

## Channel 4 News

<b>Type of case</b>	Broadcast Standards Complaint Assessment
<b>Outcome</b>	Not Pursued
<b>Service</b>	Channel 4
<b>Date &amp; time</b>	23 May 2023, 19:00
<b>Category</b>	Due impartiality
<b>Summary</b>	We received 19 complaints that a news report was not duly impartial. We concluded that the programme adequately reflected alternative viewpoints and provided sufficient context. It did not, therefore, raise issues which warranted investigation under the Broadcasting Code.

### Summary

Ofcom received 19 complaints<sup>1</sup> about a news report in the edition of *Channel 4 News* (“the Programme”) broadcast on Channel 4 on 23 May 2023. In summary, the complainants alleged that the Programme breached the due impartiality requirements in Section Five of Ofcom’s Broadcasting Code (“the Code”) because it displayed bias in its account of: complaints made against the Chair of the Equality and Human Rights Commission (“EHRC”), Baroness Kishwer Falkner; allegations that the EHRC was not acting independently of the Government; and that the coverage did not fairly represent different views on proposed changes to the Equality Act 2010.

Following an assessment of the Programme, Ofcom has decided that it did not raise issues warranting investigation. Taking into consideration that the assessment involved matters of public interest

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<sup>1</sup> This included one complaint which was supported by 54 cross bench members of the House of Lords. This complaint also alleged that the Programme was unfair in its treatment of Baroness Falkner and therefore was in breach of [Section Seven of the Code \(Fairness\)](#). Ofcom wrote to the main complainant on 31 May 2023 explaining that under the statutory scheme we can typically only accept a fairness complaint from “the person affected” by the programme or by someone properly authorised to act on their behalf.

relating to the issue of due impartiality in news, Ofcom has exceptionally decided to publish the reasons for its decision.

## Introduction

The licence for Channel 4 is held by Channel Four Television Corporation (“the Licensee”).

On 23 May 2023, the service’s hour-long evening news programme included a pre-recorded report, lasting approximately nine minutes, by its Investigations Editor, Cathy Newman, about allegations made against Baroness Falkner and the EHRC. This was followed by a live interview with Caroline Nokes MP, Chair of the House of Commons Women and Equalities Select Committee.

The pre-recorded report was introduced by the news anchor in the studio Jackie Long, who said:

*“Now, it is tasked with protecting all our human rights. But tonight, the chair of the Equality and Human Rights Commission, Baroness Falkner, is under investigation after complaints about her conduct. The inquiry is ongoing and the allegations being considered are secret. But this programme has seen concerning evidence of a toxic culture inside the Commission with claims of bullying, harassment and discrimination, along with a wave of resignations. Our Investigations Editor, Cathy Newman, has this exclusive report”.*

The Investigations Editor said that an independent barrister was conducting an investigation into Baroness Falkner’s leadership of the EHRC and that Channel 4 News had learned it would “*examine allegations of discriminatory behaviour by her*”. She also said that Channel 4 News had conducted a series of interviews with current and former members of EHRC staff, and that “*Lady Falkner’s supporters say she’s made the commission sharper and leaner. But other staff as well as public and confidential documents we’ve reviewed paint a disturbing picture of the culture at the Commission*”.

She quoted a confidential document “*written by some senior staff*” which said:

*“We are deeply concerned about an increase in bullying, harassment and discrimination...There is a lack of psychological safety, i.e. the fear of who will be attacked next...The Board, including the Chairwoman, are not functioning in line with good governance...Unacceptable behaviour from the Chairwoman is becoming normalised. Staff are not treated with courtesy and respect. Bullying and notably discriminatory comments/discussions have been openly had with officers present, e.g. the November Board meeting on the Equality Act”.*

She said that at the November 2022 Board meeting, Baroness Falkner was alleged to have referred to Emma Laslett, a trans woman who had appeared on a radio quiz show the night before. She said that Baroness Falkner “*describ[ed] her [i.e. Emma Laslett] in disparaging terms as ‘a bloke in lipstick’*”. The Investigations Editor added: “*We understand the Commission’s Chief Executive rebuked the Chair*”. An interview with Emma Laslett was then included where she responded to the alleged comment, saying:

*“I mean, if that’s true, it’s, I mean, on the one hand, not the worst comment I’ve received, but on the other, it’s disgusting and just*

*disheartening. If your job is to protect people from discrimination and while on duty and in front of everybody else who's doing that, you are peddling that kind of discrimination, then then you're not fit for the job and honestly shouldn't be doing it anymore”.*

The Investigations Editor said:

*“The Commission told us they treat allegations of bullying and harassment with the utmost seriousness, and it would be wrong to comment when an investigation is ongoing: ‘Staff welfare is of paramount importance to us’”.*

She then summarised other concerns raised by members of staff interviewed by Channel 4 News saying:

*“Many expressed fear the Commission's impartiality and independence from government is under threat, and they claim the Chair and Board were assisting the Government in undermining trans rights by proposing amendments to the Equality Act”.*

The Investigations Editor then described the proposed amendments and reactions to them in more detail, saying:

