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**Decision of the Election Committee on a  
due impartiality complaint from Reform UK  
in relation to *Election Wales 2021: Leaders’  
Debate*, 29 April 2021**

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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 Committee<sup>1</sup> 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 Committee<sup>2</sup> has considered a complaint from Reform UK (formerly 'the Brexit Party') ("the **Complainant**") in relation to *Election Wales 2021: Leaders' Debate*, a programme broadcast on BBC One Wales, BBC News Channel and BBC iPlayer on 29 April 2021 ("the **Programme**"), ahead of the Senedd elections on 6 May 2021 ("the **Complaint**").
- 1.4 The Complaint concerned the BBC's decision to exclude the Complainant from the first segment of the Programme, which lasted approximately 61 minutes, in which the leaders of five political parties debated in front of a selected, virtual audience. The Complaint said that the BBC was wrong to relegate the Complainant to the second part of the Programme featuring minor parties while allowing the leader of another political party, Abolish the Welsh Assembly Party ("**AWAP**"), to participate in a debate alongside Labour, the Conservatives, Plaid Cymru and the Liberal Democrats in the first segment of the Programme. The second segment of the Programme, lasting approximately 28 minutes, contained a debate with representatives from UKIP, the Green Party, and Reform UK.
- 1.5 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 Senedd, 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.
- 1.6 The format of any election debates, including those invited to participate, is a matter for the broadcaster's editorial judgment, which it must exercise in accordance with its obligations to preserve due impartiality and to include, and give due weight to, an appropriately wide range of significant views.
- 1.7 The Complaint alleged that the BBC breached its obligations in respect of due impartiality and due weight under Sections Five and Six of the Code, by wrongfully excluding the

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

<sup>2</sup> In this case the Election Committee consisted of the following members: Tim Suter (Chair, Member, Ofcom Board and Chair, Ofcom Content Board); Aled Eirug (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).

Complainant from the first segment of the Programme in favour of allowing the participation of the AWAP.

- 1.1 In response to the Complaint, the BBC said that it has taken account of past and current voting intentions. On the basis of its assessment, it said that in its editorial judgment, having one 90-minute programme with two panels (split between 5 and 3 parties) was the best way to achieve due impartiality, reflect past and current electoral support, and enable the BBC to properly explore and challenge each party's campaign and policy objectives.
- 1.8 **Having considered the Complaint and all of the evidence put before it, the Election Committee, for the reasons set out below, decided to not uphold the Complaint.**

## 2. Background

- 2.1 This section summarises the Complaint, the representations made by the BBC and the correspondence between Reform UK and the BBC between 6 and 21 April 2021.
- 2.2 Ofcom received the Complaint on 29 April 2021. The Complaint included the following correspondence between the Complainant and the BBC:
- a) Reform UK's letter of complaint/Pre-Action Protocol for Judicial Review to the BBC dated 6 April 2021;
  - b) BBC's letter of acknowledgement to Reform UK dated 7 April and Reform UK's response dated 8 April 2021;
  - c) BBC's response to Reform UK, dated 14 April 2021; and
  - d) Reform UK's response of 15 April to BBC letter of 14 April 2021.
- Relevant content from these documents is summarised below.
- 2.3 The Complaint was initially made 14 days before the broadcast of the Programme. In its response, Ofcom explained that Ofcom is a post-broadcast regulator and does not deal with programmes which have not yet been broadcast.
- 2.4 Ofcom informed the Complainant that if after the Programme was broadcast it wished to pursue a complaint, it should be submitted by 30 April 2021 so that Ofcom could convene the Election Committee as a matter of urgency.
- 2.5 After the broadcast of the Programme on 29 April 2021, Reform UK confirmed it wished to pursue its complaint as set out in their letter of 15 April 2021.
- 2.6 Ofcom decided that it would be appropriate for the Election Committee to consider the Complaint on an expedited nature on the basis that it raised substantive issues which, if upheld, might require redress before the Senedd elections on 6 May 2021. We gave the BBC an opportunity to provide its written submissions in response to the Complaint at short notice, and in accordance with tight deadlines.
- 2.7 The Programme was a one-and-a-half-hour-long broadcast featuring two debates between representatives of political parties participating in the upcoming Senedd elections on 6 May 2021. The presenters introduced the start of the Programme:

