

## **Voice of the Listener & Viewer—written evidence (FON0015)**

### **House of Lords Communications and Digital Select Committee inquiry: The future of news: impartiality, trust and technology**

#### **Information about the VLV**

The Voice of the Listener & Viewer (VLV) is an independent, not for profit membership-based charity, free from political and sectarian affiliations. VLV supports high quality broadcasting which maintains the democratic and cultural traditions of the UK. We support the independence and integrity of the BBC and encourage work which demonstrates commitment to the principles of Public Service Broadcasting (PSB). VLV is a charitable company limited by guarantee (registered in England and Wales No 4407712 - Charity No 1152136).

#### **Executive Summary**

1. VLV considers that a healthy news ecosystem is essential to democracy.
2. VLV is concerned by the decline in public trust of the media and urge the Committee to explore how this decline can be reversed through better regulation of broadcast media.
3. VLV considers that impartiality regulation of broadcast content in the UK could be significantly improved.
4. We do not believe that current legislation provides clear definitions of which content should be impartial. We consider that the Media Bill provides an opportunity to improve and strengthen impartiality regulation.
5. We believe that Guidance on active politicians presenting programmes on news channels should be reviewed, along with other elements of Ofcom's Broadcasting Code and Guidance.

#### **Introduction**

6. VLV welcomes the opportunity to respond to this timely inquiry into issues around impartiality, trust, and the impact of tech platforms and generative AI on news media business models.
7. VLV agrees that a healthy news ecosystem is vital to our democratic society. VLV considers that impartiality, balance and accuracy should underpin all news programming; the last of these is the most important.
8. A crucial issue for broadcasters and government is that underlying public trust in news, institutions and government is declining and has been for the past two decades.<sup>1</sup> Declining trust is fuelling polarisation and democratic disengagement. Public Trust in the UK in government and

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<sup>1</sup> <https://www.edelman.com/trust/2023/trust-barometer>

politicians is also declining:<sup>2</sup> the ONS set trust at 35% in July 2022<sup>3</sup> when they last published figures and IPPR said in June 2023<sup>4</sup> that only 6% of the public have full trust in the current political system.

9. VLV has identified a number of issues which are contributing to this decline in public trust. They include:

- a. **Alternative Facts**

The idea that facts presented to the media could be untrue became more commonplace after the concept of 'alternative facts' was coined by Donald Trump's Counselor Kellyann Conway in a Meet the Press interview on January 22nd 2017. It was notable that during the debate prior to the Brexit Referendum in 2016 the veracity of statements made on live TV and in advertising were more questioned by the media, but this was mostly after the event, once the democratic process was complete and had already been undermined by misinformation. Since 2016 it has become increasingly common for statements to be made which are often impossible to challenge in a live broadcast environment but which are found to be untrue after the event. While post-broadcast analysis may demonstrate that the statements were untrue, many citizens are unaware that they have been proven to be untrue after the event.

- b. **Social Media**

More people, especially younger people, increasingly access news from feeds on Social Media; this content is not regulated for accuracy, as broadcast content is. Often it spreads misinformation and increases the potency of users' echo chambers.

- c. **Demonisation of 'Mainstream Media'**

The decline in public trust of mainstream media has been encouraged by social media platforms which benefit from the decline in 'mainstream media' consumption and also by those who disagree with the established narrative or want to present 'alternative' facts. This further undermines trust in broadcasting, institutions and the media in general.

- d. **Opinion-led journalism**

The arrival of GB News and Talk to the UK has introduced a new style to news programming in the UK. Much of the programming on these channels is opinion-led journalism and aims to attract the widest audience by being more lively, 'entertaining' and presenting more extreme views than 'traditional' UK news programming. Some have dubbed this the 'Foxification' of UK news. While this content may be more 'entertaining' than traditional news bulletins or current affairs programming, it is likely

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<sup>2</sup> <https://www.kcl.ac.uk/news/uk-has-internationally-low-confidence-in-political-institutions-police-and-press>

<sup>3</sup> <https://www.ons.gov.uk/peoplepopulationandcommunity/wellbeing/bulletins/trustinggovernmentuk/2022>

<sup>4</sup> <https://www.ippr.org/articles/talking-politics-building-support-for-democratic-reform>

to be less based on facts and more on 'feelings'; it is sometimes not accurate; and it has a tendency to increase emotional engagement and polarisation.