*“With heightened public debate around single sex spaces, trans women in sport and trans prisoners, in January, the Women and Equalities Minister Kemi Badenoch signalled her support for changing the Equality Act to make birth sex the legal definition of sex. Some women's groups argue a change would help protect safe spaces for women[...]Trans rights groups were outraged. They argue around 7000 trans people already granted gender recognition certificates could be stripped of legal rights that have been law for over a decade. In February, Kemi Badenoch wrote to the Commission seeking their view. We've learned that the Commission's leadership and executive team had already considered this and commissioned legal advice. It recommended that contentious issues on single sex spaces could be addressed without changing the law as Badenoch proposed. Advisory committees in Scotland and Wales agreed. But the Board and its Chair, Baroness Falkner, pressed on. In April, she wrote to Badenoch, saying changing the law would bring greater legal clarity”.*

Several comments from staff members, voiced by actors, detailed these concerns, including one saying: *“This is not an impartial or objective approach to the issue of trans rights. This is very clearly an attempt to undermine their rights. It's the exact opposite of what the national human rights body should be doing”.*

The Investigations Editor said: *“The Commission told us ‘Our decisions are and have always been made independently of any government. No advice is disregarded’”.*

She went on to say that a high number of staff had left the EHRC in the last year, including: “seven senior figures...including one Commissioner”; one in four staff overall; and two in five staff “who identify as LGBT+”. She ended the report by saying:

*“The Commission told us ‘The departure of staff at all levels is driven by a number of factors’. The Commission told us tonight that the issues it finds itself handling can be very complex and there are a range of views as there are in society at large. Nevertheless, it's promised to continue to protect the rights of everyone in Britain”.*

Immediately after the report, the following statement from Baroness Falkner was read out and appeared on screen:

*“I have worked my whole life to promote the principles of equality and human rights, which are close to my heart as a British-Pakistani woman in public life. It was considered appropriate to investigate the allegations through an independent investigator. While that process continues, all I can do is explain that allegations were received in February in my capacity as Chair of the Commission. They relate to both me and to the whole Board. I, of course, take these allegations very seriously and with humility. I will be cooperating fully with the investigation and have every confidence in being exonerated. I am always prepared to take criticism, to reflect on my decisions and to hear from those I may have inadvertently upset by my actions or those of the Board”.*

This was followed by the live interview with Caroline Nokes MP, where she said that the Women and Equalities Select Committee had written to the EHRC to query the “very high staff turnover” at the organisation. Jackie Long (“JL”) and Caroline Nokes (“CN”) discussed the background to Baroness Falkner’s appointment as Chair of the EHRC:

JL: *“When she [Baroness Falkner] was appointed, Liz Truss, who was then a women's minister, said it was essential that she go in to tackle group think. There is a strong argument being made that this is just the group taking issue with that, not wanting to change the way it does things”.*

CN: *“Well, the EHRC, and this is an issue that we have queried endlessly with them, needs to be able to uphold everybody's rights. It cannot advantage one group over another and there is no reason why women's rights and trans people's rights should be a zero sum game. I will be very disappointed if it is found that there has been group think on any issue from any perspective which has adversely impacted a single group”.*

JL: *“Supporters of the chair are saying exactly that - she has gone in to defend the rights of women that many people within the Commission feel is being somehow subsumed by the argument in favour of supporting trans people”.*

CN: *“Well, it is the job of the Commission to act impartially. It's the job of the Commission to uphold everybody's rights to protect all of those who have identified characteristics which are protected under the law. They cannot discriminate in favour of one group against another, and it's important that we get to the bottom of these allegations that we look at an organisation that has a very high staff turnover and that those allegations of bullying, of harassment, of discrimination are interrogated very closely indeed”.*

As the conversation continued, Caroline Nokes added that the investigation being conducted by an independent barrister would be *“incredibly informative”*. When asked for her view on whether the EHRC was *“truly independent of Government”*, she said:

*“I'm very conscious that the Chair is a Liberal Democrat member of the House of Lords. She is not a Conservative peer. She was appointed by a Conservative Government. But it is her job to make sure that she leads that organisation impartially, fairly and indeed with respect for all of those with protected characteristics”.*

### **Ofcom's due impartiality rules**

Reflecting our duties under the Communications Act 2003 (“the Act”), Section Five of the Code requires that the impartiality requirements of sections 319 and 320 of the Act are met. Section 319 of the Act requires that news in television and radio services is presented with due impartiality<sup>2</sup>.

Section Five of the Code makes clear that “due” is an important qualification to the concept of impartiality. Impartiality itself means not favouring one side or another. “Due” means adequate or appropriate to the subject and nature of the programme. It 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. In addition, context, as defined in Section Two of the Code, is important in preserving due impartiality. Context includes a number of factors, such as the editorial content of the programme, the service on which the material is broadcast, and audience expectations.

