
Decision of the Election Committee on a due impartiality complaint from the Alba Party in relation to the BBC's coverage of the Scottish Parliamentary Election

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1. Introduction and summary

- 1.1 Ofcom is the UK's independent broadcast regulator. As a post-broadcast regulator, we assess content once it has been broadcast.
- 1.2 During an election period, Ofcom establishes an Election Committee¹ which has delegated authority from the Ofcom Board to consider due impartiality complaints in respect of election-related programmes where the complaint, if upheld, might require redress before the election.
- 1.3 The Election Committee² has considered a complaint from the Alba Party ("the Complainant") about the BBC's coverage of it so far during the run-up to the Scottish Parliamentary elections due to take place on 6 May 2021 ("the Complaint"). This included coverage of the Alba Party in relation to:
- a) *Election Scotland 2021: the Leaders' Debate*, broadcast on BBC One Scotland and the BBC News Channel on 30 March 2021 at 7.50pm ("the Leaders' Debate"); and
 - b) the BBC's news coverage and news bulletins, across its radio and television services, during the election period for the Scottish Parliamentary elections.
- 1.4 The format of election programming is a matter of editorial freedom for the individual broadcasters, as long as the programming as broadcast complies with the Ofcom Broadcasting Code ("the Code"). Our rules on due impartiality require that when broadcasters are dealing with matters of major political controversy and major matters relating to current public policy, such as elections to the Scottish Parliament, due impartiality must be preserved and an appropriately wide range of significant views must be included and given due weight, in each programme or in clearly linked and timely programmes. Due weight must be given to the coverage of parties during the election period.
- 1.5 The Complaint alleged that the BBC failed to comply with its obligations in respect of due impartiality and due weight under Sections Five and Six of the Code during the election period (which, in this case, started on 25 March 2021 and is due to end on 6 May 2021).³ It was submitted by the Alba Party on 15 April 2021, and therefore part way through that election period.
- 1.6 The Complaint specifically referred to the Leaders' Debate, and to the BBC's overall news coverage across its radio and television services during the election period. However, apart from identifying certain segments of programmes in which the Complainant felt the Alba

¹ The [Terms of Reference for the Election Committee](#) are available on the Ofcom website.

² In this case the Election Committee consisted of the following members: Tim Suter (Chair, Member, Ofcom Board and Chair, Ofcom Content Board); Maggie Cunningham (Member, Ofcom Content Board); Peter Horrocks (Member, Ofcom Content Board); Kevin Bakhurst (Group Director, Broadcasting and Online Content Group and Member, Ofcom Board and Ofcom Content Board); and Adam Baxter (Director, Standards and Audience Protection, Broadcasting and Online Content Group).

³ Ofcom published a [Note to Broadcasters](#) on 8 March 2021 which confirmed the election periods for the 6 May 2021 elections (including for the Scottish Parliamentary elections).

Party had been treated unfairly (see paragraph 3.51 below), it did not identify any other specific programme or programming to support its view that the BBC's overall coverage during the election period had failed to comply with the Code.

- 1.7 In order to allow for a rounded consideration of the BBC's coverage throughout that period, in addition to the Leaders' Debate, the Alba Party was asked to provide other examples of programming from which it considered it was excluded (or otherwise not given due weight) in the coverage of the Scottish Parliamentary elections. The Alba Party did not provide any such specific examples and we therefore asked the BBC to provide a recent sample of its news and current affairs output from a randomly selected day. We specifically selected 14 April 2021 (the day before the Complaint was submitted to Ofcom) (the "14 April News Sample") as an illustrative example of the manner in which the BBC approached its coverage of the Scottish Parliamentary elections on one day in the election period (not necessarily throughout the entire election period).
- 1.8 In response to the Complaint, the BBC explained to Ofcom how it approaches its election programming and, in particular, the factors that it takes into account when considering the appropriate levels of broadcast coverage for political parties. It also explained why it had chosen to not include the Alba Party in the Leaders' Debate in particular, and summarised its overall coverage of the Alba Party across the election period up to 19 April 2021 ("BBC's General Coverage of the Alba Party"). In addition, it explained that, on 21 April, the Alba Party manifesto launch would be covered prominently. Ofcom asked the BBC to provide a brief description of its news and current affairs programming from 21 April (the "21 April BBC Coverage"). This was considered by the BBC alongside the 14 April News Sample, as an illustrative example of the BBC's approach to coverage of the Alba Party during the election period.
- 1.9 Having considered the Complaint and all of the evidence put before it, the Election Committee reached the following conclusions:
- a) The BBC's approach to considering the Alba Party's level of current support, including the weight it has placed on an average of opinion poll evidence, has been reasonable during the election period so far. The Alba Party holds significant views and perspectives on some matters to which the BBC has given due weight over the election period so far. The Committee emphasised however that the level of current support for political parties is, by its nature, dynamic. It noted that another leaders' debate on the BBC was forthcoming and that the BBC would need to assess the above issues afresh in advance of that programme, 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.
 - b) Regarding the Leaders' Debate (and linked programming) and taking account of the evidence on the Alba Party's level of current support at that time, the Committee was not concerned about the BBC's compliance with Sections Five and Six of the Code.
 - c) Taking account of all of the programming referred to above (and again, in light of the evidence on the Alba Party's current support), the Committee was not concerned

about the BBC's overall approach to the coverage of the Alba Party during the Scottish Parliamentary election period so far under Sections Five and Six of the Code.

- 1.10 **Ofcom's Election Committee assessed the Complaint from the Alba Party, taking into account the BBC's submissions and the programming referred to above against the Code and, for the reasons set out below, decided to not uphold the Complaint.**

2. Background

- 2.1 This section summarises the Complaint, as well as the various further submissions made by the Alba Party and by the BBC between 15 April and 26 April 2021.
- 2.2 It is noted that Ofcom received the Complaint on 15 April 2021, and decided that it would be appropriate for the Election Committee to consider it on an expedited nature on the basis that it raised substantive issues which, if upheld, might require redress before the Scottish Parliamentary elections on 6 May 2021. Both the Alba Party and the BBC were therefore asked to provide their submissions in relation to the Complaint at short notice, and in accordance with tight deadlines.

The Complaint

- 2.3 As noted above, Ofcom received the Complaint on 15 April 2021, approximately three weeks into the election period. The Complaint alleged that the Alba Party had been unfairly excluded from: the Leaders' Debate; the BBC's news and current affairs coverage during the election period; and from the BBC's coverage of the Scottish Parliamentary election in general. The Complainant argued that its exclusion from this programming, which instead had focussed on the "five main parties", amounted to a breach of the BBC's obligations under the Code, namely Rule 6.2.
- 2.4 Although the Alba Party is a new political party, and therefore unable to provide evidence of past electoral performance, it argued that "all other reasonable criteria" required that it be given greater coverage than it has so far received by the BBC during the election period. In particular, the Complainant stated that the Alba Party has:
- a) approximately 5,000 members, which is more than the Scottish Liberal Democrats, and which is likely to soon overtake the membership of both the Scottish Conservatives and the Scottish Green Party;
 - b) two MPs currently sitting in the UK Parliament;
 - c) elected councillors across Scotland, seven of whom are standing as Scottish Parliamentary candidates;
 - d) 32 candidates standing across Scotland, therefore qualifying for a party election broadcast ("PEB");
 - e) as its leader, former First Minister, the Rt Hon Alex Salmond, who remains the longest-serving holder of that office; and
 - f) polling support of 6%, the same level attained by the Scottish Liberal Democrats. Further, certain analysis suggested that the Alba Party was on course to win five regional seats in the upcoming Scottish Parliamentary Election (the same number as the Scottish Liberal Democrats).
- 2.5 In addition, it argued that support for the Alba Party could be seen in social media, widespread reporting throughout the print media, real-life demonstrations, letters written to

newspapers, and below the line comments on blogs. By way of example, Alex Salmond held a press conference for the international press on 14 April 2021 which was attended by over 100 journalists and broadcasters from across the world

- 2.6 The Alba Party argued it is a party with significant views and perspectives. In particular:
- a) it has a distinctive policy in this election of moving to immediate negotiations with the UK Government on the issue of Scottish independence;
 - b) it has a unique and important message regarding Scotland's d'Hondt voting system in its proposals to return a pro-independence "supermajority" to the Scottish Parliament, should the party gain enough list votes;⁴ and
 - c) the Alba Party's policy in respect of sex-based rights for women is also different to the position adopted by other pro-independence parties.
- 2.7 The Complainant argued that, while the Alba Party has received widespread coverage in the print media, much of the tone and nature of this reporting is dictated by the largely anti-independence editorial stances of those newspapers. This is important political context in Scotland and means that the Alba Party must be given the opportunity to represent its views and put the record straight. The BBC's failure to give the Alba Party this opportunity, or to allow further interviews with them, amplifies this distortion.
- 2.8 The Alba Party said it had tried to draw these points to the attention of the BBC in written correspondence on 2, 5 and 9 April 2021, but received no substantive response or any attempt at engagement until 15 April 2021. Further, the Complainant noted that the BBC appeared to have overlooked the latest polling information (published on 14 April 2021) in its response.
- 2.9 In the Complainant's view the list of programmes cited by the BBC as examples of appropriate coverage given to the Alba Party (see paragraph 2.14b) below) amounted to a "miniscule proportion of election coverage", when "every single news bulletin across the BBC's television and radio which features the election is effectively covering five parties".

