

Stewart Purvis CBE and Chris Banatvala—written evidence (FON0072)

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

Introduction

This evidence is provided to the House of Lords Communications and Digital Committee (“the Committee”) inquiry into ‘The future of news: impartiality, trust and technology’.

It is submitted by Stewart Purvis and Chris Banatvala both former senior executives at Ofcom and television journalists (short CVs are supplied at the end of this submission).

Drawing on our expertise in news and regulation, we are concentrating on addressing the Committee’s 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?

UK law requires every television channel and radio station to preserve due impartiality in “*matters of (major) political or industrial controversy and (major) matters relating to current public policy*”. Yet during the next General Election politicians and political party officials will be allowed to present programmes throughout the campaign unless they are candidates standing for election. They will also be allowed to interview fellow politicians from the same party.

In our evidence we try to explain how this has come about and why we think it is wrong.

Background to Ofcom’s regulatory oversight.

Ofcom as the statutory regulator for the communication industry is obliged to ensure that all broadcasters who hold an Ofcom licence abide by the due impartiality requirements set out in Communications Act 2003 (“2003 Act”).

This requires, under section 320(1) and 320(6) of the 2003 Act, that when covering:

matters of political or industrial controversy and matters relating to current public policy

and

matters of major political or industrial controversy and major matters relating to current public policy

due impartiality must be preserved.

This requirement for due impartiality applies to all programmes whether they are news, current affairs, documentaries or any other genre.

Section 319(2)(c) of 2003 Act requires that:

news, in whatever form, is presented with due impartiality.

It is therefore clear from the legislation, which is transposed into Ofcom's Broadcasting Code, ("the Code"), that Ofcom must ensure that its broadcast licensees adhere to the due impartiality requirements with respect to news (in whatever form) as well as matters of (major) political or industrial controversy and (major) matters relating to current public policy (together referred to as "controversial matters").

This obligation on UK broadcasters is the cornerstone upon which the British public's trust in regulated broadcast journalism has been built, a trust which far exceeds that of any other media.

The recent rise of what has been called 'opinionated TV' channels has stretched Ofcom's interpretation of what 'due impartiality' means to its very limit.

The entire schedule of one channel is presented by supporters from only one side of the political divide who give personal political views which are often not challenged or balanced by alternative views.¹ In addition, within the programmes those presenters, who are members of political parties, sometimes interview members of their own party.

When these programmes first began to appear on GB News and Talk TV, Ofcom announced in June 2023 that it would conduct research into public attitudes towards politicians presenting programmes. Ofcom says,

"We commissioned the study...in light of the rise in the number of programmes presented by politicians, the keen public interest in this issue, and to build our evidence to inform our work".²

Now Ofcom has published that research, it claims that *"overall, the audience feedback supports the broad design of existing due impartiality rules under the Broadcasting Code".³*

After studying the detail of the Ofcom research, we believe the audience does indeed support the "broad design" of the Code but there is no evidence that it supports Ofcom's current interpretation allowing politicians from only one side of the divide to present programmes about politics and controversial matters. In fact, the truth is almost the opposite.

¹ See <https://www.gbnews.com/shows/> which includes programmes presented by Jacob Rees-Mogg; Nigel Farage; Michael Portillo; Michelle Dewberry; Camilla Tominey. Lee Anderson; Andrew Pierce, Martin Daubney, Patrick Chrisys.

² <https://www.ofcom.org.uk/research-and-data/tv-radio-and-on-demand/audience-attitudes-towards-politicians-presenting-programmes-on-television-and-radio>

³ Ofcom news release <https://www.ofcom.org.uk/news-centre/2024/broadcasters-put-on-notice-to-maintain-due-impartiality-ahead-of-general-election>

The Ofcom research (along with its redrafted guidance) was published last month and therefore we welcome the opportunity to provide our observations on it to the Committee. In this evidence we set out why, in response to Question 4 of the Committee's inquiry, we consider that regulatory oversight is not working well in one area which will be particularly important during the forthcoming General Election campaign.

We believe that at the heart of the current controversy are two separate but sometimes connected issues.

- 1) What programmes are serving politicians, especially current MPs, allowed to present on television?
- 2) When presenters, be they politicians or anybody else, express strong opinions on topical matters how is due impartiality achieved?

