

# Ofcom Broadcast and On Demand Bulletin

Issue 455  
25 July 2022

## World at One

**Type of case** Broadcast Standards

**Outcome** In Breach

**Service** BBC Radio 4

**Date & time** 24 February 2021, 13:00

**Category** Due impartiality

**Summary** A news item on the BBC's World at One included an interview with a prominent Scottish politician and was not duly impartial on a matter of major political controversy and/or a major matter relating to current public policy. In breach of Rules 5.1, 5.11 and 5.12 of the Broadcasting Code.

### Introduction

BBC Radio 4 is a national radio station providing a 24-hour speech service that broadcasts a wide range of programmes including drama, comedy, science and history as well as regular news bulletins.

*World at One* is a lunchtime news and current affairs programme containing news, analysis and comment broadcast every weekday between 13:00 and 13:45.

Complaints about content broadcast on the BBC are dealt with through a "[BBC First complaints process](#)". This means that Ofcom would normally only consider a complaint about BBC content after the BBC and its Executive Complaints Unit ("ECU") has had an opportunity to address it first. If a complainant is not satisfied with BBC's final decision about their complaint, they can then bring their complaint to Ofcom<sup>1</sup>.

This edition of the *World at One* dealt with matters related to the ongoing dispute between the Scottish Government and former First Minister, Alex Salmond over the Scottish Government's handling of harassment complaints against Alex Salmond and the consequent [Holyrood inquiry](#). Ofcom

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<sup>1</sup> This does not apply for Fairness and Privacy complaints, which can be made directly to Ofcom.

received a complaint, which had completed the BBC First process, about a lack of due impartiality and the choice of Baroness Ruth Davidson as the only interviewee on this topic in the programme.

## Summary

During the opening segment of this edition of *World at One* the presenter, Sarah Montague, introduced the programme's first news story related to the dispute between Alex Salmond and the Scottish Government. This was then followed by a comment made by the former leader of the Scottish Conservative party and then leader of their group of MSPs at Holyrood, Ruth Davidson, taken from the upcoming interview in the programme:

Sarah Montague: *"Hello and welcome to the World at One with me Sarah Montague. Scotland's Government has run riot over the Holyrood Parliament, according to the leader of Conservative MSPs".*

Ruth Davidson: *"This has now got to the structure of democracy in Scotland and whether our institutions are robust or whether they have been corrupted and that matters".*

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Sarah Montague then introduced the news bulletin, where the main story related to the dispute between Alex Salmond and the Scottish Government:

Sarah Montague: *"The BBC news is read by Luke Tuddenham".*

Luke Tuddenham: *"The leader of the Scottish Conservatives in the Holyrood Parliament, Ruth Davidson, has said the dispute between Alex Salmond and the Scottish Government over its handling of complaints against him raises questions about whether Scotland's democratic institutions are corrupt. In an interview with this programme, Ms Davidson said the Scottish Government had run riot over the parliamentary right to scrutiny. Mr Salmond is waiting to hear whether he can give evidence to a committee investigating the Scottish Government's unlawful probe of harassment allegations against him. He had been due to testify today, as our political correspondent Nick Eardley explains".*

This was followed by a report from political correspondent, Nick Eardley:

Nick Eardley: *"Alex Salmond was supposed to be appearing before MSPs right now. That's not happening because he pulled out, after the Crown Office (Scotland's prosecution service) demanded his evidence was unpublished, saying it was in contempt of court. Today Mr Salmond's lawyers have written to the head of the Crown Office, the Lord Advocate, demanding an explanation saying the removal of evidence was unprecedented. The Crown Office said prosecutors acted independently and the Lord Advocate wasn't involved. But speaking to this programme, Ruth Davidson said there were now*

*questions to be asked about whether Scotland's institutions were robust or had become corrupted. Mr Salmond has previously said the Lord Advocate is conflicted between his role as prosecutor and legal advisor to the Scottish Government. This dramatic row, in which Mr Salmond has already claimed that Ms Sturgeon misled Parliament and the group around her conspired against him, allegations she denies, is now leading to questions about the separation of powers in Scotland".*

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At the end of the news bulletin, the story was discussed in more detail (lasting almost 11 minutes) and included an interview with Ruth Davidson:

Sarah Montague: *"...What may have been dismissed as a personal row between Scotland's First Minister and... her predecessor is quickly turning into something so much more. Dragging in the Government, the Civil Service, and now the legal system. The leader of Conservative MSPs, Ruth Davidson, has told us there are now questions over whether it has corrupted the whole structure of democracy. She says a full independent judge-led inquiry is now needed. We were meant to be hearing possibly explosive evidence from the former First Minister, Alex Salmond in person today, but instead his lawyers have written to the Lord Advocate, the most senior law officer in Scotland, demanding an explanation for unprecedented and highly irregular actions after parts of his testimony were removed from Parliament's website. In the submission he accused the current First Minister, Nicola Sturgeon of breaking the ministerial code. His lawyers want to know if any third parties were involved in the decision to intervene. It is still possible that he could appear before MSPs tomorrow. When I spoke to Ruth Davidson earlier I asked why the row within the SNP mattered?"*

Ruth Davidson: *"Well, well this actually has gone far beyond Sturgeon versus Salmond, and it's gone beyond the complainants versus the treatment that they received and how they were failed. This has now got to the structure of democracy in Scotland and whether our institutions are robust or whether they have been corrupted and that matters, and that should matter to everybody within the United Kingdom, whether they're in Scotland or not and we have real question marks now over the Scottish Government. We have real questions marks around the officialdom in Scotland, whether that's the civil servants and we have real question marks now, about the Crown in Scotland, which is the supposedly independent prosecution service in Scotland and you need to have a rule of law that works and works well. So, this is absolutely striking at the heart of how*

*Scotland is governed, how it works and what we can expect of a government and the institutions that run all our lives”.*

