

**Complaints and
Appeals Board –
Proposed BBC UK
Leaders' Debate
Appeal from the
Democratic Unionist
Party**

Finding of 4 March 2015

The Panel's decision on the appeal brought by the DUP

1. A Panel ("the Panel") of the Complaints and Appeals Board ("CAB") of the BBC Trust met on 4 March 2015 to consider an expedited appeal to the BBC Trust brought by the Democratic Unionist Party ("the DUP") against the decision of the BBC Executive to exclude the DUP from the proposed BBC's UK leaders' debate ("the Debate"), scheduled for Thursday 16 April 2015.
2. The Panel consisted of Bill Matthews (the Chairman of the CAB), Sonita Alleyne, Richard Ayre and Aideen McGinley (Trustee for Northern Ireland. Northern Ireland is also referred to as "NI" in this finding).
3. The Panel's Terms of Reference are available on the Trust's website at http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/about/how_we_operate/committees/2014/cab_tor.pdf.

The Appeal and Summary of Background

4. On 20 February 2015, the DUP submitted an appeal to the BBC Trust ("Appeal"), attaching its previous correspondence with the BBC Executive, and appealing on the basis of its letter of 17 February 2015. The DUP's principal ground of appeal was that the exclusion of the DUP from the Debate would breach the BBC's duty of impartiality. In addition, the DUP argued it would constitute a disproportionate and unjustified interference in freedom of expression (including the right of the UK public to see the DUP perform head to head with the parties of Great Britain) and would breach the prohibition on discrimination.
5. As part of its principal ground of appeal, the DUP argued that the BBC Executive's justification for excluding the DUP from the Debate, namely that:
 - (a) there is a distinct separation between politics in Northern Ireland and the rest of the UK justifying differential treatment; and
 - (b) if the BBC included the DUP in the Debate, it would also need to include Sinn Fein, SDLP, UUP and Alliance, which would be unwieldy and diminish the value of the Debate,represented a fundamental misunderstanding of the political landscape and failed to provide an adequate justification for the resultant breach of the BBC's obligations of impartiality, equal treatment and freedom of expression. The DUP made several points in support of its Appeal.
6. On 24 February 2015, the Trust Unit wrote to the DUP stating that its Appeal should proceed to be considered by the Panel. The Trust Unit also explained that before CAB could consider the Appeal, the Trust's Editorial Standards Committee ("the ESC") should meet to consider and finalise the BBC's draft Election Guidelines on behalf of the Trust, against which the DUP's appeal would be considered. The draft Election Guidelines were approved by the ESC on 26 February subject to certain clarifications -

http://downloads.bbc.co.uk/guidelines/editorialguidelines/pdfs/2015_Election_Guidelines.pdf.

7. On 28 February 2015, the BBC Executive responded to the DUP's appeal. The BBC Executive argued that the Election Guidelines (as amended) do not provide that the inclusion of Northern Ireland parties in coverage of appropriate issues is mandatory and the BBC Executive stated that it did not believe that their inclusion will always be necessary to meet the obligation of due impartiality. The BBC Executive reaffirmed its position that, in order to achieve due impartiality, it is not necessary to include the larger Northern Ireland parties in the Debate, particularly where they will instead be invited to participate in a Northern Ireland debate and have the opportunity to be included in other "reaction" coverage to the Debate. The BBC Executive also rejected the assertion that it had acted in a manner incompatible with the Human Rights Act. The BBC Executive made several points in support of its position.
8. In addition, the DUP had an opportunity to reply to these points and did so on 2 March 2015.

Admissibility of the Appeal

9. In accordance with clause 89(4)(b) of the Framework Agreement¹, the Panel first considered whether the Appeal raised a "matter of substance", in order to determine its admissibility.
10. The Panel considered that the Appeal did raise a matter of substance. The Appeal concerned the exclusion of the DUP, which was the largest party in Northern Ireland at the 2010 general election, from a live debate (which will include the SNP and Plaid Cymru) to be broadcast on the BBC in the lead up to the UK General Election 2015.

