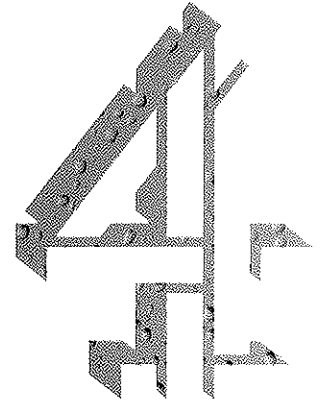


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03 February 2010

Dear Steve

Supplementary Response to Review of the Rules on Party Political and Referendum Broadcasts

Thank you for your letter dated 26 January 2010 and for the opportunity to respond to Plaid Cymru and Five's comments and Ofcom's revised draft Rule 12 of the Review.

Channel 4 accept that the end of analogue broadcasting in Wales and the position post digitalisation must be considered. However as we set out below Channel 4 does not agree that the natural consequence of this change is to oblige Channel 4 to provide airtime to Plaid Cymru for two or more Party Election Broadcasts ("PEBs").

Channel 4 are of the view that the change from analogue broadcasting provides Ofcom with an ideal moment to revisit the designation of Plaid Cymru and the SNP as "major parties" for the purposes of UK wide broadcasters such as Channel 4 (and Five) who do not have regionalisation or a split transmission signal.

In our view the communication landscape has changed substantially since the original requirement was set. As we will explain we consider that given the ways in which the nationalist parties can now communicate directly with their voters in their respective nations it now makes no sense for them to be provided with PEBs from a UK wide broadcaster. For the vast majority of our UK wide audience these parties have little or no relevance to them as voters. The overwhelming proportion of our audience is unable to vote for these parties due to their not standing candidates outside their nation or principality.

Furthermore the requirement for Channel 4 to provide PEBs to the nationalist parties is not explicitly required by statute or by the licence granted to Channel 4 by Ofcom. Section 333(4) of the Communications Act which lays down the Rules made by Ofcom for Party Political Broadcasts states that it "may make different provisions for different cases". There is therefore no requirement for parity amongst broadcasters and indeed to date Ofcom has accepted in its rules that there is a difference between those broadcasters who have regional variations and those who do not.

For the reasons we have set out below we consider Ofcom should amend the proposed Rules to remove the obligation that the SNP are to be considered by Channel 4 as a major party in draft Rule 12. It follows that we argue Plaid Cymru should not be added to that obligation.

Channel 4's Licence

Channel 4's licence from Ofcom sets out the Channel's obligations regarding Party political broadcasts:

"Party political broadcasts

*Section 333 of the
Communications Act*

(1) The Corporation shall include in the Channel 4 Service party political broadcasts and referendum campaign broadcasts (as defined in the Political Parties, Elections and Referendums Act 2000) in accordance with such rules as are referred to in paragraph 38 of Schedule 18 to the Communications Act or as from time to time may be made by Ofcom pursuant to Section 333(1)(b) of the Communications Act with respect to such matters.

(2) Such rules may include, without limitation, provision with regard to: the political parties on whose behalf political broadcasts may be made, the length and frequency of such broadcasts, and the length and frequency of referendum campaign broadcasts that are required to be broadcast on behalf of each designated organisation (as defined in Section 333(6) of the Communications Act)."

The relevant statute

Section 333 of the Communications Act ("the Act") states:

"Party Political Broadcasts

(1) The regulatory regime for every licensed public service channel, and the regulatory regime for every national radio service, includes –

a. conditions requiring the inclusion in that channel or service of party political broadcasts and of referendum campaign broadcasts; and

b. conditions requiring that licence holder to observe such rules with respect to party political broadcasts and referendum campaign broadcasts as may be made by Ofcom.

(2) The rules made by Ofcom for the purposes of this section may, in particular, include provision for determining –

a. the political parties on whose behalf party political broadcasts may be made;

b. in relation to each political party on whose behalf such broadcasts may be made, the length and frequency of the broadcasts; and

c. in relation to each designated organisation on whose behalf referendum campaign broadcasts are required to be broadcast, the length and frequency of such broadcasts.

(3) Those rules are to have effect subject to sections 37 and 127 of the Political Parties, Elections and Referendums Act 2000 (c.41) (only registered parties and designated organisations to be entitled to party political broadcasts or referendum campaign broadcasts).

