

## **Channel 4 response to Ofcom's review of the Rules on Party Political and Referendum Broadcasts and Proposed Ofcom Guidance for broadcast coverage of elections**

Channel 4 is the UK's only publicly-owned, commercially-funded public service broadcaster, with a statutory remit to be innovative, experimental and distinctive. Unlike other commercially funded broadcasters, Channel 4 is not shareholder owned – commercial revenues are the means by which Channel 4 delivers its public purpose ends, and Channel 4's not for profit status ensures that the maximum amount of revenues are reinvested in the delivery of its public service remit.

Channel 4's remit requires it to provide content that offers alternative views and prompts debate, which at times means that its output tackles controversial and challenging subject matter. As a licensed UK broadcaster all Channel 4's TV channels are subject to the Ofcom Broadcasting Code ("the Code"). The same principles are applied to provision of content on digital platforms, such as on-demand platforms.

### **Consultation questions**

#### **Question 1:**

***Do you agree with amending Rule 11 of the PPRB Rules and Section Six of the Code by inserting the proposed wording set out in paragraph 3.19 above? If you do not agree with this approach, please explain why and, if appropriate, suggest alternative wording.***

Channel 4 is content for the "major parties" to be defined in an annex to the PPRB Rules ("the Rules") and Section Six of the Code. We also agree that the current list has helped to provide predictability and certainty to both political parties and broadcasters when allocating political broadcasts.

However we are concerned by Ofcom's decision not to consult on removing the list of major parties as this option is "unworkable". It would be possible to comply with s333 of the Communications Act 2003 ("the Act") without a list of major parties. Broadcasters do review the changing electoral fortunes of the political parties and are capable of assessing how to fairly offer broadcasting time to political parties in a way which reflects their previous electoral and current support.

We note that Ofcom propose to "monitor the position of the UK's political parties on a rolling basis" and to regularly "review and refresh" the annex "taking account of relevant evidence". We note the proposal that the Alliance Party should be added to any new list – however, aside from the brief discussion in paragraph 3.13 of the consultation document we have not seen any detailed evidence to support this position. For future changes we suggest that Ofcom consults more broadly with stakeholders.

We appreciate that the Consultation states that Ofcom will consult with stakeholders on any proposals, but we would welcome further detail as to how these reviews would be undertaken, the criteria that would apply, and when they would occur.

In addition, the danger we foresee is that Ofcom could be politically pressured into changing the composition of the list and then stipulating that broadcasters must provide broadcast time to political parties that broadcasters themselves would not have assessed as major parties using all the available evidence.

We consider that it is important that the Rules try to avoid Ofcom becoming a primary decision maker in these matters. Channel 4 does not believe it is the role of the regulator in a democracy to require specific broadcasts to take place. It is appropriate for the regulator to set down rules and criteria commensurate with Article 10 of ECHR to ensure that political messages are conveyed in a democracy but such regulation should be as narrow as possible to restrict as far as possible any interference with the broadcaster's right to editorial independence and its rights to freedom of expression.

We suggest that if the concept of major parties continues it would be possible to ask broadcasters to carry out periodic reviews regarding who should be defined as a major party. In the event that political parties took exception to any listing decision taken by a broadcaster then they could ask Ofcom to review that decision. In that way the primary decision maker is the broadcaster whose airtime is being utilised rather than the regulator who cannot review its own decisions.

#### **Question 2:**

***Do you agree with amending Rules 10 of the PPRB Rules by inserting the proposed wording set out in paragraph 3.31 above? If you do not agree with this approach, please explain why, and, if appropriate, suggest alternative wording.***

Channel 4 is content to see provision being made in the Rules to allow for broadcasts by independent candidates although we are not obliged to provide broadcasts at mayoral and PCC Elections.

#### **Question 3:**

***Do you agree with amending Rule 9 of the PPRB Rules by inserting the proposed wording set out in paragraph 3.40 above? If you do not agree with this approach, please explain why, and, if appropriate, suggest alternative wording.***

Channel 4 agrees with the proposed clarification although it does not affect the channel's obligations.