The Panel's Decision

11. In considering the substance of the Appeal, the Panel noted that its role was as an appellate body, exercising a supervisory role within the BBC. The Panel reminded itself of its functions under the Charter and accepted that the test it should apply recognises the supervisory responsibility of the Trust and the fact that an appeal in this context does not mean a simple substitution of the judgement of the Trust for that of the BBC Executive, or more specifically the Director-General as editor-in-chief, as it would be wrong for the Trust to take over from the Director-General the primary duty of deciding editorial content. Accordingly, the Panel decided to apply the following test:

Before the Trust can interfere, it must be shown that:

(1) the BBC Executive had made an error in principle in its approach; or

(2) the BBC Executive had left out of account or had taken into account some feature that it should, or should not, have considered; or

(3) the BBC Executive's decision had been wholly wrong, because the Panel was forced to the conclusion that it had not balanced the various factors fairly in the scale.

12. The Panel's decision on the Appeal is set out below. The Panel first considered each of the DUP's points in support of its principal ground of appeal, and the BBC Executive's responses (summarised under sub-headings A-C below), together with the relevant Editorial and Election Guidelines (sub-heading D), before reaching a decision on whether to uphold the Appeal (sub-heading E).

A. Political landscape and the DUP's electoral support

13. The Panel noted the DUP's arguments that the DUP is the fourth largest party in Westminster, with eight seats, holding more seats than four of the seven parties included in the Debate. The DUP also argued that MPs elected in Northern Ireland are of equal status to MPs elected in any other part of the UK. The Panel noted that the BBC Executive did not disagree with these points but had informed the DUP that the number of seats held is not a conclusive factor in deciding who to invite to the Debate. In addition, the BBC Executive expressed its view that the political structure in Northern Ireland is significantly different from the rest of the UK and is not directly comparable to the situation in Scotland and Wales.
14. It was noted by the Panel that the DUP did not accept that there is a clear distinction between politics in Northern Ireland, and politics in Scotland and in Wales, and that it had made the following points:
 - (a) the SDLP and Alliance are 'sister parties' of Labour and the Lib Dems respectively. In addition, the Conservatives fielded joint candidates with the UUP in the 2010 election (although the Conservative Party intends to fight the 2015 election in NI in its own right);
 - (b) as well as the Conservatives, two parties represented in the Debate - the Greens and UKIP - field candidates in NI. They may not currently hold any seats (in Westminster) but they similarly do not hold any seats in Scotland or Wales. This does not mean that they cannot significantly influence the election of individual candidates, indeed they are more likely to do so in NI as indicated by the fact that they each hold a seat in the NI Assembly but do not hold any seats in the Scottish or Welsh Assemblies. To the extent that UKIP's election campaign succeeds, UKIP is likely to take votes from the DUP and other unionist parties, making a nationalist victory more likely in a number of close seats in NI. In this regard, the DUP in its reply also referred to the last European Election results and the fact that elections in NI are tightly contested, meaning that a few votes for smaller parties in NI could affect the result in marginal seats;

