

Decision of the Election Committee on a due impartiality complaint brought by the Respect Party in relation to *The London Debate*

ITV London, 5 April 2016

LBC 97.3 , 5 April 2016

1. On Friday 29 April 2016, Ofcom's Election Committee ("the Committee")¹ met to consider and adjudicate on a complaint made by the Respect Party in relation to its candidate for the London Mayoral election, George Galloway ("the Complaint"). The Complaint was about the programme *The London Debate*, broadcast in ITV's London region on ITV, and on ITV HD and ITV+1 at 18:00 on Tuesday 5 April 2016 ("the Programme"). The Programme was broadcast simultaneously by LBC on the local analogue radio station LBC 97.3, as well as nationally on DAB radio and on digital television (as a radio channel).
2. The Committee consisted of the following members: Nick Pollard (Chair, Member of the Ofcom Content Board); Dame Lynne Brindley DBE (Member of the Ofcom Board and Content Board); Janey Walker (Member of the Ofcom Content Board); and Tony Close (Ofcom Director with responsibility for Content Standards, Licensing and Enforcement and Member of the Ofcom Content Board).
3. For the reasons set out in this decision, having considered all of the submissions and evidence before it under the relevant provisions of the Broadcasting Code ("the Code"), the Committee decided not to uphold the Respect Party's complaint. The Committee found that in respect of ITV the broadcast of the Programme complied with the requirements of the Code. In the case of LBC, the Programme did not contain a list of candidates in the 2016 London Mayoral election (in audio form) and LBC therefore breached Rule 6.11. Whilst the Committee decided that no formal remedial action was necessary on this occasion, it noted that LBC should ensure that all further qualifying reports or discussions during the election period comply with Rule 6.11. In other respects the Committee found that the broadcast of the Programme by LBC complied with the requirements of the Code.

Background

The London Debate

4. The Programme was a factual programme featuring debate on policy matters affecting London between certain candidates in the 2016 London Mayoral election. The featured candidates represented the Conservative Party (Zac Goldsmith), the Labour Party (Sadiq Khan), the Liberal Democrat Party (Caroline Pidgeon), the UK Independence Party (Peter Whittle) and the Green Party (Sian Berry). The discussion centred on questions put to the candidates by members of a studio audience. The Programme was moderated by two presenters, Nina Hossain and Nick Ferrari. The Programme was

¹ Link to the Committee's Terms of Reference: <http://www.ofcom.org.uk/about/how-ofcom-is-run/committees/election-committee/terms-of-reference/>

produced by ITN, which also carried out compliance in relation to the Programme, following consultation with ITV's compliance department.

5. The Programme was broadcast simultaneously on television by ITV and on radio by LBC².

The Complaint

6. The Respect Party's complaint raised issues concerning ITV's and LBC's compliance with the "due impartiality" requirements in Section Five of the Code and the specific requirements relating to "elections" in Section Six of the Code.
7. The Respect Party made the following points in the Complaint:
 - a) The Respect Party stated that it considered Mr Galloway's omission from the Programme to be "unjustified, a hindrance to our ability to compete on a democratic level playing field...[and] undemocratic, as it excludes a large swathe of public opinion from a prominent public debate".
 - b) The Respect Party noted that it had "firm invitations and confirmations" extending an invitation to Mr Galloway to take part in the Programme and that as a result of the invitation it had "planned significantly around the event and promoted it to our supporters and the wider public". It added that the withdrawal of the invitation to Mr Galloway had caused "significant embarrassment and inconvenience".
 - c) The Respect Party noted that the justification given by ITN, which initially responded to the Respect Party's complaint, was that Ofcom "does not rule RESPECT to be one of the 5 major parties". In response, the Complaint raised the following matters:
 - (i) the Respect Party has had "MPs elected in London, unlike the Green Party or UKIP", is fielding a full slate of candidates for the 2016 London Assembly elections and is eligible for a Party Election Broadcast;
 - (ii) the Mayoral election is an election in London, not a national election. The Complaint stated that it is "reasonable to assume that the public profile of candidates as individuals would be at least as relevant as the supposed measures of electoral support of their parties". In this regard, the Complaint noted that:
 - a. Mr Galloway has been elected as an MP in London, unlike three of the candidates who took part in the Programme (Sian Berry, Peter Whittle and Caroline Pidgeon);
 - b. Mr Galloway has "28 years of Parliamentary experience, more than any of the other candidates put together";
 - c. Mr Galloway is "ranked by bookmakers as the third favourite candidate, with odds a fraction of those" of the candidates of the

² ITV London broadcast the first 25 minutes of the debate whilst LBC broadcast the full 60 minutes.