Sarah Montague: *“Ok, well this morning you retweeted a quote from somebody who described the Crown Office as having degenerated into a lick spittle arm of the SNP Government, why?”*

Ruth Davidson: *“First of all, for context, the chap that I retweeted is a lawyer and in fact he taught Nicola Sturgeon and his fear was he said that he’d come up against Crown lawyers a lot during his legal profession and they were always so fiercely independent and what he’s incredibly worried about now is how closely tied the Crown Office on this affair appears to have been to the Scottish Government. Now we also have a situation in Scotland where the separation of powers between the legal system and the Government is blurred, and it’s blurred because the Lord Advocate who’s the head of our legal system, the head of the Crown Office, is a minister within the SNP Government and that means there is a real requirement for them to demonstrate their independence from government. And there is a suspicion in this case that this hasn’t happened”.*

Sarah Montague: *“Is your suggestion here that the Crown Office is doing the bidding of the SNP Government, which doesn’t want this evidence to come to light?”*

Ruth Davidson: *“The issue that we have is how much obstruction there has been of getting to the truth in all of this, now whether that is parliamentary votes to release the legal information received by the Government that the...the original case was going to collapse months before it did, and that’s been turned down by the Government. Whether it has been pieces that have been redacted, whether it’s been ministers that have said that they won’t allow bits of information to go forward to the Parliamentary Committee, whether it has been members of the Government that said they won’t speak. Whether that has been the Crown Office not releasing information that the inquiry has rightly asked to be able to see. This is, there is a bit of a misunderstanding I think, particularly from the rest of the UK, about whether this is retrying Alex Salmond for the case which he wasn’t found against him – it’s not. This is about why situations arose and why the provisions that Government put in place to protect people that came forward to say that they had suffered some kind of abuse or harassment or sexual harassment from Government ministers, why that failed. Also, why it cost probably over 1,000,000 pounds of public money. Why the case was allowed to progress at the rate that it did and it also comes down to whether some of the things that have been said in Parliament are not true and the people that said*

*them knew they weren't true at the time they said them, whether the First Minister misled Parliament, that's the current First Minister. That's Nicola Sturgeon".*

Sarah Montague: *"But, but".*

Ruth Davidson: *"So, this goes right to the heart of whether there has been a corruption in the true sense of the word, of the way in which the Government is supposed to work, both its structures and the way in which personnel have chosen to act".*

Sarah Montague: *"Ok, there is this investigation ongoing, will this not get to the bottom of it or are you suggesting something else needs to happen?"*

Ruth Davidson: *"Well there's two for a start, so there's the Committee investigation. The First Minister's deputy has also – she recused herself – has also referred her to a system to see whether she's broken the ministerial code. We've asked to see her submission to that. She won't show it. There was a newspaper that asked to see the submission to that, she – they FOI'd her – she turned it down and then there's a Committee process and the Committee has had its request for information stymied, redacted, turned down. Like I said, they've had parliamentary votes to release information ignored. There's been over fifty, I think at the last count, attempts to get information that have been in some way thwarted by this Government and there is a real stench that they don't want the Committee inquiry to find out what happened and I don't know why".*

Sarah Montague: *"What is necessary now to assuage the concerns you raise?"*

Ruth Davidson: *"We need a full independent judge-led inquiry. We absolutely need to know why the Government is not allowing a Committee of its own Parliament to have access to information that they need, to look at what's happened here. And what we need, as well is to be able to show that the Parliament in Scotland has oversight over the Executive in Scotland. Because at the moment, the Government is running riot and is denying the Parliament its right of scrutiny and there is no liberal democracy in the world that should allow the Executive to become over-mighty and be allowed to snub its nose, in particular to cases as serious as this, to the Parliament and to those represented to defend the country".*

After the interview there was analysis by the BBC's Scotland Editor, Sarah Smith:

Sarah Montague: *"That was Ruth Davidson talking to me earlier. Well, BBC Scotland Editor is Sarah Smith. Now Sarah, Ruth Davidson seems an unlikely*

*ally of Alex Salmond and yet they are both really, very vexed from the sounds of it over the latest development in this ongoing row”.*

Sarah Smith: *“Yes, it’s not often you hear them both making the same argument but that is exactly what’s going on here. So Alex Salmond’s issue today is that he wants to know from the Lord Advocate, the head of the Crown Office – the Scottish Prosecution Authority – why it is that he insisted, why the Crown Office insisted, that part of his written evidence that he gave to the Holyrood Committee be removed. It was published originally on Monday night. It was then taken down, some paragraphs were taken out and it was then republished. He says that was highly irregular and he wants to know exactly why that happened but as Ruth Davidson was saying there, this is part of a wider set of arguments that have gone on about information being released. There is other evidence that Alex Salmond wants to be made public and wants to introduce to the Committee, which the Crown Office says it is not possible for it to release. So that’s other separate evidence, which as far as we know at the moment, will not be published and the Committee will not be able to consider it. So for some time Alex Salmond has been at odds with the legal authorities over this, but that’s not all. I mean, there is information that the Scottish Government has, which the Committee wants to see and which the Scottish Parliament itself has voted should be released. That’s the legal advice that was given to the Scottish Government when they were involved in a legal battle with Alex Salmond over the process that was used to investigate sexual harassment complaints against him. You have got information that the Committee wants to get from the Crown Office as well. You have different branches of government, of the governing authorities in Scotland, who are all at odds with each other over what information can be made public and when, and this is developing into a situation where everybody is at odds with everybody else and accusations of conspiracy can easily be thrown around. But Alex Salmond himself says that evidence is being withheld in order to shield some of the most powerful people in the country. He’s made a lot of very explosive accusations, but it’s not just Ruth Davidson. The Labour party in Scotland are going to ask an urgent question in Parliament today about why the Crown Office wanted to redact certain parts of Alex Salmond’s evidence. More and more questions are growing about the process around all of this, about what information will be made public, who is keeping it from being published, and why?”*