#### **Question 4:**

***Do you agree with amending Rules 7 to 9 of the PPRB Rules by inserting the proposed wording, including new Rule 9A, set out in paragraph 3.51 above? If you do not agree with this approach, please explain why, and, if appropriate, suggest alternative wording.***

Channel 4 is not directly affected by these proposals, but believes that they would impose very onerous and frequent obligations for political broadcasting on local digital television service licensees. Our experience of liaising with political parties regarding such broadcasts suggests that start-up local suppliers may be overwhelmed by these obligations and the Code compliance issues that will accompany them. Given that the local licences are now being allocated we would suggest that the extent of these obligations should not be decided until local licensees can discuss with Ofcom their readiness and ability to take on political broadcasting of this scope and frequency.

Channel 4 has contributed to and agrees with the response sent to Ofcom by the Broadcasters' Liaison Group on this question.

**Question 5:**

***Do you agree with either Option (A) or Option (B) in relation to inserting new Rules 17A and 17B, as set out in paragraph 3.68 above? If you do not agree with either of the proposed options, please explain why and, if appropriate, suggest alternative wording.***

Channel 4 has contributed to and agrees with the response sent to Ofcom by the Broadcasters' Liaison Group on this question.

**Question 6:**

***a) Do you agree with the 'one sixth' threshold set out in Rule 13 of the PPRB Rules? If you do not agree with the threshold, please explain why, and, if appropriate, suggest an alternative.***

For a UK-wide broadcaster such as Channel 4, the one sixth threshold works well to assist in fairly providing election broadcasts to the non-major parties including those with no previous electoral history. We see no need to alter it.

***b) Do you agree with amending Rules 12, 14 and 17 of the PPRB Rules by inserting the proposed wording, including new Rule 13A, set out in paragraph 3.83 above? If you do not agree with this approach, please explain why, and, if appropriate, suggest alternative wording.***

We are content with the proposed amendments.

**Question 7:**

***Do you agree with:***

***a) Any of the Options (C1), (C2), (D1) or (D2) in relation to amending Rule 20 of the PPRB Rules in relation to television, by inserting the proposed wording as set out in paragraph 3.93 above?***

We take the view that option C2 which sets all broadcasts at 2'40 is the best option.

In recent years 2'40 is the length of broadcast favoured by most parties, many of whom also repeat broadcasts rather than prepare new broadcasts if they are entitled to more than one. The certainty of a fixed time would assist political parties and broadcasters. Political parties would be able to provide the same broadcasts to each broadcaster. Broadcasters would be able to fix schedules well in advance even without knowing which political parties were to fill each slot. Broadcasters would not have to change their schedules when political parties or their producers change the length of their broadcasts close to delivery – a problem which has occurred in the past.

If option C2 is not adopted we would be content with the status quo Option C1.

We are entirely opposed to Options D1 and D2 which by leaving the determination of length to political parties would leave broadcasters' schedules dependent on parties deciding and then notifying broadcasters on the length of their broadcasts. Our experience under the existing procedures of political parties failing to notify chosen length timeously, or to notify at all, gives us no confidence this would happen effectively. Every other supplier of content to a broadcaster is told by the broadcaster the length of the content to be delivered. Broadcasters can then plan schedules and advertising breaks accordingly. We see no reason why political broadcasting should be any different.

***b) Either Option (E1) or Option (E2) in relation to amending Rule 20 of the PPRB Rules in relation to radio, by inserting the proposed wording as set out in paragraph 3.93 above.***

Channel 4 provide no radio broadcasting and have no view on these options.

**Question 8:**

***Do you agree with the scheduling requirements set out in Rules 21 and 22 of the PPRB Rules? Please give reasons for your response.***

Channel 4, along with other broadcasters, would be pleased if the scheduling requirements were relaxed for all PEBs, PPBs and RCBs at least to the extent of widening the window for broadcasts to the period 5.30pm to 11.30pm, rather than the current window of 6.00pm to 10.30pm. That would ensure no disruption to the scheduling of series and regular programmes on the hour throughout the evening and especially at 8pm, 9pm and 10pm. For broadcasters who run national news followed by local news starting at 10pm we would imagine that the 10.30pm cut-off causes unnecessary difficulty.