Response from the BBC

- 2.10 The BBC considered that it had provided "appropriate and proportionate coverage to the Alba Party" since its inception in March 2021⁵, in keeping with the Code and its own Election Guidelines⁶. It drew attention to the requirements which the BBC sets for itself in its Guidelines, including in relation to what constitutes a "Larger" or "Smaller" Party in Scotland; what level of coverage is due as a minimum and how that level is determined; and what factors are relevant where a new party cannot provide evidence of past electoral support.

⁴ For a brief overview of the d'Hondt system as it applies to the Scottish Parliament election, see <https://www.parliament.scot/msps/about-msps/how-msps-are-elected>.

⁵ The Alba Party was publicly launched on 26 March 2021, however it was registered with the Electoral Commission on 8 February 2021.

⁶ These are available at: [Election Guidelines 2021 - Editorial Guidelines](#) (BBC)

- 2.11 The BBC agreed that the absence of any evidence regarding past success was not determinative of the coverage that should be given to a new party, such as the Alba Party. It described its approach to determining the level of editorial coverage to assign to the Alba Party as follows:
- a) In considering the number of candidates the Alba Party was standing, the BBC acknowledged that the Alba Party had qualified for a PEB and a set amount of coverage in relation to its manifesto launch (or equivalent event). However, the number of candidates fielded by the party determined the minimum level of coverage to which it was entitled and did not itself depend upon electoral support.
 - b) The fact that two previously elected MPs from the Scottish National Party (“the SNP”) had defected to the Alba Party was considered as part of the “wider political context”, but the BBC noted that this was not reflective of current political support. It argued that more weight should be placed on the intention of the voters.
 - c) Mr Salmond’s previous political office and subsequent press coverage were also relevant as part of the “wider political context”, but did not reflect current electoral support.
 - d) The BBC found that the membership numbers of the Alba Party may carry some weight, but considered that, as terms and costs may vary, it was more reflective of who supported the party sufficiently strongly to “sign up and pay up” than it was of wider electoral support.
 - e) The press coverage the Alba Party was receiving, including the discussions of the party on social media, demonstrations and blogs, did carry some weight, but it was not an “objective measure” and did not translate, necessarily, into actual current electoral support.
 - f) While the BBC did consider the fact that polls indicated that more than 50% of people were in favour of independence generally, it concluded that this did not in itself indicate support for the Alba Party.
 - g) It considered that recent party polling evidence was “one accepted measure of current support”, albeit that any weight attached to it should reflect how robust and consistent the trend was, as well as the timing, number and variety of polls. It took into account the particular case of the Alba Party, and that its aim to win seats via the list system (and not the constituency system) meant that polling support would have a direct relationship with the likelihood of seats. In particular, it considered that achieving support of 6% in the opinion polls would carry some significance. At the time of writing its response, the BBC highlighted that there had been six polls taken for the Scottish Parliamentary election, which indicated that the Alba Party might win support at 3%, 6%, 3%, 3%, 2% and 6% on the regional lists. The BBC calculated that this resulted in an average polling figure of well below 6%. Taking this into account, and that there was no discernible and consistent trend in relation to the Alba Party’s polling support, the BBC concluded that the current polling data did not indicate that the Alba Party would achieve a significant level of representation in the Scottish Parliament. However, it

confirmed that it would continue to monitor polling results for the purposes of determining future coverage.

2.12 In addition, the BBC made the following points in relation to the Alba Party's exclusion from the Leaders' Debate:

- a) The Leaders' Debate took place on 30 March 2021, which was just four days after the Alba Party was launched on 26 March 2021. When the programme was broadcast, the nomination window for candidates had not yet closed, and there was no formal confirmation of the Alba Party nominations. Moreover, there were no polls to indicate initial levels of support for the Alba Party and, as a new party, there was no past electoral performance for the BBC to assess.
- b) Responding to the point raised by the Alba Party that David Coburn of UKIP Scotland, a Smaller Party, had been included in the BBC's leaders' debates during the 2016 Scottish Parliamentary elections (whereas the Alba Party had been excluded in the 2021 leaders' debate), the BBC argued that the circumstances around that debate were "entirely different" to the present case. This was due to "the imminence, at that time, of the EU referendum", the fact that UKIP had already secured 10% of the vote in Scotland in the 2014 European Parliamentary elections, and that the 2016 Scottish Parliamentary elections were effectively running in parallel with the EU Referendum.

2.13 With regards to its news coverage of the Scottish Parliamentary elections more generally, and given that at the time the Alba Party had not identified any specific programming beyond the Leaders' Debate in support of the Complaint (even after it had been asked to do so by Ofcom, in a letter dated 16 April 2021), Ofcom requested that the BBC provide a random (and recent) sample of the BBC's news and current affairs output in order to assist the Election Committee in its consideration of the Complaint. Specifically, Ofcom requested the following BBC programming from 14 April 2021 (that being the day before the Complaint was submitted to Ofcom), which is referred to in this document as the "14 April News Sample":

- a) *Reporting Scotland*, broadcast on BBC One Scotland at 6.30pm;
- b) *Good Morning Scotland*, broadcast on BBC Radio Scotland between 6 to 9am;
- c) *The Nine*, broadcast on the BBC Scotland channel at 9pm; and
- d) *Debate Night*, broadcast on the BBC Scotland channel at 10:30pm.

2.14 The BBC made the following arguments regarding its coverage of the Scottish Parliamentary elections more generally:

- a) Referring to the BBC's Election Guidelines, the BBC stated that samples from one day of its output (i.e. the 14 April News Sample) would not be sufficient to assess its compliance with the Code. This was because the requirement in the Code is that due impartiality should be achieved across the election period, rather than any single day. Moreover, the day on which the samples were taken, 14 April 2021, was the same day that the Scottish Green Party's manifesto had been launched, and therefore the majority of the election coverage on that day would have focussed on that.

- b) The BBC also provided a list of its coverage of the Alba Party during the election period (the "BBC's General Coverage of the Alba Party"):
- i) BBC Scotland's news services, on radio, television in English and in Gaelic and BBC Online gave prominent coverage to the launch of the Alba Party on 26 March 2021;
 - ii) Mr Salmond was interviewed on Radio Scotland's *Good Morning Scotland* on 7 April 2021;
 - iii) Kenny MacAskill was interviewed on the BBC Scotland Channel (*The Nine*, 29 March 2021) and Neil Hanvey was interviewed on Radio Scotland's *Good Morning Scotland* programme (30 March 2021, the same day as the Leaders' Debate);
 - iv) a preview of an Alba Party candidates' press conference on Radio Scotland's *Good Morning Scotland* on 3 April 2021, including discussion between Lesley Riddoch and Alex Massie + 1800 bulletin clip of Mr Salmond;
 - v) a contribution from Kirk Torrance in a Highlands and Islands Regional debate (recorded 20 April 2021);
 - vi) Radio nan Gaidheal interview with Calum Macmillan, an SNP councillor who defected to the Alba Party (2 April 2021)
 - vii) Alex Salmond interview for package on Radio 4's *PM* programme (20 April 2021)
 - viii) the Alba Party was covered at length on the BBC Scotland news website (6 and 7 April 2021);
 - ix) online policy guides have been produced for all of the parties, including the Alba Party;
 - x) BBC Network news (the 6.00pm and 10.00pm BBC One *News* programmes and Radio 4) had covered the launch of the Alba Party, which was also covered live on the BBC News Channel;
 - xi) Mr Salmond has been interviewed on *Newsnight* (26 March 2021) and *Today* (1 April 2021);
 - xii) a bid was placed for an interview, involving Mr Salmond and Mr George Galloway, founder of the All for Unity Party, on the subject of independence, on BBC One Scotland (the BBC noted that Mr Salmond since turned down this offer);
 - xiii) plans had also been put in place to cover the Alba Party manifesto launch, covered and trailed across programmes and language services (on 21 April 2021, and a bid had been placed to interview Mr Salmond on *The Nine* that evening); and
 - xiv) and a *Scot Squad* comedy election special in which Mr MacAskill is expected to take part, along with representatives of other parties (on 29 April 2021).
- c) The BBC also identified its online coverage of the Alba Party in its Policy Guide, a series of articles on the BBC Scotland News Website, as well as in a podcast entitled, *Podlitical* on 1 April 2021 which discussed the potential impact of the Alba Party.