Sarah Montague: *“Ok, so those who might be tempted to say this is just a case of my enemy’s enemy is my friend. This is much more widespread. The concerns about the way this process is working out”.*

Sarah Smith: *“Yes, I mean you, you...there are...you could say Alex Salmond is throwing around allegations against all sorts of people at the top of public life in Scotland. That doesn’t mean they’re baseless, but it doesn’t mean that they’re true. But when you see both of the main opposition parties also saying that they have really serious concerns about whether this process is working and we’ve heard numerous times from the Parliamentary Committee themselves that they have felt deeply frustrated and unable to get on with their work properly because they can’t get information and documents and evidence that they want to see from the Scottish Government, which the Government’s refusing to release, as well as some information that the Crown Office won’t release, and remember the Lord Advocate, the head of the Crown Office, who is now being dragged into this row. He’s a member of the Scottish Government as well as the head of the Prosecution Service. So that’s why Alex Salmond says he’s deeply compromised in those twin roles, that you can’t do both and maintain your independence. And as these allegations, claims and counterclaims are thrown around, more and more public bodies are dragged into it, it runs the risk of looking like there is some kind of cover up going on, whether there is or not, and potentially undermining people’s faith in the process that the Committee might ever get to the truth of what’s actually happened and of how our Government works”.*

Sarah Montague: *“And an election of course, just a... just a short time away. Sarah, Sarah Smith. Thank you very much...”.*

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Towards the end of the programme Sarah Montague revisited Ruth Davidson’s interview:

Sarah Montague: *“Our main headline at this lunchtime. The leader of the Scottish Conservatives in the Holyrood Parliament, Ruth Davidson, has told this programme there are questions about whether Scotland’s democratic institutions are corrupt in light of the row between Alex Salmond and the Scottish Government”.*

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The programme ended as follows:

Sarah Montague: *“That’s it from us for today. PM will be here, as usual, at 5 o’clock this afternoon. I’m Sarah Montague. That’s the World at 1:45”.*

For the reasons set out in this Decision, it is Ofcom’s view that this news programme was dealing with a matter of major political controversy and major matter relating to current public policy.

We therefore considered that this edition of *World at One* raised potential issues under the due impartiality rules set out in [Section Five](#) of the [Ofcom Broadcasting Code](#) (“the Code”). The following rules applied in relation to the programme:

- Rule 5.1: “News, in whatever form, must be reported with due accuracy and presented with due impartiality”.
- Rule 5.11: “... 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”.

As required under our [published procedures](#), we requested comments from the BBC on how the programme complied with these rules. As part of our assessment of the complaint, we requested background information from the BBC, which is also summarised below.

## Response

### Background information

#### *The BBC said it provided “regular” coverage on the issue*

The BBC said that *World at One* and *The World This Weekend*<sup>2</sup> had provided “regular” coverage on the Scottish Government’s handling of harassment complaints against Alex Salmond and the consequent Holyrood inquiry. The BBC said BBC Radio 4 had intended to report on Alex Salmond and Nicola Sturgeon appearing before the Committee on the Scottish Government Handling of Harassment Complaints as part of its ongoing coverage. The first of these appearances had been due to take place on the morning of the broadcast and both were anticipated as “major news events”. Therefore, the BBC said that *World at One* would “be the first programme to provide reports and analysis of what was said”, in which the BBC had intended to provide “extensive and prominent coverage, including significant, unedited sections of the evidence of both individuals”. Subsequently (and following the developments outlined below), Mr Salmond’s evidence was featured in the programme on Friday 26 February 2021 and Ms Sturgeon’s evidence was featured in the programme on Wednesday 3 March 2021, both followed by analysis from BBC correspondents.

#### *The BBC explained its decision to interview Ruth Davidson*

The BBC explained its decision to interview Ruth Davidson was prompted by “significant developments in the story” resulting in Mr Salmond not appearing before the Committee as planned:

- on Monday 22 February 2021, at his request, Mr Salmond’s written submission to the inquiry was published on the Scottish Parliament’s website;

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<sup>2</sup> The version of the programme broadcast every Sunday at 13:00 on BBC Radio 4.



- the same day (22 February 2021), the Crown Office wrote to Parliament stating it had “grave concerns” about the submission and its publication raised “issues of potential contempt”;
- on Tuesday 23 February 2021, the written submission was withdrawn and then republished as a redacted version;
- that evening (23 February 2021), Mr Salmond announced he would not attend his appearance at the Committee planned for Wednesday 24 February 2021, in light of the redacted evidence published on the Committee’s website;
- Mr Salmond released a statement about the redaction on the morning of Wednesday 24 February 2021, challenging the Lord Advocate and Crown Office to explain the intervention; and
- the Lord Advocate responded to an urgent question in Parliament on the afternoon of Wednesday 24 February 2021 to explain the Crown Office’s actions.

The BBC said these events meant this was a developing story and the *World at One* “took the legitimate editorial decision to seek reaction and comment from other influential Scottish politicians”. The BBC said this was “standard journalistic practice” and “part of the BBC’s remit to offer a range and depth of analysis to help people understand and engage with the world around them”. It added that it was editorially justified for them to report on Ruth Davidson’s call for an independent, judge-led inquiry and her views about “*the structure of democracy in Scotland and whether our institutions are robust or whether they have been corrupted*”, which was “news-worthy in its own right”. In its ECU response to the complainant, which was provided to Ofcom, the BBC added that listeners “would have been in no doubt that Ruth Davidson was raising her concerns about allegations of institutional corruption and listeners would not judge them as anything other than the views of a Conservative politician seeking to make a political point”.

