBC.

Request for review by Trustees

The complainant asked that the complaint be provided to Trustees, saying that his comments had not been properly answered and that he wanted to understand "*why the BBC can say they don't wish to cause offence by one action, however regularly cause offence with another*". The complainant also said that his correspondence with the BBC was illustrative of wider problems with the complaints process and that this needed addressing

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 decisions relating to programme presenters and contributors fell within the category of editorial and creative output and were the responsibility of the BBC Executive. The Panel also noted that in any case there was no ban on any particular individual appearing in BBC content, but that decisions are made on a case by case basis.

The Trustees agreed with the Trust Adviser that there was no evidence that suggested the circumstances around the decision about 'Ding, Dong the Witch is Dead' were replicated in the general use by the BBC of a particular contributor. The Trustees agreed

that this had been explained to the complainant and that there was no evidence to suggest the complaints process had not addressed the initial complaint. The Trustees agreed that there was no reasonable prospect of success for an appeal against BBC Audience Services' decision to cease corresponding with the complainant on this issue.

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

Decision taken at Stage 1 not to respond further regarding BBC News channel

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

Complaint and Appeal

The complainant first contacted the BBC to complain that news from Yorkshire was disproportionately carried on the News Channel. The complainant referred specifically to the news report into the death of a fatal motorway crash and stated that Yorkshire stories were given disproportionate emphasis. The BBC replied explaining that there is no agenda to promote any one part of the UK over another and that there are several factors that are taken into consideration when deciding how to put together news bulletins.

The complainant was not satisfied with this response and Audience Services responded again, reiterating that choices made are subjective and that the particular item this was an update from the previous day's story and the breaking news of the crash, following the naming of the victim. Audience Services added that as the complainant had not provided any evidence for his assertion that the News gave Yorkshire stories disproportionate attention and that as they had nothing further to add to the correspondence, Audience Services would not respond further on this matter.

The complainant escalated his complaint to the BBC Trust. The complainant stated that he wished to appeal on the substance of his complaint, saying that it was "*a matter of objective and demonstrable fact that the BBC is very biased in its output towards the North of England.*" He provided a list of 33 news reports which he considered evidence that Yorkshire or the North of England was given a disproportionate coverage in the news.

Decision of the Senior Editorial Strategy Adviser

The Trust's Senior Editorial Strategy Adviser (the Adviser) noted that the complainant had not received a Stage 2 response and that therefore the point she should consider was whether an appeal against the decision of BBC Audience Services not to correspond further with the complainant had a reasonable prospect of success.

The Adviser noted the examples given by the complainant of news stories reported on from Yorkshire and the examples also given of BBC drama and entertainment programmes set in Yorkshire. She noted too that the complainant considered the bias was not limited to Yorkshire, but the whole of the North of England.

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.

She noted that the BBC had a responsibility to represent the UK, its nations, regions and communities, as set out in the BBC Public Purpose Remit. She also noted the response

from BBC Audience Services of 17 May which stated: "*...we'd respectfully suggest that in a month's worth of news, particularly rolling news, 20 news stories emanating from the north of England, a large part of the country, is largely unremarkable.*"

The Adviser did not think that the Trustees would consider that the complainant's list constituted evidence of bias in favour of the North of England. Further, the Adviser considered decisions about which stories should be covered in the news were editorial judgments that were the responsibility of the Executive and it would not be appropriate for Trustees to consider this element of the complaint.

On carefully reading the correspondence, the Adviser noted that BBC Audience Services had explained the editorial thinking behind the inclusion of the specific story the complainant had raised, and had also set out how the broadcaster sought to achieve a balance between different news stories – both domestic and international. The Adviser considered that Trustees would be likely to conclude that Audience Services had provided reasoned and reasonable responses to the complaint. The Trust's Adviser considered Trustees would be likely to conclude it was reasonable for the BBC to say that it could not respond any further to the complainant's correspondence on this issue. Therefore, she considered the appeal did not have a reasonable prospect of success and should not be put before Trustees.

Request for review by Trustees

The complainant asked that the complaint be provided to Trustees, reiterating his view that the BBC was over-representing one part of the UK in its output. He said that the BBC had not understood his argument that "*general articles on issues affecting the whole of the UK are too frequently filmed in the north of England*".

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 decisions relating to the location of filming and decisions about which items to include in bulletins fell within the category of editorial and creative output and were the responsibility of the BBC Executive. The Panel agreed that the complainant's list did not constitute evidence of bias in favour of the North of England and that there was no locus for the Trust to become involved in the editorial judgements of news channels.

The Trustees agreed that the BBC had responded reasonably to this point and also noted that the BBC had provided an explanation of the editorial reasoning with regard to the specific news story the complainant had initially used to illustrate his point.

