

**Decision of the Election Committee on a Due Impartiality Complaint Brought by the
Plaid Cymru in relation to the “First Election Debate”, ITV1, 15 April 2010**

On Tuesday 27 April 2010, Ofcom’s Election Committee (“the Committee”)¹ met to consider and adjudicate upon a complaint made on behalf of Plaid Cymru about the broadcast of the “First Election Debate” on the ITV network (in all its regions) at 20:30 on 15 April 2010. The complaint was made by letter received by Ofcom on 19 April April 2010 (the “Letter of Complaint”) from Gwenllian Lansdown, Chief Executive of Plaid Cymru.

The Committee consisted of the following members: Philip Graf (Chairman of the Committee, Chairman of the Ofcom Content Board and Deputy Chairman of Ofcom), Richard Ayre (Member for England of Ofcom’s Content Board), Anthony Lilley (Member of Ofcom’s Content Board), Sue Balsom (Member for Wales of Ofcom’s Content Board for Wales), and Stewart Purvis (Executive Ofcom Partner with responsibility for Content and Standards).

For the reasons set out below, having considered all the submissions and evidence before it under the relevant provisions of the Broadcasting Code, the Committee decided that Plaid Cymru’s complaint should not be upheld, that the broadcast of the Debate complied with the requirements of the Broadcasting Code and that no remedial action was required on the part of ITV licensees.

Background

“The First Election Debate”

The “First Election Debate” (“the Debate”) was a 90-minute live factual programme featuring the leaders of the Labour, Conservative and Liberal Democrat parties in debate on domestic affairs based on questions selected from a live studio audience and moderated by the presenter, Alastair Stewart. The programme was produced by ITV Studios for the ITV1 network, and compliance was carried out by ITV Broadcasting Limited.

Plaid Cymru’s Complaint

As set out in the Letter of Complaint, Plaid Cymru complained that its *“voice has been excluded from [the Debate] and that this election has been presented as a three horse race when, in fact, there are four major parties contesting this election in Wales. Viewers in Wales...could be forgiven for thinking that there are only three major parties contesting the election in the constituency where they will cast their votes. In fact, in all Welsh constituencies another major party has been excluded from the [D]ebate”*.

Citing provisions under section 319 and 320 of the Communications Act 2003, and under Sections 5 to 7 of the Broadcasting Code, Plaid Cymru urged Ofcom to *“consider*

¹ The Committee’s Terms of Reference are available on Ofcom’s website.

retrospectively the impact that the televised ITV debate has had on overall levels of electoral support on the overall outcome of the election and to consider whether, as an arbitrator in matters of ensuring fairness and impartiality in broadcasting as defined...in [Ofcom's] guidelines, the televised debate has not had a material impact on the overall result." Plaid Cymru formally asked Ofcom "to investigate this matter and consider whether this situation is in breach of the Broadcasting Code."

In correspondence with Plaid Cymru and ITV before the Committee's meeting, Ofcom identified the following heads of complaint under the head of due impartiality:

- (a) By excluding Plaid Cymru (a major party in Wales) from the Debate, ITV failed to ensure due impartiality;
- (b) The "unprecedented rise" in support for the Liberal Democrats following Nick Clegg's appearance on the Debate is evidence of the importance of election debates and "underlines the unfairness of the decision taken by the broadcasters to exclude Plaid Cymru"; and
- (c) The Debate presented the election as a "three horse race" to viewers in Wales when, in fact, there are four major parties contesting the election in all Welsh constituencies.

Ofcom also informed Plaid Cymru (and ITV) that it did not consider the provisions of Section 7 of the Broadcasting Code to be applicable to Plaid Cymru's complaint since it raised issues of "fairness" which were properly to be considered in relation to special due impartiality requirements and "due weight" of coverage given to parties during election periods. Accordingly, the complaint fell to be considered under Sections 5 and 6 of the Broadcasting Code. The Election Committee agreed that this was the correct position (in any event, Plaid Cymru did not dispute it), so the Committee did not consider it appropriate to consider the complaint under the provisions of Section 7.

Response from ITV and supplementary submissions of the parties

In response to Plaid Cymru's complaint, ITV (by letter dated 22 April 2010) set out detailed submissions on behalf of ITV Broadcasting Ltd, maintaining (in summary) that the broadcast of the Debate in its Channel 3 licence regions was fully compliant with the requirements of the Broadcasting Code.