#### **e. Online Audio**

VLV is concerned that streamed audio, such as podcasts, are not regulated for accuracy or impartiality. While most of the podcasts which concern us would be categorised under current affairs, rather than news, we consider this an issue which needs attention and is relevant to this consultation. VLV welcomes the increased range and choice of audio content available to citizens, much of which is excellent, VLV believes that podcasting platforms should be regulated in the same way that VOD platforms are going to be regulated if the Media Bill is passed. We question why the Government intends to regulate video content but not audio. The risk of misinformation from online audio content is equally as significant as that from video content.<sup>5</sup> VLV does not believe that audiences adequately take into account that podcasts are not regulated or 'safe' in terms of accuracy. The priority should be that content is accurate rather than impartial in order to address the potential harm of misinformation. This would place a responsibility on platforms to ensuring that content is not misleading. At the very least, VLV is calling for there to be a 'health warning' at the beginning of all podcasts to highlight to audiences that this content is not regulated for accuracy.

#### **f. Large Language Models**

As highlighted in the Committee's Report *Large Language Models and Generative AI*<sup>6</sup> access to cheap AI technology is likely to allow easier means to produce misinformation which will undermine public trust further. AI creates a two-fold threat to the democratic process. One is the proliferation of deep fakes and the other is that when someone really does say something, how are citizens to determine whether it's real or not? This month Baroness Beeban Kidron delivered the Jocelyn Hay Lecture and her focus was partly on the benefits and risks of AI. She said, 'Along with the wave of awe and wonder, ChatGPT brought to town the tech bros warning that the monster they had unleashed would create misinformation at such scale that to know anything would be impossible...that the scale of decision making that the new models allowed was on course to bring down society-as-we-know-it. They were simultaneously the authors and Cassandra's of existential threat.' Baroness Kidron's full speech is available on the VLV website<sup>7</sup> and provides a fascinating insight into the AI and broadcasting landscape.

10. VLV has identified a number of trends and pressures in broadcasting which could further undermine public trust. These include:

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<sup>5</sup> <https://www.pewresearch.org/journalism/2023/04/18/podcasts-as-a-source-of-news-and-information>

<sup>6</sup> <https://publications.parliament.uk/pa/ld5804/ldselect/ldcomm/54/54.pdf>

<sup>7</sup> <https://www.vlv.org.uk/wp-content/uploads/Jocelyn-Hay-8th-Feb-final-version-of-speech-for-online.pdf>

- a) The increase in competition in the broadcasting market and reduction in income, both commercial income from advertising and public income from the TV Licence, is likely to lead to a decline in the quality of news on broadcast platforms. Broadcasters have had to make budget cuts across all their services and this includes in news provision. Increased competition from the streamers, has led to a greater need to attract audiences; this could lead to a prioritisation of more popular content in news bulletins over what is societally valuable, for example a narrower range of international news which is more expensive to produce and less popular.
  - b) As stated above, opinion-led journalism increases polarisation, generally does not present a balance of views and is sometimes factually misleading.
  - c) VLV is concerned that both Ofcom and the BBC's independence from Government are perceived to be declining. The Government's constant unfounded attacks on BBC impartiality (not to mention those by its competitors) are undermining public trust in the BBC; the controversies over Richard Sharp's relationship with the former Prime Minister and the process to appoint the BBC Chair have also undermined public trust in the independence of the BBC. Ofcom's defence of its approach to impartiality regulation has been focused on freedom of speech and the benefits of having a wider range of news outputs. This closely echoes the Government's stated goal to allow free speech and expand the range of voices on air and has led to questions about Ofcom's independence as well.
11. In 2017 Lord David Puttnam delivered the Jocelyn Hay Lecture. The full transcript of his speech is available on the VLV website and it is most instructive.<sup>8</sup>
  12. Lord Puttnam's concerns were that as the market becomes more competitive television is likely to be overly dominated by the need to entertain rather than provide accurate information, that we face a slippery slope with the broadcasting of 'alternative facts', that news is becoming entertainment and that trust in broadcasting, and the 'system' in general, is in decline.
  13. He expressed a significant concern about the decline in public trust since 2001 and said, 'We are in the trust business. Whether we like it or not, broadcasting, the media are in the trust business.... If we lose trust, we lose everything. And we're on a slippery slope away from, certainly, the democracy that all of us in this room feel is part and parcel of our heritage.'
  14. During his lecture he featured a number of clips. One was from the documentary *The Best of Enemies*,<sup>9</sup> with the premise that debates on

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<sup>8</sup> <https://www.vlv.org.uk/wp-content/uploads/Transcript-VLV-Jocelyn-Hay-Lecture-2017-Lord-Puttnam.pdf>

<sup>9</sup> <https://www.imdb.com/title/tt3518012/>

television have become a 'theatre' to entertain, rather than 'illuminate' the audience. It also raised the issue of polarisation where we no longer have a collective experience of hearing both sides of the argument and live in echo chambers.