- Green Party, Liberal Democrats and UKIP, all of whom were featured in the Programme;
 - d. Mr Galloway is “regularly featured on the national media and has presented on TalkSport and LBC, and has three weekly international [television] shows”; and
 - e. Mr Galloway attracts higher levels of support on social media (Twitter and Facebook) than Zac Goldsmith and Sadiq Khan.
- (iii) on the basis of these factors, the Complaint concluded that Mr Galloway is “unarguably, one of the most recognisable politicians in the UK, that he is more prominent than any of his opponents on a number of objective measures, and that he can demonstrate significant electoral success in London”;
- (iv) in the complainant’s view, Mr Galloway’s omission was “especially serious” given that Mr Galloway is not able to present his regular broadcast programmes during the election period; and
- (v) further, the Complaint noted that Mr Galloway’s “opponents are given a media platform they would not otherwise have due to lack of public interest, yet which Mr Galloway is then barred from”. The complainant also alleged that the failure to include Mr Galloway in the Programme was “a politically motivated decision”.

Responses from ITV and LBC

8. By letters of 27 April 2016 ITV and LBC each made representations on the matters raised in the Complaint. In summary, both ITV and LBC accepted that Sections Five and Six of the Code were engaged in relation to the Programme but submitted that the Programme, and linked and timely coverage in other programming, complied with the requirements of the Code.

Representations by the Respect Party

9. On 28 April 2016 Ofcom provided the Respect Party with a copy of ITV’s and LBC’s written representations. Ofcom invited further written representations by 5pm that day.
10. The Respect Party responded requesting that a Respect Party representative be present at the meeting to make oral representations and answer any questions. Having reviewed the materials submitted to it, the Committee considered that it would be able to make a fair and reasoned decision on the basis of the information before it and that oral representations were not needed in order for it to reach a sound decision in a fair manner. Additionally, in the Committee’s view, the Respect Party would not be disadvantaged (or unnecessarily constrained in its ability to put its case) by not having the opportunity to provide oral representations. The Committee therefore refused the Respect Party’s request to make oral representations. Ofcom provided the complainant with a further opportunity to make written representations in advance of the Committee meeting.

11. The Respect Party made the following further representations, which were considered by the Committee:
 - a) The Respect Party did not agree with the Committee's decision not to permit oral representations.
 - b) The Respect Party considered that "It also seems evident that the outcome has already been decided and that Ofcom not only has made up its mind but has also played an instrumental part in the broadcasters' decision to deprive George Galloway of the right to speak".
 - c) The Respect Party asked "Is it not the case that George Galloway was formally invited to appear at the hustings but that, following an intervention by Ofcom, this invitation was withdrawn just days before the meeting?"
 - d) The Respect Party asked the Committee to reverse its decision and allow oral representations from Mr Galloway and the Respect Party.

Statutory framework

12. Under section 319 of the Communications Act 2003, Ofcom has a duty to set standards for the content of programmes to be included in television and radio services as appear best calculated to secure a range of statutory standards objectives. Ofcom has discharged this duty by producing, and from time to time revising, the Code.
13. Specifically, the standards objectives include an objective that the impartiality requirements of section 320 are complied with: section 319(2)(c)&(d).
14. Section 320 imposes certain "special impartiality requirements" in respect of "matters of political or industrial controversy" and "matters relating to current public policy". In particular, section 320(1)(b) requires "the preservation, in the case of every television programme service... and national digital sound programme service, of due impartiality, on the part of the person providing the service, as respects all of [the above] matters".
15. Section 320(4)(a) provides that the requirement in section 320(1)(b) "may be satisfied by being satisfied in relation to a series of programmes taken as whole".
16. Section 320(5) provides that Ofcom's standards code shall contain provision setting out the rules to be observed in connection with (a) the application of the requirement specified in section 320(1)(b), and (b) the determination of what, in relation to that requirement, constitutes a "series of programmes".
17. Section 320(6) provides that any provision made for the purpose of section 320(5)(a) must, in particular, take account of the need to ensure the preservation of impartiality in relation to the following matters (taking each matter separately) – (a) matters of major political or industrial controversy, and (b) major matters of current public policy, as well as of the need to ensure that the requirement specified in section 320(1)(b) is satisfied generally in relation to a series of programmes taken as a whole.