Bethan Rhys Roberts: *Good evening and welcome to the BBC Wales leaders' debates. Tonight, exactly a week before Wales goes to the polls, we hear from the main parties in this Senedd election.*

*For the next hour I'm joined by the leaders of the Welsh Conservatives, the Welsh Liberal Democrats, Plaid Cymru, Welsh Labour and Abolish The Welsh Assembly as they debate the issues that matter to you. We're also joined by a virtual audience made up of a cross section of voters, and ready with their questions. And later, we'll hear from leaders of other parties, too, with Nick Servini.*

Nick Servini: *This is an election which could leave the balance of power in the hands of a number of parties. Later on, I'll be here with the senior figures from UKIP, the Greens and Reform, who will all be hoping to do enough to convince you to cast one or more of your votes for them.*

2.8 As the presenters outlined in their introduction, the first hour of the Programme focused on a debate with a panel consisting of the following parties and their leaders: Welsh Liberal Democrats (Jane Dodds), Welsh Labour (Mark Drakeford), Welsh Conservatives (Andrew RT Davies), Plaid Cymru (Adam Price) and Abolish the Welsh Assembly (Richard Suchorzewski). A virtual audience, consisting of a cross-section of voters, attended the debate. The debate started by allowing each of the party leaders 30 seconds for opening statements, with the order of the opening statements being determined by lots drawn by the production team. Following the opening statements, questions asked by members of the virtual audience were put to the panel for debate with the process being moderated by the first presenter, Bethan Rhys Roberts. This first debate was concluded by allowing the party leaders to make closing remarks.

2.9 The last half-hour of the Programme focused on a debate presented by Nick Servini, who introduced the second part of the Programme:

Nick Servini: *Good evening and welcome to the second part of tonight's BBC Wales election leaders' debate. In this part of the program we'll be hearing from three other parties who are after your votes in the Senedd election next Thursday. Now it's fair to say that the Greens, Reform and UKIP are not going to be leading the next Welsh government, but the electoral makeup of the Senedd after May the 6th could be tight, which means the balance of power could lie with a range of different parties.*

*In the next half an hour we'll be discussing some of the main issues of this campaign, but first we'll start with some opening statements. The production team again drew lots to determine the order and first up is Neil Hamilton, the leader of UKIP Wales.*

2.10 The second panel consisted of leaders/representatives of the following parties: UKIP Wales (Neil Hamilton), Green Party (deputy leader, Amelia Womack) and Reform UK (Jamie Jenkins). This debate did not have a virtual audience and involved questions to individual panel members by the second presenter, Nick Servini, before being discussed by the whole panel. This debate considered similar topics to the first debate, for example, how to balance the demands on the NHS, protecting the environment whilst assisting economic recovery after the Covid-19 pandemic, and whether there should be a referendum for Welsh independence. This part of the debate was moderated by the second presenter and ended by allowing each of the panel members time to make a closing statement.

## The Complaint

- 2.11 As noted above, Ofcom received the Complaint on 29 April 2021, approximately four weeks into the election period, which commenced on 29 March 2021. The Complaint alleged that the Reform UK party had been unfairly excluded from the first leaders' debate within the Programme. The Complainant argued that its exclusion, and the inclusion of AWAP within the first debate in the Programme, amounted to a breach of the BBC's obligations under the Code, namely Rules 5.11, 5.12, 6.1 and 6.2<sup>3</sup>.
- 2.12 The Complainant said that a broadcaster making a balanced assessment of factors in determining whether or not to invite the leader of a political party to a leaders' debate must place greater weight on the actual performance of the party concerned in previous elections.
- 2.13 As evidence of past electoral performance, the Complainant highlighted the following:
- a) In the 2019 European Parliamentary Election, the party, campaigning as the Brexit Party, won 29 seats with 5,200,000 votes nationwide, two million more than the Liberal Democrats and more than the total votes for the Conservatives, Labour and Plaid Cymru combined. In Wales, the Complainant took two of the four MEP seats and over 32% of the votes; and
  - b) In the last general election in December 2019 the Party polled 645,000 votes in total nationwide and in Wales they polled 83,908 votes, compared to 92,171 votes for the Liberal Democrats, 15,828 votes for the Green Party and 9,916 votes of the 'other' parties.
- 2.14 The Complainant said that during 2020 a number of opinion polls relating to Wales put its support at around 5%, mostly ahead of other smaller parties such as the Green Party.
- 2.15 The Complainant also cited polling data in Ofcom's Digest for Broadcasters, *Evidence of past electoral support and evidence of current support ahead of the various elections taking place on 6 May 2021* published on 19 February 2021 ("the Digest")<sup>4</sup>. The Complainant noted that, in respect of voting intentions in a General Election, in the recent polls in the Digest, the Party polled ahead of the Liberal Democrats and outperformed "Others" in all polls, whereas AWAP did not appear.
- 2.16 In relation to voting intentions in respect of Senedd elections, the Complainant said that the data in the Digest showed that it polled ahead of the Liberal Democrats and that AWAP are not listed individually in the data.
- 2.17 The Complainant said that AWAP has no recent track record and it did not contest the European Parliamentary elections, the General Election or any other significant election in 2019 or 2020.