- 2.15 In light of these factors, the BBC considered that it had given the Alba Party substantial editorial coverage to date which went “well above the minimum commitment to coverage” established in the BBC Election Guidelines, and which complied with the Code.
- 2.16 In response to a subsequent request from Ofcom, on 22 April 2021 the BBC provided the following brief description of its coverage of the Alba Party on 21 April (that being the day on which it launched its manifesto) (“the 21 April BBC Coverage”):
- a) BBC One 6:30pm Reporting Scotland – Package by political correspondent, Kirsten Campbell, including clips with Mr Salmond and Tasmina Ahmed-Sheikh. This was followed by a presenter discussion with political editor, Glenn Campbell. This was followed by a trail to a pre-recorded interview (including a clip) on *The Nine* with Alex Salmond.
 - b) *The Nine* (BBC Scotland Channel) – Package from political correspondent, as above, plus pre-recorded 7-minute interview with Mr Salmond.
 - c) *10.30pm Reporting Scotland* – Presenter-read story with pictures of launch.
 - d) *An La* (BBC Alba) – Package from political correspondent, Niall O’Gallagher, including clip of Mr Salmond.
 - e) *Aithris an Fheasgair* (evening news prog) on Radio nan Gaidheal - Story + clip of Mr Salmond.
 - f) Radio Scotland –
 - i) Story in 12.00pm Bulletin
 - ii) *Lunchtime Live* (01.10pm): Kirsten Campbell 2-way, including Mr Salmond clip
 - iii) *Drivetime* (4.48pm): presenter discussion with political correspondent, David Wallace Lockhart
 - iv) 5.00pm Bulletin: introduction & clip of Mr Salmond
 - g) [BBC News website](#)
 - h) BBC Network News coverage –
 - i) News Channel, *One*, *Six* and *Ten O’Clock News* – presenter-read story with pictures of launch
 - ii) Radio 4 6.00pm bulletin – report from Scotland Editor, Sarah Smith
 - i) Thursday 22nd April - BBC Radio Scotland, *Good Morning Scotland*: live interview with Kenny MacAskill MP.

Oral submissions from the Alba Party

- 2.17 On 23 April 2021, Alex Salmond (the Leader of the Alba Party) provided oral submissions to the Committee in support of the Complaint.

- 2.18 Mr Salmond began by highlighting that his party was only four weeks old and acknowledging that new parties brought challenges for broadcaster coverage. He said there were two basic reasons for his complaint to Ofcom: the fact that his party had experienced difficulty engaging with the BBC; and concerns they had over the BBC's election coverage.
- 2.19 Regarding BBC engagement, Mr Salmond said there had been no substantive dialogue to date. Although his party had not always agreed with levels of coverage on other broadcasters, they had achieved effective dialogue elsewhere and other broadcasters had consequently made what he described as "appropriate provision" to cover the interests of a new party, whereas the BBC had not. He reported one phone conversation he had conducted with the BBC's Chief Political Adviser, but he said this was on his instigation and not proactively offered by the BBC.
- 2.20 Mr Salmond explained that the lack of coverage for his party on the BBC was problematic, as the BBC currently dominates broadcast coverage of the Scottish Parliamentary elections (having more outlets and presentation opportunities than any other broadcaster). He also argued that broadcast coverage was particularly important during this specific election, since Covid restrictions have prevented some of the activity a new party might usually have undertaken to win support, such as holding mass rallies. It was also crucial that the BBC reflected the variety of the election itself, which he did not believe had been achieved so far. This has made it even more unfortunate that the Alba party had received what he termed "such shabby treatment" from the BBC and had not been treated fairly "under any estimation".
- 2.21 In relation to the BBC's Election Guidelines, Mr Salmond explained his view that these contrasted with Ofcom's own requirements under the Broadcasting Code. He reminded the Committee of the consultation undertaken by Ofcom in 2017 to remove the concept of larger parties from Section Six of the Code and replace it with a requirement on broadcasters to take election-related editorial decisions by reference to evidence of past electoral support and/or current support. Mr Salmond had contributed to this consultation at the time and said his recollection was that the change had partly been made precisely to take into account the fragmented political system in Scotland and to allow for representation of new parties in broadcasting. This made it all the more "stark" that the BBC specified in an Appendix to its current Election Guidelines that "larger parties" in Scotland should be considered as: the Scottish National Party; the Conservatives Party; the Labour Party; the Liberal Democrats; and the Scottish Green Party. Mr Salmond said this was precisely the concept Ofcom moved away from in 2017 and that it "seems strange" that Ofcom had moved towards a concept that stresses flexibility while the BBC continued to adhere to a "narrow concept". He stated that if a party was in that group (i.e. the larger parties) it was treated "substantially differently" to any other party in the campaign, which was the basis of the Alba Party's complaint.
- 2.22 Mr Salmond also said that the concept of "larger parties" was in itself flawed, as it required approximately equal coverage for all five parties, whereas the SNP was in fact "ten times" the size of the Scottish Liberal Democrats in terms of seats in the Scottish Parliament.

- 2.23 Mr Salmond stated that the unfair treatment towards his party had crystallised around the broadcast of the BBC's Leaders' Debate at the end of March. He explained his view that, just as broadcasting dominates elections, a leaders' debate dominates broadcasting. He described such debates as "make or break" to receive acknowledgement from the audience and said that in fact three similar programmes had been scheduled – the original leaders' debate on 30 March 2021, an edition of Question Time broadcast from Edinburgh on 22 April 2021, and a forthcoming second BBC leaders' debate, the date of which was still to be confirmed. Mr Salmond said that in none of these programmes had the Alba Party received "mention, position or place", nor did the BBC engage in any discussions with the party.
- 2.24 Mr Salmond identified examples of other editorial techniques to ensure that the Alba Party had a presence in leaders' debates which the BBC could have used, such as the inclusion of 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. Mr Salmond's view was that the BBC would have "benefitted enormously" from adopting the same approach. He said that to allow Alba to come under attack (as it had done in the BBC's Leaders' Debate) and not offer any right of reply could not be considered "fair or reasonable" in broadcasting terms. He also suggested a public service broadcaster such as the BBC should have "higher expectations" in terms of adherence with the Code and should have been more responsive than other broadcasters in acknowledging the existence of the Alba party and providing them with fair coverage.
- 2.25 Mr Salmond next turned to the BBC's explanation of why it had included a representative from UKIP in an equivalent programme in 2016. He said the BBC had argued this was because Brexit had been the "dominating issue" at the time. Mr Salmond submitted that Scottish independence was the "dominating issue" in the current Scottish Parliamentary elections. It was therefore inconsistent for the BBC not to recognise this. He also commented on the use of opinion polls to determine appropriate coverage and stated that the Alba Party currently had an average support of 3.4% across seven opinion polls and was expecting to gain seats. The similar average for UKIP in the 2016 Scottish Parliamentary elections was 2%. He broke this down further to explain that before the BBC leaders' debate at that time it had been 1% and after rose to 4% (which he said, in itself, was a "clear indication" of the importance of leaders' debates). He therefore found it difficult to accept that there was any substantive difference between the situation of UKIP in 2016 and of his party today. He said the BBC's decision regarding coverage was "unjustified" and that it had had an "unfair and deleterious effect" on the party's prospects.
- 2.26 Finally, Mr Salmond addressed the BBC's argument that it had been unable to confirm, at the time of the Leaders' Debate on 30 March 2021, that the Alba Party would be fielding any candidates, since the debate took place before the deadline for nominations. Mr

Salmond argued that the same could be said of any party on that date – none had been confirmed to be fielding candidates at that time.