18. Section 325 provides that the regulatory regime for every programme service licensed by a Broadcasting Act licence includes conditions for securing that the standards set under section 319 (referred to above) are observed in the provision of that service. That obligation is reflected in each of ITV's and LBC's relevant broadcasting licences.

Applicable provisions of the Broadcasting Code

19. Section Five of the Code contains rules in relation to "Due Impartiality and Due Accuracy and Undue Prominence of Views and Opinions".
20. The Committee considered that the Programme, as a (non-news) factual programme featuring debate between politicians on policy matters affecting London in the London Mayoral election, was properly to be regarded as a programme relating to "matters of major political and industrial controversy and major matters relating to current public policy". Such matters are defined in Section Five as being "...generally matters of political or industrial controversy or matters of current public policy which are of national, and often international, importance...".
21. As such, the Committee considered the following provisions of Section Five of the Code to be relevant.
 - **Rule 5.11:** "...[D]ue 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 (listed above) 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."
22. The Committee also considered the meaning of "due impartiality" as defined at the beginning of Section Five of the Code:

"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."
23. In addition, the Committee considered Section Six of the Code relating to "Elections and Referendums" as the Complaint related to a programme broadcast within the election period for the 2016 London Mayoral election. Section Six sets out rules relating

to: (a) to the preservation of due impartiality across an election campaign; and (ii), specific programmes involving candidates in reports or discussions relating to their constituency or electoral area.

24. The Committee considered the following provisions of Section Six of the Code to be relevant.

- **Rule 6.2:** “Due weight must be given to the coverage of larger parties during an election period. Broadcasters must also consider giving appropriate coverage to other parties and independent candidates with significant views and perspectives.”
- **Rule 6.8:** “Due impartiality must be strictly maintained in a constituency report or discussion and in an electoral area report or discussion.”
- **Rule 6.9:** “If a candidate takes part in an item about his/her particular constituency, or electoral area, then candidates of each of the larger parties must be offered the opportunity to take part. (However, if they refuse or are unable to participate, the item may nevertheless go ahead.)”
- **Rule 6.10:** “In addition to Rule 6.9, broadcasters must offer the opportunity to take part in constituency or electoral area reports and discussions, to all candidates within the constituency or electoral area representing parties with previous significant electoral support or where there is evidence of significant current support. This also applies to independent candidates. (However, if a candidate refuses or is unable to participate, the item may nevertheless go ahead.)”
- **Rule 6.11:** “Any constituency or electoral area report or discussion after the close of nominations must include a list of all candidates standing, giving first names, surnames and the name of the party they represent or, if they are standing independently, the fact that they are an independent candidate. This must be conveyed in sound and/or vision. Where a constituency report on a radio service is repeated on several occasions in the same day, the full list need only be broadcast on one occasion. If, in subsequent repeats on that day, the constituency report does not give the full list of candidates, the audience should be directed to an appropriate website or other information source listing all candidates and giving the information set out above”.

25. Ofcom's published Guidance to Section Six of the Code states the following with regard to Rules 6.9 and 6.10:

“Rule 6.9 requires that if a candidate takes part in an item about his/her constituency then the broadcaster must ensure that each of the larger parties (as explained in the Broadcasting Code under Rule 6.2) is offered an opportunity to take part, as well as those with evidence of significant previous or current electoral support (Rule 6.10).”

The ‘larger parties’

26. “Larger parties” for the purposes of the London Mayoral election are defined in Ofcom’s list of larger parties, published on 11 March 2016, as follows³:

“3. At present in England and Wales, larger parties are defined as: the Conservative Party; the Labour Party; the Liberal Democrats; and the UK Independence Party.

....

7. In addition to the above, in England the larger parties for the purposes of the London Assembly and London Mayoral elections taking place on 5 May 2016 include the Green Party”.