- (c) in practice therefore, the DUP is in competition with the UK parties to the same extent as the SNP and Plaid, but holds greater power than them in Westminster;
 - (d) the DUP in its reply added that the differences with England in the Scottish, Welsh and NI voting landscapes are therefore questions of degree and the BBC Executive interprets the term 'largest' broadly, which is misleading as the Scottish Conservative Party currently holds one seat.
15. The Panel also noted the BBC Executive's arguments in response which were as follows:
- (a) as far as the BBC Executive is aware, there is no public formal relationship between the 'sister parties', and NI parties stand on their own policy platforms. It would therefore be wrong to proceed on the basis that any of the UK parties can be taken to speak on behalf of any of the NI parties. Nor would it be right to assume that the NI electorate will be swayed to support the SDLP, Alliance or UUP because of the performance in the Debate of the leaders of Labour, Lib Dems or Conservatives respectively. The BBC Executive would accept that during the course of the campaign voters may take the view that certain NI parties are more likely to lend political support to particular UK-wide parties in the event of coalition negotiations, particularly if electoral pacts are entered into, but at this stage this is necessarily speculative and no simple relationship can be drawn. Further, even if there were a formal relationship between any of the parties, the political landscape of NI is such that any impact would be marginal and would not affect the compliance of the Debate with the BBC Executive's editorial obligations;
 - (b) the politics in the four nations of the UK are not symmetrical. There are different political structures in each of the nations as detailed in the BBC's Electoral Landscape Paper. The political contests in Scotland and Wales, while not identical to that in England, nevertheless overlap significantly with it. The three largest parties in England (Conservatives, Labour, Liberal Democrats) are also among the largest parties in Wales and Scotland. UKIP and the Greens have a presence in all three nations. SNP and Plaid Cymru compete for votes against the main UK-wide parties in Scotland and Wales respectively;
 - (c) Northern Ireland has a very different political landscape. The largest political parties are Sinn Fein, DUP, SDLP, UUP and Alliance, none of which stand candidates outside Northern Ireland. Taking into account the last General Election, subsequent elections and polling, the Green Party of NI and UKIP have limited electoral support. The UUP stood joint candidates with the Conservative Party in the 2010 General Election, however having regard to each party's performance in subsequent elections, it is clear the NI Conservatives do not enjoy significant electoral support whereas the UUP do. It therefore follows

that the main political contest in NI is between the largest NI parties. The UK-wide parties are expected, if their previous and current levels of support are reliable indicators of future performance, to secure only a minor share of the vote. It is therefore not accepted that the DUP is in competition with UK-wide parties to the same extent as the SNP and Plaid Cymru.

B. Potential outcome of the General Election 2015

16. The Panel noted the DUP's argument that:
 - (a) the 2015 General Election was unlike most previous elections in that commentators consider that neither of the large parties is likely to win an overall majority of seats enabling it to form a government;
 - (b) what happens in the 18 constituencies of Northern Ireland could be of profound importance for the outcome in Westminster and the stability of Northern Ireland;
 - (c) this possibility gives added importance to the stance of smaller parties, the policy commitments they may require in return for their support, and the willingness of the larger parties to make such commitments;
 - (d) these factors may be of particular importance to floating voters in all parts of the UK of undecided allegiance whose votes may be determined by particular issues;
 - (e) the DUP could hold the balance of power and determine who will become Prime Minister, either through formal coalition or through support of a minority government.
17. The Panel also noted the BBC Executive's arguments that:
 - (a) its coverage would ensure a proper understanding of the political context of the election, such as the role Northern Ireland parties, including the DUP, could play in the formation of the next United Kingdom government;
 - (b) while it agreed that the stance of Northern Ireland parties in respect of coalition negotiations, and the willingness of larger parties to make commitments to smaller parties, may have a particular importance in the 2015 General Election, this matter could be addressed in the Northern Ireland debate as well as other UK-wide election coverage if deemed editorially appropriate in accordance with the Election Guidelines;
 - (c) these considerations were not determinative of whether the Northern Ireland parties ought to be included in the Debate in the hope that

their inclusion might lead to a debate about what commitments might be sought or provided;

- (d) the fact that the general stance of the larger UK parties has been to avoid giving any such public commitments was not the reasoning that led to the inclusion of any of the parties which had been invited to participate in the Debate.

18. The Panel noted that the DUP had responded to the BBC Executive in the following terms:

- (a) it was unreasonable for the BBC Executive to ask the DUP to accept that the Northern Ireland debate, about which it had little information, would provide a fair alternative to the Debate;
- (b) the UK as a whole was entitled to receive information about a party which might have a significant role in government following the next election, and to see its leader perform.

C. Form of Debate and other coverage

Consultation about the format of the Debate

- 19. The Panel noted that the DUP had stated in the background section to its Appeal that it had not been included in the talks and consultations that preceded the revised proposals for the Debate, despite having objected to the original proposals along with the Green Party, the SNP and Plaid Cymru.
- 20. The Panel noted the BBC Executive's argument that this was because, unlike the SNP and the Green Party, with whom the BBC corresponded at the time and subsequently engaged with regarding revised proposals, the DUP did not make any formal complaint, despite having met with the BBC Executive on 7 January 2015.

