

Mr David Halliday

BY EMAIL TO: [✂]

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Direct line: [✂]
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4 May 2021

Dear Mr Halliday,

**RE: DECISION OF THE OFCOM ELECTION COMMITTEE,
DUE IMPARTIALITY IN RELATION TO THE BBC'S COVERAGE OF THE SCOTTISH
PARLIAMENTARY ELECTION (27 April 2021)**

Thank you for your email dated 3 May 2021, in which you express your client's dissatisfaction with the above-referenced decision of the Election Committee ("**the Decision**"); and identify further examples (subsequent to the Decision) of what you consider is a structural bias within the BBC against the Alba Party during the election period.

We deal with each of these points in turn below. In doing so, and for completeness, we note that Section 3 and Annex 1 of the Decision set out the relevant statutory framework and rules of Ofcom's Broadcasting Code ("**the Code**").

The Committee's decision of 27 April 2021

As explained in its Terms of Reference, the Election Committee's decisions are final and are not subject to internal review¹.

However, we convened the Election Committee again today to urgently consider your email of 3 May 2021, which included a new complaint of evidence of a structural bias within the BBC against the Alba Party and in doing so, the Committee responds to the particular points raised below.

Inviting further representations from the BBC following Mr Salmond's hearing

You have suggested in your recent email that Ofcom should not have gone back to the BBC after Mr Salmond's oral submissions as the BBC had already indicated that their participation in the process was concluded. For the reasons set out below, we strongly disagree with this.

As a public body, it is important that Ofcom acts fairly, particularly when considering broadcasting complaints such as those raised by your client. Further, the ability for all parties to a complaint to

¹ [Election Committee - Ofcom](#)

make representations to Ofcom is important, not least to ensure that the Election Committee is able to reach a robust decision taking account of all of the relevant facts.

Ofcom considered, taking account of the nature of the submissions made by Mr Salmond in his oral hearing on 23 April 2021, that it would be appropriate to provide the BBC with excerpts of the transcript from that hearing and to invite it to make further comments. The Committee had indicated to Mr Salmond during the oral hearing that it may do this. In doing so, Ofcom was mindful of the fact that Mr. Salmond appeared to be raising some substantive new points for the Committee's consideration (for example, regarding the BBC's alleged hostility on *The Nine* and *Good Morning Scotland*) and that he had played a short recording of his interview on *The Nine* for the Election Committee without necessarily playing the full interview. The Committee considered that, in the interests of fairness, the BBC should be given the opportunity to respond to these particular points.

Whilst the BBC did indicate that it did not intend to make any oral submissions to the Election Committee in its letter of 21 April 2021, this did not in our view mean that its participation in the process was concluded and that it should thereafter be precluded from providing any further representations on any new or substantive points made by Mr Salmond in his oral submissions. The BBC made clear that, if as a result of representations from the Alba Party, Ofcom would feel it helpful for the BBC to provide further input, it would be happy to do so. Further, the fact that the BBC did choose to make further submissions following Mr Salmond's oral hearing, and that it did so in some detail, demonstrates in our view the value of inviting further representations in this particular case.

Ofcom's approach to the 14 April News Sample

You have also suggested that, having selected a recent and random day (14 April 2021) to use as an illustrative example of the BBC's coverage of the Alba Party during the election period, Ofcom then chose to ignore or explain that sample as unrepresentative in the Decision. We do not agree.

In choosing to request some of the BBC's programming from 14 April 2021, Ofcom was seeking to provide the Election Committee with an illustrative example of the way that the BBC has approached coverage of the Alba Party during the election period. However, as noted by the BBC and the Election Committee, caution should be exercised when considering the overall coverage of an election period (as is required by Rule 6.2 of the Code) by reference to a broadcaster's coverage on only one or two days within that period.

The Election Committee did consider the 14 April News Sample when assessing the Complaint (see paragraph 3.45 onwards of the Decision). Indeed, the Committee specifically recognised at paragraph 3.47 that the 14 April News Sample contained little reference to the Alba Party. In the Committee's view however, this should not, by itself, demonstrate a failure by the BBC to provide due weight to the Alba Party during the election period. As explained at paragraph 3.46 of the Decision, and taking account of the level of the Alba Party's current support, the Committee did not consider that the BBC should be required to include a reference to the Alba Party in every news item which considers the Scottish Parliamentary election.

Ofcom's approach to the concept of larger and smaller parties and the BBC's election guidelines

The Committee noted your comments about paragraphs 3.20-21 of the Decision, but disagreed. As we have previously stated, providing it could demonstrate compliance with the Code, the BBC was entitled to apply its own editorial guidelines. The Committee did not consider that the fact that the BBC has editorial guidelines which distinguish between large and small parties should, by itself, mean that the BBC's election related programming fails to comply with the Code. The Committee further noted the comment made in your email dated 3 May 2021 that "it may be true that.... the BBC using concepts which have been specifically discontinued by Ofcom (supported by the BBC) does not in itself contradict the Code".

You also argue that, in this case, the BBC's use of the larger party concept had "caused a view to be taken of the appropriate coverage to be given which would not have been taken had those disapproved concepts not been applied". The Committee was however convened to assess the BBC's compliance with the Code in its broadcast coverage of the Alba Party from the start of the election period, until the date of the Decision. It was not for the Committee to assess the content of the BBC's own internal guidelines, or to speculate as to what editorial decision it might have made in respect of this coverage had different guidelines been adopted.