In its background information, the BBC said that it had broadcast the interview with Ruth Davidson knowing that “those responsible for *World at One* did so in the knowledge the programme would give due weight to the views of Mr Salmond and Ms Sturgeon when they gave evidence in the next few days, as set out above”. It added that it was known that other BBC News radio programmes, including BBC Radio 4’s *PM*<sup>3</sup>, “would provide the audience with a range of views on the breaking story throughout the day, including reaction to Ruth Davidson’s concerns, and report on the Lord Advocate’s appearance before Parliament later that afternoon”.

*The BBC said it provided sufficient context within this edition of World at One*

The BBC said it had attempted repeatedly to interview a representative from the Scottish National Party (“SNP”) in the preceding week and in the days immediately before the interview with Ms Davidson, including on the day Ruth Davidson’s interview was broadcast, but the SNP did not respond.

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<sup>3</sup> *PM* is the afternoon news programme broadcast at 17:00 on weekdays on BBC Radio 4, which the BBC describes as the sister programme to *World at One*.

The BBC added that it therefore sought to provide sufficient context within the programme as a whole as follows:

- the programme began with a news report from Nick Eardley, which set out the background to the story. Mr Eardley said that Nicola Sturgeon had denied all the allegations made against her by Alex Salmond, including one of misleading Parliament;
- the presenter, Sarah Montague, sought to explain the latest developments in more detail, in particular the potential concerns about the independence of the Crown Office and the role of the Lord Advocate; and
- the BBC's Scotland Editor, Sarah Smith also provided commentary, putting some of Ruth Davidson's comments into context. The BBC highlighted a quote from Sarah Smith which, in its view, demonstrated this:

*"You have different branches of Government, the governing authorities in Scotland, who are all at odds with each other over what information can be made public and when, and this is developing into a situation where everybody is at odds with everybody else and accusations of conspiracy can easily be thrown around...there is other evidence that Alex Salmond wants to be made public and wants to introduce to the Committee, which the Crown Office says it is not possible for it to release".*

#### *The BBC clarified to Ofcom its ECU response to the complainant*

Ofcom asked for clarification of the following extracts from the ECU's response to the complainant in this case:

*"...it is reasonable to presume regular listeners to news and current affairs programmes recognise politicians who are invited to contribute will come at an issue from a particular perspective"; and*

*"...it was implicit from what Ms Davidson said that the Government and other institutions would disagree with her and dismiss her concerns".*

In its background information to Ofcom, the BBC clarified it was not suggesting that, "because audiences are likely to recognise the perspectives from which politicians speak, their contributions are in some way exempt from due impartiality requirements". It said that these comments were intended to address the complaint that the programme included "just one interviewee", illustrating that it was not necessarily the case that featuring only one interviewee will result in a breach of the due impartiality requirements.

The BBC also said that a separate comment in its final response to the complainant that "due impartiality can be achieved over time by ensuring a broad range of individuals and views are represented" was intended as "a statement of general principle" and should not be taken by Ofcom as the BBC suggesting that "due impartiality required the substantive points made by Ms Davidson to be specifically addressed by other viewpoints in subsequent output".

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## Formal comments

In its formal comments to Ofcom under Rules 5.1, 5.11 and 5.12, the BBC reiterated that it believed the requirements for due impartiality were met in its coverage of this story. It referred Ofcom to its previous background information provided and added some further points.

The BBC cited other coverage on BBC Radio 4 on 24 February 2021, namely the edition of *World at One's* "sister programme" *PM*, broadcast several hours after the programme in this case which it said was relevant to the complaint and included the SNP's position in detail:

- the edition of *PM* broadcast later the same day led with the same story at 17:00 and included a clip of the interview with Ruth Davidson, followed by coverage of the Lord Advocate responding to questions in the Scottish Parliament that afternoon, which had taken place at 3:50pm. The programme incorporated an account of the Lord Advocate's defence in which he stated he had not been consulted over the advice the department had given to redact part of Alex Salmond's testimony. An extract of the Lord Advocate's response to MSPs was broadcast in which he said he had "*at no time...encountered any situation in which ministers have sought to influence a prosecutorial decision*"; and
- within the edition of *PM*, the Lord Advocate's response was followed by Nick Eardley interviewing Dr Nick McKerrell, a legal expert from Glasgow Caledonian University. In that interview, the BBC said that:
  - Dr McKerrell offered an expert opinion and critical viewpoint of Ruth Davidson's claims, suggesting at one point it was "*crude politics*" to think the Lord Advocate was personally responsible for making every decision in his department;
  - Nick Eardley set out the Crown Office's position that it had redacted Mr Salmond's testimony because parts of it might have been in contempt of court; and
  - Nick Eardley also went on to explain Alex Salmond's concern that he would be unable to speak openly to the committee and they therefore could not properly scrutinise the Scottish Government's actions.

The BBC said that taken together it believed the programmes met the Code's requirement for "an appropriately wide range of significant views" to be given "due weight" in "clearly linked" programmes. In its ECU response to the complainant the BBC explained its Editorial Guidelines "make it clear that due impartiality does not necessarily require the range of perspectives or opinions on an issue to be covered in equal proportions within a particular programme" and that "daily news programmes such as the *World at One* are not required to follow the appearance of a politician or a contributor with a partial view by someone taking a contrary view".

The BBC added that BBC Radio 4 has "an established, and clearly connected, set of sequence[d] news programmes" and its listeners "understand that stories will be regularly updated throughout the day", which was necessary in this case given "the fast-changing nature of this story". It added that this was "in keeping with any requirement there may have been to show due impartiality over time and taken

together with the coverage on *PM*, will have made the views of all the significant participants available to listeners". It also said that "the *World at One* usually trails ahead to the *PM* programme".

The BBC stated its understanding was that the Ofcom Code, like the BBC's Editorial Guidelines, "is intended to allow programme-makers the flexibility to respond to breaking news, with an understanding that a full range of views, even on a matter of public controversy, can sometimes only be achieved through successive programmes, whether explicitly linked or not". The BBC said it would be "a significant constraint on programme-makers were this requirement to be tightened to the extent that it was deemed that there had been a breach of the Code because this was not achieved within a single programme".

