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FROM THE CHAIRMAN
& CHIEF EXECUTIVE

ANNEX I

4 October 1990

Private & Confidential

The Rt Hon Margaret Thatcher FRS MP
Prime Minister
10 Downing Street
London
SW1H

Dear Prime Minister,

Broadcasting Bill

I would like to draw your attention to certain misgivings we have at ITN about the effect of the Government amendment on impartiality, due to be discussed in the House of Lords next week during the Report Stage of the Broadcasting Bill.

The requirement for ITV to have a news service of due impartiality and balance has been in place since the 1954 Television Act.

Let me say at the outset that in ITN we have never looked upon this rule as what has sometimes been described as a dreary doctrine, which inhibits robust reporting. Rather we have taken the view that our country is not short of organs of opinion but is short of sources of good, hard, reliable information. The need to be balanced and impartial, therefore, has been a positive asset in our box office appeal to a public hungry for quality news.

Our concern is that the amendment, which requires balance on individual issues in the same programme, could be interpreted as too sweeping in its application and could lead to unworkable absurdities in regular news programmes.

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Our legal advice is that a statutory definition of this kind opens the way for ill-intentioned people to smother news programmes under an avalanche of obligatory balancing statements from any quarter, which considers itself to have a say on a given issue, regardless of its standing. Any omission could be grounds for court action.

For instance, our advice is that if a party conference were debating a major issue, such as defence, we would be obliged that night to give balancing responses to all other parties on that issue. In our Parliament Programme on Channel 4, we frequently invite an MP on Friday to look back on the week's work in Parliament. We aim to balance the selection of MPs over a period of time. But under this amendment we could be expected to include MPs from all parties within the same programme: an unworkable formula.

We are assured that this is not the Government's intention and that it is for the ITC to draw up a code which clarifies definitions. Our legal advice persists, though, that the danger remains in the wording in the Bill.

From the perspective of news programmes, we feel that no new definitions of impartiality are called for. But if the amendment is to be accepted, it is of vital importance that it is made clear in debate what is in ministers' minds: that the amendment is not intended to dislodge what plain people would currently judge to be commonsense and fair play in reporting a given issue; that there is no automatic right of response by a roll-call of interested parties within a given news programme.

We are anxious that in any future legal action over interpretation of this provision, a judge could find guidance as to the Government's intentions as regards daily news.

I would be most grateful if you would give our concerns sympathetic consideration.

*Yours ever,
David*

Sir David Nicholas

ANNEX II

Extract from a background brief prepared by the Shadow Independent Television Commission for the House of Lords Report Stage of the Broadcasting Bill

Impartiality

1. The Shadow ITC wholeheartedly accepts the provisions in Clause 6 of the bill requiring due accuracy and impartiality in news programmes (clause 6 (i) (b)) and due impartiality on the part of persons providing a service as regards matters of political or industrial controversy or relating to current public policy (clause 6 (i) (c)). We support the proposal for an ITC Code of due impartiality (clause 6 (3)) in order to give clear and unequivocal guidance to licence holders and the programme-makers working for them and agree that the requirements of the Code must be effectively enforced (clause 6 (4)). The ITC believes that the due impartiality obligations in the 1981 Act have, with rare exceptions, been fully honoured in 35 years of Independent Television. We recognise the legitimate concern to see that due impartiality is upheld but it is important to frame rules which command widespread support and understanding.
2. The Shadow ITC has considered the Government's amendments to Clause 6 and has taken legal advice on them. It welcomes the Government's re-statement that the Code will be an ITC Code. Nevertheless, the detailed provisions regarding the content of the Code in the Government's amendments in Clause 6 (4A) go further than Government had previously indicated, appear to have effects which may not have been appreciated or intended, and

raise serious doubts about its workability in practice. By definition the Code is intended to deal with controversial matters where views are likely to be strongly held and there is the risk of litigation and possibly of vexatious litigation. It is in everyone's interest that such a risk should be avoided. A Code which is not workable will bring the law into disrepute and it is unfair to ask the ITC to administer it.

3. The Shadow ITC's concerns are principally with Clause 6(4A)(a) and (4A)(f). These deal with due impartiality in respect of 'individual issues' and the prominence to be given to certain issues intended to secure due impartiality in a debate.
4. As regards 6(4A)(a) the News Office has stated that its approach does not see due impartiality as a matter which can be reduced to any rigid mechanical formulae. However, the actual words of the statute are what will count in any legal proceedings and the Shadow ITC believes, that the wording does in this subsection could expose it and its licensees to serious risk of prior restraint through injunctions or subsequent judicial review.
5. The amendment's requirements on 'individual issues' (a term which is itself open to a variety of interpretations) could have serious effects on news programmes since it would appear to require that news events on a particular day, involving for example the Prime Minister or Leader of the Opposition, would have to be balanced by comments on the same issue from the opposing party. There are many single news programmes when such balance rightly takes place within a single news programme, but

to make it an invariable requirement on every issue would be an unrealistic constraint.

6. Moreover, in a series of interviews with party leaders in either news or current affairs programmes it could have the effect of limiting the agenda in terms of issues discussed to that set by the first interview. The same problem could arise in regional programmes where local MPs are interviewed over a series. The requirement could also have the effect of preventing the inclusion in programmes reporting Parliament of segments in which MPs drawn in series from different parties give their own assessment of the week in Westminster. In each case the issues addressed would be different because of the moving Parliamentary agenda.