- 2.27 Mr Salmond acknowledged that, in its submissions to the Committee of 21 and 22 April 2021, the BBC had provided a list of programming which it said had demonstrated coverage it had given to the Alba Party. Mr Salmond argued that many of these programmes had only featured two journalists discussing the party, rather than party representatives. Furthermore, some of the programming had not yet been broadcast, including the one programming strand on the BBC to provide the party with sufficient coverage in his view: the comedy *Scot Squad*. On “not one single day” had Alba’s coverage been equivalent to any other party’s. Mr Salmond argued that, in fact, on the vast majority of days (including 14 April 2021, the date randomly selected by Ofcom for sampling) there had been a “total blackout” of coverage of Alba, which he termed “extraordinary” given the variety of BBC programmes and platforms.
- 2.28 Mr Salmond also referred to the information provided by the BBC to the Committee in its representations regarding its online coverage of the Alba party. He presented a screenshot of the BBC website which he said still reflected coverage of the five larger parties, with little reference to Alba. He described the BBC’s online provision as having the most flexibility to reflect variety in comparison to its broadcast content, yet even there his party still only received “occasional mention”.
- 2.29 Mr Salmond went on to describe the limited coverage of the Alba Party given by the BBC as being “unremittingly hostile”, showing a clip from his appearance on *The Nine* from 21 April 2021 to illustrate his point. He also alleged that the journalist in question was following “notes and editorial instructions” when asking about Mr Salmond’s personal conduct, as the same line of questioning was used during the Alba Party’s only previous appearance on *The Nine* in an interview with Kenny MacAskill MP. In Mr Salmond’s view, there is a reasonable expectation for the party to be questioned about its policies on the day of the Alba Party’s manifesto launch rather than on personal issues as happened on *The Nine*. He was keen to stress that he wasn’t questioning a journalist’s right to ask a politician about any subject they deem relevant. Rather he was making the point that in his view, if the BBC is going to give limited airtime to the Alba Party then that time should be used to focus on the Party’s policies.
- 2.30 Mr Salmond commented that the Alba Party was “the talking point of the election” in the first two weeks of the campaign, citing the party’s prominence in *The Herald’s* most-read stories sidebar earlier in the campaign as evidence of this. The emergence of the Alba Party has also been of interest internationally according to Mr Salmond, as shown by the international press call of over 100 news outlets on 14 April 2021 that Mr Salmond took part in.
- 2.31 Finally, Mr Salmond mentioned that the BBC’s approach to the Alba Party also appears “out of sync” with other UK broadcasters who had, for example, invited him to participate in leaders’ interviews. Both the coverage of the Alba Party elsewhere and Mr Salmond’s leaders’ interviews with other UK broadcasters highlighted the BBC’s “dramatically

different" approach to covering the party and serve to highlight how it is "failing in its obligations to the [Broadcasting] Code", in Mr Salmond's view.

BBC response to the Alba Party's oral submissions

- 2.32 The Committee considered that it would be appropriate to provide a transcript of parts of Mr Salmond's oral submissions to the BBC, in order to allow it to provide any final submissions.
- 2.33 In its response dated 26 April 2021, the BBC provided further information regarding its engagement with the Alba Party to date. It said there have been "ongoing communications between BBC News programmes and the Alba Party since its launch" and that this was evident from the significant range of BBC content which featured the Alba Party which was set out in its previous response to Ofcom.
- 2.34 The BBC provided Ofcom with the following examples of the type of contact between themselves and the Alba Party:
- a) operational contact from the Alba Party about campaign events has been via email from the Alba Party's media team to the BBC planning desk;
 - b) individual BBC Scotland and Network News programme teams have contacted the party or specific candidates when they have been bidding for interviews for example, producers on the *Good Morning Scotland* team, on *The Nine* team, on *The Campaign* team, on *Today* and on *Newsnight*;
 - c) there has been frequent contact between the Alba Party's media team and the BBC Scotland Political Editor;
 - d) there has been contact with the BBC's non-News staff about PEBs. The BBC initiated contact with the Alba Party on 26 March (the day the party launched) providing written details of all necessary information regarding its PEB qualification; and
 - e) on a corporate level, there has been contact through the Alba Party's lawyers with the BBC.
- 2.35 The BBC said it had responded appropriately to all the letters/emails received from the Alba Party's lawyers, with acknowledgments, either on the day of receipt or on the following day, and said it had provided a response on 6 April 2021 and further response on 15 April 2021.
- 2.36 The BBC said while it has its broadcast election programming planned (for example the timing of the leaders' debates), detailed coverage and any linked programming inevitably evolves during the course of the campaign based on news judgment and other factors which may have bearing on its coverage such as the confirmation of candidacy and opinion polling. The BBC said that at no stage has its correspondence relayed anything untrue about the development of its programming plans.
- 2.37 In relation to a phone conversation which took place between Mr Salmond and the BBC's Chief Political Adviser, the BBC said that this took place on 2 April 2021 but did not involve

- programming. The BBC said the phone call took place because an email sent from Mr Salmond's solicitors that day had received an automated return message and Mr Salmond wanted to make sure it had been seen. The BBC said the email was acknowledged the same day.
- 2.38 The BBC also responded to some points raised during the oral representations about programming on *The Nine*, BBC Scotland, 21 April 2021, *Good Morning Scotland*, 7 April 2021 and *The Nine*, 29 March 2021. In particular, the BBC responded to say that on 21 April 2021, *The Nine* carried a package from political correspondent Kirsten Campbell, which: reported the party plans on independence and strategy around a 'supermajority'; and mentioned some key manifesto policies on a written constitution, currency plans for an independent Scotland, plans for a second chamber and commitment to a Citizens' Assembly on trans rights and women's rights.
- 2.39 The BBC said this report also included a clip of Mr Salmond speaking about strategy and tactics for Scottish independence, and a clip of Tasmina Ahmed-Sheikh (candidate for the Alba Party in the Central Scotland region) speaking about women's rights. The BBC said this was followed by an approximately seven-minute interview with Mr Salmond which covered the following:
- a) the Alba Party's strategy if the Prime Minister doesn't agree to a referendum;
 - b) the range of options that could follow;
 - c) differences in strategy on independence between the Alba Party and the SNP;
 - d) the Alba Party's policy on the European Union and the European Free Trade Association;
 - e) Mr Salmond's personal poll ratings; and
 - f) questions around Mr Salmond's conduct.
- 2.40 In response to the interview on *The Nine*, the BBC said it believed the questioning was fair and appropriate and, in relation to what was said at Mr Salmond's recent trial, accurate. It added that it is normal practice for presenters to prepare notes in discussion with programme teams, ahead of conducting an interview, and, in the process of that interview, to refer to their notes. The BBC said that the suggestion that Ms Curran was following "editorial instructions" during the interview had no basis in fact.
- 2.41 The BBC said that the suggestion that it has attacked the Alba Party and Mr Salmond personally is not true. The BBC said it has asked challenging questions on relevant issues, as it has done with other politicians. It said Mr Salmond has had opportunity in the various interviews he has undertaken with the BBC to answer these questions and added that such questions are not unique to the BBC and these issues have been raised by other reputable broadcasters and journalists.
- 2.42 In relation to *Good Morning Scotland* on 7 April 2021 which carried an interview with Mr Salmond and its presenter Gary Robertson, the BBC said this interview lasted approximately 13 minutes and covered a range of topics including: the 'supermajority'

strategy; regional lists and the D'Hondt system; a second independence referendum; strategy and tactics if the Prime Minister refuses a referendum. It also covered, Mr Salmond's conduct; his work for RT; questions about possible Russian involvement in the 2014 referendum campaign and the US elections; and whether Russia was responsible for the Salisbury poisonings.

- 2.43 In relation to an interview conducted with Kenny MacAskill MP on *The Nine* on 29 March 2021, the BBC said this interview was conducted three days after the launch of the Alba Party, when the party was announcing its candidates, some of whom had previously been SNP MPs and councillors and Mr MacAskill had announced his defection from the SNP. The BBC said the interview which was conducted by Rebecca Curran lasted five minutes and covered the following topics: Mr Salmond's fitness for office; comments about Mr MacAskill from the SNP's Westminster leader, Ian Blackford; Mr MacAskill's decision to remain as an MP rather than resign to allow a by-election; and the possibility of other defections from the party.
- 2.44 Finally, the BBC said: "we believe that it is clear from the above list of communications with, and coverage of, the Alba Party and its policies, that the BBC's coverage has been appropriate".

Statutory Framework

- 2.45 Under section 319 of the Communications Act 2003 (the "Act"), Ofcom has a duty to set such standards for the content of programmes to be included in television and radio services as appear to them 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. The standards objectives set out in the Act include special impartiality requirements relating to matters of major political and industrial controversy and major matters relating to current public policy. These may be satisfied through a series of programmes taken as a whole. See the Annex for full details of the relevant statutory framework.

Applicable provisions of the Broadcasting Code

- 2.46 The Committee considered the Complaint by reference to Sections Five (Due Impartiality and Due Accuracy and Undue Prominence of Views and Opinions) and Six (Elections and Referendums) of the Code and accompanying Guidance Notes. See the Annex for full details of the relevant Code provisions.

3. The Committee's Decision

- 3.1 The Committee considered whether due impartiality had been preserved (and an appropriately wide range of views included and given due weight) in the BBC's coverage of the 2021 Scottish Parliamentary election to date, and whether the BBC had provided due weight to coverage of the Alba Party in that same period.
- 3.2 In doing so, it took into account the Complaint, along with the further information provided by the Alba Party (including Mr Salmond's oral representations), the BBC's submissions (including its response to Mr Salmond's oral representations), and the relevant programming⁷.