## Decision

Reflecting our duties under the Communications Act 2003 ("the Act"), Section Five of the Code requires that the due impartiality requirements of section 319 and section 320 of the Act are met.

Section 319 requires that news in television and radio services is presented with due impartiality. Section 320 sets out special impartiality requirements, which include the preservation of due impartiality on matters of political or industrial controversy and matters relating to current public policy. This section requires Ofcom, for the purposes of setting the due impartiality rules in the Code, to take particular account of the need to ensure the preservation of impartiality in relation to matters of major political or industrial controversy and major matters relating to current public policy.

Every time Ofcom applies the Code to broadcast content, Ofcom gives careful consideration to the broadcaster's and the audience's Article 10 rights. This encompasses the broadcaster's right to freedom of expression as well as the audience's right to receive information and ideas without interference. In order to reach a Decision on whether due impartiality was maintained in this programme, Ofcom has taken into account Article 10 and the relevant contextual factors.

To assist broadcasters in complying with the due impartiality rules in Section Five of the Code, Ofcom has [published Guidance](#). Among other things, Ofcom's Guidance makes clear that it is an editorial matter for the broadcaster how due impartiality is preserved, as long as the Code is complied with<sup>4</sup>; and there are a range of editorial techniques for maintaining due impartiality<sup>5</sup>.

Our Guidance also states that the broadcasting of comments either supporting or criticising the policies and actions of, for example, any one state or institution is not, in itself, a breach of the due impartiality rules. Comments which are highly critical in this way may be broadcast, provided the content complies with the Code. However, depending on the specific circumstances of any particular case, it may be necessary to reflect alternative viewpoints or provide context in an appropriate way, to ensure that due impartiality is preserved<sup>6</sup>.

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<sup>4</sup> [Ofcom's Section Five Guidance](#), paragraph 1.6.

<sup>5</sup> [Ofcom's Section Five Guidance](#), paragraph 1.17.

<sup>6</sup> [Ofcom's Section Five Guidance](#), paragraph 1.34.

## Application of Section Five of the Code

Ofcom first considered whether the requirements of Section Five of the Code should be applied in this case. The obligation under Rule 5.1 to preserve due impartiality in news applies to any matter covered in a news programme and not just matters of political or industrial controversy and matters relating to current policy. News includes news bulletins, news flashes and daily news magazine programmes. We considered that the *World at One* clearly constituted news, and the BBC did not dispute this. Therefore, Rule 5.1 applied in this case.

Ofcom also considered whether the further requirements of Section Five of the Code were engaged, that is, whether the programme concerned matters of major political or industrial controversy or major matters relating to current public policy. The Code states that such matters will vary according to events, but these will generally be matters of political or industrial controversy or matters of current public policy which are “of the moment” and of national, and often international importance, or are of similar significance within a smaller broadcast area.

As described above, this programme dealt with issues relating to the ongoing dispute between former First Minister, Alex Salmond, and the Scottish Government, including the current First Minister Nicola Sturgeon. There had been significant national media and political interest in this story in the UK, and not just at the Scottish level. At the time of broadcast, specific events had taken place in the preceding days, and indeed on the day of the broadcast, as discussed below, which had resulted in an increased intensity in media and political interest.

Ofcom understands that on the morning of the broadcast, 24 February 2021, Alex Salmond was scheduled to appear in front of the Holyrood inquiry, the [Committee on the Scottish Government Handling of Harassment Complaints](#) (“the Committee”), to give evidence. The evening before, Mr Salmond had announced he would no longer be appearing, due to his written evidence being withdrawn and then re-published in a redacted form earlier that week by the Scottish Parliament. On the morning of the broadcast, Mr Salmond released a statement criticising and challenging the Lord Advocate and the Crown Office’s advice to redact his evidence.

The pre-recorded interview with Ruth Davidson included in this edition of the *World at One* focused on this issue. It included highly critical comments and raised significant allegations about the SNP, the Scottish Government, the Lord Advocate and Nicola Sturgeon, including that questions had been raised about “*corruption*” in relation to the Scottish Government, officials and the structure of democracy and that there were questions over whether the Scottish First Minister had “*misled Parliament*”.

Ofcom was mindful that the date of broadcast, while not falling within an election period as defined by the Code<sup>7</sup> was still in the run up to the Scottish Parliamentary election, which took place on 6 May 2021, and was referenced by the presenter at the end of the programme: “*And an election of course, just a... just a short time away*”.

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<sup>7</sup> Defined in the Code: For the Scottish Parliament elections, the period begins with the dissolution of the Scottish Parliament. In 2021, this was scheduled to be on 25 March.

Ofcom considered that this unfolding story, and the allegations being made, were highly controversial and of national importance, both in Scotland and the rest of the UK. This was particularly so given the time of broadcast in the lead up to an election. Accordingly we considered that the allegations of possible corruption within Scottish Government institutions and the alleged corrupt behaviour of the SNP-led Scottish Government, in particular relating to the dispute between Alex Salmond and Nicola Sturgeon and the Scottish Government's handling of Alex Salmond's evidence to the Committee, constituted a matter of major political or industrial controversy and major matter relating to current public policy.

Therefore the BBC was required to preserve due impartiality pursuant to Rules 5.11 and 5.12 of the Code, as well as Rule 5.1.

### The preservation of due impartiality

Ofcom therefore assessed whether due impartiality was preserved in this news programme. The Code and Guidance make clear that "due" is an important qualifier to the concept of impartiality. "Due impartiality" does not therefore mean an equal division of time must be given to every view, or that every argument must be represented. Due impartiality can be preserved in several ways and it is an editorial decision for the broadcaster as to how it ensures this.

The Code also makes clear that the approach to due impartiality may vary, according to the nature of the subject, the type of programme and channel and the likely expectation of the audience. In addition, context, as defined in [Section Two \(Harm and Offence\) of the Code](#) is important in considering whether due impartiality has been preserved.