Ofcom has published [Guidance](#) to assist broadcasters in complying with Section Five of the Code. Among other things, Ofcom's Guidance makes clear that:

- the concept of due impartiality is central to the application of Section Five and in reaching a decision on whether due impartiality needs to be preserved in a particular case, broadcasters

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<sup>2</sup> This is reflected, for example, in Rule 5.1 of the Code which states that news, in whatever form, must be reported with due accuracy and presented with due impartiality.

should have regard to the likely expectation of the audience as to the content, and all other relevant contextual factors<sup>3</sup>; and

- it is an editorial matter for the broadcaster how due impartiality is preserved, as long as the Code is complied with, and there are various editorial techniques which can help to ensure this<sup>4</sup>.

Ofcom's Code and Guidance Notes are drafted, and are given effect to, in accordance with the right to freedom of expression as set out in Article 10 of the European Convention of Human Rights. Freedom of expression is one of the essential foundations of a democratic society. It 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 these programmes, Ofcom has had careful regard to the broadcaster's and audience's Article 10 rights and relevant contextual factors.

### **Our assessment**

Rule 5.1 of the Code states that "news, in whatever form, must be reported with due accuracy and presented with due impartiality."

Ofcom considered whether the programme raised potentially substantive issues warranting investigation under Rule 5.1 of the Code. While a number of allegations against, and criticisms about, Baroness Falkner and the leadership of the EHRC were made during this report, we noted that the following alternative perspectives were also included on these matters and related issues:

- Cathy Newman said "*Lady Falkner's supporters say she's made the Commission sharper and leaner*";
- a statement from the EHRC said that "[they] *treat allegations of bullying and harassment with the utmost seriousness, and it would be wrong to comment when an investigation is ongoing: 'Staff welfare is of paramount importance to us'*";
- on the criticisms that Baroness Falkner had not taken "*an impartial or objective approach to the issue of trans rights*", it was reported that: Equalities Minister Kemi Badenoch had signalled her support for changing the Equality Act 2010 to make birth sex the legal definition of sex; and Baroness Falkner had written "*to Badenoch, saying changing the law would bring greater legal clarity*". Against this backdrop, Cathy Newman said: "*Some women's groups argue a change would help protect safe spaces for women*" and Jackie Long said: "*Supporters of the chair are saying...that she has gone in to defend the rights of women that many people within the Commission feel is being somehow subsumed by the argument in favour of supporting trans people*";

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<sup>3</sup> [Ofcom's Section Five Guidance](#), paragraph 1.4. See also paragraph 1.34, which explains that other relevant factors may include the nature of the programme, the programme's presentation of its argument and the transparency of its agenda.

<sup>4</sup> [Ofcom's Section Five Guidance](#), paragraph 1.6. See also paragraph 1.37 which makes clear that there are a range of editorial techniques which may be employed.

- in response to claims by former employees that the EHRC was being influenced by Government ministers, Cathy Newman said: *“The Commission told us: ‘Our decisions are and have always been made independently of any government. No advice is disregarded’”*;
- in response to suggestions that a high number of staff, and in particular *“staff who identify as LGBT+”* had left the EHRC last year, Cathy Newman said: *“The Commission told us: ‘The departure of staff at all levels is driven by a number of factors’”*;
- a further statement from the EHRC: *“The Commission told us tonight that the issues it finds itself handling can be very complex and there are a range of views as there are in society at large. Nevertheless, it's promised to continue to protect the rights of everyone in Britain”*;
- the statement from Baroness Falkner read out after the pre-record report, detailed on p.3 above;
- during the interview with Caroline Nokes, Jackie Long said: *“When [Baroness Falkner] was appointed, Liz Truss, who was then a Women's Minister, said it was essential that she go in to tackle group think. There is a strong argument being made that this is just the group taking issue with that, not wanting to change the way it does things”*; and
- on allegations that the EHRC was not *“truly independent from Government”*, Caroline Nokes said: *“I'm very conscious that the Chair is a Liberal Democrat member of the House of Lords. She is not a Conservative peer. She was appointed by a Conservative Government”*.

Ofcom considered that the Programme had used a range of editorial techniques in order to include alternative perspectives, including: several statements from the EHRC; a statement from Baroness Falkner; presenters outlining the views of Baroness Falkner’s supporters; and a presenter outlining the views of some women’s groups who are supportive of the proposed changes to the Equality Act 2010.

We also had regard to the likely expectation of the audience of the Programme. We considered that they would expect a news report on this issue to: provide a range of perspectives; to give Baroness Falkner and the EHRC an opportunity to respond to the claims made in the programme; and to accurately report the current status of the independent investigation into the allegations made against them.

We also took into consideration the broadcaster’s and audience’s rights to freedom of expression. It is an editorial matter for the broadcaster to choose which stories they include in a news programme, and we considered it was a legitimate matter of public interest for Channel 4 News to include a report on allegations made by former staff members of the EHRC, provided that the report was presented with due impartiality and was compliant with the Code.

Having considered all relevant contextual factors, including audience expectations and the broadcaster’s and audience’s rights to freedom of expression, as set out above, Ofcom considered that alternative viewpoints were sufficiently reflected and provided in the Programme.

## **Conclusion**

Ofcom considered therefore that the Programme did not raise any issues warranting investigation under Section Five of the Code. Consequently, Ofcom has decided not to pursue these complaints further.

## **Not pursued**