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<sup>3</sup>The Complainant also alleged breaches of Rules 6.8-6.12 inclusive. However, the Complaint acknowledged that the Complainant had been offered the opportunity to participate in the Programme and so did not raise any issues warranting consideration under these Rules.

<sup>4</sup>[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0026/213992/electoral-digest-local-elections.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/213992/electoral-digest-local-elections.pdf).

2.18 In conclusion, the Complainant said that the BBC's decision to include the leader of AWAP within the first debate of the Programme whilst excluding the leader of Reform UK was unjustifiable.

## The BBC's response to the Complainant

2.19 In its correspondence with the Complainant before the broadcast, the BBC referred to their editorial discretion when giving due weight to impartiality in respect of their election coverage. They made the following observations:

- a) The assessment of due impartiality is not a hard-edged question of objective fact; it is a question of editorial judgment, which will almost always be context driven and highly nuanced<sup>5</sup>;
- b) In the context of due impartiality, the BBC has "a wide margin of discretion in exercising its judgement, given the specialist area in which that judgement has been exercised and the expertise of the BBC in the field"<sup>6</sup>;
- c) The Code and Ofcom's Guidance are explicit that due impartiality, including in the context of election coverage, can be achieved over a period by a series of linked programmes;
- d) The language in Rule 6.2 of the Code, is deliberately designed to give a degree of flexibility to broadcasters, as it merely requires *due weight* is given to the coverage of parties and in fulfilling this obligation a broadcaster only has to consider giving appropriate coverage to parties with significant views and perspectives;
- e) Paragraph 1.16 of Ofcom's Guidance states that the editorial format of televised debates "is a matter for the broadcaster and, as appropriate, the relevant political parties as long as the broadcaster complies with the Code";
- f) A broadcaster's right to editorial discretion should be understood in line with the protection afforded under Article 10 of the European Convention of Human Rights (ECHR). Article 10 ECHR protects both the media's right to impart information and ideas as well as the public's right to receive them. It not only protects the substance of a broadcast, but also the form in which they are conveyed.

2.20 The BBC said that it made its decision carefully and conscientiously whilst being compliant with the Code. It noted that the Complainant had accepted the inclusion of the Liberal Democrats in the first segment of the Programme.

2.21 In relation to its decision to include AWAP in the first debate of the Programme, the BBC said that this was based on a combination of:

- a) The fact that AWAP achieved 4.4% of the vote on the regional lists in the 2016 Welsh Assembly elections (the previous directly comparable election);

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<sup>5</sup> R (Liberal Democrats) v ITV, paragraph 107.

<sup>6</sup> R (Keighley) v BBC [2019] EWHC 3331 (Admin), paragraph 8.



- b) An evaluation of current electoral support, especially the recent trend of support evident in the opinion polls;
- c) The fact that AWAP is expected to field a full list of regional candidates and a large number of constituency candidates; and
- d) It is publicly predicted by experts in the field to win a number of Senedd seats.

2.22 In relation to the polling data relied upon by the Complainant, the BBC said that polls for a UK General Election were of limited relevance. In relation to polling data in the Ofcom Digest in respect of Senedd voting intentions, which were referred to by the Complainant, the BBC observed that analysis of the underlying data revealed that in the two most recent YouGov polls on voting preference for the regional list outlined by Ofcom, AWAP had outperformed Reform UK.