Ofcom acknowledged the BBC's submission that this was a developing story and that certain last-minute changes in planned events, such as Alex Salmond deciding not to give oral evidence to the Committee, meant that the BBC had "respond[ed] accordingly" in terms of its planned coverage. We also considered that there was a high public interest in this story, as it related to an ongoing dispute between the Scottish Government and former First Minister Alex Salmond. Given that questions were likely to be raised by Alex Salmond's statement that morning regarding the advice to redact his published evidence to the Committee, and his subsequent decision not to give oral evidence, it was perfectly legitimate for the BBC to interview a prominent Scottish politician such as Ruth Davidson and include their views in the programme, despite them being highly critical of the Scottish Government. As highlighted in Ofcom's [Guidance to Section Five of the Code](#)<sup>8</sup>, the broadcasting of highly critical comments concerning policies and actions of, for example any one state or institution, is not in itself a breach of due impartiality rules. Ofcom recognises that it is essential that news programmes are able to explore and examine the viewpoints of political figures on matters of major political or industrial controversy or major matters relating to public policy in their programming.

However, as this edition of the *World at One* was dealing with a major matter of political controversy, the BBC was required to reflect "an appropriately wide range of significant views and give them due weight in each programme or in clearly linked and timely programmes". We therefore considered

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<sup>8</sup> Guidance notes Section Five: Due Impartiality and Due Accuracy and Undue Prominence of Views and Opinions, 1.34, p.9.

whether an appropriately wide range of significant views were included in the programme and given due weight.

Throughout this news item, various references were made to allegations of corruption within the Scottish Government. For example, at the beginning of the news item, the presenter said:

*“The leader of the Scottish Conservatives in the Holyrood Parliament, Ruth Davidson, has said the dispute between Alex Salmond and the Scottish Government over its handling of complaints against him raises questions about whether Scotland’s democratic institutions are corrupt. In an interview with this programme, Ms Davidson said the Scottish Government had run riot over the parliamentary right to scrutiny”.*

This was followed by Nick Eardley who said:

*“...speaking to this programme, Ruth Davidson said there were now questions to be asked about whether Scotland’s institutions were robust or had become corrupted”.*

In the introduction to the interview with Ruth Davidson, Sarah Montague then said:

*“Ruth Davidson, has told us there are now questions over whether it [i.e. the “row” between Alex Salmond and Nicola Sturgeon] has corrupted the whole structure of democracy. She says a full independent judge-led inquiry is now needed”.*

During the interview with Ruth Davidson herself, she made a number of highly critical and accusatory statements about the Scottish Government, including that of corrupt behaviour in relation to the Scottish Government’s handling of the investigation into Alex Salmond. For example:

- Ms Davidson said: *“there are now questions over whether it has corrupted the whole structure of democracy”*; and *“this goes right to the heart of whether there has been a corruption in the truest sense of the words of the way in which the Government is supposed to work”*;
- Ms Davidson conceded that she had, as described by the interviewer, *“retweeted a quote from somebody who described the Crown Office as having degenerated into a lick spittle arm of the SNP Government”*. In explaining why she had retweeted this statement, Ms Davidson reiterated her argument about alleged inappropriate behaviour by the Scottish Government in relation to its influence over the Scottish legal system by saying: *“Now we also have a situation in Scotland where the separation of powers between the legal system and the Government is blurred, and it’s blurred because the Lord Advocate who’s the head of our legal system, the head of the Crown Office, is a minister within the SNP Government and that means there is a real requirement for them to demonstrate their independence from government. And there is a suspicion in this case that this hasn’t happened”*;
- in response to a question from the presenter (*“Is your suggestion here that the Crown Office is doing the bidding of the SNP Government, which doesn’t want this evidence to come to light?”*)

Ms Davidson replied: *“The issue that we have is how much obstruction there has been of getting to the truth in all of this, now whether that is parliamentary votes to release the legal information received by the Government that the...the original case was going to collapse months before it did, and that’s been turned down by the Government. Whether it has been pieces that have been redacted, whether it’s been ministers that have said that they won’t allow bits of information to go forward to the Parliamentary Committee, whether it has been members of the Government that said they won’t speak. Whether that has been the Crown Office not releasing information that the inquiry has rightly asked to be able to see”*;

- referring to the actions of the Deputy First Minister of Scotland, Ms Davidson said: *“The First Minister’s Deputy<sup>9</sup> has also – she recused herself – has also referred her to a system to see whether she’s broken the ministerial code<sup>10</sup>. We’ve asked to see her submission to that. She won’t show it. There was a newspaper that asked to see the submission to that, she – they FOI’d her – she turned it down and then there’s a Committee process and the Committee has had its request for information stymied, redacted, turned down”*;
- Ms Davidson, in referring to the attempts within the Scottish Parliament to gain information to the Scottish Government’s handling of the investigation into Alex Salmond Ms Davidson said: *“the Committee has had its request for information stymied, redacted, turned down...There’s been over fifty, I think at the last count, attempts to get information that have been in some way thwarted by this Government and there is a real stench that they don’t want the Committee inquiry to find out what happened... We absolutely need to know why the Government is not allowing a Committee of its own Parliament to have access to information that they need”* and *“we need a full independent judge-led inquiry”*; and
- in her concluding statement, Ms Davidson said: *“At the moment, the Government is running riot and is denying the Parliament its right of scrutiny and there is no liberal democracy in the world that should allow the Executive to become over-mighty and be allowed to snub its nose, in particular to cases as serious as this, to the Parliament and to those represented to defend the country”*.

We considered that Ruth Davidson, as the leader of the largest group of opposition MSPs within the Scottish Parliament at the time, had spoken at length making serious accusations about alleged corrupt behaviour by the Scottish Government. We therefore considered whether alternative viewpoints to those expressed by Ruth Davidson had been included during the programme and given due weight. We took into account that this was a developing story (for example, the Lord Advocate responded to an urgent question in the Scottish Parliament on this matter later in the day) and that

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<sup>9</sup> John Swinney is the Deputy First Minister of Scotland.