(4) Rules made by Ofcom for the purposes of this section may make different provisions for different cases.

(5) Before making any rules for the purposes of this section, Ofcom must have regard to the views expressed by the Electoral Commission.

(6) In this section –

A4.1 “designated organisation”, in relation to a referendum, means a person or body designated by the Electoral Commission under section 108 of the Political Parties, Elections and Referendum Act 2000 (c.41) in respect of that referendum;

A4.2 “national radio service” means a national service within section 245 of this Act; and

A4.3 “referendum campaign broadcast” has the meaning given by section 127 of that Act.”

Channel 4’s Response to the Review of the Rules on Party Political and Referendum Broadcasts

Channel 4 responded to Ofcom’s Review on 25th November 2009. The issue of the end of analogue broadcasting in Wales was not raised in the Review paper and therefore no comment was made about this in Channel 4’s Response.

However in paragraphs 21 through to paragraph 30 of the Channel’s response we raised concerns about the need for clarity in Ofcom’s wording as we considered that the proposed new rules were confusing if one considered the position of a UK wide broadcaster with no split transmission.

In particular the reference in Section 3 paragraph 12 of the Consultation “to the nation in which it is held” and the entirety of paragraph 15 were criticised in our response as confusing the previously clear position that parties which qualified in all three of England, Scotland and Wales would be offered broadcasts on Channel 4, Five and national commercial radio.

Channel 4 at last General Election

At the last General Election Channel 4 advised parties that the Channel would provide election broadcasts to:

(a) the “major” parties;

(b) to those parties who stood candidates in at least one sixth of the seats in Great Britain who would qualify for one UK-wide broadcast, or alternatively ;

(c) to any party which was standing in less than one sixth of the seats in Great Britain but who had significant levels of electoral support in England or Scotland and who would then qualify for one UK wide broadcast.

This position was clearly in accordance with Rules A5.10 to A5.13 of the existing Ofcom Rules. In fact the last category was more generous than the Rules provided for.

The effects of applying these criteria at the last General Election was that minority parties such as UKIP, Green Party and the BNP were allocated an election broadcast.

The last category (c) allowed Channel 4 to consider the position of a party which stands candidates in our transmission area (the UK) (but not in at least one sixth of the seats) but which has significant levels of electoral support in either of the largest of the nations in our transmission area. That is a generous and responsible approach to catering for our UK wide audience and fulfilling our public service regarding political broadcasts. It is arguably too generous a position.

Separately, in accordance with their position as a "major" party for Channel 4 under the Ofcom Rules the SNP were allocated three broadcasts, two of which were broadcast at 19.55 pm and the other at 00.05 am.

Twenty Party Election Broadcasts were transmitted between 11th April and 3rd May. Scheduling PEBs is a considerable challenge given the short notice of an election period and its exact timetable combined with uncertainties as to how many candidates parties will stand.

With this context in mind we now turn to look at the current matter raised in Ofcom's letter of 26th January 2010:

Plaid Cymru response

As is set out in the letter Plaid Cymru's response to the earlier consultation stated that:

"As is noted on page 1, under section 333(1) of the Communications Act 2003, "every licensed public service television channel and every national commercial radio service must include PPBs [...] and must observe rules for such broadcasts made by Ofcom". Section 3 (point 12, page 6) refers to "includ[ing] the SNP on Channel 4, and SNP and Plaid Cymru on Five". Further Section 3 (point 17, page 7) refers to "Parties which qualify for a PEB in all three nations of England, Scotland and Wales will additionally be offered a PEB on Channel 4 (at General Elections)". I understand that Plaid Cymru does not qualify for a PEB in all three nations. As is noted elsewhere, however, Plaid Cymru has a slot on S4C. I understand that Ofcom does not have a role in regulating S4C in this connection. However, given digitalisation, it must be right that Plaid Cymru be included on Channel 4 (as one of the licensees identified by the Act) as well as S4C given that many viewers in Wales now have the option of watching either S4C or Channel 4 (assuming that S4C was once considered as being instead of Channel 4 for viewers in Wales?) and that a significant number of viewers in Wales do not receive S4C at all.