2.23 Further, the BBC noted that the Ofcom digest was published in February 2021 and had considered more recent data. The BBC said that in the five most recent polls for regional lists voting intentions, the last three of which were not recorded within the Ofcom Digest, AWAP significantly out-pollled Reform UK:

Latest five Polls	April 2021	April 2021	April 2021	March 2021	Feb 2021
Reform UK	5%	4%	n/a	3%	1%
AWAP	7%	7%	4%	9%	7%

2.24 The BBC said this was relevant information that it was proper and reasonable for it to take into account when making editorial decisions to ensure the Programme was fair and balanced, impartial and informative to its audiences.

2.25 The BBC said that in any event, the fact that the Complainant's party leader was included within the second segment of the broadcast satisfies the due impartiality requirement through linked programming.

## The BBC's response to the Complaint

2.26 The BBC provided Ofcom with its submissions in response to the Complaint on 3 May 2021.

2.27 The BBC noted in its response that the Complainant was not excluded from the Programme and had appeared during the second part of the Programme. In making its decision to include Reform UK in this part of the Programme, the BBC took into account evidence of past and current electoral support.

2.28 The BBC made the following comments about the structure of the Programme:

- a) The two panels were included in the same programme with the same title;
- b) All eight participants across both panels stood at podiums and had the opportunity to make opening and closing statements with the same time restrictions;
- c) The second panel followed the first panel without any breaks in the Programme;

- d) Viewers during the first panel were signposted more than once to the second panel; and
- e) Although there was a different moderator for each panel, both moderators were highly experienced political journalists and very well-known presenters in Wales.

The BBC stated that the format aimed to offer audiences a programme which reflected the continuities and changes demonstrated in the past and current electoral support in Welsh politics between 2016 and 2021.

- 2.29 The BBC referred to its Election Guidelines<sup>7</sup>, which state that the four 'larger parties' (Labour, Plaid Cymru, the Conservatives, and Liberal Democrats) should receive broadly similar levels of coverage. The BBC explained that these Guidelines had been published following and considering the election results for the Welsh Assembly in 2016 and 2011 and electoral support in subsequent all-Wales elections. While the BBC noted that support for the Liberal Democrats in Wales has generally been in decline, the party's performance in UK General Elections in Wales improved from 2017 to 2019 and had a stronger performance in the 2019 European election. The BBC commented that "the decision was not an easy one", but that on balance, and taking account of the 2016 and 2011 Assembly elections and the full range of past electoral support, the Liberal Democrats should still be regarded as one of the larger parties under its Election Guidelines.
- 2.30 In relation to the smaller parties in Wales, the BBC considered that its Election Guidelines suggest that UKIP, the Complainant, and AWAP were 'smaller parties' and may receive some coverage proportionate to the larger parties. The BBC commented that each of these parties had evidence of some support, and while representation in the Senedd was a consideration, it was not a significant factor given the low numbers for this group of parties.
- 2.31 In relation to the Complainant, the BBC stated it took into account its past electoral support and the wider political context. In particular, the BBC noted that the party's performance in the 2019 European election was "clearly significant", having drawn more than 32% of the poll and winning two of the four seats in Wales. However, the BBC noted the specific political context of the election, which it considered to be "singular and unlikely to arise again". The BBC added that the representation won in the 2019 European election was temporary and was no longer in place at the time of the Senedd election following the 2019 General Election, where the Brexit Party (as it was then known) only secured 5.4% of the votes and no seats.
- 2.32 In relation to AWAP, the BBC commented that polling through 2020, with one exception, indicated that AWAP had a similar level of current support to the Complainant (i.e. around 3-4%), until the last two polls before publication of the Election Guidelines, which suggested that AWAP had moved up to 7%. It was therefore the BBC's view, when drafting the Election Guidelines, that AWAP was a 'smaller' party in respect of its coverage in the context of the Senedd election.

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<sup>7</sup> <https://www.bbc.co.uk/editorialguidelines/guidelines/electionguidelines2021>

- 2.33 When determining which parties to invite to participate in the Programme, the BBC said that, from October 2020, AWAP began polling at 7%, and that a consistent pattern of it polling at this level emerged from polls conducted in 2021. The BBC added that AWAP was outperforming other smaller parties, including the Complainant, and the Liberal Democrats. It said support at this level indicated that AWAP are in contention to gain a number of Senedd seats in the election.
- 2.34 The BBC explained that it was conscious that electoral support is “dynamic”; consequently, the BBC considered it would be fair and duly impartial to other parties with evidence of past and current support to include them within the same Programme to provide “substantial and comparable prominence”. It was therefore decided to include a second panel in the Programme featuring Reform UK, UKIP, and the Green Party. These parties were invited to appear on the same Programme, which the BBC noted had a “closer connection” than would have been the case with a linked programme with a separate time, format, or title, and therefore was the best way to achieve due impartiality, reflect past and current electoral support, and enable the BBC to explore and challenge each party’s campaign and policy objectives.