**Question 9:**

***Do you agree with amending Rules 9 and 18 by inserting the proposed wording set out in paragraph 3.101 above? If you do not agree with this approach please explain why and, if appropriate, suggest alternative wording.***

Channel 4 is not covered by these proposed amendments. As Ofcom knows we provide 16 Political Slots (four times a week for four weeks of the year) allocated among Conservative, Labour, Liberal Democrats, SNP, Plaid Cymru, Greens and UKIP. The timing of these broadcasts roughly corresponds to the seasonal allocation envisaged for other broadcasters by Ofcom but often adjustments need to be made – for example depending on elections in May and last year occasioned by the PCC Elections in November. We avoid providing Political Slots during election periods. Our experience suggests that the other broadcasters may require greater flexibility than provided for in this amendment. For example because of the November elections one set of our political slots was broadcast in December 2012 to allow for production and broadcast after the election period. This suited us and the political parties and did not interfere with the election process.

**Question 10:**

***Do you agree with amending Rules 8, 9 and 19 by inserting the proposed wording set out in paragraph 3.110 above? If you do not agree with this approach, please explain why and, if appropriate, suggest alternative wording.***

Channel 4 is not affected by these proposals and will leave it to the regional Channel 3 licensees to respond.

**Question 11:**

***Are there any other issues arising from the PPRB Rules, not already covered, which you wish to raise?***

We have seen ITN's response and their comments regarding constituency reporting. We agree with them but have no other issues to raise at this time.

**Question 12:**

***a) Are the provisions of the Proposed Code Guidance set out above appropriate?***

***b) If you do not agree that any provisions of the Proposed Code Guidance are appropriate, please explain why and suggest alternative wording***

Channel 4 welcomes the opportunity to comment on Ofcom's Proposed Code Guidance. Channel 4's recent experience discussing the application of the Code with Ofcom in the light of programmes such as *Sri Lanka's Killing Fields* gives it a deep insight into the the Code's provisions in this area, and in this context Channel 4 has a number of observations to make regarding the proposed guidance. This section of our response follows the paragraph numbers in the proposed guidance.

## **Proposed Guidance to Section Five (Due impartiality and Due Accuracy and Undue Prominence of Views and Opinions) of the Broadcasting Code.**

### **General**

#### Paragraph 4.7

In relation to the “General” guidance, we consider it undermines the strength of guidance to state that it may be adapted “if circumstances require ... as appropriate to the case”. The Guidance is just that – guidance – but not a substitute for adjudication on the basis of the Rules in particular facts and circumstances. It would be helpful to know what “circumstances” may require adaptation of the Guidance and to have confirmation that further adaptation of the Guidance in this crucial area of freedom of expression will only follow on from consultation with broadcasters and other stakeholders.

### **Due impartiality and due accuracy in news**

The legislative background to the concept of due impartiality as set out in the Communications Act 2003 sections 319 and 320 (“the Act”) deals with the need for news to be presented with due impartiality and due accuracy and for the observation of the special impartiality requirements. The special impartiality requirements exclude from all programming the views or opinions of the person providing the service. They also require the preservation of due impartiality and the prevention of undue prominence of opinions on matters of political or industrial controversy and matters relating to current public policy. It is in that statutorily defined context that we make the following comments:

#### Paragraph 4.15

We note the proposal that “where appropriate, alternative possible interpretations should be provided”. However, Channel 4 does not believe that it is always necessary to provide alternative viewpoints in order to comply with the provisions of the Code, and suggests either the substitution of “should” with “may” in the proposed text, or the deletion of the final sentence in draft paragraph 4.15.