Alba Party support and political context

- 3.3 Before considering the programming to which the Alba Party and the BBC had specifically referred it, the Committee considered the submissions made by both parties regarding the Alba Party's level of current support and political context. The Committee recognised that this would be an important contextual factor when determining whether due impartiality had been preserved in accordance with Section Five of the Code, and whether due weight had been provided to coverage of the Alba Party in accordance with Section Six of the Code.
- 3.4 In particular, and as the Code itself states, "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 and the likely expectation of the audience.
- 3.5 Consistent with this, paragraph 1.21 of Ofcom's Guidance Notes on Section Six of the Code recognises that the concept of giving "due weight" is flexible and that its application depends on the electoral context.
- 3.6 In addition:
- a) in respect of the requirement to preserve due impartiality under Rules 5.1 and 5.11, paragraph 1.7 of Ofcom's Guidance Notes on Section Six of the Code provides that due impartiality during election campaigns does not mean that balance is required in any simple mathematical sense. In their coverage of elections, broadcasters – in fulfilling their obligations to preserve due impartiality – should take a consistent approach to the assessment of the level of coverage given to all the candidates. Broadcasters may

⁷ As explained at paragraph 3.45 below, the relevant programming to which Ofcom had regard when considering the Complaint was: the Leaders' Debate and linked programming, the 14 April News Sample (on which, see paragraph 2.13 above), the BBC's General Coverage of the Alba Party (on which, see paragraph 2.14 above) and the 21 April BBC Coverage (on which, see paragraph 2.15 above).

have regard to any measurable and objective evidence of the likely level of electoral support for particular candidates, and the relevant political context, in deciding relative levels of coverage for different candidates in the same election; and

- b) in respect of the requirement under Rule 6.2 to give due weight to coverage of the Alba Party, the Rule itself provides that in determining the appropriate level of coverage to be given to parties, broadcasters must take into account evidence of past electoral support and/or current support. Broadcasters must also consider giving appropriate coverage to parties with significant views and perspectives.

Paragraph 1.47 of Ofcom's Guidance Notes on Section Six of the Code confirms that greater weight should be placed on actual performance of a political party in elections than on the level of its current support. The Committee recognised that as a new party, the Alba Party does not have any evidence of past electoral support. Ofcom's Guidance Notes on the Code seek to assist broadcasters in understanding how Ofcom will usually interpret and apply the concept of "current support". They make clear that evidence of significant current support should be interpreted in a "straightforward way", taking into account all factors and not only electoral support (paragraph 1.43), and that we put weight on evidence of current support that is objective and measurable (including opinion poll data, where it is available) (paragraph 1.47). The weight placed on opinion poll evidence of current support should be determined with reference to factors such as the number of polls taken; the degree to which the candidate is polling above the margin of error for a particular poll; the degree to which polling suggests a consistent level of support throughout the election period; and who conducted the poll.⁸ Ofcom's Guidance Notes recognise that other factors may be relevant in addition to polling data, such as support from candidates holding elected office or participating in the election in question, or comparable elected office. However, they make clear that in considering such evidence, we would take into account the consistency and objectivity of each type of evidence (paragraph 1.47)]

3.7 As the Alba Party does not have evidence of past electoral support, it was necessary for the Committee to consider the concepts of due impartiality and due weight under the Code in this case with reference to the Alba Party's level of current support, taking into account the relevant political context. The Committee considered the evidence of current support for the Alba Party that was available to it, and the BBC's approach to assessing that evidence.

3.8 In particular, it considered the following factors in turn:

- the results of opinion polls, both before and since the broadcast of the BBC's Leaders' Debate on 30 March 2021;
- the rapid growth of the Alba Party's membership (which the Party estimated to be 5,000, higher than the Scottish Liberal Democrats and soon to exceed the Scottish Conservatives and the Scottish Green Party);
- the number of candidates being fielded by the party (32 for regional list seats);

⁸ For instance, a poll conducted by a member of the British Polling Council might carry more weight.

- the fact that the Alba Party has a number of elected councillors and two MPs following defections;
- other forms of support which the Alba Party argued should be taken into account, including “social media support, real-life demonstrations, letters written to newspapers, comments below the line on blogs and the like”;
- the status of party leader Alex Salmond as a former First Minister of Scotland; and
- evidence the party leader had presented in his oral representations that “Scottish independence and devolution” was currently the number one issue of salience in the election, with 49% of respondents to a survey listing it as such.

3.9 In considering opinion poll evidence, the Committee agreed that this is the most objective and measurable evidence of current support and it was therefore appropriate to place the most weight on this, relative to the other factors in the list. The Committee was mindful that the Complainant had relied, in its initial complaint to Ofcom, on the most recent opinion poll (at the time of its complaint) for the Scottish Parliamentary election, which indicated polling support of 6%. The other five opinion polls which had taken place prior to the Alba Party's complaint indicated an average of 3.8% across all six polls⁹. The Committee was also mindful that the BBC has suggested that achieving 6% in opinion polls would carry some significance, but that an average of 3.8% across the six polls would not, in the BBC's view, indicate a level of support likely to result in a significant level of representation in the Scottish Parliament.

3.10 The Committee also noted that since the Complaint was submitted, four further opinion polls have been reported regarding the Scottish Parliamentary elections, and that these indicated support for the Alba Party of 2%, 1%, 3% and 6% respectively.¹⁰

3.11 The Committee considered all of the polling evidence that it had seen regarding the Alba Party and agreed with the BBC that, given the margin of error for opinion polls is often cited to be plus or minus 3%¹¹, it is reasonable for broadcasters to exercise caution with regards to any one opinion poll on its own. In order to obtain a more holistic view of a party's current support, the Committee considered it reasonable for broadcasters to instead focus on the (rolling) average across all relevant polls. Taking account of the ten opinion polls conducted subsequent to the Alba Party's launch, the Alba Party's (rolling) average at the time of publication is currently 3.5%.¹²

3.12 The Committee acknowledged that trends in opinion polling were important and that, while any consistent uptick in opinion polling data as an election neared might be

⁹ These polls showed support for the Alba Party in the regional vote as, respectively: 3% (Survation), 6% (Panelbase), 3% (Ipsos MORI), 2% (Opinium), 3% (Savanta ComRes) and 6% (Panelbase).

¹⁰ These polls showed support for the Alba Party in the regional vote as, respectively, 2% (YouGov), 1% (Savanta ComRes), 3% (Survation) and 6% (Panelbase).

¹¹ YouGov, for example, define the margin of error in this way. See their explanation [here](#).

¹² The ten 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, conducted on 30 March-1 April 2021), 3% (Ipsos MORI, conducted on 30 March-4 April 2021), 2% (Opinium, conducted on 1-6 April 2021), 3% (Savanta ComRes, conducted on 2-7 April 2021), 6% (Panelbase, conducted on 9-12 April 2021), 2% (YouGov, conducted on 16-20 April 2021), 1% (Savanta ComRes, conducted on 16-20 April 2021), 3% (Survation, conducted on 20-22 April 2021), and 6% (Panelbase, conducted on 21-26 April 2021).

significant, there was no consistent evidence to date of that taking place regarding the Alba Party for this election.

- 3.13 Regarding the remaining factors listed above, the Committee acknowledged that, while each of these individual factors could appropriately be attributed a certain amount of weight (some more persuasively than others) and did form part of the relevant political context, none were considered to be of such influence as to require any great amount of weight and none would not necessarily translate into evidence of likely electoral or current support.
- 3.14 For example, a rapid growth in party membership might carry some weight but was likely to be reflective of a self-selecting sample of individuals rather than of the electorate as a whole. The same could be said for the party having fielded high numbers of candidates. In this regard, the Committee specifically agreed that no distinction should be drawn between constituency and regional members of the Scottish Parliament and the fact that the Party had fielded a high number of list candidates (but not constituency candidates) did not impact its consideration. However, the Committee agreed that the fact that the number of candidates did qualify them for some coverage and for a PEB was significant (this point had also been acknowledged by the BBC).
- 3.15 The Committee acknowledged that some of the candidates who had defected from the SNP were well-known politicians with personal records of previous electoral support (such as Alex Salmond himself and also Kenny MacAskill MP) and that this might reasonably lead them to expect to attract some support from the electorate for this election. The Committee therefore placed some weight on this factor. However, the Committee was also mindful that any candidate who had defected had, by virtue of their defection, been previously elected on a manifesto based on another party's policies.
- 3.16 Regarding other forms of support which the Complainant had argued should be taken into account (including support on social media and in the printed press), the Committee agreed that these were all part of the relevant political context and indicated press interest in the Alba Party, particularly given the involvement of Alex Salmond and others. However, this was not particularly objective or measurable as a means of identifying electoral or current support, and less weight should be placed on this.
- 3.17 The Committee acknowledged the evidence put forward by the Complainant in oral representations that "Scottish independence and devolution" was currently the number one issue of salience in the election. The Committee was also mindful of the fact that the Complainant had further argued that 50% of the electorate was currently said to be supportive of Scottish independence, which implied inherent support for the Alba Party's policies. Although this was relevant political context, the Committee did not consider this to be determinative of specific current support for the Alba Party (there being at least two other pro-independence parties also standing in this election).¹³

¹³ The SNP and the Scottish Green Party are both in favour of Scottish independence.