15. He also featured a clip from *Fox and Friends* on the Fox News Channel in which it was alleged that President Obama had spied on Donald Trump. After the broadcast the Fox News Senior Judicial Analyst, Judge Napolitano, was taken off air because, as Lord Puttnam said, 'Fox have probably conceded that he's not the most reliable source in the world'. Lord Puttnam went on to say, 'the problem with this...is that if you go on YouTube and look at this clip, alongside it is all the other newsfeeds that picked up from it, all of which drop the equivocation. They move from being 'alleged' to 'fact'. So what happens is, you have this extraordinary situation where someone can make a claim - the claim has got no credibility whatsoever - but the other newsfeeds pick it up and it's fact. This is very, very dangerous. I think this is the ultimate slippery slope. So this happens to be a sort of entertainment show, *Fox & Friends*, but people look at it as a news show. So it's news, it's entertainment masquerading as news. This goes on and on.'
16. He said, 'We have reached a point this year....where unsourced rumour is more trusted than an official announcement so people are more prepared to trust something that they hear, as it were, on the grapevine than they are to trust an official announcement: so scary times'.
17. VLV focuses its response to this Call for Evidence on how it considers the regulation of impartiality in broadcasting should be improved.

**Question 4: How well is regulatory oversight working? Are any changes needed, for example: a) In the way Ofcom oversees due impartiality and the extent of its remit?**

18. VLV considers that changes need to be made to the way broadcasting impartiality regulation is designed and implemented.
19. It is clear that there is general concern about impartiality regulation and many are questioning whether the regulation of due impartiality on UK broadcast platforms is effective. In an effort to balance the free speech requirements in the European Convention on Human Rights with the Communications Act, VLV considers there is a risk that Ofcom is being overly lenient in its approach.
20. Concern has increased especially during the past 18 months in response to the increasing number of news channel programmes presented by sitting MPs who are able to interview members of their own party. This issue has been discussed at recent VLV conferences in depth;<sup>10</sup> at its Spring Conference 2023 there was a significant consensus that impartiality regulation is currently being severely challenged.

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<sup>10</sup> VLV Spring Conference May 11<sup>th</sup> 2023 - [https://www.youtube.com/watch?v=OKh1nPWC3\\_A&t=90s](https://www.youtube.com/watch?v=OKh1nPWC3_A&t=90s)

21. While Ofcom or the BBC might be criticised for a perceived lack of impartiality on broadcast channels, it appears to VLV that what people don't do is blame the underlying legislation or Broadcasting Code for the problems we are seeing. It seems to us that perhaps this should be the focus.

### **Where do the problems lie with impartiality regulation?**

- a) VLV considers that one of the underlying problems of current impartiality regulation is the lack of statutory definition of the content which should be impartial in the Communications Act 2003.
- b) As a result of the vagueness of primary legislation Ofcom has the power to decide which content should be impartial. VLV considers that Parliament should have this responsibility rather than Ofcom.
- c) Impartiality regulations are embedded in Ofcom's Broadcasting Code and Guidance which include a number of, what appear to VLV to be, inexplicable rules and guidance which is too vague and opaque to be effective.
- d) VLV has long considered that there is a danger that when impartiality is measured over the period of the day or week it is not effective. While this allows greater flexibility for broadcasters, more often than not audiences do not listen or watch for hours on end which means they are not exposed to a range of views.
- e) VLV is concerned that as opinion-led journalism is increasingly normalised on UK channels this will undermine news standards – both accuracy and impartiality – and this is undermining the UK's democratic processes, as predicted by Lord Puttnam.
- f) This shift towards opinion-led journalism is likely to change audience expectations of PSB journalism in general.
- g) The underlying problem is that in a competitive broadcasting market there is a massive financial incentive in providing partial news which is more 'entertaining'.