Nothing in the current law or the Code sets out what a serving politician can present, only what they cannot. Rule 5.3 of the Code states:

"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."

At the heart of Ofcom's current interpretation of its own Code is the belief that Rule 5.3 should be seen to apply only to 'news bulletins' not to 'current affairs' content. This is despite there being no reference of a genre called 'current affairs' anywhere in the relevant sections of the Code. Ofcom believes that politicians cannot present 'news programmes' but they can present 'current affairs'.

It was therefore important to test whether viewers could tell the difference between the two genres. This was an issue put to the Ofcom Chairman, Lord Grade, while the research was underway and focus groups were being held around the country. On 29 November 2023, Lord Grade spoke to the Voice of the Listener and Viewer conference in London and then answered questions from the BBC's Culture and Media Editor Katie Razzall.⁴

Katie Razzall: *'The confusion about what counts as news and what doesn't count as news, what's current affairs.'*

Lord Grade: *I don't think it's very difficult what is a news programme and a current affairs programme, I don't think that's difficult at all, we all know the difference between Panorama and News at Ten.*

Katie Razzall: *'There are new genres making it confusing.'*

Lord Grade: *It's not confusing, not confusing at all."*

⁴ View <https://www.youtube.com/watch?v=zvy4-SzFAvk>

When Ofcom published the research last month it proved that the opposite of what Lord Grade had said was true. (See section “Ofcom research into politicians as presenters” below).

Regulatory Oversight

The Committee has identified that there are growing concerns over the challenges around due impartiality, most notably from increasingly fragmented media environment and opinionated online content. However, challenges to the UK impartiality regime are not new. Ever since a UK broadcast regulator licensed services from abroad originating from countries which adopt different approaches to impartiality, the regulator has had to deal with these issues. For instance, the Independent Television Commission licensed Fox News in 2001 and found programmes in breach of due impartiality.⁵ It also suspended Med TV’s licence⁶ for impartiality breaches before revoking its licence. More recently, Ofcom has had to deal with issues with channels such as RT⁷ (formally *Russia Today*) and CGTN⁸ (*China Global Television Network*) imposing fines of £125,000 and £200,000 respectively for breaches of the impartiality rules.

However, Ofcom is now facing challenges from UK-established services (in particular, television licensees)⁹ covering primarily UK domestic controversial matters. Many within the industry and media commentators consider Ofcom is not upholding the due impartiality regime as stringently for these channels as it is for other services such as BBC, ITV News, Sky News. We consider that it has led to a two-tier impartiality system where public service broadcasters and some others are held to a higher standard of impartiality.

There are examples of content, where we, as former journalists and content regulators, consider that Ofcom should have launched an investigation or recorded breaches of the Code. In addition, there is industry concern that where Ofcom decides not to uphold complaints or investigate a programme, it does not in some cases publish its reasons. This is despite the issue being a matter of public interest where e.g. Ofcom’s decision would set a precedent, the programme received a number of complaints or there is general media coverage.

For example, *The Neil Oliver Show* on GB News made what many believed were misleading claims over ‘turbo cancer’¹⁰ but Ofcom decided not to pursue the complaints. In the same programme, the presenter gave his views on numerous controversial issues such as NATO expansion, immigration and the current Israeli/Palestinian conflict without any alternative views. Another programme allegedly spread misinformation on climate change¹¹ and this was not

⁵ See <https://www.theguardian.com/media/2003/may/08/iraqandthemediarupertmurdoch>

⁶ See <http://news.bbc.co.uk/1/hi/world/monitoring/326883.stm>

⁷ See <https://www.bbc.co.uk/news/entertainment-arts-49126466>

⁸ https://www.ofcom.org.uk/data/assets/pdf_file/0013/215221/sanction-decision-star-china-media-limited-due-impartiality.pdf

⁹ It is of note that the issue primarily, though not exclusively, concerns television services rather than radio. Radio has a tradition of using listeners in call-in programmes to appropriately challenge presenters.