Number of participants

- 21. The Panel noted that the DUP does not accept the BBC's argument that, if the DUP were to be invited to take part in the Debate, the BBC would need to include all four other larger parties in NI meaning that the Debate would be unwieldy and diminished in value. The DUP argued that, even if unwieldiness were a sufficient reason for excluding a political party, it did not consider that all four NI parties would need to be included, for the following reasons:
 - (a) in respect of Sinn Fein, the DUP argued that there would be no purpose in including them as they do not take up their seats in Westminster;
 - (b) the Alliance and UUP have one and no seats respectively, so they could be excluded; and

- (c) given that the SDLP has three seats, it would be proper to include them, thereby increasing the overall number of participants only from seven to nine - a marginal increase.
22. The Panel also noted that the DUP further argued that no explanation had been given as to why a debate involving seven leaders would be manageable, but an increase beyond that would not be.
23. The BBC Executive argued that, based on the political landscape in NI, it could not include the DUP in the Debate and exclude the other larger NI parties as it considered that this would breach its duty of impartiality. It contended that the DUP and Sinn Fein are not (in general) in competition with each other as Sinn Fein competes principally with the SDLP, and the DUP with the UUP, while the Alliance aims to appeal to a broader cross-section of the electorate, therefore the BBC Executive believes all five larger parties would need to be included. According to the BBC Executive, this means that the size of the Debate would be increased to 12 participants and, while the BBC Executive accepted that, in principle, that would be another way of achieving due impartiality, its editorial preference was to host a debate with fewer participants, affording a greater opportunity to pursue points with particular leaders.
24. In answer to the DUP's points, the BBC Executive argued that the fact that Sinn Fein does not take up its seats at Westminster would not provide a legitimate reason to exclude them, and excluding the UUP and Alliance on the basis of the number of seats they held would not be consistent with the Election Guidelines, which require the BBC to take into account other factors such as vote share.

Special status of the Debate

25. The Panel noted that the DUP had argued that the Debate had a special status compared with the regional leaders' debates, and that, for that reason, it was not appropriate to include the Northern Ireland parties in the NI debate only, particularly when the SNP and Plaid Cymru were being included in both the debates in Scotland and Wales respectively and in the UK-wide Debate itself.
26. The DUP argued that there had been no explanation given by the BBC Executive as to why the inclusion of the SNP and Plaid Cymru bolstered the value of the Debate, whereas the inclusion of one or more NI parties would diminish the Debate's value. The DUP argued that the fact 97% of UK viewers could not vote for NI parties was no justification, as that applied equally to the SNP and Plaid Cymru. 91.5% of the UK cannot vote for the SNP and 95% of the UK cannot vote for Plaid Cymru.
27. The DUP submitted that its exclusion was likely to have an impact on the results of the election, because viewers would have a chance to see UKIP (a major competitor for Northern Ireland votes) perform head-to-head with the

major parties, but not how the DUP performed in the same circumstances. In addition, the DUP argued that the inclusion of UKIP and the Green Party gave viewers a misleading impression as to their respective importance in terms of seats in Parliament, and therefore on the political landscape. The DUP argued that, by giving the Conservatives, UKIP and the Green Party undue prominence in comparison with other parties in Northern Ireland, the BBC was giving them an unfair advantage.