- 3.18 As well as considering these specific factors, the Committee also considered the Alba Party's assertion that the BBC's approach to it was inconsistent with its approach to other political parties (and, most notably, the Liberal Democrats). In particular, that (at the time of the Leaders' Debate) no other parties had confirmed the list of their candidates, and that (at the time of its Complaint) the Alba Party's membership exceeded that of the Liberal Democrats. The Committee noted however that, at the start of the current election period, the Scottish Liberal Democrats, Scottish Conservative Party, Scottish Labour Party, Scottish Green Party and the SNP each had evidence of past electoral support (the Liberal Democrats having five representatives in the Scottish Parliament). The Committee agreed that greater weight should be placed on this than on evidence of current support alone. As stated in paragraph 1.47 of Ofcom's Guidance on Section Six of the Code, this reflects the fact that electoral performance is a measure of how voters have actually exercised their democratic choice (compared with the greater uncertainty associated with support in opinion polls, which may not translate into actual votes or seats at an election). Further, and as noted above, more weight should be placed on evidence such as opinion polling than on membership numbers, and the average of the polling evidence in respect of the Liberal Democrats (from the current election period) indicates support on the regional list of 6%.¹⁴
- 3.19 The Committee also acknowledged the Complainant's argument in its oral representations that the specific definition of "larger parties" in Scotland¹⁵ in the BBC's Election Guidelines conflicted with the more flexible requirements in Ofcom's Broadcasting Code for coverage to be determined by taking into account "evidence of past electoral support and/or current support". The Complainant also argued that the concept of "larger parties" was in itself flawed, as it required approximately equal coverage for all five parties, despite the Alba Party currently having a higher membership than the Scottish Liberal Democrats (which was still defined as one of the "larger parties").
- 3.20 The Committee noted that Ofcom did decide to remove the concept of larger parties from Section Six of the Code in 2017¹⁶ in order to provide broadcasters with greater editorial freedom to take decisions in the area of elections by reference to evidence of past electoral support and/or current support. This change means that Ofcom no longer decides in advance of an election which political party is a larger or smaller party, and that the individual broadcasters are able to make those assessments themselves on the available evidence instead. For the purposes of considering the Complaint, the Committee noted that its role was to consider the question of the BBC's compliance with the Ofcom Broadcasting Code, not of its compliance with its own Editorial Guidelines.
- 3.21 The Committee acknowledged that, providing it could demonstrate compliance with the Code in its programming as broadcast, the BBC (and other broadcasters) are entitled to

¹⁴ This is based on the polls referred to at footnote 12 above.

¹⁵ The [BBC Election Guidelines 2021](#) lists the parties which gained substantial representation across Scotland at the 2016 Parliamentary election and over subsequent elections in Scotland (i.e. the Scottish National Party, the Conservatives, Labour, the Liberal Democrats and the Scottish Green Party) and states that "these parties should receive broadly similar levels of coverage".

¹⁶ Ofcom's final statement is available at: [Consultation \(ofcom.org.uk\)](#).

compile their own editorial guidelines, which may differ in some respects from the Code, and that this would often be helpful for programme producers given the principles-based nature of the Code. They also noted the BBC's submission that the Code should be considered the "de minimis" standard for BBC content. 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.

- 3.22 Finally, the Committee noted that Rules 5.12 and 6.2 of the Code contain provisions regarding the inclusion of significant views and perspectives within broadcast programming. Specifically, a requirement that broadcasters include an appropriately wide range of significant views and give them due weight in each programme or in clearly linked and timely programmes (Rule 5.12) and that broadcasters consider giving appropriate coverage to parties with significant views and perspectives during the election period (Rule 6.2). The Committee agreed with the Complainant that the Alba Party as a new political party held significant views on policy areas such as the D'Hondt voting system (including its desire to secure a 'supermajority' of independence-supporting MSPs by standing regional list candidates only) and its policy of entering into immediate negotiations with the UK Government regarding the issue of Scottish independence. It also noted that the BBC had not disputed the fact that the Alba Party may hold significant views and perspectives.
- 3.23 **Taking into account all of the above, the Committee found that the BBC's approach to considering the evidence on the Alba Party's level of current support (including its decision to place greater weight on the average of opinion poll evidence) had been, reasonable during the election period so far. The Committee also recognised that the Alba Party holds significant views and perspectives on some matters to which, in the programming which was brought to the Committee's attention (see paragraph 3.45 below), the BBC has given due weight during the election period so far.**
- 3.24 The Committee emphasised however the level of current support for political parties is, by its nature, dynamic. It noted that another leaders' debate on the BBC was forthcoming and that the BBC would need to assess the above issues afresh in advance of that programme, 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.

The Leaders' Debate

- 3.25 In its complaint, the Alba Party specifically referenced the BBC's Leaders' Debate in support of its view that the BBC had failed to give appropriate coverage to the Alba Party (taking account of its current support and significant views and perspectives). The Committee therefore considered the BBC's approach to the Leaders' Debate and whether it gave rise to any due impartiality concerns under Sections Five and Six of the Code.
- 3.26 The Leaders' Debate was a television programme transmitted on 30 March 2021. It was broadcast on BBC One Scotland and the BBC News Channel at 19:50. It was an audience-led discussion programme moderated by the presenter Sarah Smith, and related

specifically to the Scottish Parliamentary election. The leaders of the SNP (Nicola Sturgeon), the Scottish Conservatives (Douglas Ross), Scottish Labour (Anas Sarwar), the Scottish Liberal Democrats (Willie Rennie) and the Scottish Green Party (Lorna Slater)¹⁷ appeared in the Leaders' Debate and were given an opportunity to answer questions asked by the audience (who attended virtually, due to the coronavirus pandemic).

- 3.27 The Committee considered that the Leaders' Debate 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", because it concerned coverage of the Scottish Parliamentary election.¹⁸
- 3.28 As stated at paragraph 1.16 of Ofcom's Guidance Notes on Section Six of the Code, there is no obligation on broadcasters to transmit leaders' or candidates' debates. The format of election debate programming is a matter of editorial freedom for the individual broadcasters and, as appropriate, the relevant political parties, as long as the programming complies with Ofcom's rules on due impartiality and due weight is given to the coverage of parties during the election period.
- 3.29 As noted at paragraph 3.4 above, the Code states that "due" is an important qualification to the concept of impartiality. "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 and the likely expectation of the audience. Context is important.
- 3.30 In particular, the Committee noted that it is an editorial matter for a broadcaster as to how it maintains due impartiality. As explained at paragraph 1.33 of Ofcom's Guidance Notes on Section Five of the Code, whether or not due impartiality has been preserved will depend on a range of factors such as, for example: the nature of the programme; the programme's presentation of its argument; the transparency of its agenda; the audience it is aimed at; and the audience's expectations.
- 3.31 The Committee considered whether the exclusion of the Alba Party from the Leaders' Debate was, by itself, indicative of a failure by the BBC to preserve due impartiality or to not include (and give due weight to) an appropriately wide range of significant views in the programme as broadcast. In the Committee's view, the BBC was justified in its decision to not include the Alba Party in the Leaders' Debate.
- 3.32 The Committee noted paragraph 1.7 of Ofcom's Guidance Notes on Section Six of the Code, which provides that broadcasters may have regard to any measurable and objective evidence of the likely level of electoral support for particular candidates, and the relevant political context, in deciding relative levels of coverage for different candidates in the same election. It recognised that the BBC's decision to not include Alex Salmond in the Leaders' Debate should be considered against the backdrop of the information available to the BBC

¹⁷ Lorna Slater serves as co-leader of the Scottish Green Party alongside Patrick Harvie.

¹⁸ Rule 6.1 of the Code states that the rules in Section Five apply to the coverage of elections.

at that time. At the time of the Leaders' Debate, the Alba Party was a very new party (having been launched four days earlier) with no past electoral performance, and no polls had been published since its launch (the first such poll being reported two days after the Leaders' Debate, on 1 April 2021).

