

BRIEFING NOTE

Impartiality Regulation: Where Do The Problems Lie?

June 2023

There has been much debate about whether the regulation of due impartiality on UK broadcast platforms is effective. Concern has increased during 2023 because of the rising number of news channel programmes presented by sitting MPs who are able to interview members of their own party. Ofcom is conducting research to 'gauge current audience attitudes to towards..[such] programmes'. Should sitting MPs be allowed to present news and current affairs programmes? Is there a risk of the 'Foxification' of UK News? Trust in broadcasting is declining, according to Edelman, and polarisation of views is increasing. Is impartiality regulation failing audiences?

Ofcom and the BBC are regularly criticised for a perceived lack of impartiality on TV; they are easy targets. One of the underlying problems of impartiality regulation is the lack of statutory definition of the content which should be impartial in the Communications Act 2003. If legislation is not clear, it should be amended. If Ofcom's interpretation of the legislation is too relaxed, the Broadcasting Code should be tightened. The Media Bill provides a useful opportunity to reconsider the legislation which underpins impartiality regulation and to improve it for the benefit of UK democracy.

This note is written specifically in the context of sitting MPs and active politicians presenting programmes on channels where audiences have an expectation of seeing the news. Notable current senior politicians presenting TV programmes include Lee Anderson, Jacob Rees-Mogg, Nadine Dorries, Esther McVey and Philip Davies; Nigel Farage, former Northern Ireland first minister Arlene Foster and ex-Labour MP Gloria de Piero.

VLV is concerned that as opinion-led journalism is increasingly normalised on UK TV and online, this will undermine standards – both accuracy and impartiality standards – and this will undermine the UK's democratic processes. We also worried that TV channels are testing impartiality regulation to see how far they can push it, using freedom of speech as a cover to present more partial and extreme views which attract larger audiences. It's been suggested that the government has been keen to increase the range of views expressed in news programming and that Ofcom has been enabling this.

VLV has long considered that there is a danger in impartiality being measured over the whole output of a channel – while this allows greater flexibility to have more extreme and potentially entertaining content, audiences are often not exposed to a wide range of views unless they listen/watch for a long period of time.

Ofcom is investigating the *Saturday Morning with Esther and Philip* programme which went out on 11 March when they interviewed Jeremy Hunt. Whether it was a news or current affairs programme and whether a broad enough range of opinions was included, is likely to be central to Ofcom's eventual ruling.

Ofcom dismissed complaints about the first Nadine Dorries' programme in which she interviewed Boris Johnson because it was not news in their view.

WHAT CAN BE DONE?

VLV questions whether changes could be instituted in the Media Bill to strengthen impartiality regulation. We question whether Ofcom has too much power because in effect it decides which content should be subject to due impartiality regulation.

Recommendation 1: Clarify the definition of News & content covered by impartiality rules

What is News? This is unclear in the Communications Act and at the root of the problem. The Act says: *“news” means news in whatever form it is included in a service*¹. VLV would expect this to mean that all content provided by a ‘news’ channel, such as GB News or Sky News, for example, should be governed by impartiality rules. However, Ofcom, which has responsibility to decide when to apply the due impartiality rules, says that they only apply to *‘news bulletins, news flashes and daily news magazine programmes’*. *Their guidance goes on to say ‘Just because material is broadcast on a ‘rolling news’ channel does not necessarily mean that the material would be characterised as ‘news’ content’*. Ofcom also says that the *likely expectation of the audience* should be taken into account when assessing whether a programme is duly impartial. Surely when a channel has the word ‘news’ in its title then it sets up an audience expectation that content on that channel is news? VLV questions how Ofcom came to decide which content should be duly impartial.

Recommendation 2: Clarify when politicians should be allowed to present programmes

The Broadcasting Code says: *No politician may be used as a newsreader, interviewer or reporter in any **news programmes** unless, exceptionally, it is editorially justified. In that case, the political allegiance of that person must be made clear to the audience*². Ofcom Guidance goes on to say: *The use of politicians as reporters or presenters in news programmes could be problematic in the context of the requirement for due impartiality. A politician is likely to include an elected representative e.g. an MP or councillor, a candidate, an applicant to be a candidate or a prospective candidate..., an employee of a political party or an activist*³.

Strange anomalies in regulation have appeared as more MPs present programmes. Daily news magazine programmes have to be impartial, but weekly news discussion programmes do not; this means that MPs can present weekly news discussion programmes but not daily news magazine programmes. Why is a distinction made between these? VLV does not believe that Ofcom should be allowed to define which content should be in scope for impartiality regulation in this way without there being public debate and parliamentary scrutiny. This is too important an aspect of regulation to left for a regulator to decide alone.

Recommendation 3: Better define ‘appropriate’ impartiality in Ofcom Guidance

What does *impartiality adequate or appropriate to the subject* really mean in Broadcasting Code Rule 5.1: *News, in whatever form, must be reported with due accuracy and presented with due impartiality*.

Again, Ofcom is responsible for deciding what is ‘adequate’ or ‘appropriate’. Could these be better defined in legislation? Does Ofcom have too much power to decide which content should be duly impartial and accurate?

Recommendation 4: Reassess allowing due impartiality across a service or series

Under current legislation impartiality can be delivered across *a series of programmes taken as a whole and all the programmes included in the service in question, taken as a whole*⁴. This is a problem because viewers clearly don’t always watch a whole series of programmes, even if they are linked, or watch *all the programmes included in the service in question*.

VLV is concerned that it should be taken into account that audiences switch between channels and services, not often consuming hours of the same channel’s output. This means that it is unrealistic to allow impartiality to be assessed across *all the programmes included in the service in question*.

VLV believes this provision should be revised.

¹ Communications Act – Section 319(8)

² Broadcasting Code - Clause 5.3

³ Ofcom Broadcasting Code Guidance – Clause 1.20

⁴ Communications Act 2003 Section 320(4).