### **The Definition of News**

22. One of the weaknesses of current regulation is the lack of statutory definition of the content which should be covered by it in the Communications Act 2003.
23. Section 319(8) in the Communications Act 2003 defines "*news*" as *news in whatever form it is included in a service*.<sup>11</sup> VLV would expect this to mean that all content provided by a 'news' channel, such as BBC News, GB News or Sky News, should be governed by impartiality rules. However, Ofcom,

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<sup>11</sup> *The Communications Act 2003, Section 319(8)*

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*'.<sup>12</sup> 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*'. VLV questions how Ofcom came to this conclusion when the Communications Act says "'news" means news in whatever form it is included in a service'?

24. VLV considers that Ofcom's definition of what should be impartial should be reviewed. We believe impartiality regulation should apply equally to weekly news discussion programmes as well as daily news magazine programmes and question why these are treated differently.

### **Appropriate or Adequate Impartiality**

25. VLV questions what *impartiality adequate or appropriate to the subject*<sup>13</sup> means in Rule 5.1 of the Broadcasting Code. Who should decide what is adequate or appropriate? This needs to be more accurately defined.

### **Active Politicians presenting programmes**

26. Section 5.3 of 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.*
27. 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.*<sup>14</sup>
28. The problem here, again, is the definition of News programmes. There are strange anomalies in the Broadcasting Code such as the fact that 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. VLV questions why a distinction is made between these two types of programme.

### **Impartiality regulation across all programmes in a service**

29. VLV has long been concerned by the provision in the Communications Act 2003 which rules that due impartiality should be assessed across *all the programmes included in the service in question*<sup>15</sup> so that impartiality can

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<sup>12</sup> *Ofcom Broadcasting Code Guidance Notes, Section 5, para 1.8*

<sup>13</sup> *Ofcom Broadcasting Code Guidance Notes, Section 5, para 1.10*

<sup>14</sup> *Ofcom Broadcasting Code Guidance Notes, Section 5, para 1.20*

<sup>15</sup> *The Communications Act 2003, Section 320(4)*

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.*

30. VLV considers this provision is problematic because viewers and listeners often don't consume a whole series of programmes, even if they are linked, and, more often than not, they do not watch *all the programmes included in the service in question*. This means they may well be exposed to highly partial content without being exposed to other content which balances it.

### **Audience Expectations**

31. Ofcom says that the *likely expectation of the audience*<sup>16</sup> should be taken into account when assessing whether a programme is duly impartial. We question firstly how Ofcom knows what the *likely expectation of the audience* is and, secondly, why this should influence whether a programme is duly impartial. There is a lack of transparency and clarity here.
32. VLV would suggest that the audience expectation of a 'news' channel might be that it is regulated as news output, however Ofcom disagrees with our expectation – on what basis?

### **Comments on the existing legislative system**

33. VLV has held a number of conference sessions on impartiality regulation in recent years.
34. At the VLV Spring Conference on 11 May 2023 we held a panel session chaired by broadcaster Roger Bolton. Adam Baxter, Ofcom's Director of Broadcasting Standards, Professor Steven Barnett of the University of Westminster and Sue English, former Head of Political Programmes at the BBC and Chair of The Disasters Emergency Committee all spoke.<sup>17</sup>
35. VLV notes and agrees with Sue English's pithy statement during this session that 'the idea...that two politicians can interview a senior cabinet minister of the same party and you can call that anything like impartial is just for the birds'.<sup>18</sup>
36. Stewart Purvis, former Chief Executive and Editor in Chief of ITN and former Partner for Content and Standards at Ofcom, speaking from the audience suggested<sup>19</sup> that 'there has been a re-interpretation of the rules [by Ofcom] about alternative views' partly because of a 'wish in government to broaden the range of broadcasters in the country'.

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<sup>16</sup> *Ofcom Broadcasting Code Guidance Notes*, Section 5, para 1.4

<sup>17</sup> <https://www.vlv.org.uk/recent-events/vlv-spring-conference-2023-2/>

<sup>18</sup> Sue English speaking at the VLV Conference on 11 May 2023 - [https://www.youtube.com/watch?v=OKh1nPWC3\\_A&t=90s](https://www.youtube.com/watch?v=OKh1nPWC3_A&t=90s)

<sup>19</sup> Stewart Purvis speaking at the VLV Spring Conference May 11<sup>th</sup> 2023 - [https://www.youtube.com/watch?v=OKh1nPWC3\\_A&t=90s](https://www.youtube.com/watch?v=OKh1nPWC3_A&t=90s)