- 3.33 The Committee considered the Complainant's suggestion that the BBC had been inconsistent in determining which parties ought to be included in leaders' debates, as the then leader of UKIP Scotland, David Coburn had been a sixth participant in the BBC leaders' debate for the 2016 Scottish Parliament Election. The Committee also noted the BBC's response that the information available to the BBC at the time of the 2016 leaders' debate concerning the likely level of support for UKIP Scotland, and the relevant political context, was different.¹⁹ However, the issue before the Committee was whether the BBC had – in the Leaders' Debate that took place in 2021 – preserved due impartiality and included (and given due weight to) an appropriately wide range of significant views. It did not consider that the BBC's editorial decisions in a leaders' debate over five years earlier, in very different circumstances should fetter its editorial discretion, and particularly not a number of years later.
- 3.34 The Committee noted that, in deciding to proceed with the *Leaders' Debate* without Alex Salmond, or any other representative of the Alba Party, the BBC had to ensure that the programme as broadcast (including linked programmes) complied with the requirements of the Code. It therefore considered the point made by Mr Salmond in his oral representations that – even if it were justifiable for the BBC to not include the Alba Party in the Leaders' Debate – it should have used other editorial techniques (for example, an interview with an Alba Party MP) to allow the Party to represent its views.
- 3.35 The Committee noted that there was very little reference to the Alba Party (or Alex Salmond) in the Leaders' Debate. It also noted that the few references to it which were made did not provide viewers with any substantive information regarding the Alba Party's policies, including any significant views or perspectives that it might hold.
- 3.36 However, it is for the broadcaster to determine how it complies with the special impartiality requirements in Section Five of the Code. Paragraph 1.17 of Ofcom's Guidance Notes on Section Five of the Code makes clear that there are a range of editorial techniques for maintaining due impartiality, and due impartiality can be achieved over clearly linked and timely programmes.
- 3.37 In this regard, the Committee was mindful of the fact that the Alba Party was referenced clearly in the BBC's programming immediately before and after the Leaders' Debate, specifically, in its "*Election Scotland 2021: Leaders Debate Countdown*" and "*Election Scotland 2021: Leaders Debate Reaction*" programming. The Committee considered that both of these programmes were clearly linked and timely programmes for the purposes of the Code. This was clear from the name of the programmes, the timing of their broadcast

¹⁹ For instance, UKIP Scotland had obtained more than 10% of the vote in Scotland at the 2014 European Parliamentary elections, and that a referendum on the question of whether the UK should remain within the EU was taking place six weeks after the Scottish Parliamentary elections.

(immediately before and after the Leaders' Debate), and the fact that a clear link was drawn by the presenter between these programmes and the Leaders' Debate. On each of these linked programmes, the Committee noted that:

- a) *Election Scotland 2021: Leaders Debate Countdown* was a television programme broadcast immediately before the Leaders' Debate on BBC News at 19:30. During this programme, a presenter explained the format of the upcoming Leaders' Debate and discussed the big themes that would be debated with a panel of guest contributors (Professor Sir John Curtice, Professor of Politics at the University of Strathclyde), Lesley Riddoch (author, broadcaster and pro-independence campaigner) and Pamela Nash (Chief Executive of Scotland in Union). Specific reference was made to the creation of the Alba party, to Alex Salmond's role as its leader, and to the fact that no polls had been published since the launch of the Alba Party a few days earlier. Further, an explanation of the Scottish voting system was provided and it was noted that the Alba Party would be standing candidates for the regional list (rather than for constituency seats) with a view to securing a supermajority for Scottish independence alongside the SNP.
- b) *Election Scotland 2021: Leaders Debate Reaction* was broadcast immediately after the Leaders' Debate on BBC News and followed a similar format to *Election Scotland 2021: Leaders Debate Countdown* (and included the same panel of guests, each giving their reaction to the Leaders' Debate). One of the guests, Lesley Riddoch, specifically referenced the Alba party and the fact that it had not been included in the Leaders' Debate. She noted that it was not yet clear how many candidates the Alba Party would have, and that it would be announcing its policies on 6 April 2021. In the course of a discussion of the SNP and Scottish Green Party's position on the timing of a second Scottish independence referendum, Lesley Riddoch also stated that, in her view, the BBC's coverage "*did not feel very balanced to me*" as a number of questions put to the Leaders all suggested that it would be inappropriate to move forward with a plan on independence whilst the Covid pandemic were ongoing.

3.38 The Committee also noted that the requirement in Rule 5.12 of the Code was to include (and give due weight to) an "appropriately wide range" of significant views and perspectives. Further, as noted in the Code and at paragraph 1.32 of Ofcom's Guidance Notes on Section Five of the Code, due impartiality does not require that a broadcaster include every argument on a particular subject or that it provide, in each case, a directly opposing argument to the one presented in the programme. The Committee noted that the linked programming did include reference to the Alba Party, its general position in relation to Scottish independence, and the securing of a pro-independence supermajority in the Scottish Parliament through the D'Hondt system, commensurate with what was known about the Party and its policies at the time of the broadcast.

3.39 **Taking all these factors into account, the BBC's approach to the format of the Leaders' Debate and linked programming did not raise any concerns for the Committee under Sections Five and Six of the Code.**

3.40 However, the Committee reiterated that broadcasters should be mindful during election periods of the dynamic nature of current support, and of the evolving political landscape. Election periods last for a number of weeks and what might be appropriate in order to comply with the special impartiality requirements at the start of the election period may not be appropriate towards the end of the election period.

Overall BBC coverage during the election period

3.41 Having considered the Leaders' Debate specifically, the Committee then considered whether it had any concerns regarding the BBC's overall coverage of the Alba Party during the election period and, in particular, whether the BBC might have failed to give due weight to it.

3.42 The Committee noted that, unlike the rules in Section Five of the Code (which apply to specific programmes or linked programmes), Rule 6.2 concerns the coverage of parties and candidates over an entire election period. It noted that election periods can last for a number of weeks (six, in the case of this Scottish Parliamentary elections) and it could not, given the need to expedite this complaint, view all of the BBC's coverage of the Scottish Parliamentary election from the last four weeks.

3.43 Whilst the Complaint specifically referred to the Leaders' Debate in support of the Alba Party's view that the BBC had failed to comply with the Code, it did not identify any other specific BBC programming from during the election period, even following a specific request for this from Ofcom (although the Complainant did provide some examples of BBC programming which it considered to have been hostile towards the Alba Party, as set out at paragraph 2.29 above). The BBC was therefore asked to provide a recent sample of its news and current affairs output from a randomly selected day; specifically, the 14 April News Sample. It was also asked to provide a brief description of its news and current affairs programming from 21 April (namely, the 21 April BBC Coverage) on the basis that this was the day on which the Alba Party launched its manifesto.

3.44 The Committee recognised that caution should be exercised when considering the overall coverage of an election period by reference to a broadcasters' coverage on only one or two days within that period. However, in the Committee's view this would still provide a useful illustrative example of the BBC's approach to coverage of the Alba Party during the election period, which would assist in its consideration of the Complaint (alongside the specific programming to which the BBC drew Ofcom's attention in its submissions).

3.45 The Committee then considered whether it had any concerns regarding the BBC's approach to coverage of the Alba Party during the election period (taking into account the Alba Party's current support and views and perspectives) on the basis of the following:

- a) the Leaders' Debate and linked programming;
- b) the 14 April News Sample;
- c) the BBC's General Coverage of the Alba Party; and
- d) the 21 April BBC Coverage.

