

## PRIME MINISTER

### BROADCASTING BILL: IMPARTIALITY

I have seen the Home Secretary's note to you following his study of the Hampden Trust report. His response is extremely disappointing.

#### 1. "Current" controversy

It is welcome that the Home Secretary has agreed to the removal of the word "current". It is hard to see why this was ever inserted in the first place.

#### 2. "Bias across a Series"

The Home Secretary's note argues that it would be wrong to require balance within a programme. This is not what Lord Wyatt's amendments are proposing. Lord Wyatt has tabled amendments requiring that:

- (a) at the end of any programme of over 15 minutes which is not impartial, there should be a discussion allowing the opposing point of view to be put.
- (b) within one month, a programme will be broadcast putting forward the other side of the case.
- (c) after any ~~im~~partial programme, there will be broadcast an announcement stating when this second programme will be shown.

This is a "belt and braces" approach: either (a) or (b) and (c) would be sufficient.



I attach a copy of the amendments tabled by Lord Wyatt and Lord Orr-Ewing. The Home Secretary does not appear to have addressed them.

3. An Independent Adjudicator

The Home Secretary says that the ITC will be publishing a code specifying how impartiality should be achieved. This is no different from the television producers' guidelines already published by the IBA (attached). The problem has been that these have simply been ignored. Yet whenever a complaint has been lodged, the IBA has referred to these guidelines. If rules are to have any force, they must be in the Bill, not in a code.

Moreover the Bill maintains the position that the BBC and IBA (now ITC) are judge and jury with regard to any complaint. Lord Wyatt proposes that the Broadcasting Standard Council's remit should be extended to cover political impartiality. This is the only amendment which will also catch the BBC. David Waddington says that neither Lord Rees-Mogg nor Lady Anglesey (of the Broadcasting Complaints Commission) wish for this. It seems to me that the BSC is the ideal body to take this on - but the main thing is to have an independent body adjudicating complaints rather than the present arrangements which have proved so woefully inadequate.

4. Special Mandate / Personal View Programmes

The amendments by Baroness Cox and Lord Orr-Ewing on special mandate and personal view programmes are not addressed by the Home Secretary.



At present, broadcasters have sought to suggest that they are not required to maintain impartiality either because the programme concerned is a "personal view" or because it is broadcast under Channel Four's "special mandate" to transmit innovative programmes catering for minority interests. The amendments would close these loopholes by requiring that these programmes would not be exempt from the impartiality requirements.

If we had deregulated broadcasting, there might be no need for impartiality requirements. But the BBC and Channel Four are public service broadcasters in a privileged position. They have consistently abused this.

We will only show the broadcasters we mean business on impartiality if all these amendments are accepted. If we adopt the Home Secretary's line, the broadcasters will regard it as the green light to ignore any code or requirement for impartiality, just as they do at present. Lords Wyatt and Orr-Ewing intend to press their amendments to a division and are working hard to obtain support: we should not be opposing them.

I have shown this note to Brian Griffiths, who fully endorses it.

JAW  
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JOHN WHITTINGDALE

18 June 1990



**6.1** The following sub-sections indicate areas in which care is particularly likely to be needed in order to ensure fair dealing. (For guidelines on defamation and contempt of court see 10.1 and Appendix III.) There is in addition the specific requirement of the Broadcasting Act that the IBA should ensure that, so far as possible, 'due impartiality is preserved on the part of the persons providing the programmes as respects matters of political or industrial controversy or relating to current public policy'. The term 'due' is significant: the IBA is not required to secure impartiality on matters such as drug-trafficking, cruelty and racial intolerance, for example, on which society, even today, is virtually unanimous. The requirement will also vary with the type of programme: the considerations applying to drama, for example, are different from those applying to current affairs programmes.

### 6.2 Drama

It is not unusual for plays and films on television to be concerned with matters of political or industrial controversy or with current public policy, and therefore to fall within the requirements of due impartiality. Problems are most likely to occur in connection with dramatised documentaries, when it may seem that dramatic devices are being used to convince viewers not merely of the factual accuracy of the actions portrayed but of the validity of a particular point of view or a particular explanation and interpretation of society or recent history.