7. Clause 6 (4A)(f) referring to prominence could be interpreted as meaning that specific percentages of time be given to differing points of view. We believe that this is not Government's intention, but rather that the Code should allow for judgements to be made about the relative importance of different points of view. We doubt whether a Code could give detailed practical guidance in advance on the prominence to be given to differing points of view in any particular series. Any series covered by the Code would need to assess the relative importance of different points of view but consideration of this is, in the Shadow ITC's view, adequately provided for in sub-sections (b) and (c). We therefore recommend that (f) should be deleted.

8. The IBA has supported Clause 6 throughout the passage of the Bill through both Houses of Parliament. We prefer to see the matters covered by the Government's amendments left to the ITC's judgement in drawing up the Code. The Shadow ITC has undertaken to consult widely about its contents. Should the Government amendments not be withdrawn we would wish to see them further amended as follows:-

- 6(4A) The Code referred to in sub section (3) shall give guidance on the rules:-
- (a) for due impartiality be preserved on the part of the person providing a licensed service on the matters falling within sub section (1) (c)
 - (b) as stated
 - (c) as stated
 - (d) as stated
 - (e) as stated
 - (f) delete
 - (g) as stated
- 4(B) as stated

IBA Pension Scheme

40. The IBA has a long established pension scheme and the Trustees are responsible for determining the arrangements for its continuation for staff of the ITC and the Radio Authority and for IBA pensioners. The Trustees are obliged to determine, with actuarial advice, appropriate sums to transfer into the new transmission company pension scheme.
41. A government amendment seeks to give the Secretary of State power to override the Trustees' decision and the Trustees feel that it is improper to use this legislation for this purpose.

Extract from background brief prepared by the Shadow Independent Television Commission for the House of Lords Report Stage of the Broadcasting Bill

Impartiality

1. The Shadow ITC wholeheartedly accepts the provisions of clause 6 of the bill regarding the requirements for impartiality in the broadcasting of programmes (clause 6 (i) (b)) and due impartiality in the broadcasting of persons providing a service as regards matters of political or industrial controversy or of religious or racial controversy (clause 6 (i) (c)). We support the principle of impartiality and due impartiality, and we welcome the unequivocal guidance to licence holders and programme makers working for them and agree that the requirements of the Code must be effectively enforced (clause 6 (1)). We believe that the due impartiality obligations in the Code have, with rare exceptions, been fully honoured in the Independent Television. We recognise the legitimate need to see that due impartiality is upheld but it is important that rules which contrast with the Code do not have unintended effects which may not have been appreciated or intended.
2. The Shadow ITC has considered the Government's amendments to Clause 6 and has taken legal advice on them. It welcomes the Government's re-statement that the Code will be applied. Nevertheless, the detailed provisions regarding the content of the Code in the Government's amendments in Clause 6 (4) ~~appear to have~~ appear to have further than Government had previously indicated, ~~appear to have~~ effects which may not have been appreciated or intended.

raise serious doubts about its workability in practice. By definition the Code is intended to deal with controverted matters where views are likely to be strongly held and the risk of litigation and its attendant costs are high. It is in everyone's interest that such a risk should be avoided. A Code which is not workable in practice is a failure and it is unfair to ask the ITC to administer it.

3. The Shadow ITC's code of practice is intended to deal with and (4A)(f). These deal with the 'individual issues' and the ITC is intended to resolve the legal issues.

4. As regards 6(4A)(b) the Home Office has stated that its approach does not see due observance as a matter which can be reduced to any rigid mechanical formula. However, the amendments to the statute are that will lead to a legal code. The Shadow ITC believes that the working code to take out such a code could expose it and if it is necessary to restrict the restraint through individual cases.

5. The amendment's requirements are intended to be which is itself open to a variety of interpretations and serious effects on news programmes since it would appear to require that news events on a particular day, involving for example the Prime Minister or Leader of the Opposition, would have to be balanced by comments on the same issue from the opposing party. There are many single news programmes when such balance rightly takes place within a single news programme, but

to make it an invariable requirement on every issue would be an unrealistic constraint.

6. Moreover, in a series of interviews with party leaders in the news or current affairs programmes it would have the effect of limiting the agenda in terms of issues discussed to those they the first interview. The fact that the news programmes themselves require a certain amount of time to be devoted to the inclusion of particular issues would also be a factor which MPs do not seem to have taken into account in their assessment of the work which would be done. The issues addressed would be determined by the news programmes and the agenda.

7. Clause 6 (4A)(f) relating to the Government's duties as meaning that... differing points of view... Government's duties... for judgement... different points of view... detailed practical... given to differing... series covered by... importance of differing... is, in the Shadow ITC's view, adequately covered by sections (b) and (c). We therefore recommend that... be deleted.

8. The IBA has supported Clause 6 throughout the passage of the Bill through both Houses of Parliament. We are not aware of any matters covered by the Bill which have been raised in the course of judgement in drawing up the Bill. The Shadow Secretary of State for the Home Department should be consulted to see if any amendments should be made to Clause 6. Clause 6 is amended as follows:

6(4A)

(a)

(b)

(c)

(d)

(e)

(f)

4(5)

A Pension Scheme

The IRA has a long established pension scheme. The rules are set out in the IRA Act 1968. The scheme is a defined contribution scheme. Contributions are made by the IRA and the pension is paid to the member on retirement. The actual amount of the pension depends on the contributions made and the length of time the member has been in the scheme.

A government has the power to change the rules of the scheme. It is important that it does not do so in a way that is unfair to the members.