¹⁰ <https://www.thetimes.co.uk/article/gb-news-presenter-neil-oliver-cleared-by-ofcom-over-turbo-cancer-claims-8tt5087s3> (paywall)

¹¹ <https://www.desmog.com/2024/05/07/ofcom-refuses-investigate-gb-news-climate-conspiracy-theories->

investigated. There were 471 complaints (about misleading material) on *Farage* (28 February 2024) and 412 complaints about *GBN Tonight* (1 November 2023) on due impartiality. Ofcom published no findings about these programmes. It should be noted, however, that the number of complaints is in no way an indication of whether a breach of the Code has occurred, but it is an indication of public concern about a programme.

It is clear from both the legislation and the Code that there is a requirement that Ofcom must ensure all licensees (radio and television) adhere to the due impartiality requirements in news (in whatever form) and when covering controversial matters. This is irrespective of what service the content is transmitted on or the size of the audience. This approach has been upheld in the courts.¹²

Politicians presenting current affairs programmes

There has been much debate about whether active politicians (such as sitting MPs, and officials of political parties) should be permitted to present broadcast programmes. There are, understandably, concerns that it is effectively impossible for a programme to achieve due impartiality when presented by an active politician aligned to a political party.

The Code currently prohibits a “politician” from being a newsreaders, interviewer or reporter in a news programme.¹³ The Code is silent on all other programmes which, by implication, means that politicians can present all other programmes including what Ofcom refers to as current affairs. However, at the time of an election, candidates are not permitted to be presenters or interviewers in any programme.¹⁴

As a result, some Ofcom licensees have taken advantage of the Code’s flexibility in this area and legislators (active politicians) who currently sit in Parliament as well as senior officials of political parties present programmes that deal with controversial matters.

When the Code was originally drafted and consulted on (2004) and then published (2005), it was not envisaged by Ofcom that news channels would use politicians, from the same party or political wing to present programmes ‘day in, day out’. Ofcom’s view was that it would be extremely difficult for a broadcaster to maintain due impartiality under such circumstances. As a consequence, it was considered not necessary to specifically prohibit such activity as the general due impartiality rules would capture such behaviour.

[neil-oliver-show/](#)

¹² See for examples <https://www.judiciary.uk/wp-content/uploads/2020/03/RT-v-Ofcom-approved-judgment-27.3.20.pdf>

¹³ Rule 5.3 of the Code states, “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.”

¹⁴ Rule 6.6 of the Code states “Candidates in UK elections, and representatives of permitted participants in UK referendums, must not act as news presenters, interviewers or presenters of any type of programme during the election period. BBC ODPS are not required to remove archive content for the election or referendum period.”

In its published findings and within Ofcom’s guidance that accompanies the Code,¹⁵ Ofcom refers to the fact that politicians can present current affairs programme. In fact, many of Ofcom’s decisions rest on the fine demarcation between what is news and what is current affairs.¹⁶ However, in terms of the requirement for broadcasters to maintain due impartiality, there is no reference in the 2003 Act to current affairs. The legislation simply requires that news (in whatever form) and controversial matters are treated with due impartiality. Contrary to Ofcom’s interpretation and public statements, the legislation does not state that “*the requirements of due impartiality are [the] highest for news*”.¹⁷ The statutory framework requires news and controversial matters to be held to the same level of impartiality requirements. Ofcom’s distinction between the two genres and hence the allowing politicians to present programmes dealing with controversial matters is one that is self-created.

Politicians as presenters at election time

The requirement for due impartiality is never greater than at the time of elections and, in fact, there are rules originating from the Representations of the Peoples Act 1983 which provides specific restrictions during the election period set out in Section Six of the Code.

Following a series of investigations into GB News and research Ofcom commissioned (see below), it has recently published updated guidance (see footnote 15) on the issue of politicians presenting programmes including at election time.

In March 2024, we wrote an article in *The Guardian*¹⁸ outlining our concerns about the way due impartiality was being regulated by Ofcom. We asked three questions, which we now consider have been answered. The answers may raise concerns for the Committee.

Question 1:

Is Ofcom going to allow senior party officials to present election programmes as long as they are not actual candidates?

Yes, under Ofcom’s current interpretation of their rules the Honorary President of the Reform UK Party, Nigel Farage, who is also a director and co-owner of the party, will be able to present his weeknight prime time programme on GB News, unless he stands as a candidate. He will be able to interview e.g. Richard Tice the party leader. He will be able to do this throughout the election campaign – even though Reform UK says it will stand around 600 candidates.