28. The BBC Executive responded that the proposal as developed complied with the obligation of due impartiality in respect of coverage in Great Britain and in respect of the UK as a whole. The inclusion of the SNP and Plaid Cymru reflected the fact that those parties were in competition with the UK-wide parties to a greater extent than the DUP, and their inclusion was an editorially appropriate and manageable step, which would be of particular benefit to viewers in Wales and Scotland, but without giving disproportionate attention to parties for which the majority of viewers would be unable to vote. It stated that the inclusion of five additional parties for whom a large part of the audience could not vote would reduce the relevance of the Debate.
29. The BBC Executive suggested that any perceived disadvantage to the Northern Ireland parties arising out of the inclusion of the Conservatives, the Green Party and UKIP in the Debate should be seen against the context of other proposed coverage in Northern Ireland, including the NI debate, which would not include those parties, and the planned reaction and other coverage in Northern Ireland to the Debate, which could balance the limited advantage to the parties of appearing in the Debate. That coverage is eminently capable of balancing the Debate (as upheld in *Scottish National Party v BBC*), and the DUP therefore could not show at this stage that the Debate would *necessarily* breach the obligation of due impartiality. The BBC Executive did not agree that the status of the Northern Ireland debate was significantly lower than that of the Debate, stating "*it will include the five larger Northern Ireland parties, and will be the main forum for debate between those parties*".
30. The DUP responded that the DUP had not been given enough information about the Northern Ireland debate for it to be able to accept that it would provide a fair alternative to participation in the Debate. The DUP set out what it knew about the viewing figures, timing, and online coverage of the 2010 Northern Ireland debate and why these had not been comparable to the 2010 UK leaders' debate. It complained that the SNP and Plaid Cymru had been given both national and regional forums, unlike the DUP. It reiterated that the whole of the UK was entitled to receive information about a party which may have a significant role in the next election and to see its leader perform on the same stage as other leaders.
31. The BBC Executive responded that the DUP was wrong about the prominence of the Northern Ireland leaders' debate, both in 2010 and in terms of the plans for 2015 - it would be appropriately linked and signposted, broadcast primetime and available UK-wide.

Omission of an important perspective

32. The Panel noted that the DUP had also argued that the exclusion of the DUP from the Debate would effectively exclude the perspective of an entire region of the UK from a national political debate which would be the "omission of an important perspective" under the Editorial Guideline 4.4.2, given that it believed that the Debate would focus on national issues, whereas the NI debate would focus on regional matters, and given that it believed that the Debate was to be of a much higher profile than the NI debate. The DUP stated that the omission in this case was particularly important given that the DUP was likely to have considerable influence over the formation of the next government.
33. The BBC Executive argued that Guideline 4.4.2 did not require the range of opinions or perspectives to be covered in equal proportions, and pointed out that the Guideline stated that *"the omission of an important perspective, in a particular context, may jeopardise perceptions of the BBC's impartiality. Decisions over whether to include or omit perspectives should be reasonable and carefully reached, with consistently applied editorial judgement across an appropriate range of output."* The BBC Executive said that the proposal to omit the Northern Ireland parties had been reasonably and carefully reached in accordance with the Guidelines and there was no basis for the DUP's assumption that the Northern Ireland debate would focus only on "regional matters".

D. Editorial and Election Guidelines

34. The Panel noted the relevant Editorial Guidelines on impartiality and the Election Guidelines.
35. In particular, the Panel noted that the Election Guidelines (which the Trust itself, acting through the ESC, had approved on 26 February 2015) set out the factors that should be taken into account in order for the BBC to make judgements about appropriate and proportionate levels of coverage in discharging its duty of impartiality during the General Election period. Appendix 1 says:

The relative amount of coverage given to political parties should reflect levels of past and/or current electoral support. In considering this, bearing in mind the location of the intended audience, although performance at the last equivalent election in terms of representation and share of the vote is taken as the starting point, the following factors must be given due weight:

- *performance in subsequent elections, where relevant*
- *other relevant evidence of current electoral support*
- *the number of candidates a party fields in the election*
- *other relevant editorial issues, such as electoral pacts, new parties, coalition agreements etc.*