- 3.46 In its written submissions, the Alba Party had suggested that it had been “excluded from the news coverage in each and every bulletin”. Based on the evidence before it, the Committee did not consider that this was an accurate summary of the BBC’s approach to coverage of the Alba Party during the election period so far. It also did not consider, taking account of the Alba Party’s level of current support, that the BBC should necessarily be required to include a reference to the Alba Party in every news item which considers the Scottish Parliamentary election (except where to do so is explicitly required by virtue of Rules 6.8 – 6.12 of the Code concerning constituency coverage and electoral area coverage in elections).²⁰
- 3.47 The Committee recognised that the 14 April News Sample contained little reference to the Alba Party, and that it focused on the ‘five main parties’ (with a particular focus on the Scottish Green Party). However, the Committee was mindful of the fact that this was the date of the Scottish Green Party’s manifesto launch. Further, and as noted above, it was only coverage from one day. It noted that it is an editorial decision for a broadcaster as how to approach coverage across the election period, provided that – across the election period – it provides an appropriate level of coverage to parties.
- 3.48 Further, the Committee noted that the Alba Party had been provided with extensive coverage by the BBC on the date of its manifesto launch. This was consistent with the BBC’s approach to the manifesto launch of the Scottish Green Party on 14 April. Whilst the BBC had included within the 21 April BBC Coverage a reference to its website coverage of the Alba Party, the Committee’s focus was on the BBC’s broadcast content, and specifically its television and radio coverage.
- 3.49 Focusing on the BBC’s broadcast content from the wider election period, the Committee noted that the BBC had summarised its overall coverage up to 19 April 2021, as well as its coverage on 21 April 2021 (referred to in this document, respectively as the BBC’s General Coverage of the Alba Party and the 21 April BBC Coverage), and that the Alba Party had not disputed the veracity of this summary. Taking this into account, it was clear that the BBC had:
- a) included coverage on its television and radio services regarding the launch of the Alba Party on 26 March 2021;
 - b) included interviews with a number of Alba Party representatives on its television and radio services during the election period. This included (but was not limited to) interviews with Alex Salmond on *Good Morning Scotland* (7 April 2021), *Newsnight* (26 March 2021), *Today* (1 April), Radio 4’s *PM* programme (20 April) and *The Nine* (21 April 2021);
 - c) included some discussion in the programming around the Leaders’ Debate (*Election Scotland 2021: Leaders Debate Reaction* and *Election Scotland 2021: Leaders Debate*

²⁰ Rule 6.12 states that Rules 6.8 to 6.12 apply to the coverage of wider electoral regions, such as in elections to the Scottish Parliament.

Countdown) regarding the launch of the Alba Party, and its desire to secure a supermajority for Scottish independence through regional list seats; and

d) as noted above, provided the Alba Party with extensive coverage on the date of its manifesto launch (21 April 2021).

- 3.50 The Committee was also mindful of the Alba Party's current support (discussed from paragraph 3.3 above), including that on average during the election period, polls have indicated support of approximately 3.5%.
- 3.51 The Committee considered Mr Salmond's argument in his oral representations that the lack of weight given to the Alba Party in the BBC's coverage of the Scottish Parliament elections was exacerbated by the fact that the limited coverage it did receive was hostile in tone, and that it did not allow for the Alba Party to express its views and policies (instead focusing on his recent involvement in court proceedings, or his views on Russian foreign policy). Mr Salmond had, in particular, drawn the Committee's attention to interviews of Kenny MacAskill and himself broadcast on *The Nine* on 29 March and 21 April respectively, and to his interview on *Good Morning Scotland* on 7 April 2021.
- 3.52 The Committee emphasised the importance (subject to compliance with the Code) of freedom of expression within broadcasting, particularly during the coverage of elections. It considered that the ability for broadcasters to properly hold politicians to account during an election period is important in the functioning of a healthy democracy. With that in mind, and given Mr Salmond's role as leader of the Alba Party, the Committee considered that the robust line of questioning adopted by the presenter was legitimate and relevant in the context of the election. Further, the Committee noted that Mr Salmond was given the opportunity and was able to respond to the questions that were put to him.
- 3.53 The Committee also took into account the BBC's submissions of 26 April 2021 on this particular point. This included that, in respect of *The Nine* on 21 April 2021, the BBC had included a "package" from its political correspondent regarding the Alba Party's plans on independence and strategy around a "supermajority", and had mentioned some of its key manifesto policies. The Committee was mindful that in his oral representations, Mr Salmond had showed a short clip of this interview, when in fact the whole interview as broadcast had lasted approximately seven minutes and covered topics beyond Mr Salmond's alleged conduct (including his strategy regarding Scottish independence and differences in that strategy as between the Alba Party and the SNP).
- 3.54 **Taking account of all of the above, the Committee did not have any concerns about the BBC's overall approach to coverage of the Alba Party during the Scottish Parliamentary election period so far, including its compliance with Rules 5.1, 5.11, 5.12, 6.1 and 6.2 of the Code.**

The BBC's engagement with the Alba Party

- 3.55 The Committee considered the Alba Party's complaint that it had experienced difficulty engaging with the BBC, and that it had contacted the broadcaster on multiple occasions

between 2 and 9 April 2021 regarding coverage of the Alba Party in its election programming but that, save for a few “holding emails”, the only significant interaction from the BBC had been the letter dated 15 April 2021, and when Mr Salmond instigated a telephone conversation with the BBC's Chief Political Advisor on 2 April 2021.

- 3.56 The Committee also considered the subsequent representations made by the BBC, including that it had been in contact with the Alba Party on a number of occasions during the election period (at an operational level and in relation to bidding for interviews and PEBs).
- 3.57 The Committee did not agree with the point made by Mr Salmond (in his oral representations to the Committee) that the BBC should be held to a “higher” standard than other broadcasters with regards to responsiveness in communicating with parties in an election. It did however note that the BBC did not appear to have provided a substantive response to the Alba Party's complaint of the 2 April 2021 until 15 April 2021, approximately two weeks later. In considering this delay, the Committee considered it was important that due impartiality issues raised by a party in relation to its election coverage are responded to and discussed with parties promptly, taking into account the short time-frames of the election period.

Conclusion

- 3.58 **For the reasons set out above, the Committee decided to not uphold the Complaint.**

A1. Statutory Framework and Sections Five and Six of the Broadcasting Code

Statutory Framework

- A1.1 Under section 319 of the Communications Act 2003 (the “Act”), Ofcom has a duty to set such standards for the content of programmes to be included in television and radio services as appear to them 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.
- A1.2 Specifically, the standards objectives include an objective that the impartiality requirements set out in section 320 of the Act are complied with (section 319(2)(c)). 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..., of due impartiality, on the part of the person providing the service, as respects all of those matters”.
- A1.3 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 a whole”.
- A1.4 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”.
- A1.5 Section 320(6) then 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 relating to 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.²¹

Applicable provisions of the Broadcasting Code

- A1.6 Section Five of the Code contains rules in relation to “Due Impartiality and Due Accuracy and Undue Prominence of Views and Opinions”.
- A1.7 The BBC’s election coverage, including the Leaders’ Debate and its news and current affairs programming relating to the Scottish Parliamentary election, was properly to be regarded as a programme relating to “matters of major political or industrial controversy” or “major

²¹ In the absence of a complaint post-broadcast of the programme from any person affected, the Committee did not consider any fairness issues under Section Seven of the Code. This Section of the Code is pursuant to section 3(2)(f) of the Act and section 107 of the Broadcasting Act 1996.

matters relating to current public policy". Such matters are defined in Section Five as being "...generally... matters of current public policy which are of national, and often international, importance...". The Committee also noted, in this regard, that Rule 6.1 of the Code provides that the rules in Section Five of the Code relating to major matters relating to current public policy "apply to the coverage of elections and referendums".

A1.8 As such, the Committee considered the following provisions of Section Five of the Code to be relevant.

- **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 (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."

A1.9 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,^[22] is important."

A1.10 In addition, the Committee considered the meaning of "series of programmes taken as a whole" as set out in Section Five of the Code:

"This means more than one programme in the same service, editorially linked, dealing with the same or related issues within an appropriate period and aimed at a like audience. A series can include, for example, a strand, or two programmes (such as a drama and a debate about the drama) or a 'cluster' or 'season' of programmes on the same subject."

²² In relation to the meaning of "context", Section Two states that: "Context includes (but is not limited to): the editorial content of the programme, programmes or series; the service on which the material is broadcast; the time of broadcast; what other programmes are scheduled before and after the programme or programmes concerned; the degree of harm or offence likely to be caused by the inclusion of any particular sort of material in programmes generally or programmes of a particular description; the likely size and composition of the potential audience and likely expectation of the audience; the extent to which the nature of the content can be brought to the attention of the potential audience for example by giving information; and the effect of the material on viewers or listeners who may come across it unawares."

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- A1.11 It noted that there is no definition in the Code for the term “clearly linked and timely programmes”.
- A1.12 As well as the provisions of Section Five, the Committee considered Section Six of the Code in relation to “Elections and Referendums” as the Complaint related to programming broadcast within the election period for the 2021 Scottish Parliamentary Election. Section Six sets out rules relating to, amongst other things, the preservation of due impartiality in the coverage of elections and the giving of due weight to political parties in coverage during the election period.
- A1.13 The Committee considered the following provision of Section Six of the Code to be relevant.
- Rule 6.2:** “Due weight must be given to the coverage of parties and independent candidates during the election period. In determining the appropriate level of coverage to be given to parties and independent candidates broadcasters must take into account evidence of past electoral support and/or current support. Broadcasters must also consider giving appropriate coverage to parties and independent candidates with significant views and perspectives.”
- A1.14 The Committee noted that the “election period” for the Scottish Parliamentary elections, for the purposes of Section Six of the Code, commenced on 25 March 2021 and will end on 6 May 2021, i.e. the polling date for the Scottish Parliamentary elections.