The Committee’s Decision

27. The Committee carefully considered the submissions made by the Respect Party and ITV’s and LBC’s written representations.
28. The Committee considered further the Respect Party’s request to make oral representations. The Committee noted that in the particular circumstances of this case, the Committee was required to determine the complaint with great speed. This is because the London Mayoral election will be held on 5 May 2016. The Committee is therefore required to convene, reach a decision and publish it sufficiently in advance of the election so that, in the event of a Code breach being identified, it is possible to direct ITV and/or LBC to take appropriate steps to remedy the breach in advance of the election⁴. In the case of the Complaint, the Committee noted that it is required to make a decision regarding the compliance of ITV and LBC with the rules in Section Five and Six of the Code. That decision requires an assessment of the relevant rules, review of the Programme itself, consideration of the Complaint and the representations of the parties. Having regard to this information, the Committee considered that it did not additionally require oral representations from the complainant in order to make its decision.
29. The Committee therefore proceeded to consider ITV’s and LBC’s compliance with each of the Code Rules set out above.
30. The Committee first considered whether the Programme was an ‘electoral area discussion’ falling within the scope of Rules 6.8 to 6.11 of the Code. The Committee then turned to the application of the due impartiality rules more generally in Rules 5.11, 5.12 and 6.2.

³ Ofcom statement of 11 March 2016: “Review of Ofcom’s list of larger parties for elections taking place on 5 May 2016”(<http://stakeholders.ofcom.org.uk/binaries/consultations/review-larger-parties-elections-5-May-2016/statement/statement.pdf>).

⁴ The complainant had been informed of the special procedures in cases of this nature by email of 25 April 2016.

Electoral area discussion

31. The Committee considered that the Programme was an electoral area discussion for the purposes of Rules 6.8 to 6.11 of the Code. In this regard, the Committee noted that the Programme consisted of a moderated debate featuring five candidates in the forthcoming London Mayoral election discussing matters of relevance to the electorate.

Rules 6.9 and 6.10

32. The Committee noted that ITN, who had made the programme for ITV and LBC, had invited representatives of each of the “larger parties” for the purposes of the 2016 London Mayoral election to take part in the Programme and, indeed, they had taken part. The Committee discussed Ofcom’s statement of 11 March 2016 “Review of Ofcom’s list of larger parties for elections taking place on 5 May 2016”, which had been finalised after a public consultation.
33. The Committee appreciated the importance of television as a medium, and the potential of televised debates to increase or decrease support for individual political candidates and for their parties as a whole. However, that being so, the Committee considered that Rule 6.9 of the Code did not specifically require the inclusion of any party not properly considered to be a “larger party”.
34. The Committee noted, however, that inclusion or otherwise on the Ofcom list of larger parties should not be a single determining factor in whether a broadcaster is required to offer a candidate an opportunity to take part in an electoral area discussion for the purposes of Rule 6.10. Rule 6.9 and Rule 6.10 taken together clearly anticipate the possibility that candidates from parties other than the larger parties must be offered the opportunity to take part in such a programme where they can demonstrate sufficient past or current support.
35. In relation to Rule 6.10, the Committee considered each of the points presented by the complainant (and ITV’s and LBC’s representations in response) by reference to the requirement on ITV and LBC to offer all candidates within the electoral area an opportunity to take part in the electoral area discussion where those candidates have “previous significant electoral support” or where there is evidence of “significant current support”.
36. As to the evidence of previous significant electoral support, the Committee noted that Mr Galloway was elected as the MP for Bethnal Green & Bow in 2005-2010, representing the Respect Party, and also as the Respect Party MP for Bradford West in 2012-2015. The Committee also noted that: (i) in the 2010 General Election, Mr Galloway stood as the Respect Party candidate for Parliament in Poplar and Limehouse, coming third with 17.5% of the vote in that constituency; and (ii) in the 2015 General Election, Mr Galloway stood as the Respect Party candidate for Parliament in Bradford West, coming second with 21.5% of the vote in that constituency. The Committee acknowledged that this demonstrated a degree of support for Mr Galloway, including in London, as a Respect Party candidate in previous elections, albeit that the

most significant performance occurred three election cycles ago (2005, Bethnal Green & Bow) and in a by-election (2012, Bradford West).

