

# The regulation of due impartiality

## VLV Spring Conference 11 May 2023

Adam Baxter

Director, Standards and Audience Protection, Ofcom

# Legal background

Under the **Communications Act 2003**, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, which include the requirements that:

- news included in television and radio services is presented with due impartiality and reported with due accuracy (see section 319(2)(c) and (d) of the Act); and
- due impartiality is preserved in other programming which covers matters of political or industrial controversy and/or matters relating to current public policy (see sections 319(2)(c) and 320 of the Act).

These standards are contained in **Section Five** (“due impartiality and due accuracy”) of Ofcom’s Broadcasting Code.

# Freedom of expression

When applying the rules in Section Five, Ofcom must take into account Article 10 of the European Convention on Human Rights:

- Everyone has the right to freedom of expression. This right includes the freedom to hold opinions and to receive and impart information and ideas without interference by public authority.
- It is a qualified right not absolute.
- The right can be restricted if it is: 1) prescribed by law 2) necessary in a democratic society and 3) in pursuit of a legitimate aim.

# Due impartiality

## Meaning of “due impartiality”:

*“Due” is an important qualification to the concept of impartiality. Impartiality itself means not favouring one side over another. “Due” means adequate or appropriate to the subject and nature of the programme. So “due impartiality” does not mean an equal division of time has to be given to every view, or that every argument and every facet of every argument has to be represented. The approach to due impartiality may vary according to the nature of the subject, the type of programme and channel, the likely expectation of the audience as to content, and the extent to which the content and approach is signalled to the audience. Context, as defined in Section Two: Harm and Offence of the Code, is important.*

- Context is key.
- Greater obligations when dealing with **matters of major political or industrial controversy and major matters relating to current public policy.**

# Some key issues



# The BBC

- Unlike with other broadcasters, complainants must normally complete the BBC complaints process first before escalating their complaint to Ofcom – the **BBC First** framework agreed by Parliament.
- There are a range of ways under the BBC First system in which due impartiality standards on BBC services are enforced:
  - in the first 5 years of the Charter, the BBC ECU has upheld or partially upheld due impartiality cases in 25 instances (out of a total of 125).
  - Apart from one breach investigation Ofcom has not considered it necessary or proportionate to also launch any investigations of our own under our due impartiality rules.
  - However, on some occasions, although we have not opened a full investigation, we have published our reasoning explaining why, and have also given the BBC important guidance to help it comply with the due impartiality rules.

# The BBC – Mid-Charter Review

In June 2022 we published our Statement *How Ofcom regulates the BBC* to inform the Government's own mid-term review. Our key findings:

- The BBC has a good record of complying with the due impartiality rules but our research found that audiences rate the BBC less highly for impartiality compared with trust and accuracy. Audience perceptions driven by non-content factors: the sense of ownership audiences have with the BBC; the overall BBC brand; how it responds to audience concerns; the way people see themselves being reflected on screen; the stories it chooses to cover; and how the BBC's impartiality is challenged in the wider media.
- We said the BBC must do more to tackle the mismatch between its compliance record and audience perceptions – we welcome the Serota Review and Impartiality and Editorial Standards Action Plan.
- We also directed the BBC to publish its reasoning in all its final decisions relating to due impartiality and due accuracy will give audiences and stakeholders more clarity about how the BBC approaches this issue, help demonstrate the BBC's commitment to due impartiality and allow more effective oversight by Ofcom as the independent regulator.

# Politicians as presenters

- Because audiences expect broadcasters to apply the highest level of due impartiality to news programmes (such as news bulletins) our rules state that no politician may be used as a newsreader, interviewer or reporter in any news programmes unless, exceptionally, it is editorially justified.
- However, outside of news programmes, there is no Ofcom rule that prevents a serving politician or political candidate from hosting or appearing on a TV or radio show – provided they aren't standing in an election taking place.
- Whether or not a programme is a news programme or a current affairs programme depends on a number of factors, including its content and format. In terms of content, as the definition of current affairs programmes set out in Section Nine of the Broadcasting Code makes clear, current affairs programmes – by their nature – contain “...explanation and/or analysis of current events and issues, including material dealing with political or industrial controversy or with current public policy”.
- Additional factors will be present for a programme to be considered a news programme. These might include: a newsreader presenting directly to the audience; a running order or list of stories, often in short form; the use of reporters or correspondents to deliver packages or live reports; and/or a mix of video and reporter items.
- We are currently investigating in this area and we are keeping this issue under review.





Questions?

