[GB] Section Six of Ofcom Broadcast Code engaged during UK Referendum about EU

IRIS 2016-9:1/19

David Goldberg
deeJgee Research/Consultancy

On 23 June 2016, polling stations in the UK were open from 07.00 to 22.00 to enable voters to participate in the referendum on whether the UK should stay in the European Union or not. Section 6.4 of the Ofcom Broadcast Code states that "discussion and analysis of election and referendum issues must finish when the poll opens (this refers to the opening of actual polling stations. This rule does not apply to any poll conducted entirely by post.)".

A Fox News programme was the subject of a complaint under Section 6. Fox News is a news channel originating in the USA, broadcast on the digital satellite platform and licensed by Ofcom in the UK. The licence for this channel is held by Fox News Network Limited Liability Company ("FNN" or the "Licensee").

The complainant objected that a programme discussed the referendum on the UK's membership of the EU on the day of the vote, while the polls were still open. The programme was "Your World with Neil Cavuto", a weekday business and financial news programme. At 21:05 p.m. there was a news item, lasting approximately five minutes, relating to the EU Referendum; at 9:50 p.m., there was a further brief news item, which included statements referring to the referendum.

The Licencee argued that due weight should be given to the interest in freedom of expression and Article 10 of the European Convention on Human Rights (ECHR); that the programme was oriented to the United States and what its audience there would find interesting; that it was a financial/business programme and therefore that it was unlikely to affect any UK voters - citing paragraph 1.26 of Ofcom's published Guidance to Section Six of the Code. This states that "[t]he purpose of Rule 6.4 is to ensure that broadcast coverage on the day of the election does not directly affect voters' decision". FNN argued that "[i]n light of the business focus of the [p]rogramme, and its airtime in the UK, it is unlikely that the programme 'directly affect[ed] voters' decision" in relation to the EU Referendum.

Ofcom decided that this content was in breach of Section 6.4 of the Code. As regards Article 10, Ofcom stated that the right to freedom of expression is not absolute. Notwithstanding the business aspect of the programme and its focus on

© European Audiovisual Observatory (Council of Europe) 2026

the American audience, Ofcom took the view that “this programme contained a number of statements that constituted discussion and analysis of issues related to the EU Referendum.” Further, it took the view that Section 6.4 is not qualified by reference to context. Thus, given that the statements were made during the period whilst the polls were still open - content which concerned various aspects of the EU referendum including: the likelihood of a vote to leave the EU; issues debated during the period before the EU referendum vote such as immigration; how the Bank of England would react in relation to a British exit from the EU; and, how an exit from the EU could potentially benefit British trade relationships with the rest of the world.

The decision does not seem to have been accompanied by any sanction.

Ofcom Broadcast and On Demand Bulletin, Issue number 31, 22 August 2016, p. 8

http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb311/Issue_311_of_Ofcoms_Broadcast_and_On_Demand_Bulletin.pdf

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026