37. The Committee also noted Mr Galloway's previous parliamentary career as a representative of the Labour Party. In the Committee's view, however, this did not amount to evidence of previous significant electoral support for Mr Galloway as a candidate for the Respect Party in the London specific elections.
38. The Committee also noted that this evidence of previous electoral support related to Westminster elections, rather than elections for London Mayor. The Committee noted that, unlike elections for Westminster seats, London Mayoral elections have typically focussed on the individuals standing rather than being focussed on the political party that they represent. The Respect Party itself did not stand candidates in the Mayoral or London Assembly elections in 2012. In 2008, the Respect Party did not obtain significant levels of electoral support: the party achieved 0.7% and 1.1% of the vote in the Mayoral and London Assembly elections, respectively. Mr Galloway has not previously stood as a candidate for London Mayor.
39. In the light of the particular characteristics of the London Mayoral election as well as the Respect Party's participation in those elections, the Committee considered that it would be reasonable, in this instance, for the broadcasters to place greater weight on the available evidence of Mr Galloway's current support in the 2016 London Mayoral election.
40. The Committee reviewed the available evidence of current support. Consistent with Ofcom's published Guidance to Section Six of the Code, the Committee considered that this requirement should be interpreted in a straightforward way. In assessing evidence of "significant current support" broadcasters should take account of all relevant factors, and not only electoral support. However, broadcasters may understandably place greater weight on evidence that is objective and measurable (such as opinion poll evidence). The Committee noted that this position was set out in Ofcom's published Guidance to Rule 6.10.
41. The Committee reviewed the available opinion poll data for the period January to April 2016 for the London Mayoral election. It was noted that a number of opinion polls had been conducted both in the run up to and during the election period⁵ for the London Mayoral election both before and after the Programme was broadcast on 5 April 2016. These show the following levels of support for the Respect Party: 2% (YouGov, 7 January); 1% (Opinium, 8 March); 2% (YouGov, 14 March); 1% (ComRes, 21 March), 1% (Opinium, 4 April); and 2% (ComRes, 5 April 2016)⁶. In the Committee's view, these opinion poll results, taken both together and in isolation, did not amount to evidence of current significant support on the part of the Respect Party or its candidate, Mr Galloway. In particular, the Committee considered that this evidence did not

⁵ The election period for the 2016 London Mayoral election commenced on 21 March 2016.

⁶ A further opinion poll, published after the broadcast of the Programme records 0% for the Respect Party (YouGov, 21 April).

indicate that Mr Galloway's performance in the London Mayoral election would be reflective of his performance in previous Westminster elections.

42. The Committee went on to consider whether there was evidence of significant current support for the Respect Party and/or Mr Galloway based on the other factors put forward in the Complaint, including: the number of candidates standing for the party and the party's eligibility for a Party Election Broadcast; Mr Galloway's public profile (including his radio and television shows); support on social media; and bookmakers' odds.
43. In relation to the number of candidates standing for the Respect Party and its eligibility for a Party Election Broadcast, the Committee noted that this fact does not in itself demonstrate levels of current support.
44. The Committee considered the continuing relevance of opinion poll data and the significance of other potential measures of support. In relation to the other factors put forward in the Complaint, the Committee considered that the Respect Party had failed to demonstrate sufficient evidence of significant current support on this basis. In the Committee's view, these factors lacked sufficient consistency and objectivity. In assessing whether a candidate is able to demonstrate significant current support, such that the obligation in Rule 6.10 is engaged, broadcasters must rely on objective and measurable evidence of the levels of support of a candidate. This will help ensure that broadcasters treat all candidates in an election with the due impartiality required by the Code, and demonstrate that it has done so, when applying Rule 6.10. In the Committee's view, social media profile, bookmakers' odds and more general factors such as the public profile of the individual concerned are not sufficiently objective and measurable factors for the purposes of Rule 6.10. In this regard, the Committee considered that, unlike opinion poll data, these factors were not reliable indicators of whether people intended to vote for Mr Galloway in the London Mayoral election.
45. Having regard to the totality of the relevant evidence, the Committee considered that it was within the scope of ITV's and LBC's reasonable judgement not to include Mr Galloway in the Programme. The Committee therefore considered that ITV and LBC had complied with Rules 6.9 and 6.10 of the Code.

Rule 6.8

46. The Committee then considered whether ITV and/or LBC had breached the requirement in Rule 6.8, that due impartiality must be "strictly maintained" in the Programme as an Electoral Area Discussion.
47. The Committee noted the qualification imparted by the word "due" in relation to impartiality (as defined in Section Five of the Code) was an important consideration. "Due impartiality" did not mean that an equal division of time has to be given to every view (or set of views) within a programme or within clearly linked and timely programmes. Its meaning varied according to a variety of contextual factors, including the extent to which the content and approach of a programme is signalled to the audience.