## Statutory Framework

- 2.35 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

- 2.36 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 the BBC's approach to the inclusion of the Complainant in the Programme, taking into account its level of past electoral and current support, was consistent with the obligations under 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.
- 3.2 In doing so, it took into account the Complaint, correspondence between the Complainant and the BBC ahead of the broadcast, the BBC's submissions in response to the Complaint, and the Programme.

### Reform UK support and political context

- 3.3 Before considering the Complaint, the Committee considered the submissions made by both parties regarding Reform UK's level of past and current support, how that compared with levels of support for AWAP and the Liberal Democrats, and the relevant political context. The Committee recognised that these were important contextual factors 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 Reform UK in accordance with Section Six of the Code.
- 3.4 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 Rule 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 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 Reform UK, 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.
- 3.7 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.
- 3.8 In respect of "past support", the Guidance Notes explain that Ofcom places greater weight on the actual performance of a political party in elections than it does on opinion poll data, because this is a measure of how voters have actually exercised their democratic choice compared to the uncertainty associated with opinion polls.
- 3.9 The Guidance Notes explain that Ofcom takes account of electoral performance in the previous set of corresponding elections over at least two electoral cycles, in other relevant past elections being contested at the same time, as well as performance in past elections not being contested at a given time.
- 3.10 In respect of "current support", Ofcom's Guidance Notes 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).
- 3.11 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<sup>8</sup>. 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).
- 3.12 The Committee considered all of the polling evidence that it had seen regarding Reform UK and agreed with the BBC that, given the margin of error for opinion polls is often cited to be plus or minus 3%<sup>9</sup>, 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.
- 3.13 The Committee noted that the Complainant was launched as a political party in Spring 2019, under the name The Brexit Party. It was renamed Reform UK in January 2021.

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

<sup>9</sup> YouGov, for example, define the margin of error in this way. See their explanation [here](#).

- 3.14 In relation to past electoral performance, the Committee noted that the Complainant has not previously contested elections for the Senedd. It took account of the Complainant's performance in the 2019 election for the European Parliament, when it won 32% of the vote in Wales. In weighing the significance of this vote share, the Committee took account of the fact that this was a different type of election than the election for the Senedd, with which the Programme was concerned, and that it took place within a particular political context, namely the UK's exit from the European Union.
- 3.15 The Committee noted that in the 2019 General election, the Complainant secured 5.4% of the vote in Wales, which was comparable to the Liberal Democrats' share of the vote in that election (6%).
- 3.16 The Committee noted that AWAP did not contest the General Election or the European Parliament elections in 2019.
- 3.17 In relation to evidence of current voting support, the Committee considered the opinion polls which were referred to by the Complainant and the BBC in their response. These were carried out between January 2020 and April 2021<sup>10</sup>. The Committee focused on the polls as they relate to the regional list voting intentions on the basis that this is the most likely means by which the Complainant and AWAP could achieve representation in the Senedd. In relation to the polls carried out between January 2020 and January 2021, which were referred to by the Complainant, the rolling average of the polling data gives the Complainant a vote share of 4.5%. The rolling averages for both AWAP and the Liberal Democrats, respectively, for the same period, is also 4.5%.
- 3.18 In relation to opinion polls carried out between October 2020 and 28 April 2021 in respect of list voting intentions for the Senedd, which were highlighted by the BBC in their response, these give the Complainant a rolling average of 3%. AWAP and the Liberal Democrats have a rolling average of 7% and 3.75% respectively<sup>11</sup>. The Committee acknowledged that trends in opinion polling were important and noted that there was no evidence of an increase in support for the Complainant from the opinion polling data as the election neared.
- 3.19 Taking into account all of the above, the Committee found that the Complainant's support in Wales was dynamic. While it recorded a substantial share of the vote in Wales in the European Parliament elections in April 2019 under the name The Brexit Party, it was appropriate to take account of the particular political context of that election. Its share of the Welsh vote in the General Election in December 2019 was significantly lower at 5.4%. The opinion poll data for 2021 in the run up to the Senedd election indicate current levels of support at 3%, which is comparable to that for the Liberal Democrats and below that for AWAP at 7%.