Plaid Cymru in turn provided further submissions in response to ITV by letter dated 23 April 2010. ITV replied to those further submissions by letter dated 26 April 2010.

Statutory Framework & the Broadcasting Code

Under section 319 of the Communications Act 2003, Ofcom has a duty to set standards objectives for the content of programmes included in television (and radio) services, which are set out in the Broadcasting Code ("the Code").

Specifically, the standards objectives include objectives in relation to due impartiality and due accuracy in “news”, and also in relation to “special impartiality requirements” in section 320: section 319(2)(c)&(d).

Section 320 imposes 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”.

Section 320(4)(a) provides that the requirement in section 320(1)(b) “may be satisfied by being satisfied in relation to a series of programmes taken as whole”.

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”.

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.

Applicable provisions of the Code

Section 5 of the Code makes provision in relation to “*Due Impartiality and Due Accuracy and Undue Prominence of Views and Opinions*”.

In the Committee’s view, Rules 5.1 to 5.3 were not applicable to Plaid Cymru’s complaint as those provisions relate to the preservation of due impartiality and due accuracy in “news” programmes, and the Debate did not constitute “news” (or the reporting / presenting of “news”) in the sense contemplated by these particular Rules.

The Committee considered that the Debate, as a (non-news) factual programme featuring debate between politicians on domestic affairs at issue in the General Election, was properly to be regarded as a programme relating to “matters of major political and industrial controversy and major matters relating to current public policy”. Such matters are defined in section 5 as being “...*generally matters of political or industrial controversy or matters of current public policy which are of national, and often international, importance...*”

As such the Committee considered that the following provisions of Section 5 were specifically 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 (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.”*

For the purposes of the Rules, the Committee also considered the meaning of “due impartiality” as defined at the beginning of Section 5: *“Due” is an important qualification to the concept of impartiality. Impartiality itself means not favouring one side over another. “Due” means adequate or appropriate to the subject and nature of the programme. So “due impartiality” does not mean an equal division of time has to be given to every view, or that every argument and every facet of every argument has to be represented. The approach to due impartiality may vary according to the nature of the subject, the type of programme and channel, the likely expectation of the audience as to content, and the extent to which the content and approach is signalled to the audience. Context, as defined in Section Two: Harm and Offence of the Code, is important.”*

The Committee also had regard to Rules 5.5 to 5.10 (in relation to ‘non-major’ “matters of political or industrial controversy”) and considered that those Rules had limited additional relevance to the issue raised by Plaid Cymru’s complaint.

Furthermore, given that this complaint was made by Plaid Cymru in the course of the current General Election campaign (which began, for the purposes of the application of the Broadcasting Code, with the announcement of the dissolution of Parliament on 6 April 2010 and ends with the close of the poll on 6 May 2010), the Committee also considered the application of Section 6 of the Code: “Elections and Referendums”.

Rule 6.1 of the Code makes clear that *“the rules in Section Five, in particular the rules relating to matters of major political or industrial controversy and major matters relating to current public policy, apply to the coverage of elections and referendums.”*

Further, Rule 6.2 provides that *“Due weight must be given to the coverage of major parties during an election period. Broadcasters must also consider giving appropriate coverage to other parties and independent candidates with significant views and perspectives.”*

As to the meaning of “major parties”, section 6 states that: *“At present in the UK major parties are the Conservative Party, the Labour Party and the Liberal Democrats. In addition, major parties in Scotland and Wales respectively are the Scottish National Party and Plaid Cymru.”*

The Committee’s Decision

The Committee carefully considered all the submissions provided by both Plaid Cymru and ITV in their helpful and prompt correspondence to assist the Committee within a necessarily limited timeframe.

The Committee considered that Plaid Cymru's central complaint was that its exclusion from the Debate (as a major party in Wales) failed to comply with the requirements of due impartiality under section 5, together with the specific requirement in section 6.2 to give due weight of coverage to major political parties during this General Election period. The Committee noted that, as part of its complaint, Plaid Cymru specifically argued in its supplementary submissions that the Debate breached the requirement in 5.12 that "Views and facts must not be misrepresented".

Accordingly, the Committee considered first whether the exclusion of Plaid Cymru constituted a failure by ITV licensees to comply with due impartiality requirements (under Sections 5 and 6) and then whether the Debate had specifically breached the requirement in Rule 5.12 that views and facts had been misrepresented by the Debate.