It may be that it is editorially necessary in preserving due accuracy to provide alternative interpretations or viewpoints regarding news but it would be regrettable if Ofcom’s guidance was used as a way to prevent news reporters from making statements of assessed fact. This paragraph as presently framed could be used to provide an expectation to all those with different interpretations or viewpoints to expect that those interpretations or viewpoints must be broadcast. It is the job of news reporters to gather facts and report them. The existence of alternative views does not mean that those views are worthy of broadcast, as they may be misguided, prejudiced or partial; or based on incomplete fact gathering or factual analysis. There are occasions where unequivocal interpretations or statements about contentious issues should be made and in Channel 4’s view Ofcom should support broadcasters’ right to do so without having to provide alternative viewpoints

#### Paragraph 4.21

Channel 4's track record of hard-hitting international coverage including *Sri Lanka's Killing Fields* and *Syria's Torture Machine* gives it a well-informed perspective on this proposed paragraph. The draft guidance suggests broadcasters "can criticise or support the actions of particular nation-states in their programming, as long as they, as appropriate, reflect alternative views on such matters."

However, we suggest that the words "reflect alternative views" are substituted with "seek a response". We consider there is a danger here and elsewhere in the proposed guidance of conflating the concept of preservation of due impartiality with the provision of alternative viewpoints. There may be many alternative views regarding the conduct of nation states. Indeed, many nation states employ public relations companies, lobbyists and diplomats to put forward views which are self serving, partial, sometimes entirely false. They engage with politicians, businesses and others to promote these views. Channel 4 does not believe it is the function of the Communications Act provisions to require broadcasters to include these views. It is of course normally necessary to put significant allegations to a nation state and to include their denials, explanations or other responses. It may be appropriate to include other views but in Channel 4's view that is an editorial decision for the broadcaster.

#### Paragraph 4.23

Again we are concerned that the concept of "alternative views" is given an elevated importance in this paragraph. Channel 4 does not believe that due impartiality requires the broadcast of each and every available view. It usually demands a response from those against whom significant allegations are made. Due impartiality may require the exposition of alternative views but that may depend on the credibility of the source of the view, the facts it is based on, the cogency of the argument etc. We suggest that this paragraph is reviewed with these points in mind.

That said, we are pleased to note the final sentence of this paragraph which confirms that "it is an editorial matter for the broadcaster as to how it presents news with due impartiality."

#### **Matters of political or industrial controversy and matters relating to current public policy**

#### Paragraph 4.29

Channel 4 is concerned that the last phrase of this paragraph could be used to suggest that the existence of alternative viewpoints in itself means that a matter is one of political or industrial controversy. In our view such an interpretation of matters of political or industrial controversy goes beyond what is required by the Act. In order to preserve due impartiality it is not a requirement to react to each and every alternative viewpoint.

As we have previously submitted to Ofcom, in accordance with Article 10 of ECHR and the clear intention of Parliament in the Act, the rules relating to due impartiality and particularly those relating to the special impartiality requirements imposed on broadcasters should be interpreted as narrowly as possible and the restrictions on editorial freedom applied only as is necessary in a democratic society.

The concern we have is that the definitions of matters and major matters of political or industrial controversy applied by Ofcom is becoming increasingly wide and unpredictable. A provision imposed by Parliament to safeguard the democratic process in this country is capable of extension to all those who have different viewpoints – but that extension would be an unnecessary restriction on broadcasters’ freedom of expression and the public’s right to receive information. We suggest the deletion of the phrase “as there may be one or more alternative viewpoints on such matters” at the end of this paragraph.

#### Paragraph 4.31

We suggest that the word “should” in the second line is replaced by the word “could”. It may be editorially decided that it is prudent to refer to reports commissioned by Parliament or scientific principle but we do not think it is necessary or appropriate for the Code and Guidance to compel editors to undertake specific categories of research when exercising their editorial freedoms.