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

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

Decision taken at Stage 1 not to respond further regarding Richard Bacon on the Shelagh Fogarty Show

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

Complaint and Appeal

The complainant initially contacted the BBC about a comment made by Richard Bacon on 4 February 2013 during the *Shelagh Fogarty Show* on Radio Five Live in which he said he would reimburse the licence fee of any listener who did not enjoy his interview with Sir David Attenborough.

The complainant said he emailed the programme after the broadcast to say he had not enjoyed the interview and would like his licence fee reimbursed but only received an automated response. He subsequently made a complaint through Audience Services, saying that he expected Richard Bacon to *"make good on his promise"*.

Audience Services wrote to the complainant and said that Richard Bacon had been joking when he made the offer. Their letter stated:

"While we appreciate your concerns, and while you state this isn't a joke, we can assure you that Richard was indeed joking when he made this statement. He simply stated this because he thought the interview was very good and it should be enjoyed by everyone. We're sorry you didn't appreciate the interview, but the BBC is a publicly-funded broadcaster serving the whole of the United Kingdom providing programming to a hugely diverse audience with differing tastes and preferences, and so it's inevitable that aspects of programmes which are enjoyed by some won't appeal to others. This is the nature of broadcasting whereby we're serving many different people with many different expectations."

The complainant was dissatisfied and did not consider the offer had been a joke. He renewed his complaint on 11 June 2013, saying the offer had been *"clear and unambiguous"* and should be honoured.

Audience Services replied on 12 June 2013. They said that they had nothing further to add to their previous correspondence and did not believe the points raised by the complainant suggested a possible breach of standards.

The complainant appealed to the BBC Trust on the same day, reiterating his view that Richard Bacon's offer had not been a joke and the promise of reimbursement was *"unambiguous"*. He was unhappy that Richard Bacon had not replied to him personally.

Decision of the Senior Editorial Strategy Adviser

The Trust's Senior Editorial Strategy Adviser (the Adviser) noted that the complainant had not received a Stage 2 response and that therefore the point she should consider was whether an appeal against the decision of BBC Audience Services not to correspond further with the complainant had a reasonable prospect of success.

The Adviser noted that, according to the Complaints Framework, it was open to the BBC to close down complaints in some circumstances:

Complaints that the BBC may not investigate

1.7 At all stages of this Procedure, your complaint may not be investigated if it:

1.7.1 fails to raise an issue of breach of the Editorial Guidelines; or

1.7.2 is trivial, misconceived, hypothetical, repetitious or otherwise vexatious.

For completeness, the Editorial Complaints Protocol can be found here:

http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/our_work/complaints_framework/2012/editorial_complaints.pdf.

The Adviser noted the relevant section of *The Shelagh Fogerty Show* which included the following exchange between Shelagh Fogerty and Richard Bacon:

RB: If you don't enjoy this interview I will personally.....

SF: (interrupting, jokily)come round to your house and...., what will you do?

RB: (Light-hearted) I wouldn't go that far actually - now you're just being silly!

SF: Of course. (Laughs)

RB: But I am offering to personally reimburse the licence fee of any listener who claims not to enjoy hearing David Attenborough this afternoon.

SF: (Laughing) Risky strategy!

RB: I know, um...I think low risk....because we talk about population explosion, climate change, obviously Africa, Brian Cox, all sorts of stuff.....hear Sir David Attenborough a bit later... and the BBC - he's been management - so much stuff. So David Attenborough at 2 o'clock.

The Adviser considered that, while one could question the wisdom of a radio presenter making such a remark live on-air, with the risk that some listeners might take it seriously, Trustees would be likely to conclude that this verbal exchange between the presenters was clearly light-hearted and the offer was not intended to be taken seriously.

She considered that BBC Audience Services had made this position clear to the complainant, had expressed disappointment that he had not enjoyed the interview and had given him a reasonable response to his concerns. She considered that Trustees would be likely to conclude that BBC Audience Services had answered the complaint reasonably and had acted appropriately in closing the correspondence. Therefore she considered the appeal had no reasonable prospect of success and should not be put before Trustees.

The Adviser noted that the complainant had expressed dismay at the final email he had received from BBC Audience Services, which he considered was "a disgrace", and had also stated in his appeal:

"You have not even shown me the respect of asking Richard Bacon to reply to me in person it is the least he can do following his live on air promise."

However the Adviser noted that the complaints procedure was intended to focus complaints through a central point in the interests of efficiency. She noted there was no requirement within the protocol for presenters to respond directly with complainants.

Therefore she considered on this point, too, the appeal did not have a reasonable prospect of success and should not be put before Trustees.