Further, given that the proposed changes determine the "nation in which [a particular election] is held" to be a material consideration, it is difficult to understand why Plaid Cymru should not be offered a PEB slot on Channel 4 given the changed landscape post-digitalisation."

Channel 4 accepts that in accordance with the Act we are required to include PEBs in our broadcasting service. We also accept that Ofcom are empowered to make rules for these broadcasts. It is correct also that Plaid Cymru would not qualify for PEBs as they do not qualify in all three nations. Also, in contrast to the SNP they are not currently designated a major party for Channel 4 purposes in Ofcom's rules.

We have already set out our concerns in our main response about the way in which the phrase "the nation in which it is held" is used in the Ofcom Review. It may be that this phraseology was employed to allow for referenda. However as can be seen by Plaid Cymru's response its use has confused the position when looking at Channel 4's role and obligations as a UK wide broadcaster.

Ultimately Plaid Cymru's position is that because Welsh viewers will have a choice post – digitalisation to watch S4C or Channel 4 then Channel 4 should be compelled to broadcast Plaid Cymru PEBs. We are not aware that S4C are planning to stop broadcasting PEBs for Plaid Cymru. Furthermore to date there have been no complaints that we are aware of that Welsh voters have not had adequate access to Plaid Cymru PEB's broadcasts on S4C

So it seems that what Plaid Cymru are in fact asking for is an increase in coverage for their PEB's and not a replacement for the existing S4C coverage. A reverse substitution is not taking place and S4C will still exist, so this is nothing more than an attempt to increase coverage simply in Wales which provides no benefit to the overwhelming majority of our UK wide audience.

As we discussed at the start of this letter there is no statutory requirement for Channel 4 to provide such broadcasts either in analogue or digital form. The PEB's are created for the Welsh electorate and are irrelevant to the vast majority of our audience.

In addition it is difficult to see why this new imposition on our airtime should be made for Plaid Cymru. There are other minority parties (for example in Northern Ireland) who have greater parliamentary representation. Following the same approach would suggest that other parties should be granted the right to PEBs on Channel 4.

As we stated in Paragraph 27 of our response to the Consultation for a UK wide broadcaster such as Channel 4 it would be an expensive and weighty burden on airtime and scheduling at election time to have to try and accommodate such an entitlement.

We foresee that such an entitlement would lead to large numbers of our audience receiving political broadcasts of no relevance to them. This would dilute the democratic effect of truly UK wide broadcasts.

Five's response

Five's response included this:

"Draft Rule 12 maintains the current position, of requiring Five to offer broadcasts to both the SNP and Plaid Cymru while requiring Channel 4 to offer broadcasts only to the SNP. This position is clearly based on the historic division of analogue broadcasting between Channel 4 and S4C, with the latter broadcasting on the fourth channel in Wales while Channel 4 broadcast to the rest of the United Kingdom.

However, from 3 March 2010 digital switchover will be completed in Wales. This means that at the next General Election Channel 4 will be as widely available in Wales as Five. Therefore, we cannot see any continuing justification for the requirement for Five to show PPBs from Plaid Cymru not to apply to Channel 4 as well.

We do not believe a major burden need be placed on Channel 4 by putting them on the same basis as Five. In 2005, Five offered Plaid Cymru a series of three broadcasts. If in the 2010 election, Plaid Cymru was to be allocated one broadcast on Five and one on Channel 4 this would be broadly proportionate to what it received in 2005 (given that Channel 4 commands a larger audience share than Five).

Therefore, we propose that draft Rule 12 be amended, firstly to require Channel 4 to broadcast a Plaid Cymru broadcast and secondly to remove the obligation to show that party "a series of two or more" broadcasts, so that a single broadcast on each channel could suffice."

This response sets out no reason why Channel 4 should now provide airtime for Plaid Cymru. It starts from a position that because Five are obliged to then Channel 4 should. It then proceeds to argue that the obligation already carried by Five should be lightened. It seeks to off-set Five's current obligations by imposing a new obligation for Channel 4.

However the Act specifically allows Ofcom to "make different provisions for different cases". Ofcom are not required to carry out a like for like exercise.

