

CONFIDENTIAL

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[X]

20 November 2019

Dear Anjula

The Brexit Election strapline, Sky News, various dates and times

I am writing in response to your complaint dated 15 November 2019 about the use by Sky News of the strapline *The Brexit Election* as an onscreen label across its General Election coverage.

At the outset, I would like to make clear that, after carefully considering your complaint, Ofcom has found no grounds to pursue it further. Given the importance of the issues raised by your complaint, I would like to explain our reasoning below.

Our assessment

As you noted in your complaint, under the Communications Act 2003, Ofcom has a duty to set standards for programmes on television and radio in a range of areas. These standards are set out in the Broadcasting Code (“the Code”) in the form of rules that broadcasters must abide by. The Code applies to all broadcasters licensed by Ofcom and to content on the BBC’s licence fee funded television, radio and on demand programme services.

In particular, during election periods, broadcasters must comply with the due accuracy and due impartiality rules set out in [Section Five](#) of the Code and the election rules set out in [Section Six](#) of the Code.

The Code is drafted and Ofcom must perform its duties in accordance with the right to freedom of expression set out in Article 10 of the European Convention of Human Rights. Freedom of expression is one of the essential foundations of a democratic society. As is well established, it encompasses the broadcaster’s right to freedom of expression as well as the audience’s right to receive information and ideas without unnecessary interference.

When handling broadcasting standards complaints, we follow our published [procedures](#). In particular, these explain (in paragraphs 1.21 to 1.25) that: “Ofcom will first consider whether, on its face, a complaint raises potentially substantive issues under the Broadcasting Code...which warrant investigation by Ofcom” and that “[b]ased on an initial assessment of the complaint and a review of the relevant broadcast, Ofcom will consider whether there may have been a breach of particular provisions of the Broadcasting Code...which Ofcom considers requires a response from the broadcaster. If not, Ofcom will decide not to investigate further...”. We will do so by reference to the gravity and/or extent of the matter complained of – including, for example, whether it involves

ongoing harm, harm to minors, and/or financial harm. During election periods, due to the importance of the issues involved, we expedite our assessment of all election-related complaints.

You complained that the use of the strapline *The Brexit Election* “gives undue and unfair weight to the Conservative Party’s political agenda because it frames the election in terms chosen by Boris Johnson and the Conservative Party, which is using Brexit in its campaign slogan”. You added that “It is also, of course, the name being used by one of the political parties contesting seats in the election, which is seeking to form an electoral alliance with the Conservatives”.

We assessed the content in this case under the following rules of the Code:

- Rule 5.1: “News, in whatever form, must be reported with due accuracy and presented with due impartiality”.
- Rule 5.11: “In addition to the rules above, due impartiality must be preserved on matters of major political and industrial controversy and major matters relating to current public policy by the person providing a service...in each programme or in clearly linked and timely programmes”.
- Rule 5.12: “In dealing with matters of major political and industrial controversy and major matters relating to current public policy an appropriately wide range of significant views must be included and given due weight in each programme or in clearly linked and timely programmes. Views and facts must not be misrepresented”.
- Rule 6.1: “The rules in Section Five, in particular the rules relating to matters of major political or industrial controversy and major matters relating to current public policy, apply to the coverage of elections and referendums”.
- Rule 6.2: “Due weight must be given to the coverage of parties and independent candidates during the election period. In determining the appropriate level of coverage to be given to parties and independent candidates broadcasters must take into account evidence of past electoral support and/or current support. Broadcasters must also consider giving appropriate coverage to parties and independent candidates with significant views and perspectives”.

The Code defines “due impartiality” as follows:

“‘Due’ is an important qualification to the concept of impartiality. Impartiality itself means not favouring one side over another. ‘Due’ means adequate or appropriate to the subject and nature of the programme. So ‘due impartiality’ does not mean an equal division of time has to be given to every view, or that every argument and every facet of every argument has to be represented. The approach to due impartiality may vary according to the nature of the subject, the type of programme and channel, the likely expectation of the audience as to content, and the extent to which the content and approach is signalled to the audience. Context, as defined in Section Two: Harm and Offence of the Code, is important”.

We took into account the context of how *The Brexit Election* strapline has been used in Sky News’ election programming. Consistent with the right to freedom of expression, there is no prohibition on such a strapline being used by a broadcaster, as long as it complies with the Code. Further, we also

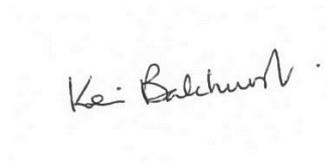
took into account that the use of on-screen graphics and captions is a common editorial technique used by broadcasters to label and otherwise illustrate their content, and make such content more engaging with audiences.

We considered that Brexit is an important background contextual factor which has been instrumental in shaping the debate within Parliament in the weeks and months leading up to the General Election. In addition, given that the current extension to the Article 50 process runs out on 31 January 2020, the issue of what happens next in terms of the UK's relationship with the EU will be determined by the election result and the make-up of the next Parliament. Against this backdrop, we consider it a reasonable editorial judgment for Sky News to use the strapline "*The Brexit Election*" to label its election programming. Further, we do not consider that the use of this strapline would in and of itself engage due impartiality considerations or indicate that Sky News is favouring any party or parties in the context of this particular election campaign.

Given the above, we do not consider that Sky News' use of the strapline *The Brexit Election* raises issues warranting investigation under the Code.

We realise this decision is likely to come as a disappointment to you, but hope this letter makes clear that we have considered your concerns carefully.

Yours sincerely

A handwritten signature in black ink that reads "Ke. Bakhurst". The signature is written in a cursive style and is positioned above a faint, light-colored rectangular stamp or watermark.

Kevin Bakhurst