

CONFIDENTIAL

Ofcom Standards Team
Email: OfcomStandardsTeam@ofcom.org.uk

Ofcom ref: 00483581

Mr Gavin Hunt
By email: gavin@valandgav.plus.com

7 December 2017

Dear Mr Hunt,

BBC1, *Question Time*, Season 15

We are writing with regard to your complaint about the above programme.

At the outset, we would like to make clear that, after carefully considering your complaint, Ofcom has found no breach of our rules. We appreciate that this issue is important to you and that you have invested time and effort into this process, so we would like to explain our reasoning.

Our assessment

Under the Communications Act 2003, Ofcom has a duty to set standards for programmes on television and radio in a range of areas. These standards are set out in the Broadcasting Code (“the Code”) in the form of rules that broadcasters must abide by. The Code applies to all broadcasters licensed by Ofcom and to content on the BBC’s licence fee funded television, radio and on demand programme services.

The process for the handling of BBC complaints is reflected in our published procedures, available here: <https://www.ofcom.org.uk/tv-radio-and-on-demand/information-for-industry/guidance/procedures>.

When applying the Code, Ofcom must take into account Article 10 of the European Convention on Human Rights. This provides for the broadcaster’s and audience’s right to freedom of expression, which encompasses the right to hold opinions and to receive and impart information and ideas without interference by public authority. The broadcaster’s right to freedom of expression is not absolute. For example, in carrying out its duties, Ofcom must balance the right to freedom of expression on one hand against the requirements to preserve due impartiality on the other.

You complained that the last season of *Question Time*, running from January 2017 to July 2017, gave undue weight to arguments in favour of remaining in the EU (the “Remain” outcome) compared with those arguing to leave the EU (the “Leave” outcome) through the composition of the panels and the criteria for selecting the audience. Specifically, you said that “Over a season, there was a heavy bias towards pro-Remain and reluctant Leavers, preventing the positive Leave arguments to be given due weight, compared to the counter arguments of Remain”.

You said that, during the season, there were 25 programmes and the panels were composed as follows:

“2 episodes had Leave majorities of 3:2 on the Panel; 1 episode was balanced; 22 out of 25 episodes had Remain majorities on the Panel; 2 episodes (Oxford and Salford) had 5:0 Remain majorities; 8 episodes had a 4:1 Remain majority”.

You also complained about: the BBC’s handling of your complaint; the timing of the BBC’s customer satisfaction survey; and that a conflict of interest arose from funding that the BBC received from the European Union.

We did not consider it would be proportionate to assess all 25 programmes about which you have raised concerns. We therefore assessed those programmes which you indicated had the highest number of Remain panellists. These were the two programmes which you said had “5:0 Remain majorities” (the “Salford” and “Oxford” programmes). We therefore assessed these programmes under the following rules of the Code:

Rule 5.11: “In addition to the rules above, 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 (list 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 programmed or in clearly linked and timely programmes. Views and facts must not be misrepresented”.

Both programmes were broadcast during the election period for the UK General Election that took place on 8 June 2017. Therefore, Rules 6.1 and 6.2 of the Code were also applicable:

Rule 6.1: “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 coverage of elections and referendums”.

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”.

The format of the debate

It is important to bear in mind that Ofcom has no role in determining the structure, format, or style of any *Question Time* programme. It is an editorial matter for the broadcaster as to how it selects

audience and panel members. Therefore, as long as broadcasters comply with the Code, the format of any debate programmes and the subject matters discussed is a matter for them.

It is important to note that “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.

Also, just because programme contributors are associated with a particular political party, organisation or perspective on a controversial policy matter, does not necessarily lead to a breach of our due impartiality rules. There are a range of editorial techniques that broadcasters can use to preserve due impartiality. In the case of *Question Time*, the role of the presenter, David Dimbleby, is crucial. In our view, and as evidenced in the Oxford and Salford programmes, Mr Dimbleby consistently provides critical challenge to panellists’ stated positions, summarises with due objectivity and, where necessary, offers alternative viewpoints. Panellists themselves also challenge viewpoints put forward by their fellow panellists. Alternative viewpoints are also expressed by audience members, who are given the opportunity to challenge statements made by panellists.

Against this background, we assessed each programme in turn.

