

**(1) The Liberal Democrat Party
(2) The Scottish National Party**

Claimants

v

ITV Broadcasting Limited

Defendant

Decision of the court

The Liberal Democrat Party and the Scottish National Party have raised strong objections to a TV debate scheduled by the Defendant, ITV, for screening at 8pm tomorrow, Tuesday 19 November 2019. The televised debate, as scheduled, is to be between Boris Johnson, the Prime Minister and leader of the Conservative Party, and Jeremy Corbyn, the leader of the Labour Party and of the Opposition. The claimants say that such a debate, which as scheduled will include neither of the leaders of their parties, will be unfair to them and to the electorate and will be unlawful. For obvious reasons, this matter has come on before this court in circumstances of great urgency. As agreed by counsel before us, it is not practicable for this court to give its full reasons for its conclusion today; and those reasons will be provided in writing in due course. Nevertheless, the court will give its actual decision now. Our conclusions, having regard to the evidence and arguments put before us are as follows:

- (1) In the present context, ITV has not been exercising a public function, in the sense known to law, and accordingly is not amenable to judicial review; and (as a linked point)

- (2) Having regard to the statutory scheme, the remedy available to the Liberal Democrats and the SNP is by lodging a complaint with OFCOM, the specialist regulatory body designated by statute to deal with complaints of such a kind.

That disposes of these claims. But we would in any event conclude with regard to the other issues raised before us that, even if the court had had jurisdiction:

- (3) The decision to schedule tomorrow's debate in this format was a matter for the editorial judgment of ITV, which cannot be said to have displayed a want of due impartiality for the purposes of the Broadcasting Code: especially in the light of subsequent planned interviews, further debate and other programmes, which are properly to be regarded as a series of "linked" programmes. No arguable breach of the Broadcasting Code is shown.
- (4) The editorial judgment was, in public law terms, a judgment properly and reasonably open to ITV. It did not take into account irrelevant or immaterial factors or fail to take into account relevant or material factors; and the decision cannot be regarded as irrational or perverse. That the Liberal Democrat Party and the Scottish National Party strongly and sincerely disagree with that editorial judgment gives rise to no valid objection in law.
- (5) Article 3 of the 1st Protocol to the European Convention on Human Rights has no application in the context of the present case.

The clear conclusion of both members of this court is that, viewed overall, these claims are not realistically arguable. We refuse permission to apply in both cases. It follows that the television debate scheduled for tomorrow evening between the leader of the Conservative Party and the leader of the Labour Party may lawfully go ahead.

Lord Justice Davis
Mr Justice Warby
18 November 2019