#### Paragraph 4.32

As Ofcom is aware from our submissions regarding both *Sri Lanka’s Killing Fields* programmes we argued that:

“Ofcom is obliged under Article 10 to take a more purposive approach and ask itself whether it is genuinely ‘necessary’ in a democratic society to apply the restriction in this case. The apparent rationale behind Section 5 of the Code is that the public should be able to trust broadcasters to take an impartial stance as the programmes they transmit have the power to sway the democratic process. However, this applies far less in a programme such as the current one, where the public do not have a direct vote or right to participation in matters relating to international comity or, indeed, the use of international law in holding governments to account for crimes against humanity. Further, the Programme concerns events which took place abroad (and outside of the EU), so the importance of applying such onerous restrictions here in the UK is even further reduced.”

We are concerned that the proposed guidance reinforces Ofcom’s view that even where there is no political controversy in the UK Parliament or the UK that the onerous conditions in Section 5 of the Code apply. Broadcasters have other duties of fairness and accuracy elsewhere in the Code which prevent imbalanced broadcasting and we suggest that, having regard to Article 10 of ECHR and the Act, the broad view of what constitutes political or industrial controversy set out in this paragraph of the proposed guidance is not required.

### **Preservation of due impartiality**



### Paragraphs 4.41, 4.42 and 4.43

Channel 4 suggest that Ofcom accommodate within this section of the guidance situations where “alternative viewpoints” are not available. For example our recent experience with nation states such as Syria and Sri Lanka is that they actively hinder reporting by preventing access and at best will only provide blanket denials of wrongdoing. In these circumstances Channel 4 would welcome clarification that broadcasting of the denial would be sufficient to comply with the Code.

### **Matters of major political or industrial controversy and major matters relating to current public policy**

#### Paragraph 4.61

Regarding “Major matters” we note the previous guidance that

“these additional rules are necessary because of the nature of the subject matter concerned: it is of a significant level of importance and is likely to be of the moment,”

has been removed. We suggest reinstating that guidance. In our view “major matters” must be of a significant level of importance and truly current.

#### Paragraph 4.63

The additional “or” after “major” on line 2 is a typographical error and should be deleted, and the “or” after “controversy” should be replaced with “and” to copy the Code accurately.

#### Paragraph 4.64

We believe that the casual dismissal of views simply as a means of promoting an agenda is not correct behaviour for a responsible broadcaster but this paragraph may go further than is necessary to deal with that concern.

In our view there may be occasions where it may be appropriate to dismiss or denigrate viewpoints while treating them with due weight – for example if a nation state is engaged in ethnic cleansing, torture or other atrocity and seeks to defend such actions.

### **Proposed Guidance to Section Six (Elections and Referendums) of the Broadcasting Code.**

We have one point to make regarding the Proposed Guidance to Section Six (Elections and Referendums) of the Code. At paragraph 4.122 when dealing with Rule 6.12 it does seem to us that Ofcom’s reference to “a policy issue” is unhelpful and, no doubt inadvertently, suggests that broadcasters have to operate a balancing system when particular policy issues are discussed.

We do not think that it is correct to say that “if one party is given the opportunity to put their views on a policy issue, other relevant parties should be given similar opportunities within the election period” in the way it is presented here.

The guidance at this point deals with Rule 6.12 and the need to ensure that a candidate is not given an opportunity to make constituency or electoral area points when other candidates are not given a similar opportunity. The guidance also refers back to Rule 6.1 and the need for due impartiality. However the need for due impartiality does not demand that broadcasters seek out the other parties’ responses on individual policy issues. It would be sufficient for a broadcaster to ensure that other candidates are provided with similar opportunities to make constituency points about the constituency in which they are standing. It is a matter for the parties afforded those opportunities to decide what constituency points they wish to raise and which questions they will answer on particular policy issues.

As Ofcom discuss with regard to the Proposed Guidance on Section 5 there are several ways in which a broadcaster could ensure due impartiality was maintained where one candidate discusses a particular policy issue. It is not always necessary to seek out and hear from the other candidates in order to maintain due impartiality as their views and indeed the views of the public, interested experts and others may have been discussed in the original broadcast with the candidate.

Therefore we would suggest deleting the words “on a policy issue” where they occur in paragraph 4.122.

Channel 4 hopes that this submission is of use to Ofcom and would be happy to discuss any of the points raised if that would be helpful.

**Channel 4**  
**22 January 2013**