37. In 2021 we ran a similar panel at our Spring Conference where the speakers were Professor Stephen Cushion of Cardiff University, Lord Tom McNally, Broadcaster Julia Hartley Brewer, Rachel Corp, Editor of ITV News, and Stewart Purvis CBE, former Editor in Chief of ITN. Notes of what they said are available on the VLV website.<sup>20</sup>
38. Below are some of the solutions they recommended between them:
- A separation between fact and comment on all channels (as in press – opinion and news) would be a good idea in broadcasting.
  - We need journalists to listen to people across country and reflect their views on air. Diversity across newsrooms is important to include race, geography.
  - Accuracy must be top of minds. But there is a question about which facts you choose. Are they presented in context?
  - News is slipping into entertainment. Once you allow news to become entertainment then standards slip.
  - Opinion and comment attract audiences but news is what news providers should concentrate on.
  - Central is keeping to your standards in broadcasting. Are we being lured down a slippery slope?
  - Eye-witness journalism and putting people at the heart of stories is key.
  - We should use the same standards online as on TV/radio.
  - Informed impartial opinion of expert journalists must be allowed.
  - The big question is which content is defined as 'news programmes'? Ofcom needs to ensure that impartiality is maintained in news programmes which are more opinionated than news 'bulletins'.
  - A range of different agendas in news is beneficial.
  - We need to avoid the slippery slope of allowing less impartial news programming because people get used to it being less impartial and therefore it is justified.
  - It is very difficult to measure impartiality but we must research this.
  - There are limits to what Ofcom can do. The boundaries are too relaxed.

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<https://www.vlv.org.uk/wp-content/uploads/Notes-from-Impartiality-Session-at-the-VLV-Spring-Conference-2021.pdf>

## **5. Are there any actions the Government should take to address concerns around due impartiality, trust, and the influence of technology platforms?**

- a) Are changes needed to the Media Bill?**
- b) Are changes needed to the way the Government addresses mis- and dis-information?**

39. VLV considers that there is an opportunity in the Media Bill to strengthen impartiality regulation. This was highlighted by Lord McNally at the VLV Spring Conference on 11 May 2023. He said that in the context of the Media Bill 'it is going to be a very important battle... there is an attempt to broaden the concept of truth and accuracy ... Deregulation in the United States has cheapened their broadcasting and democracy in a dangerous way. The way we get this bill through is going to be a real test in how we strengthen our democracy in the years ahead. I think impartiality requirements should be strengthened.'<sup>21</sup>
40. VLV has set out its concerns about the vagueness of existing primary legislation above.
41. We have also set out a summary of the legislation and Ofcom Code and Guidance which underpins impartiality regulation in an annex which is available at <https://www.vlv.org.uk/wp-content/uploads/Legislative-background-to-impartiality-regulation-VLV-May-2023.pdf>.
42. Our recommendations on how the Media Bill could strengthen impartiality regulation are set out below.

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

43. VLV recommends that the Media Bill should more clearly define exactly which output should be subject to due impartiality rules and not leave this to Ofcom's discretion. Currently Ofcom is tasked with deciding which output due impartiality regulation should apply to and 'news' is very loosely defined in the Communications Act 2003. Ofcom has decided that different rules should apply to different output, regardless of whether it is on a news channel. This means news bulletins and news magazine programmes are treated differently from current affairs programmes, weekly discussion programmes and other output. VLV does not believe that Ofcom should be allowed to define which content should be in scope for impartiality regulation without there being public debate and parliamentary scrutiny. This is too important an aspect of regulation to left for a regulator to decide alone.

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<sup>21</sup> Lord McNally speaking at the VLV Spring Conference, 11 May 2023, London.

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

44. VLV considers that Ofcom Guidance should more clearly and specifically set out when politicians can present programmes and how impartiality should be maintained when they do so. For example, should a politician be allowed to interview a colleague from their own political party?

**Recommendation 3: Better define 'appropriate' impartiality in Ofcom Guidance**

45. As stated above, VLV questions what *impartiality adequate or appropriate to the subject* means in Broadcasting Code Rule 5.1. Ofcom is responsible for deciding what is 'adequate' or 'appropriate'. We question whether this could be better defined in legislation or the Broadcasting Code.

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

46. 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. 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. We recommend that the Media Bill should amend the 2003 Communications Act so that impartiality is assessed within individual programmes and not allowed *across all the programmes in the service in question*.

*February 2024*