

Who will stiffen Ofcom resolve?

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Can the Government act on impartiality?

Steve Barnett and Julian Petley

Last October, Ofcom published its new guidelines on politicians presenting news. This followed a High Court judgement in 2024, in which GB News had successfully challenged Ofcom rulings that two shows hosted by Sir Jacob Rees-Mogg in 2023 breached the impartiality clauses of its Broadcasting Code. The court held that Ofcom had misapplied its rule stating that politicians (Rees-Mogg was still an MP at the time) could not present news programmes, on the grounds that the relevant broadcasts were “current affairs” rather than news.

Ofcom launched a consultation in the wake of that judgement, with the recommendation that the relevant rule should be amended “to make clear that no politician may be used as a newsreader, news interviewer or news reporter **in any type** of programme” (their emphasis). As we have argued in these pages before, Ofcom’s attempted distinction between news and current affairs – on a dedicated news channel – was absurd and clearly contrary to Parliament’s intentions in the 2003 Communications Act. In light of the court ruling, however, they were obliged to clarify their position.

Their new guidelines in fact did precisely the opposite. Clearly spooked by the level of hostility to their proposed “clarification” from all sides of the political spectrum (as well as from GB News itself), Ofcom concluded that they were not going to change their Broadcasting Code after all. Instead, they provided more detailed “guidance” on the relevant rules which would apply in those cases when politicians *did* present news. They also extended the definition of “politician” to include members of the

House of Lords and representatives of political parties, an ill-defined group whose inclusion is unlikely to make the slightest difference.

The result is yet further loosening of an impartiality regime that has already been stretched well beyond Parliament's original intention. Writing on LinkedIn, former Ofcom Director of Standards Chris Banatvala concluded: "For the first time ever, Ofcom seems to be allowing politicians to present 'news, in whatever form' within non-news programmes but will then consider a number of factors before deciding whether the content is impartial".

Veteran commentator Ray Snoddy was more direct, describing it as a major win in particular for Nigel Farage: "It gives him presence, visibility and an aura of normality when he is anything but normal". Referring to the considerable subsidies being funnelled to Farage courtesy of the still heavily loss-making channel, Snoddy rightly concluded that these are ultimately "matters for Parliament and the Culture Secretary if she really believes that it is completely unacceptable for serving politicians, and party leaders in particular, to present programmes on news channels".

As it happens, even before Ofcom had delivered its ambiguous verdict, the Culture Secretary Lisa Nandy had given notice that the Government was taking a close interest in this matter. In evidence to the Culture select committee last September, she stated that while the BBC is "rightly held to the highest of standards ... there has been a fracturing of the news media and there are different standards being observed in other places". Certain channels were blurring the line between political polemic and news, with serious consequences for viewers' understanding of the world, and this was "something that this Government and I feel very strongly about".

She said the Government strongly supported what she called Ofcom's consultation on "tightening the rules around politicians presenting news programmes and news in any format", adding that "we will look closely at what Ofcom presents to us, but it is an area in which we intend to act". Her determination was motivated not simply by concerns raised by fellow MPs about Nigel Farage presenting news programmes on GB News but also because "the public have a right to know if what they are seeing is news and is impartial or not". If denied that right, she argued, people completely lose trust in the news, which becomes polarised and fragmented and ceases to provide that shared space and shared understanding that is the basis for democracy. "That", she argued, "is a very dangerous position for a country to be in, and the impartiality of our news is something that we intend to robustly defend".

Asked by committee member Paul Waugh about what implications any revised impartiality regulations might have for freedom of expression, Nandy responded that it was not for the Government to "stray into determining who can be featured on broadcast media and what is discussed. That is entirely a question for broadcasters", not least because a key part of their role is to subject the Government to scrutiny. "But", she concluded, "it is right and proper that as a Government we ensure that we have a proper framework so that viewers are empowered to understand if what they are seeing is news, or if what they are seeing is political polemic presented as news".

Just before Ofcom announced its decision, Nandy responded to new research published by Cardiff University. In a representative poll of 2,000 respondents carried out by YouGov, the Cardiff researchers found that 51% opposed politicians being allowed to present current affairs programmes while only 29% agreed with the (then) current rules. This directly contradicted the findings of Ofcom's much more limited

qualitative research which we analysed in *BJR* 36: 3. In response Nandy repeated her point that the public were “right to be concerned about elected politicians playing the role of news presenters”.

Following Ofcom’s statement in response to the consultation, Nandy took several opportunities to express her disappointment. In an interview with Laura Kuenssberg on 9 November, she stated that “we are looking at what we can do as a government to deal with this. We can’t continue with a situation where people can’t trust what they see”.

Astonishingly, when she repeated her disappointment in an LBC interview with Lewis Goodall, this time saying that “I am now looking at a range of options that are available to the government to try to disentangle the mess”, Ofcom posted the LBC clip with their own comment: “Our rules are clear that politicians may not present news programmes unless exceptionally justified and our recently updated guidance puts this beyond doubt.” When an under-fire regulator starts trolling the Culture Secretary, it is surely time for action.