36. It was noted that Appendix 1 sets out guidance for, amongst other things, party coverage for broadcasts across the UK, differentiating between larger parties in Great Britain, smaller parties in Great Britain and coverage of Northern Ireland parties on UK-wide outlets, thereby recognising the distinction between the political structures in Great Britain and in Northern Ireland.
37. The Panel noted that the requirement for coverage of Northern Ireland parties on UK-wide outlets at clause 1.3 of the Appendix states as follows [our emphasis]:
- The largest parties in Northern Ireland are: the Democratic Unionists, Sinn Fein, the Ulster Unionist Party, the SDLP and the Alliance Party. Bearing in mind the respective share of the vote and the level of representation won in 2010, UK-wide programmes which report on the election **as it affects Northern Ireland** should give similar levels of coverage to the DUP and Sinn Fein. The UUP, the SDLP and the Alliance Party should also be given appropriate levels of coverage in output which includes the largest two parties, up to and including similar levels of coverage. **Some UK-wide coverage of these larger parties may also be editorially appropriate on other issues, for instance, potential coalition building.***
38. The Panel noted that the Election Guidelines are not restrictive in that they do not prevent NI parties from being considered for inclusion in UK-wide coverage on UK-wide issues where considered editorially appropriate. It also noted that the Election Guidelines do not make the inclusion of NI parties mandatory, allowing the BBC Executive a degree of flexibility in exercising its editorial discretion.

E. Finding

39. The Panel first of all noted the BBC's duty to do all it can to ensure that controversial subjects are treated with due accuracy and impartiality (Framework Agreement clause 44), as elaborated upon in the Editorial Guidelines and, in particular, the Election Guidelines which operate during the General Election period. The Panel also noted the BBC's Electoral Landscape paper, which sets out the broad electoral context for elections in 2015, and states that the 2015 General Election will be fought in new electoral territory and poses new challenges for what the audience will expect in terms of the relative levels of coverage the BBC gives to different political parties throughout the UK.
40. The Panel acknowledged that the UK leaders' debates broadcast on the BBC, ITV and Sky in the 2010 General Election between the Conservatives, Labour and Liberal Democrats were the first of their kind to be broadcast live in the run-up to a General Election, and there was considerable public interest in the Debate planned to be broadcast by the BBC (and other broadcasters) in the forthcoming General Election.
41. The Panel noted that the BBC Executive's decision about the appropriate participants for the Debate in the forthcoming General Election (and indeed, any election) is an exercise by the BBC Executive of its editorial discretion to decide what programmes to broadcast and the format they should take, but is subject to the BBC meeting its duty of impartiality.
42. Bearing in mind the test of showing that:
 - (1) *the BBC Executive had made an error in principle in its approach; or*
 - (2) *the BBC Executive had left out of account or had taken into account some feature that it should, or should not, have considered; or*
 - (3) *the BBC Executive's decision had been wholly wrong because the Panel was forced to the conclusion that the decision has not balanced the various factors fairly in the scale,*the Panel considered the reasonableness of the BBC Executive's decision in excluding the DUP from the Debate.
43. The Panel noted that the ESC had considered the Election Guidelines before they were published, and had specifically addressed the question whether - in light of the current political landscape in the United Kingdom - those Guidelines were appropriate. The ESC had concluded that the distinction in the Election Guidelines between party coverage in Great Britain and in Northern Ireland continued to be appropriate, and went on to approve the Guidelines (with some amendments).
44. Accordingly, the Panel concluded that the distinction between party coverage in Great Britain and in Northern Ireland as relied upon by the BBC Executive

in reaching its decision to exclude the DUP from the Debate was consistent with the Election Guidelines. In this context, the fact that the DUP is the fourth largest party in Westminster does not require that the DUP be included in the Debate.