¹⁵ Ofcom publishes, non-binding and non-statutory guidance to the Code to help broadcasters ensure compliance. It is available at https://www.ofcom.org.uk/_data/assets/pdf_file/0023/283622/broadcast-code-guidance-section-5.pdf (Section Five: Due impartiality and due accuracy)

https://www.ofcom.org.uk/_data/assets/pdf_file/0034/99178/broadcast-code-guidance-section-6-march-2017.pdf (Section Six: Elections and Referendums)

¹⁶ See, for example, https://www.ofcom.org.uk/_data/assets/pdf_file/0029/280838/GB-News-Decisions-Five-Broadcast-Standards-Decisions.pdf

¹⁷ See https://www.ofcom.org.uk/_data/assets/pdf_file/0029/280838/GB-News-Decisions-Five-Broadcast-Standards-Decisions.pdf page 6

¹⁸ <https://www.theguardian.com/commentisfree/2024/mar/13/ofcom-gb-news-media-regulator>

Question 2

Could a channel host party loyalists from only one side, delivering nightly unchallenged polemics on each day's campaign news?

Yes, unless they are candidates. And party officials, assembly members and political activists will all be allowed to interview representatives of their own party every day of the campaign. Of course, Ofcom would require them to maintain 'due impartiality'.

Question 3

Will channels with poor compliance records and fewer viewers than the public service broadcasters be given greater flexibility in achieving "due impartiality" on the basis of what Ofcom calls "audience expectations"?

It is unknown how Ofcom will take into account "audience expectation" at the time of an election. But it was Ofcom's CEO, Dame Melanie Dawes, who first articulated Ofcom's more flexible approach to due impartiality, stating,

"the standard for someone like the BBC, which reaches still 70 per cent of the TV viewing audience, [for] the news is a different one from that of a channel that has an audience of maybe four or five per cent of the viewing public. We expect different things. And I think that's appropriate."¹⁹

She added that the public service broadcasters and Sky News should continue to be "scrupulous" in their pursuit of impartiality, because of their "high levels of trust" among viewers. However, "there are other channels that can present the news from a particular perspective" as long as they present a "sufficient range of views" across their programmes "rather than just one single view".

Ofcom research into politicians as presenters

Ofcom commissioned research into the attitudes of the public towards politicians presenting television and radio programmes.²⁰

The research was carried out by Ipsos who organised online focus groups between 16 August and 11 October 2023.

It is reasonable to assume that Lord Grade had not seen any early feedback when he spoke on 29 November because it would have told him his assumptions were wrong. As previously referenced, speaking to the Voice of the Listener and Viewer conference he confidently predicted that television and radio audiences know the difference between news and current affairs.²¹

When the research was eventually published a full six months on from October 2023 in April 2024 Ipsos's opening headline in their Executive Summary was,

¹⁹ <https://inews.co.uk/news/media/gb-news-gets-away-more-bbc-ofcom-boss-2938731>

²⁰ The full research can be found at https://www.ofcom.org.uk/_data/assets/pdf_file/0026/283625/Audience-attitudes-towards-politicians-presenting-on-TV-and-radio-report.pdf

²¹ See <https://www.youtube.com/watch?v=zvy4-SzFAvk>

"Participants thought they could easily distinguish between news and current affairs programmes in principle but struggled to consistently do so in practice."

The core of the confusion was the visual presentation. Among the video clips which the focus groups were shown, there were four from GB News including *Farage* and *Jacob Rees-Mogg's State of the Nation*. Ofcom regards these as 'current affairs' but the focus groups were confused because these programmes had visual elements which they regarded as 'news': *'rolling banners, presenters sitting behind a desk, a branded backdrop, and a ticker being visible across the screen with information about breaking news stories'*. The focus groups had associated current affairs content *"with a more relaxed presentation, which could include an audience, a panel or guests sitting on sofas"*.

Ipsos observed:

"...when asked to identify whether example clips were news or current affairs, the similarities in the topic and visual presentation sometimes led to confusion. This was particularly when participants felt programmes contained both news and non-news (i.e. current affairs) content".

It is therefore clear that the evidence suggests that while viewers think they know the difference in practice they do not.

On the specific and crucial question on what did the research sample think of the politicians presenting 'current affairs' programmes, Ipsos is absolutely clear:

"The most prevalent opinion held among participants was feeling uncomfortable with politicians presenting current affairs content."