Ofcom proposal and Channel 4's response

Following these representations Ofcom make this proposition in their letter of 26th January:

"If Ofcom were minded to change the rules so that Channel 4 has also to carry PEBs for Plaid Cymru, we would amend paragraph 12 of the revised draft rules issued for consultation as follows:

Before a General Election, and in the case of other elections where appropriate, each major party (referred to in Rule 11) should be offered a series of two or more PEBs, the length of a series offered to a particular party being determined by the Licensee. This includes the SNP and Plaid Cymru on Channel 4 and Five. In every case, the number of PEBs should be determined having regard to the circumstances of a particular election, the nation in which it is held, and the individual party's past and/or current electoral support in that nation (see Rule 15).

In conjunction with rule 7, the effect of this would be to require Channel 4 at General Elections to carry two or more broadcasts for Plaid Cymru. Scheduling rules will continue as now, and will be reflected in paragraph 21 of the revised Rules. We understand that broadcasts for the SNP on Channel 4, and SNP and Plaid Cymru on Five, are normally broadcast after 23:30. "

In our view this proposal demonstrates that Ofcom have not considered this issue properly from first principles. In the absence of a statutory requirement to provide the main Scottish and Welsh nationalist parties with PEBs and with a new set of circumstances following digitalisation it is surely incumbent on Ofcom to make an entirely fresh assessment of the provision of PEBs to named parties.

The question to be addressed is why a UK wide broadcaster is being told to transmit to their audience party election material for parties who do not stand candidates across the whole or even a majority of the electoral area.

In addition, what is the justification for treating Plaid Cymru and the SNP as special cases? What may have been appropriate in the political and communications landscape in the past may not be appropriate in the future.

Also, a decision regarding Plaid Cymru may have ramifications for other small parties. We are not aware of the Electoral Commissions views which Ofcom are required to have regard to and it would be helpful to know their position. Likewise we are naturally concerned at the potential impact of

this proposed changes on other minority parties and in particular the position in Northern Ireland and Furthermore has any research been conducted with the electorate as to what they want?

We note for example that the SDLP in their response to the original consultation have raised the issue of UK wide broadcasts for other minority, geographically limited parties. Although we would oppose their suggestion that other parties are afforded PEBs we can see that they raise a valid question.

In our view it is regrettable that Ofcom are trying to alter Election Rules this close to a General Election. It would be better to consider the provision of PEBs after the forthcoming Election has taken place and to provide a more open and transparent consultation process.

There are now increased opportunities for political parties to communicate their message to the electorate. The Scottish and Welsh nationalists can now engage with and be broadcast on a multiplicity of regional television and radio stations. They are able to use internet communication and forms of social media unheard of when the original PEB requirements were stipulated.

As we stated in Paragraph 9 of our original Review response:

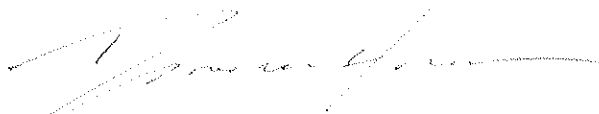
"It should be noted that the legal requirement to provide broadcast time to political parties is for any broadcaster (including Channel 4) an interference with the broadcaster's right to editorial independence and their rights of freedom of expression. Of course the provision of airtime in this way can be seen as a public service duty and necessary in a democratic society, but the decisions regarding the allocation, length, frequency and/or scheduling of such compulsory broadcasts should remain with the broadcaster. Any regulation and stipulation by Ofcom should be restricted to that which is necessary to ensure compliance with s333 of the Communications Act 2003 ("the Act") and which ensures the political parties rights to convey their political messages."

In these circumstances Channel 4 believe that is consistent with the Act that Ofcom require UK wide broadcasters like Channel 4 to provide PEB's only to political parties who address the whole UK electorate and offer candidates to that electorate. It dissipates the effect of PEBs to a UK wide audience to provide them with PEB's relating to parties they cannot vote for. Such parties can be provided for in a more locally appropriate manner.

We therefore propose that the requirement that Channel 4 treat the SNP as a major party should be removed. We also propose that no new requirement be imposed regarding Plaid Cymru.

If Ofcom do not accept this proposal we suggest that there is no change to the rules regarding Plaid Cymru until the whole issue of PEBs for minority parties can be consulted upon in detail following the General Election.

Yours sincerely



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Channel 4 Television