45. The Panel went on to consider whether any other factors raised by the DUP suggested that the BBC Executive had erred in its approach to the Debate. The Panel considered that the BBC Executive's responses to the points raised were reasonable and that the BBC Executive had not erred in its approach.
46. The Panel acknowledged that the DUP was correct to say that there is one election for both political systems. However, it accepted that it was reasonable for the BBC Executive to take the view that voters in Northern Ireland are choosing between a substantially different range of parties. The larger NI parties – DUP, Sinn Féin, the UUP, the SDLP and the Alliance – are primarily in competition with each other, rather than with parties which also compete in Great Britain.
47. The Panel considered that the BBC Executive was entitled to note the absence of any formal public relationship between the so-called 'sister parties', and to conclude that it would be wrong to proceed on the basis that any of the UK parties speak on behalf of any of the NI parties, or to assume that the NI electorate will be swayed to support the SDLP, the Alliance or the UUP because of the performance in the debate of the leaders of Labour, the Liberal Democrats or the Conservatives respectively.
48. The Panel noted the political landscape in Northern Ireland and its potential to change in the future, including that UKIP and the NI Conservatives may win more votes from the unionist parties than from the nationalist parties. The Panel noted the argument that the DUP may lose some votes to UKIP in particular, however it did not find this persuasive given the limited electoral support for UK-wide parties in Northern Ireland and current polling data, and so considered that the BBC Executive acted reasonably in adopting this evidence-based position. For the same reasons, and also for the reasons in paragraph 52 below, the Panel also considered that the BBC Executive was reasonable in concluding that including the Conservatives, UKIP and the Green Party in the Debate would not give those parties an unfair advantage over the DUP.
49. The Panel understood the DUP's point concerning the comparison with the SNP and Plaid Cymru, which have fewer current MPs than the DUP (respectively six and three, compared to the DUP's eight) but are to be invited to participate in the Debate, as well as respectively participating in Scotland- and Wales-specific debates. While the Panel agreed that this point had some force, it nevertheless considered that the BBC Executive was reasonable in taking the view that this is not the only factor in deciding who to invite to the Debate. Further, although the Panel accepted that it was indeed arguable that the SNP, Plaid Cymru and the DUP were comparable because none of these parties field candidates outside their particular nation, the Panel nevertheless considered that the BBC Executive was reasonably entitled to take the view

that they were not comparable, on the basis that the SNP and Plaid Cymru compete directly for votes with the larger parties of Great Britain, whereas the DUP and the other NI parties do not.

50. The Panel agreed that the possibility of a hung parliament is likely to be a key element of the election campaign and noted that the Trust's ESC had expressed the same view when approving the Election Guidelines, stating that in those circumstances, there would be consequent added attention on the positions of those parties who may (or may not) hold the balance of power. The Panel also noted that this had led to a helpful clarification being added to Appendix 1 of the Election Guidelines which made it clear to BBC programme makers that, even though the Election Guidelines are not restrictive, NI parties (and indeed other parties) should be considered for inclusion in UK-wide coverage on UK-wide issues where considered editorially appropriate. The Panel agreed that it was reasonable for the BBC Executive to conclude that coalition issues (and other issues which may be of significance, such as the willingness of larger parties to make commitments to the smaller parties), could be addressed in the NI debate as well as other UK-wide coverage to voters across the UK if deemed editorially appropriate, and such considerations were not determinative of whether the NI parties should be included in the Debate. The Panel also noted that the Executive had said that its election coverage would ensure viewers had a proper understanding of the political context of the election, and the role NI parties, including the DUP, might play in the formation of the next UK government.
51. The Panel then considered whether the BBC Executive was correct to state that if the DUP were to be invited to participate in the debate, the duty of due impartiality would require that the four other larger NI parties would also have to be invited, bringing the number of participants to twelve. The Panel decided that it was open to the BBC Executive to conclude that, consistent with the Election Guidelines and in particular Appendix 1, it would not be possible to invite one of the five larger NI parties to participate without inviting them all given the BBC's duty to do all it can to ensure that controversial subjects are treated with due accuracy and impartiality. The Panel considered that it was reasonable for the BBC Executive to conclude that the BBC could achieve due impartiality by way of a seven person debate as proposed or a twelve person debate (to include the NI parties) and it was reasonable and within the editorial discretion of the BBC Executive to decide which of the options it preferred. The Panel commented that if due impartiality did in fact require that all 12 leaders should be included in the debate, the argument that it would be unwieldy would not be a proper basis upon which to exclude any of those 12 leaders. However, in the circumstances this was not relevant to consider given that the Debate's proposed composition of 7 leaders complies with the due impartiality requirement.
52. One point which the Panel considered the BBC Executive might have addressed more fully is the issue of precisely what other coverage the NI parties will receive, in particular what format the separate NI debate will take

and what issues it will cover. The BBC Executive cited such other coverage as an answer to certain of the points raised in the DUP's letter of appeal but, as the DUP noted in response, there is not a great deal of information available (albeit the Executive said it is still finalising its proposals). Nevertheless, the Panel considered that it was not unreasonable for the BBC Executive to rely on other future coverage - which is capable of balancing any perceived or limited disadvantage to NI parties - such as the NI debate, which it has made a publicly announced decision to provide. The Panel noted that if - in the event - duly impartial coverage of the larger Northern Ireland parties on these issues was not achieved, it would be open to the larger Northern Ireland parties, including the DUP, to complain to the BBC at that point.