<sup>10</sup> Nicola Sturgeon commissioned an independent review to examine whether or not she had broken the Ministerial Code in relation to her handling of sexual assault claims against Alex Salmond. This was separate to the Holyrood inquiry investigating how the Scottish Government handled harassment complaints against Alex Salmond, which was conducted by an independent legal authority.



the interviewer and the political correspondent provided some background context to the issue. For example, we acknowledged that Nick Eardley said:

*“Alex Salmond was supposed to be appearing before MSPs right now, that’s not happening because he pulled out after the Crown Office (Scotland’s prosecution service) demanded his evidence was unpublished, saying it was in contempt of court. Today Mr Salmond’s lawyers have written to the head of the Crown Office, the Lord Advocate demanding an explanation saying the removal of evidence was unprecedented”.*

Nick Eardley also said: *“The Crown Office said prosecutors acted independently and the Lord Advocate wasn’t involved”*. We considered this briefly set out the Crown Office and Lord Advocate’s position, including the explanation that their actions were due to Mr Salmond’s evidence potentially being *“in contempt of court”*. Later in the programme, when the topic of the Scottish Government allegedly withholding information from Parliament was discussed, Sarah Smith further explained *“that’s the legal advice that was given to the Scottish Government”*.

In addition, we were also mindful that at the start of the programme in the news headlines, there was a brief reference by Nick Eardley to Nicola Sturgeon’s denial of the claims against her:

*“This dramatic row in which Mr Salmond has already claimed that Ms Sturgeon misled Parliament and the group around her had conspired against him, allegations she denies, is now leading to questions about the separation of powers in Scotland”.*

We also considered that Sarah Smith provided some relevant context when explaining that the different authorities were at odds over what information could legally be released and when: *“You have different branches of Government, of the governing authorities in Scotland, who are all at odds with each other over what information can be made public and when, and this is developing into a situation where everybody is at odds with everybody else and accusations of conspiracy can easily be thrown around”*. In addition, Sarah Smith commented that *“...you could say Alex Salmond is throwing around allegations against all sorts of people at the top of public life...that doesn’t mean they’re baseless, but it doesn’t mean that they’re true...”*.

We also noted that Sarah Montague provided some challenge to Ruth Davidson’s point that *“this goes right to the heart of whether there has been a corruption in the truest sense of the word”*, by saying *“there is this investigation ongoing, will this not get to the bottom of it or are you suggesting something else needs to happen?”*.

We acknowledged that the above statements reflected, to a limited extent, alternative viewpoints on the ongoing dispute between Alex Salmond and the Scottish Government, and in particular on the Scottish Government’s recent actions regarding the publication of Alex Salmond’s evidence. However, given the gravity of Ruth Davidson’s accusations regarding the Scottish Government, her strong and continued criticism and the fact that she was able to express her views at length, we did not consider that alternative perspectives were given due weight within the programme. For example, in our view the position of the Scottish Government on allegations that it was corrupt, undemocratic, *“running*

riot” in Holyrood and was “denying the Parliament its right of scrutiny” was insufficiently represented in the programme.

We acknowledged that this was a developing story and the BBC had “respond[ed] accordingly” in terms of its planned coverage. However, the interview with Ruth Davidson was pre-recorded and the content of the interview was not affected by the developing news per se. As such, and in any event, it was incumbent on the broadcaster to present the programme with due impartiality, in accordance with Rule 5.1.

We took into account that the BBC said they had made repeated requests to interview a representative from the SNP in the week prior to the broadcast and in the days immediately before the interview. These requests were reiterated on the day that Ruth Davidson’s pre-recorded interview was broadcast and the SNP were offered an opportunity to respond directly to her concerns, but did not respond to the invitation. However, Ofcom’s [Guidance](#)<sup>11</sup> on Section Five also makes clear that “where a broadcaster attempts to seek alternative views, but these are not readily available (for example, an individual or organisation declines to give an interview or give comments), there are a range of editorial techniques for maintaining due impartiality”. For example, in this case the interviewer could have, used robust questioning or provided stronger challenge to Ruth Davidson’s statements during the interview. Instead, in the programme as broadcast, reference to Nicola Sturgeon’s position on the allegations made against her and the SNP was scant (apart from the short statement “*allegations she [Nicola Sturgeon] denies*” in the news report by Nick Eardley at the start of the programme). Although Sarah Smith’s analysis following the interview acknowledged there were alternative views by stating: “*this is developing into a situation where everybody is at odds with everybody else*” and “*you could say Alex Salmond is throwing around allegations against all sorts of people at the top of public life...that doesn’t mean they’re baseless, but it doesn’t mean that they’re true...*”, Ofcom did not consider this to be robust or sufficient challenge to the serious allegations put forward by Ruth Davidson. Accordingly, Ofcom considered that the BBC failed to present an appropriate range of views and give them due weight in the programme itself.

However, Rules 5.11 and 5.12 allow for due impartiality on major matters to be achieved “in clearly and timely linked programmes”. We went on to consider if this was achieved.

### Due impartiality in clearly linked and timely programmes

The BBC submitted that the due impartiality requirements were met “over time” because:

- they reported on this issue in two further episodes of the *World at One* on 26 February 2021 and 3 March 2021, where they broadcast ten minutes of Alex Salmond’s opening remarks in full and then broadcast two unedited sections of Nicola Sturgeon’s opening statement to the Committee respectively; and
- *World at One*’s “sister” programme, *PM*, led with the same story at 5pm that day. This coverage included an interview with a legal expert, Dr Nick McKerrell, who explained the

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<sup>11</sup> Guidance notes Section Five: Due Impartiality and Due Accuracy and Undue Prominence of Views and Opinions, paragraph 1.17.

constitutional position of the Lord Advocate and offered a critical perspective on Ruth Davidson's claims and an explanation from Nick Eardley of the Crown Office's view on events.