Your new complaint

Further examples of structural bias against the Alba Party in the BBC's election coverage

The BBC's decision to not include Alex Salmond in its second leaders debate

In your email, you have drawn Ofcom's attention to the BBC's upcoming leaders debate in respect of the Scottish Parliamentary elections, scheduled to be broadcast at 7:50pm this evening on BBC One Scotland (the "**Second Leaders Debate**"). You have noted, in particular, that in its equivalent leaders debate for the May 2021 elections to the Welsh Senedd (the "**Welsh Leaders Debate**"), the BBC has included the leaders of the Welsh Labour Party, Conservative Party, Plaid Cymru, Liberal Democrats and Abolish the Welsh Assembly parties in the first hour of that programme. And that, in the second part of that programme, the leaders of Reform UK, the Green Party and UKIP have been included. You have suggested that, given the evidence regarding support for these parties (some of which are polling at levels below or similar to the Alba Party), it would be perverse for the BBC to exclude the Alba Party from the Second Leaders Debate.

As you will be aware, the Committee did consider the BBC's approach to its first leaders debate (broadcast on 30 March 2021, the "**First Leaders Debate**") in the Decision, including the BBC's decision to not include Alex Salmond, as the leader of the Alba Party, in that programme. The Committee found that, taking account of the information available to the BBC at that time, it was not required by Rules Five or Six of the Code to include the leader of the Alba Party within the First Leaders Debate.

As made clear at paragraph 3.24 of the Decision, the level of support for political parties is, by its nature, dynamic and the BBC would need to assess the Alba Party's level of support and political context afresh in advance of the Second Leaders Debate in order to determine what level of

coverage, if any, should be provided to the Alba Party in that debate or in any linked programmes. We recognise that the BBC has more information now regarding the likely level of support for the Alba Party than it did at the time of the First Leaders Debate. Taking account of the 15 opinion polls conducted subsequent to the Alba Party's launch, the Alba Party's (rolling) average level of support in the regional vote as at the date of this letter is currently 3.3%.²

However, Ofcom is a post-broadcast regulator and therefore assesses content once it has been broadcast. We do not consider that it would be appropriate for Ofcom to pronounce on the content of the BBC's Second Leaders Debate and, in particular, with Rules Five and Six of the Code before the programme and any linked programming has actually been broadcast.

We nevertheless want to take this opportunity to reiterate that it is an editorial matter for a broadcaster as to how it maintains due impartiality under the Code, and that there are a range of techniques for maintaining due impartiality. This was a point made specifically by Mr Salmond in his oral submissions to the Election Committee on 23 April 2021, where he noted that the BBC could have (when covering the First Leaders Debate), included "an Alba Party spokesperson in follow-up analysis or linked related programming. This would ensure that the Alba Party received some sort of acknowledgement of presence, a recognition that its policies might be of interest to audiences and an opportunity to comment on the debate and the issues that had arisen".

We recognise that inviting all party leaders to participate in a debate programme is one means of preserving due impartiality and including an appropriately wide range of significant views and perspectives in election-related programming. However, we do not consider that this is the only means of doing so. We are mindful, in this regard, that the Second Leaders Debate and Welsh Leaders Debate relate to different elections in different nations with different political context and that the evidence of support for the different political parties in both of these elections is different (with the Alba Party having no past electoral support). Further, and as noted in paragraph 3.36 of the Decision, due impartiality can also be achieved over clearly linked and timely programmes. In this regard, the Committee notes that the BBC has invited Mr Salmond for an interview on BBC One Scotland at 7pm, before the Second Leaders Debate. The BBC has explained that this programme will be clearly linked with the Second Debate.

BBC's failure to provide coverage of Alba Party candidates meeting outside Holyrood to publicise the party's policies on women's rights

We note the further example of alleged BBC bias towards the Alba Party identified in your email and which concerned the BBC's failure to cover the gathering of Alba Party candidates outside of the Scottish Parliament building, to publicise the party's policies on women's rights. You say that the

² The 15 opinion polls considered in total showed support for the Alba Party in the regional vote as, respectively: 3% (Survation, conducted on 29-30 March 2021), 6% (Panelbase, 30 March-1 April 2021), 3% (Ipsos MORI, 30 March-4 April 2021), 2% (Opinium, 1-6 April 2021), 3% (Savanta ComRes, 2-7 April 2021), 6% (Panelbase, 9-12 April 2021), 2% (YouGov, 16-20 April 2021), 1% (Savanta ComRes, 16-20 April 2021), 3% (Survation, 20-22 April 2021), 6% (Panelbase, 21-26 April 2021), 2% (Survation, 23-26 April 2021), 2% (Savanta Comres, 23-27 April 2021), 4% (BMG, 27-30 April 2021), 4% (Panelbase, 28-30 April 2021) and 3% (Opinium, 28 April-3 May 2021)

BBC's explanation for this was that it did not have a camera in the area, but that your clients later noted that it had managed to cover the attendance of Willie Rennie, leader of the Scottish Liberal Democrats, at the same location. In response the BBC informed us that Mr Rennie was interviewed in Edinburgh by a BBC crew at 10am on Sunday. The cameraman then had to go to Balerno for another pre-arranged interview. The BBC said it did not have any crew available for the Alba Party photocall at midday. The BBC also said that it does not cover every photocall that the Alba Party– or other parties – stage. The Committee notes that political parties are free to hold photocalls when and wherever they choose, but there is no requirement for broadcasters to attend them. The Committee did not consider that this example demonstrates that the BBC is biased against the Alba Party.

For the reasons set out above, the Committee did not uphold your complaint of 3 May 2021. Please note that we will be publishing this correspondence on our website shortly.

Yours sincerely

[signature]

Adam Baxter