(A) Due Impartiality & the Exclusion of Plaid Cymru from the Debate

In the Committee's view, it was important to bear in mind that the Rules in 5.11 and 5.12 had to be considered together with Rule 6.2 since the Debate had been broadcast during the General Election Period.

When reading those provisions together in these circumstances, it was clear that

i) Due impartiality could be achieved by broadcasters in "clearly linked and timely programmes" included in their services over the election period (Rule 5.11),

ii) It required an "appropriately wide range of significant views" to be included and "given due weight" in each programme, or in clearly linked and timely programmes, over the course of the election period, and required views and facts not to be misrepresented (Rule 5.12);

(iii) The qualification imported by the word "due" in relation to impartiality (as defined in Section 5 of the Code) was an important consideration. "Due impartiality" did not mean that an equal division of time had to be given to every view (or set of views) within a programme, or clearly linked and timely programmes. Its meaning varied according to a variety of contextual factors, including the extent to which the content and approach of a programme is signalled to the audience.

iv) Whilst "due weight" must be given to the "coverage of major parties" during an election period (for the purposes of Rule 6.2), it was important to consider the particular election in which coverage was provided to political parties and, in relation to "major parties", the nation(s) in which a party was defined as "major".

The Committee noted that section 6 of the Code presently defined Plaid Cymru as a "major party" in Wales, whereas the Conservatives, Labour and Liberal Democrats were defined as "major parties" in the United Kingdom as a whole. The Committee found no reason why those definitions should not be regarded as appropriate for this General Election. The Committee noted that although Plaid Cymru is currently part of the coalition Welsh Assembly government, and has a record of substantial electoral support in Wales, it only had three seats in the Westminster Parliament prior to its dissolution. Furthermore, although Plaid

Cymru is standing candidates for this General Election in all (40) Welsh constituencies, it is not seeking to contest enough seats to gain an overall majority in the House of Commons.

By contrast, the Labour, Conservative and Liberal Democrat parties are contesting seats across England, Scotland and Wales, such that any one of them could potentially form the next UK Government. Furthermore, prior to the dissolution of Parliament those parties had, respectively, over 340, 190 and 60 seats in Parliament in Westminster. For that reason, these parties were properly to be regarded as the major political parties across the United Kingdom (as defined in Rule 6.2).

It was in that context that the Committee considered the format and broadcast of the Debate. In this respect, the Committee fully appreciated the political and constitutional impact which Devolution had had on the electoral landscape, particularly on areas of domestic policy which formed the focus of the Debate.

It further appreciated the importance of television as a medium, and the potential of televised party leader debates to increase or decrease support for individual political leaders and for their parties as a whole. Equally, the Committee considered that polling evidence which attempted to gauge the impact of such debates on voters' intentions (such as the YouGov poll cited by Plaid Cymru in its Letter of Complaint) was of limited relevance in assessing broadcasters' compliance with the due impartiality requirements of the Code at the time when programmes were broadcast. Polling of voters' intentions may be affected by a range of matters and their opinions are likely to fluctuate at different times during an election period. The due impartiality provisions of the Code required the Committee to focus on the content of, and relationship between, relevant programmes said to be in breach of those due impartiality requirements.

In the Committee's view, the Debate was clearly presented to an audience across the United Kingdom as an opportunity to hear from the leaders of the three major UK political parties, one or more of which had a realistic prospect of forming the next UK government, with the leaders themselves seeking to become the next Prime Minister. The moderator of the Debate had expressly introduced it with the words: "*...we'll be hearing from three men, each hoping to be the leader of the next UK government...*" That being so, the Committee considered that the due impartiality requirements of the Code did not specifically require the inclusion of any party not properly considered major parties across the UK as a whole.

Insofar as the Debate itself focused on areas of domestic policy, some of which are variously devolved to the administrations in Scotland, Wales and/or Northern Ireland, the Committee noted that the moderator of the Debate had sought to signal in advance those question areas put by members of the live studio audience which related to matters of devolved policy. The submissions of Plaid Cymru did not appear to address this.