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<sup>10</sup> The polls considered were carried out by: YouGov (April 2020 – January 2021), ICM (Feb 2020) and Survation (May 2020).

<sup>11</sup> Reform UK: YouGov (October 2020): 5%, YouGov (January 2021): 4%, ICM (February 2021): n/a, YouGov (February 2021): 3%, YouGov (March 2021): 1%, Opinium (April 2021): n/a, YouGov (April 2021): 2% and Savanta ComRes (April 2021): 3%. AWAP: YouGov (October 2020): 7%, YouGov (January 2021): 7%, ICM (February 2021): 4%, YouGov (February 2021): 9%, YouGov (March 2021): 7%, Opinium (April 2021): n/a, YouGov (April 2021): 7% and Savanta ComRes (April 2021): 8%.

## The Programme

- 3.20 The Committee considered that the Programme as broadcast 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 Senedd election<sup>12</sup>.
- 3.21 The Committee considered that it is within the broadcaster’s discretion to determine how to conduct electoral debates, provided this is compliant with the Code. 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.
- 3.22 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.
- 3.23 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. 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.
- 3.24 The Committee also 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.
- 3.25 The Committee then considered whether the exclusion of Reform UK from the first section of the Programme 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. Taking account of the dynamic nature of the data in relation to the Complainant’s past and current support and the Complainant’s

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<sup>12</sup> Rule 6.1 of the Code states that the rules in Section Five apply to the coverage of elections.

submissions on how that compared to other political parties, the Committee considered that there were different editorial techniques that the BBC could have employed to maintain due impartiality in the programme as broadcast. However, it was the Committee's opinion that, given the level of current support for Reform UK and the contextual differences between the opinion polls for the 2021 Senedd election and the results of the 2019 European election, as described at paragraphs 3.14-3.19 above, it was a reasonable exercise of the BBC's editorial judgment to include Reform UK within the second part of the Programme in the 'smaller parties' debate, rather than the first part of the Programme. In the Committee's view, the BBC was therefore justified in its decision to not include Reform UK in the first part of the Programme.

- 3.26 However, it is for the broadcaster to determine how it complies with the special impartiality requirements in Section Five of the Code.
- 3.27 The Committee referred to the two-panel format of the Programme and the fact that both debates were held within the same programme. The Committee also noted that both sections had a similar structure and covered similar topics during each debate. In considering the format of the Programme as a whole, the Committee concluded that: the inclusion of both debates within the Programme; the similar treatment of both debates within the Programme in terms of structure, topics and time of broadcast; and the fact that each party involved in the Programme had a similar opportunity to contribute, thereby afforded fair treatment to each of the parties involved, including the Complainant.
- 3.28 Taking all these factors into account, the BBC's approach to the format of the Leaders' Debate did not raise any concerns for the Committee under Sections Five and Six of the Code.

## Conclusion

- 3.29 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<sup>13</sup>.

## 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 Wales 2021: Leaders' Debate, which concerned the Senedd election, was properly to be regarded as a programme relating to "matters of major political or industrial controversy" or "major matters relating to current public policy". Such matters

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<sup>13</sup> 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.

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 5.11:** "...due impartiality must be preserved on matters of major political and industrial controversy and major matters relating to current public policy by the person providing a service... in each programme or in clearly linked and timely programmes."
- **Rule 5.12:** "In dealing with matters of major political and industrial controversy and major matters relating to current public policy an appropriately wide range of significant views must be included and given due weight in each programme or in clearly linked and timely programmes. Views and facts must not be misrepresented."

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<sup>14</sup>, is important."*

A1.10 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 Senedd 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.

A1.11 The Committee considered the following provision of Section Six of the Code to be relevant.

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<sup>14</sup> 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."

**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."

- A1.12 The Committee noted that the "election period" for the Senedd elections, for the purposes of Section Six of the Code, commenced on 29 March 2021 and will end on 6 May 2021, i.e. the polling date for the Senedd elections.