"Participants were concerned that politicians presenting current affairs content could promote an agenda and mislead audiences who might not be able to recognise politicians."

But did the viewers think the rules should allow politicians to present these programmes?

"Although there was concern about politicians presenting current affairs content, there was no consensus for preventing them from doing so."

"...not everyone in this group thought they should be prevented from doing so."

Given that among the focus groups there were regular viewers of the programmes they were discussing, it is perhaps not surprising that *"not everyone"* wanted them stopped.

When an Ofcom executive, Cristina Nicolotti Squires appeared on BBC Radio 4's *Media Show* she said:

"When it came to current affairs they didn't particularly like politicians presenting it but they didn't want it banned".

So "not everyone", in Ipsos's words, wanted politicians prevented from presenting but Ofcom prefers to leave no room for doubt: *"they didn't want it banned"*.

The overall significance of the Ofcom research is that the basic premise underlying Lord Grade's view, and it is fair to assume Ofcom's current policy, is flawed. Viewers cannot tell the difference between what Ofcom defines as acceptable and unacceptable in terms of politicians presenting programmes.

Furthermore, what the groups were not asked is what they thought of a broadcaster using presenters almost exclusively from the same political party or political wing.

It is the case, that the line between news and current affairs is blurred. It is an artificial distinction that has effectively been created for regulatory purposes. It is well-established that for example, BBC 2 *Newsnight*, Channel 4 *News* and BBC Radio 4 *Today* are hybrid programmes and contain elements of both news and current affairs. This is confirmed by Dame Melainie Dawes refusal to say whether Radio 4's *Today* could have politicians presenting the programme.²² But would the audience be content to see politicians present the "current affairs" elements of these programmes?

Conclusions & Recommendations

Currently, the legislation requires all television and radio broadcasters, who hold an Ofcom licence, to maintain due impartiality in news (in whatever form) and on controversial matters. It is Ofcom's statutory duty to ensure that broadcasters comply with these requirements.

If there is a view that the regulation of impartiality for broadcasting should evolve or be adapted because of technological developments or the ever-evolving media environment, then this is a matter for Parliament. This should follow the usual standards of due process of, for example, green and white papers, a full public consultation, a draft bill and proper parliamentary scrutiny.

Parliament should ensure that Ofcom is fulfilling its statutory duty so that broadcasters present news with due impartiality and preserve due impartiality on controversial matters in all non-news programmes (including current affairs)

We consider that Ofcom's research on the "Audience attitudes towards politicians presenting programmes on television and radio" is a helpful contribution to the debate but is in fact the beginning of that debate and not the end. It is evident from the (albeit limited) research conducted by Ofcom that there is *"common concern about politicians presenting current affairs content"*.

²² Dame Melainie Dawes interview on Radio 4 *Today* on 24 April 2024

Ofcom should therefore launch a full public consultation on whether, and if so, how politicians (and other individuals intrinsically linked with political parties) should present programmes.

It appears that Ofcom considers that different levels of due impartiality apply to news and controversial matters in non-news programmes.

Parliament should consider amending section 319(2)(c) of the 2003 Act to make it clear that the same level of due impartiality applies to current affairs programmes (which deal with controversial matters) as news.

Stewart Purvis CBE was formally a BBC news trainee, Editor of Channel Four News, Editor-in-Chief and Chief Executive of Independent Television News, Editor-in-Chief of Independent Radio News, an Executive Director of LBC, President of EuroNews, Visiting Professor at Oxford University, Professor of Television Journalism at City University of London, Ofcom Partner for Content and Standards, Chair of the UK Government's Working Party on Media Literacy, adviser on BBC issues to the Lords Committee on Communications and non-executive director of Channel Four.

Chris Banatvala formally the senior political producer on Channel Four News, and then founding Director of Standards and Content Board member at Ofcom. Independent expert member of the Sky News Board. Channel 4's Online Independent Complaints Reviewer. Advises broadcasters, tech companies and internal governments and regulators. Independent panel member of BBC Board (Serota) Review following the Bashir/Panorama controversy. Reviews for broadcasters including impartiality for BBC Charter renewal and inquiry into BBC 1 Naga Munchetty/Breakfast complaint.

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