For example, when introducing a question on education (having clarified the date on which Scottish and Welsh leaders' debates would be broadcast), the moderator stated "[this is] *an area where again there are devolved powers in Scotland, Wales and Northern Ireland, OK?...*" Later on, when introducing a question on health, the moderator further pointed out to

the audience and viewers that this was “*an area covered by devolution settlements in Scotland and Wales and Northern Ireland.*”

The Committee considered that these indications from the moderator in signalling devolved areas of policy, whilst limited, were adequate to alert viewers in the UK (including those in Wales) that in relation to some of the public policy areas discussed, the Parliament at Westminster and the UK government had no locus in Wales. But in the Committee’s view, viewers in Wales nonetheless had a legitimate interest in just hearing from the leaders of the three UK-wide parties, each of whom had realistic prospect of forming the next UK Government, debating domestic matters with implications for the UK as a whole or parts of the UK.

Furthermore, the Committee also considered it relevant under this head that the Debate had signalled to the audience (via the moderator) that viewers in the devolved nations could see televised debates between leading figures of the major parties in those nations (including Plaid Cymru) on issues of policy most relevant to those nations. (The relevant Welsh debate was broadcast at 9pm ITV Wales on Tuesday 20 April 2010). In this respect, the Committee carefully considered Plaid Cymru’s argument (in its supplementary submissions) that the Welsh debate did not constitute a “clearly linked or timely” programme (for the purposes of Rules 5.11 and 5.12) and that the Welsh debate “in no way achieved due impartiality”. Plaid Cymru maintained that position for two reasons. First, the Welsh debate, it said, is not an innovation in Welsh politics – it has long been the practice of ITV Wales to broadcast Welsh leaders’ debates at election time. By contrast, the Debate is the first time such a UK-wide leaders’ debate has been broadcast. So the Welsh debate could not be a “clearly linked and timely” programme for the purposes of assessing due impartiality requirements. Second, in summary, the disparity in viewing figures between the Welsh debate and the Debate itself was further “*proof that the Welsh debate cannot be seen as equivalent or proportionate to the UK-wide [Debate], and should not be presented as compensatory, as providing Plaid Cymru with a level playing field, or as achieving due impartiality*”.

The Committee did not accept these arguments. As to Plaid Cymru’s first point: in the Committee’s view, the fact that Welsh leaders’ debates in Wales were not an “innovation” in Welsh politics, or that it had been the practice of ITV Wales to broadcast such debates at election time in that nation, did not mean that the Debate itself (with a comparable format, organised and televised on a UK-wide basis between major parties in the UK) could not be a “clearly linked” programme within the meaning of Rule 5.12. The Committee noted that the Welsh debate had been specifically scheduled for a prime time slot (i.e.9pm) just a few days after the Debate, making its scheduling comparable to that of the Debate. The Committee also noted that the moderator of the Debate expressly signalled and promoted to the audience (on more than one occasion) that viewers could see other debates broadcast in the devolved nations, emphasising the specific participation of Plaid Cymru. The moderator clearly stated: “*Let me remind you that viewers in Scotland and Wales will be able to see Scottish and Welsh leaders’ debates next Thursday 28th April at 9 o’clock. Those debates will involve the three parties here tonight, plus the Scottish National Party and Plaid Cymru in their respective nations...*”. The moderator then subsequently corrected the date on which

these broadcasts could be seen. The fact that the Debate therefore expressly cross-referred to the Welsh debate and referred to Plaid Cymru by name satisfied the Committee that there was clearly a sufficient link between these debate programmes. In the Committee's view, the question areas in the Welsh debate clearly overlapped with those of the Debate.

In this respect, the Committee also had regard to the definition in Section 5 of "series of programmes taken as a whole", which is provided in relation to the special impartiality requirements in Rules 5.5 to 5.10 (which underlie those in Rules 5.11 and 5.12 on matters of major political controversy) . In the Committee's judgment, the Debate itself and the Welsh debate were clearly programmes editorially linked within an appropriate period, and linked by similar or related (general election) issues aimed at a like audience.

As to Plaid Cymru's second point (regarding the disparity of viewing figures): the Committee considered that neither the due impartiality requirements of the Code (nor the provisions of Section 6) indicated that due impartiality (or "due weight" of coverage) was to be assessed by reference to viewing figures, which may be affected by a number of different factors. The emphasis of the relevant provisions in the Code was on the content and subject matter of programmes, together with the relationship or link between them, as included in broadcasters' services. In this respect, the Committee considered that the material consideration was that ITV Wales had scheduled the broadcast of the Welsh debate in a prime time slot (9pm) which was comparable to that of the preceding Debate itself, and the moderator of the Debate had specifically promoted the Welsh debate to viewers as including the participation of Plaid Cymru. In that event, it was up to viewers if they wished to tune in. Accordingly, the Committee considered that it was appropriate to assess ITV's compliance with the due impartiality requirements of the Code with regard to the broadcast of the Welsh Debate. In the Committee's view, when considered together, the broadcast of these debate programmes satisfied the due impartiality requirements of the Code, in particular the requirement (in Rule 5.12) that an appropriately wide range of significant views must be included and given due weight in these linked debate programmes.