Oxford programme

This programme was broadcast on 27 April 2017. The panel members were:

Conservative Work & Pensions Secretary – Damian Green

Labour former Shadow Defence Secretary – Clive Lewis

Liberal Democrat Business and Women and Equalities Minister in the Coalition – Jo Swinson

Scottish National Party Europe Spokesperson – Stephen Gethins

Journalist and former policy adviser to David Cameron, now in the House of Lords as a non-affiliated peer – Camilla Cavendish

A large amount of the programme did not include any discussion on or reference to Brexit. There were five set questions from the audience, of which two related directly or indirectly to Brexit:

"Has the General Election been called for the benefit of the Conservative Party and not the country?"

"Is tactical voting undemocratic or the only way to prevent a 'Hard Brexit'?"

The three remaining set questions bore no direct relation to Brexit. However, Brexit was mentioned during the discussion of one of them.

During the discussion, there were a number of viewpoints expressed which could be described as critical of Brexit to some degree. However, we considered that there were also views expressed which could be described as supporting Brexit in some form, or otherwise challenging the Remain position. For example, Damian Green disagreed with various statements that were supportive of a Remain position. He said most people had not changed their mind since voting in the 2016 EU Referendum (“the referendum”), and although he was part of the referendum campaign for Remain, he respected democracy and the referendum outcome. He also: rebuked Tim Farron for saying the Liberal Democrats would frustrate the Parliamentary process for introducing Brexit; stated a strong and stable government would get a good Brexit deal; the referendum outcome ruled out membership of the Single Market and being subject to the European Court of Justice; and argued that Brexit had to mean more control over immigration and our budget. We considered that these were views that could be reasonably described as supporting what may be termed a form of “Hard Brexit”.

Although Damian Green was a supporter of the Remain outcome during the referendum, in this programme he espoused and put forward the views of those wishing to leave the EU with vigour. We considered that Damian Green was an integral part of the debate, and he was not on the margins. We also considered that he was given the opportunity to respond to the statements for Remain, and to give the Leave perspective. In addition, viewpoints supportive of Brexit were put forward in other ways. For example, an audience member said that people like Clive Lewis were: firstly, dissatisfied no matter what the Prime Minister did, complaining that the Prime Minister had no mandate for “Hard Brexit”, but also second, complaining that she was then seeking a mandate through the General Election. Further, when an audience member commented that only 30% of the electorate had voted for Brexit, David Dimbleby pointed out that how those who did not vote would have voted was unknown.

We concluded that both Remain and Leave viewpoints were reflected in the programme and that it was duly impartial.

The Salford programme

This programme was broadcast on 25 May 2017. In this programme, the panel members were:

Home Secretary – Amber Rudd

Mayor of Greater Manchester – Andy Burnham

Founder of the Foundation for Peace – Colin Parry

Counter extremism campaigner and former adviser to the Home Office – Sara Kahn

The Head of the Association of Police and Crime Commissioners, and former Chief Prosecutor for North West England – Nazir Afzal

David Dimbleby, the presenter, said that this was a “*special programme focusing on the impact of Monday’s shocking events at Manchester Arena [the Manchester attack]*”. He added that, with election campaigning suspended, the programme did not have the “*usual multi-party panel*”, but the

“normal, party political Question Time [would resume the following week]”. No questions in this programme could reasonably be said to focus on Brexit. Therefore, the perspective of the panellist on Brexit was not, in our view, a relevant factor in determining whether due impartiality was preserved in this case. We considered that a range of viewpoints were raised by the audience and debated by the panel on the issues of national security; community relations; and terrorism. We therefore concluded that due impartiality had been preserved in this programme.

In summary, we considered that neither of these programmes raised issues warranting investigation under the due impartiality and election rules of the Code.

Complaint handling and Customer Satisfaction Survey; and Conflict of Interest

Under the BBC Charter and Agreement, Ofcom has no role regulating how the BBC handles individual complaints. However, Ofcom retains certain responsibilities in relation to the BBC complaints framework in general. We do not consider you have raised any issues in relation to how your complaint was handled which warrant Ofcom taking any further regulatory action. However, we have noted your concerns.

As to the alleged conflict of interest, we do not consider that you have provided any evidence which would lead us to question the BBC's ability to comply with the Code. Further, given that the BBC, in our view, has complied with the Code in this case, we do not consider the existence of any grant given to the BBC by the EU programme for Research and Development to be relevant to our consideration of these programmes.

Conclusion

Following the above assessment, we have decided not to pursue your complaint further. We realise this decision is likely to come as a disappointment to you, but hope this letter makes clear that we have considered your concerns very carefully. Our decision will be published on our website in the fortnightly Broadcast and On Demand Bulletin¹.

Yours sincerely,

Ofcom Standards Team

¹ <https://www.ofcom.org.uk/about-ofcom/latest/bulletins/broadcast-bulletins>