48. In the Committee's view, the requirement in Rule 6.8 for due impartiality to be strictly maintained in the Programme did not impose a requirement, additional to Rule 6.10, to afford Mr Galloway the opportunity to participate in the debate. Rule 6.8 did not require ITV or LBC to invite all candidates to participate in the Programme. Rather, the requirement in Rule 6.8 relates to whether due impartiality was strictly maintained in the Programme by reference to the material covered in the Programme. The Committee additionally considered whether Rule 6.8 required ITV and LBC to reflect Mr Galloway's views in the Programme, notwithstanding the fact that he was not participating in the debate. In the specific context of the Programme, the Committee decided that Rule 6.8 did not impose such an obligation. It was noted that Rules 5.11 and 5.12 (addressed below) required due impartiality and due weight to be given to an appropriately wide range of significant views in each programme and in clearly linked and timely programmes.
49. Having reviewed the Programme, the Committee did not identify any breach by ITV or LBC of Rule 6.8.

Rules 5.11, 5.12 and 6.2

50. The Committee then considered the application of Rules 6.2, 5.11 and 5.12. In the Committee's view, given that the Programme was broadcast during the election period for the 2016 London Mayoral election, it was appropriate to consider these rules together.
51. The Committee considered the content, format and broadcast of the Programme, in the context of, for each of ITV and LBC, other clearly linked and timely programming.
52. The Committee noted ITV's submission that it had featured Mr Galloway and his campaign in its electoral reporting on ITV London News. Specifically, ITV pointed to a profile item featuring Mr Galloway on ITV London News on 22 April 2016. ITV explained that it either had featured, or intended to feature, prior to polling day, similar linked profiles on all the smaller party and independent candidates. ITV explained that express consideration had been given to the inclusion of Mr Galloway in the Programme, but that a decision not to include him had been taken for editorial reasons.
53. The Committee also noted LBC's submission that it had made plans to feature all of the candidates for the 2016 London Mayoral election in its programming during the election period. LBC explained that it had offered Mr Galloway a five minute interview with its Political Editor and the opportunity to make his case uninterrupted with a one minute manifesto to be broadcast in the final days of the campaign (LBC explained that this offer has also been made to all the non "larger party" candidates).
54. In the Committee's view when reading these rules together in these circumstances, it was clear that:
 - a) Due impartiality could be achieved by broadcasters in "clearly linked and timely programmes" included in their services over the election period (Rule 5.11).

- b) It required an “appropriately wide range of significant views” to be included and “given due weight” in each programme, or in clearly linked and timely programmes, over the course of the election period, and required views and facts not to be misrepresented (Rule 5.12).
 - c) Specifically during an election period “due weight” must be given to coverage of the “larger parties”. Broadcasters have an obligation to consider giving appropriate coverage to other parties and independent candidates with significant views and perspectives (Rule 6.2).
 - d) The qualification imported by the word “due” in relation to impartiality (as defined in Section Five of the Code), was an important consideration.
55. The Committee considered that these provisions did not require ITV or LBC to offer every candidate in the 2016 London Mayoral election the opportunity to take part in the Programme. In the context of a single debate broadcast featuring each of the candidates of the “larger parties”, and having regard to other clearly linked and timely programming, the Committee considered that it was an appropriate and proportionate decision not to include Mr Galloway. The Committee considered that due impartiality had been maintained in the Programme and that an appropriately wide range of views had been included and given due weight. The Committee also noted the other ITV and LBC programming featuring Mr Galloway (and the other candidates) that had already been broadcast, or which was planned to be broadcast, during the election period. The Committee therefore considered that both ITV and LBC had discharged their respective obligations in Rule 5.11 and 5.12 in clearly linked and timely programmes. Both ITV and LBC had also considered giving appropriate coverage to other parties and independent candidates with significant views and perspectives during the election period as required by Rule 6.2.
56. The Committee therefore considered that ITV and LBC had complied with Rules 5.11, 5.12 and 6.2 of the Code.