Furthermore, the Committee also considered it appropriate to consider ITV's compliance with due impartiality requirements by reference to other programmes which, in the Committee's view, were also "clearly linked and timely" in relation to the Debate. This included the ITV News at Ten immediately following the Debate (and which was clearly trailed by the moderator at the end of the Debate) and the "Campaign 2010 with Jonathan Dimbleby" programme broadcast following the ITV News at Ten. (The Committee understood that the Campaign 2010 programme had also been trailed by a continuity announcement in the closing credits of the Debate. In any event, the Committee considered that this programme was clearly linked by proximity of scheduling, title and subject matter.) The ITV News at Ten included a clip from Ieuan Wyn Jones, the Plaid Cymru leader and the Campaign 2010 programme featured a live interview with Mr Wyn Jones. Whilst the Committee noted that Plaid Cymru had complained to ITV that the clip of its response to the Debate in the ITV News at Ten was not as long as it had been given to expect (and the Committee noted that ITV had only recently responded to that complaint by email on 23 April

2010), the Committee was nevertheless satisfied that due impartiality was preserved across the Debate, the Welsh debate, the ITV News at Ten and the Campaign 2010 programmes.

The Committee also noted Plaid Cymru's reference (in the supplementary submissions) to the need for "balance" as being a requirement of the principle of due impartiality, and their position that "the broadcasting opportunities being offered to Plaid Cymru are not equivalent at all..." (emphasis added). In this respect, the Committee stressed that the "due impartiality" requirements (under Section 5 of the Code) and the requirement to give "due weight" of coverage (in Section 6) do not require strict "balance", equivalence or parity of coverage of political parties or within linked programmes as such. The key consideration was whether *due* impartiality had been observed across the Debate and the Welsh debate programmes and the other relevant linked programmes. For the reasons set out above, the Committee considered that it had.

For these reasons, the Committee concluded that the exclusion of Plaid Cymru from the Debate did not of itself constitute a breach of the requirements of the Code in relation to due impartiality and/or due weight of coverage given to political parties, and therefore this head of complaint should not be upheld.

The Committee emphasised that it was not in a position to consider whether, in addition, ITV's other election coverage further satisfied the requirement in Rule 6.2 that "due weight must be given to the coverage of major parties during the election period" as that period is still ongoing, and so is ITV's relevant election coverage.

(B) Whether the Debate misrepresented views and facts (under 5.12)

Under this head, the Committee specifically considered Plaid Cymru's point (raised in its Letter of Complaint) that the Debate presented the election to viewers as a "three horse race when, in fact, there are four major parties contesting the election in Wales", and that "Viewers in Wales could be forgiven for thinking that there are only three major parties contesting the election in the constituency in which they will cast their votes".

The Committee also considered Plaid Cymru's point (in its supplementary submissions) that its "existence as a major party in Wales is a significant fact of the election ...[which] has been misrepresented by excluding Plaid Cymru from the Debate. Further, Plaid Cymru, as a major party in Wales, represents a "significant view" which has not been included in the Debate for viewers watching in Wales.

For the reasons set out under head (a), the Committee was satisfied that the combination of the indications of the moderator in the Debate in introducing questions on devolved policy areas, and in particular the fact that the moderator had promoted the Scottish and Welsh debates as including the participation of the SNP and Plaid Cymru, was adequate in alerting the viewers in Wales that the election in Wales was not "a three horse" race. The Committee was also satisfied that, in other respects, the Debate did not result in Welsh viewers being materially misled or resulted in the misrepresentation of facts or views.

Insofar as Plaid Cymru alleged that its position on matters in the Debate was a “significant view” which was excluded, the Committee was satisfied that the Code permitted such views to be included in clearly linked and timely programmes and that Plaid Cymru’s views were duly represented in such programmes.

Conclusion

For the reasons set out above, the Committee therefore decided that Plaid Cymru’s complaint should not be upheld and that it follows that no remedial action is required on the part of ITV licensees.

Ofcom Election Committee

28 April 2010