While Nandy’s objections have not been couched in politically partisan terms, we can safely assume that she would disagree with much GB News content. But this places the government in a particularly awkward position, because any legislative initiative will inevitably look politically motivated, and would certainly be presented as such by the government’s enemies – not least the predominantly right-wing press. That said, the law as it stands in the 2003 Communications Act is perfectly clear: “news, in whatever form, must be reported with due accuracy and presented with due impartiality”; and “due impartiality must be preserved on matters of major political and industrial controversy and major matters relating to current public policy”.

As Stuart Purvis, former Ofcom Partner for Content and Standards, stated in his submission to the Ofcom consultation: “This is the statutory duty Ofcom inherited and cannot be disregarded without undermining Parliament's original intent. It is not for Ofcom but Parliament to decide whether impartiality rules should be weakened, changed or abandoned”. Furthermore, the Media Act 2024 actually *extends* existing impartiality rules to the major streaming services, so it would be both perverse and surprising if the Government weakened their application to traditional linear channels.

Despite Nandy's oft-stated enthusiasm for action, the government has yet to come up with concrete proposals. A simple solution would be to insert a clause into section 319 of the Communications Act 2003, which deals with what it calls Ofcom's standards code, stating that all serving leaders of political parties and government ministers are prevented from presenting programmes on all licensed TV and radio stations. Indeed, such a ban could also be extended to all sitting MPs, while excluding those associated with political parties (such as Labour's Ayesha Hazarika or the Conservatives' Iain Dale) to allow for those stations that apply responsible balancing criteria to their political presenters across their schedules.

So why the inertia? A charitable argument would be the absence of any obvious legislative vehicles and a government that is already struggling to complete the passage of existing Bills. A more cynical interpretation might be Starmer's reluctance to do or say anything that risks antagonising both his political enemies and powerful commercial vested interests like Sir Paul Marshall who has demonstrated his willingness to take the fight to Ofcom - and would have the Labour government clearly in his sights.

It is of course ironic that, while the multiple complaints against GB News continue to fall on Ofcom's deaf ears, the BBC is yet again under fire from the usual suspects (including GB News) about alleged breaches of the impartiality regulations.

The most serious of these was the egregious edit in the October 2024 Panorama programme, *Trump: A Second Chance?*. It was a dreadful breach of editorial standards for which the BBC rightly apologised and which subsequently resulted in the resignation of both the Director of News and the Director General. This is not the place to discuss whether those were proportional responses to a lapse in editorial judgement, but there can be no question that the BBC firestorm was triggered by a *Daily Telegraph* front page splash on 6 November last year (with multiple follow-ups) featuring allegations of institutional bias contained in a "leaked" memo by Michael Prescott, a former adviser to the BBC's Editorial Standards Committee.

The crucial issue here is that – as well as having its own editorial code – the BBC is subject to the same impartiality regime as all other licensed broadcasters. A month after the *Telegraph* "exclusive", Ofcom reported that it had received 48 complaints about the programme (by then, of course, a year past its original broadcast). Ofcom will normally open a detailed investigation only if complaints raise substantive issues under the Broadcasting Code and, at the time of writing, it has not done so.

Nevertheless, the Ofcom chair Lord Grade felt it necessary to write to the BBC chairman, Samir Shah, to "to seek assurances that Mr Prescott's concerns were being considered seriously by the BBC Board". Should Ofcom launch an investigation, it will be interesting to see whether its approach to "due impartiality" in the case of the BBC differs from its manifestly flexible attitude to GB News when implementing an identical code.

This flexibility, as we have said before in the *BJR*, stems at least partly from the regulator's libertarian approach to freedom of expression, which prioritises the freedom of the broadcaster *to* express itself over freedom *from* the potentially harmful consequences of its exercise of that freedom. And now, having been chastened by its defeat at the hands of Marshall's expensive lawyers, Ofcom will be keen not to encounter them again.

This raises profound questions about the regulator's ability to stand up on behalf of the public interest to wealth and power. If Ofcom is unable or unwilling to take on the deep pockets of Paul Marshall, how on earth can it hope to carry out its obligations under the Online Safety Act and tackle the richest man on the planet, Elon Musk? And, inequality of arms aside, how can it reconcile its enthusiasm for freedom of expression in the case of GB News with the need to constrain it in the case of X?

Moreover, Ofcom's hamstrung approach to regulation is compounded by Nandy's approach to legislation on both impartiality and reining in the tech platforms. The government's foot-dragging in both cases – ensuring proper implementation of the Communications Act and the Online Safety Act – is a discouraging symptom of a more general genuflection to the exercise of power: in one case, a wealthy ideologue backed by powerful press interests, in the other an American president intent on intimidating anyone who threatens to put their own national interest before those of the US. With both a government and a regulator cowed into inaction, it is difficult to see how those who wish to champion liberal democratic ideals of truth-telling and an informed public sphere can rely on them for support.

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