53. Finally, the Panel considered the DUP's argument that the exclusion of it from the Debate would exclude the perspective of an entire region of the UK from a national political debate which would be the "omission of an important perspective" under the Editorial Guidelines. The Panel considered that the Executive had applied the relevant Guideline (4.4.2) reasonably as far as it could see at the present time. It was impossible for the Panel to know whether the Debate, or the BBC's coverage in general, would omit any important perspective on the General Election 2015, but there was no indication at the present time that it would do so. The Panel also accepted that that Guideline did not require the range of perspectives to be covered in equal proportions and that there was no basis for the DUP's assumption that the NI debate would focus only on "regional matters".
54. Taking all the above arguments into account, the Panel was satisfied that the difference in treatment between the Northern Ireland parties and the SNP and Plaid Cymru was based on the different treatment of Northern Ireland and the rest of the UK under the Election Guidelines, and as such, was a reasonable editorial decision for the BBC Executive to have made, and not one in which the BBC Trust should interfere.

Lack of consultation on the Debate format

55. The Panel also noted the DUP's complaint that it had not been included in the talks and consultations that preceded the revised proposals for the Debate. The DUP said that while the Green Party, the SNP, Plaid Cymru and the DUP had all objected to the original proposal for the UK leaders' debates, the BBC had only referred to meetings and conversations with the Conservatives, Liberal Democrats and UKIP, and discussions and correspondence with the Green Party, the SNP and Plaid Cymru, in its announcement of 23 January 2015 about the new proposed format of the debate. The DUP objected to not being included.
56. The Panel also noted the BBC Executive's argument that this was because, unlike the SNP and the Green Party, with whom the BBC had corresponded at the time and subsequently engaged with regarding revised proposals, the DUP did not make any formal complaint, despite having met with the BBC Executive on 7 January 2015.

57. Taking both perspectives into consideration, the Panel concluded that there was no obligation upon the BBC Executive to consult the DUP before making its editorial decision on the format of the Debate, and therefore that this did not cause unfairness or otherwise undermine the decision to exclude the DUP.

European Convention of Human Rights

58. The Panel noted that the DUP also argued that its exclusion from the Debate, and the effect of that exclusion (as considered above), would constitute a disproportionate and unjustified interference in its freedom of expression and the right of UK constituents to receive information under the European Convention of Human Rights ("ECHR") and would also be a breach of the prohibition of discrimination under the ECHR.
59. The Panel considered the terms of the ECHR and also the case law drawn to its attention on freedom of expression and the prohibition on discrimination.
60. The Panel did not consider that the BBC Executive's proposed plan of action placed the BBC in breach of the ECHR.

Conclusion

61. The Panel concluded by reminding itself of the test it had decided to apply to determine this Appeal:

Before the Trust can interfere it must be shown that:

(1) the BBC Executive has made an error in principle in its approach; or

(2) the BBC Executive has left out of account or has taken into account some feature that it should, or should not, have considered; or

(3) the BBC Executive's decision was wholly wrong because the Trust is forced to the conclusion that it has not balanced the various factors fairly in the scale.

62. For the reasons stated above, the Trust decided that:

(1) it had seen no evidence that the BBC Executive's decision to exclude the DUP from the Debate was an error in principle.

(2) it had seen no evidence of any relevant factors which the BBC Executive had failed to take into consideration, or irrelevant considerations which the BBC Executive had taken into account, when reaching its decision to exclude the DUP from the Debate.

(3) it did not consider that the BBC Executive's decision to exclude the DUP from the Debate was wholly wrong because the BBC Executive had not balanced the various factors fairly in the scale.

Appeal not upheld