Rule 6.11

57. The Committee then considered whether LBC had breached the requirement in Rule 6.11 to “include a list of all candidates standing, giving first names, surnames and the name of the party they represent, or if they are standing independently, the fact that they are an independent candidate”.
58. The Committee noted LBC’s acceptance that owing to a “production mistake”, the full list of candidates was only available to viewers of the ITV programme by means of an on screen graphic, not listeners to LBC. The Committee noted LBC’s response that it had “at the earliest opportunity, directed its audience to the full list of candidates during the 7pm news bulletin”.
59. The Committee noted that the 7pm news bulletin simply directed listeners to a list of candidates on LBC’s website. In the Committee’s view, the requirement in Rule 6.11

requires, in the case of a radio broadcast, a list of candidates to be read out on air including the candidates' names and the parties they represent (or the fact that they are an independent candidate). The Committee therefore considered that LBC had breached the requirement in Rule 6.11 but accepted that this was due to an oversight resulting from the co-production of the programme with ITV (a list of candidates had been presented on screen). The Committee noted LBC's attempt to promptly correct this error, but considered that this had fallen short of what was required by Rule 6.11. The Committee decided that no formal remedial action was necessary on this occasion but it noted that LBC should ensure that all further qualifying reports or discussions during the election period comply with Rule 6.11.

Other matters raised in the Complaint and the Respect Party's representations

60. The Committee noted that there were a number of other matters raised in the Complaint, including: the withdrawal of the initial invitation to participate in the Programme; Mr Galloway's inability to present his regular broadcast programmes during the election period (as a candidate in the election); and the allegation that the failure to include him in the Programme was a "politically motivated decision". The Committee also noted the complainant's contention that: the Committee had already made up its mind; that Ofcom had played an instrumental part in the broadcasters' decision not to include Mr Galloway in the Programme; and that, Mr Galloway's invitation to take part in the Programme had been withdrawn following an intervention by Ofcom.
61. The information provided by the complainant indicated that on 1 March 2016 a representative of ITN, the organisation that produced the Programme, did invite Mr Galloway to take part in the debate and, when questioned, confirmed that invitation on 17 March 2016. That invitation was withdrawn by telephone conversation on 31 March 2016. The Committee noted ITV's apology for this in its representations and LBC's explanation that the decision was taken by ITN to only include representatives of the larger parties in the Programme. In the Committee's view the subsequent withdrawal of the invitation clearly had the potential to cause embarrassment and inconvenience on the part of the Respect Party and Mr Galloway. Whilst, the Committee considered that this represented poor practice on the part of ITN, it did not raise a question of compliance by ITV or LBC with the Code. The Committee noted that Ofcom had no role or involvement in any decisions of the broadcasters relating to the Programme, including the choice of participants in the Programme. Those matters were entirely for the editorial judgement of the broadcasters, subject to compliance with the Code which is assessed by Ofcom post-broadcast. It was noted that Ofcom's "larger parties" statement was published on 11 March 2016 and that that document stated as follows:

"2.14 (...) the Code does not prevent broadcasters from covering parties and independent candidates other than the parties on the list during election campaigns.

2.15 We would therefore expect broadcasters to give appropriate editorial coverage to parties not on the list of larger parties, especially in situations where there are likely to be a greater range of potential voices competing for coverage. There may be

particular reasons for this in the context of the different elections being contested in May 2016, especially in the different nations of the UK.”

62. In relation to the fact that Mr Galloway is unable to present his regular radio shows during the election period, this is a consequence of Rule 6.6 of the Code which states that: “Candidates in UK elections … must not act as news presenters, interviewers or presenters of any type of programme during the election period”. Ofcom’s published Guidance on Rule 6.6 states:

“Rule 6.6 is concerned not just with preventing electoral issues from being reported in a partial matter. The rule is designed to help secure the integrity of the democratic process, and the public’s trust in that integrity, through preventing any unfair electoral advantage being afforded to a particular candidate, through their appearance on licensed services. (...)"

63. The Committee considered the implications of this rule for Mr Galloway and was satisfied that the implications of Rule 6.6 did not raise a question of compliance of the Programme by ITV or LBC with the Code.

Decision

64. For the reasons set out above the Committee decided that:

- a) ITV had complied with the Code.
- b) LBC had complied with Code Rules 5.11, 5.12, 6.2, 6.8, 6.9 and 6.10.
- c) LBC had breached Rule 6.11 by failing to include a list of candidates for the 2016 London Mayoral election within the Programme. LBC should ensure that all further qualifying reports or discussions during the election period comply with Rule 6.11.

3 May 2016