Request for review by Trustees

The complainant asked that the complaint be provided to Trustees, reiterating his view that the comment was not made in jest but was one borne of arrogance.

The Panel's decision

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

The Panel agreed with the Trust Unit Adviser that the verbal exchange between the presenters was unmistakably light-hearted in tone and that the vast majority of the audience would have recognised that the offer was not intended by the presenters to be taken seriously.

The Panel considered the response from Audience Services to have explained the BBC's position appropriately and that it was reasonable for them to have ceased corresponding on this issue. The Panel also agreed that, as Audience Services are specified in the complaints framework as the central point of contact for enquiries and complaints to the BBC, it was reasonable for Audience Services to provide a response, rather than for it to come from Richard Bacon directly.

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

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

Decision taken at Stage 1 not to respond further regarding the casting process for *EastEnders*

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

Complaint and Appeal

The complainant stated that he had made several attempts "*over the last few years*" to obtain an acting role in *EastEnders*. In his original complaint he stated that his agent had received a phone call two months previously from an *EastEnders* producer requesting the complainant not to make any more enquiries about acting roles in the series. The complainant referred to a video on the BBC website, *A Day in the Life of Khali Best*, in which *EastEnders* actor Khali Best described how he got on the programme by persistently writing to the show. The complainant felt this was very unfair and he was being discriminated against.

Audience Services responded to the complainant explaining that they were unable to discuss casting decisions.

The complainant made a follow-up complaint saying that he was not asking them to deal with casting, but to respond to his complaint about the "*unpleasant contact*", via his agent, from the *EastEnders* producer who had asked him not to write to the programme any more. He was particularly unhappy about this request as the video on the BBC website, *A Day in the Life of Khali Best*, contradicted this course of action. He stated that several people interviewed in the video said they had contacted the programme repeatedly and were finally selected to work on the programme as a result of their persistence. He said it was the principle he was complaining about, not the fact that he hadn't got a particular role. He reiterated his feeling that he was being discriminated against.

Audience Services sent a stage 1b response saying they could not engage in any further correspondence with the complainant on this issue as they did not consider the points he raised suggested a possible breach of editorial guidelines.

The complainant then appealed to the BBC Trust on the substance of his complaint which was that a BBC producer had requested, via his agent, that he should not make any further enquiries about acting roles in the series. Having seen a video on the BBC website, *A Day in the Life of Khali Best*, in which Khali Best and others described how they got on the programme by being very persistent, the complainant felt that this was very unfair and he was being discriminated against.

Decision of the Senior Editorial Strategy Adviser

The Trust's Senior Editorial Strategy Adviser (the Adviser) noted that the complainant had not received a Stage 2 response and that therefore the point she should consider was whether an appeal against the decision of BBC Audience Services not to correspond further with the complainant had a reasonable prospect of success.

In reviewing the correspondence, the Adviser noted that the complainant did not feel the stage 1 responses had addressed his concerns. However, she considered that BBC Audience Services had responded reasonably in saying that they were unable to discuss

casting decisions and that they did not consider the points raised by the complainant suggested a possible breach of editorial guidelines.

The Adviser noted that decisions relating to the casting of actors in BBC dramas were day-to-day matters for the Executive. 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. Likewise, the "operational management of the BBC" was defined in the Charter (paragraph 38, (1) (c) as a duty that was the responsibility of the Executive Board, and ones in which the Trust would not usually get involved unless, for example, they raised broader issues such as a breach of a station's Service Licence or of the BBC's Editorial Guidelines. related to a breach of the BBC's editorial standards which did not apply in this case.

The Senior Editorial Strategy Adviser considered that Trustees would be of the view that Audience Services provided a reasonable response to the complainant's concerns. She considered it was reasonable for the BBC to decline to engage in further correspondence on this issue. It followed from this that she did not consider the appeal had a reasonable prospect of success and it should not therefore be put before Trustees.

Request for review by Trustees

The complainant asked that the complaint be provided to Trustees. The complainant said that he felt his complaint had not been taken seriously and that his complaint was not that he had not been cast in *EastEnders*, but about the principle of *EastEnders* contacting his agent with a request to stop writing in when she could have contacted him directly with her request. He felt that the BBC producer had abused her position and again reiterated that he felt he had been the victim of discrimination.

The Panel's decision

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

The Panel agreed that decisions relating to the casting of actors in BBC dramas, and contact between production staff and artists' agents were day to day creative and operational matters for the Executive, rather than the Trust.

The Panel agreed that although it was appropriate for Audience Services to state that they would not engage in further correspondence about the production's process of casting and contact with the complainant's agent, the responses from Audience Services should have been better tailored to the complainant's concerns.

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

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