The BBC also argued that BBC Radio 4 has an established, and clearly connected, set of sequence[d] news programmes and its regular listeners understand that stories will be regularly updated throughout the day. It also said that "the *World at One* usually trails ahead to the *PM* programme", as it did on this occasion ("*PM will be here, as usual, at 5 o'clock this afternoon*").

Broadcasters may comply with Rules 5.11 and 5.12 by ensuring due impartiality is maintained either in each programme "or in clearly linked and timely programmes". We therefore considered whether the editions of the *World at One* on 26 February and 3 March 2021, and the edition of *PM* on 24 February 2021, were clearly linked and timely.

It is clear that national radio broadcasters, such as the BBC in the case of Radio 4, cannot preserve due impartiality by relying on what is broadcast across their service as a whole. Rather, under Rules 5.11 and 5.12, due impartiality can only be achieved within clearly linked and timely programmes.

It is also well established that even if other programmes deal with the same subject matter and contain relevant alternative viewpoints, these contextual factors alone are not sufficient to ensure due impartiality is maintained, particularly where the matter concerned is a major matter within the scope of Rules 5.11 and 5.12. This is because without an explicit editorial link listeners may not be aware of the other programmes which the broadcaster is relying on to preserve due impartiality. We would expect such a link to include a reference to the fact that the linked programme deals with the same matters as the programme in question.

Although the edition of *PM* referred to by the BBC was broadcast on the same day as this edition of the *World at One* and was therefore timely, we did not consider this programme – or the two broadcasts of the *World at One* on later dates – were clearly linked programmes within the meaning of the Code. This is because although the presenter trailed the programme by saying "*PM will be here, as usual, at 5 o'clock this afternoon*", there was no explicit reference to the fact that *PM* would be continuing coverage on the Scottish Government's handling of Alex Salmond's evidence to the Committee in the manner described above. Therefore this trailing statement on its own was insufficient to clearly link the two programmes, which was particularly significant in the context of a programme which concerned a major matter of political controversy. We acknowledged that in its background information, the BBC told Ofcom it had broadcast the interview with Ruth Davidson knowing that its future coverage in *PM* "would provide the audience with a range of views on the breaking story throughout the day, including reaction to Ruth Davidson's concerns, and report on the Lord Advocate's appearance before Parliament later that afternoon". However, in Ofcom's view, if the BBC had planned to provide alternative viewpoints in subsequent programming, it should have appropriately signposted this to listeners by, for example, including this information in the on-air trailing statement.

The BBC also stated that its understanding of the Code is that it "allows programme-makers the flexibility to respond to breaking news, with an understanding that a full range of views, even on a matter of public controversy, can sometimes only be achieved through successive programmes, whether explicitly linked or not". Ofcom acknowledges that breaking news requires editorial teams to make decisions rapidly while under intense pressure. However, the requirement in Rule 5.1 for due

impartiality to be maintained applies to all news programming. The Code does allow for due impartiality, including where major matters of political controversy are concerned, to be achieved in timely and clearly linked programmes. It is also the case that programmes broadcast before or after the programme in question may be a relevant contextual factor that can be taken into account when determining whether a broadcaster complied with Section Five. However, when considering whether due impartiality has been preserved, we will typically consider it appropriate to put much less weight on this contextual factor compared with other factors, such as the likely expectation of the audience. This is because the due impartiality rules envisage that if a broadcaster is seeking to preserve due impartiality by reflecting alternative viewpoints in linked programming, this should be made clear to the audience on air. In Ofcom's view, the BBC appears to have misinterpreted the Code by stating that due impartiality can be achieved through "successive programmes, whether explicitly linked or not" and "over time by ensuring a broad range of individuals and views are represented". As it cannot be guaranteed that a person listening to one programme will have been listening to the programme that precedes it or follows it, Ofcom would expect the broadcaster to take steps to ensure that the two programmes are "clearly linked" in order to comply with our rules. This is clearly set out in the wording of Rules 5.11 and 5.12. In this case, the presenter could have signalled to listeners, either during the course of the programme or at the end when she trailed *PM*, that the story would be covered throughout the day in a specific programme. Without a clear link listeners may not have been aware that the other programme(s) would continue to discuss the story and provide alternative viewpoints on it.

We acknowledged the BBC's argument that "it would be a significant constraint on programme-makers were this requirement to be tightened to the extent that it was deemed that there had been a breach of the Code because this was not achieved within a single programme". As discussed above, the Code is clear that due impartiality *can* be achieved across different programmes, even when dealing with a major matter of political or industrial controversy or major matters of public policy, so long as these programmes are clearly linked and timely.

Given the above, we did not consider that the BBC had reflected, and given due weight to, an appropriately wide range of significant views in clearly linked programmes.

In this case, we have taken careful account of the broadcaster's and audience's rights to freedom of expression and all the relevant contextual factors. In particular, Ofcom considered that the following factors (as outlined above), taken together resulted in a lack of due impartiality in the programme. These factors were: the gravity of Ruth Davidson's accusations regarding the Scottish Government and her strong and continued criticism; the fact that she was able to express her views at length without alternative perspectives being given due weight within the programme, for example Nicola Sturgeon's position on the allegations made against her and the SNP was only referred to very briefly during the programme; and the absence of a clear link to the subsequent *PM* programme which continued to cover the story. For all the reasons set out above, Ofcom's Decision is that the BBC failed to preserve due impartiality in its coverage of the relevant matters of major political controversy and major matters relating to current public policy dealt with in this programme.

Therefore, it is Ofcom's Decision that the BBC failed to comply with Rules 5.1, 5.11 and 5.12 of the Code.

**Breaches of Rules 5.1, 5.11 and 5.12**