Drama is by definition the personal view of the dramatist, and the IBA does not regard the transmission of a play with a contemporary political or social message as in itself an indication of lack of impartiality on the part of the company providing the programme. The due impartiality required of a play by an independent dramatist is not identical to that required of a current affairs programme produced by a company's own production team. Nevertheless difficulties could arise with a play dealing with a particular current issue which at the time of transmission had become a matter of imminent national decision. The IBA believes that each case should be treated separately on its merits; but it would be unlikely to approve the scheduling of a play commending one side or the other in a matter of public policy, such as abortion, or capital punishment, at a time when that issue was being debated in Parliament, or of a play which took sides on any aspect of industrial relations during a strike of national importance. And it would not accept any drama that was clearly designed to serve the interests of one political party.

### 6.3 Current Affairs and Documentary Programmes

Each current affairs or documentary programme dealing with matters of political or industrial controversy or relating to current public policy should normally attempt to be impartial in itself.

This does not mean that 'balance' is required in any simple mathematical sense of equal time or an equal number of lines being given to each relevant viewpoint. It requires, for instance, that the programme should not be slanted by the concealment of relevant facts, or by misleading emphasis; nor should investigation turn into a case for the prosecution or defence, or into a form of trial by television.

#### 6.3(i) THE SERIES QUALIFICATION

The Broadcasting Act's requirements about impartiality allow a series of programmes to be considered as a whole. This presupposes that the presentation, over a series, of different points of view is planned in advance, and that the intention to achieve impartiality in this way is made clear so that the viewer of one programme is not misled into thinking that he has seen the whole story.

#### 6.3(ii) PERSONAL VIEW PROGRAMMES

'Personal view' programmes are programmes on matters of topical interest in which the presenter or central person presents his or her own view. The IBA believes that, subject to the following safeguards, such programmes may be a valuable element in the schedules:

- Each such programme (or series of programmes) should be the subject of early prior consultation with IBA staff before scheduling.
- In billing and promotion, as well as within the programme itself, it should be made clear that the programme is the expression of one person's view on matters about which other views exist.
- Programme companies have an obligation to ensure that statements of fact in the programme are accurate, and that opinions expressed, however partial, do not rest upon false evidence.
- The programmes should preferably not be scheduled in the time slots normally occupied by regular current affairs or documentary programmes.
- The programmes should be drawn from a wide political and social spectrum, and a company offering 'personal view' programmes should ensure that this requirement is met within a reasonable period.
- 'Personal view' programmes on political matters should not be scheduled at times when Parliamentary or local government elections are pending.

### 6.4 Discussion Programmes

The demands of accuracy as well as those of impartiality and fairness require care to ensure that in a discussion on any matter of controversy or public policy a wide range of opinions is represented. Those chosen to speak for a point of view should be competent to represent it with proper authority. When the views of an organisation need to be represented, there is no obligation to use an officially nominated spokesman. At times it may be useful to do so; at others it may appear that someone



else would be more competent to convey and explain those views to the public in a television programme. This is a matter for producer judgement.

In discussion programmes dealing with political issues the participants do not necessarily have to be spokesmen for the main political parties.

The obligation to ensure due impartiality relates to issues, not to parties, and some important issues do not divide opinion along existing party lines. Indeed there are occasions when it is preferable to confine discussion to the spokesmen of only one party; the opportunity can be taken to investigate a particular approach to an issue in depth, provided that overall in a series of programmes impartiality is maintained. On the other hand there are many issues on which the attitudes of the parties are clear cut and distinct, recognisably part of the respective party policies. In those cases competent spokesmen of known party allegiance should be chosen. They need not be official nominees, although it may occasionally, in the light of producer judgement of a specific issue, be desirable to seek advice, without commitment, from official party sources about suitable speakers.

#### 6.4(i) THE EMPTY CHAIR

It sometimes happens that, in spite of every possible effort by the production team, all likely and competent spokesmen for one of the relevant points of view in a discussion are either unable or unwilling to accept an invitation to participate. In such circumstances reference to their absence should normally be made in as detached a manner as possible, implying regret rather than criticism.

Unless the projected programme would be unrealistic without their presence, the unwillingness or inability of certain individuals or organisations to participate need not prevent a duly impartial discussion of important matters of public interest, and the programme should be allowed to proceed. It should be the duty of the chairman to give where appropriate as fair and objective an account as possible of the known opinions of the missing participants on the subject under discussion. (N.B. there are particular requirements, under the Representation of the People Act, at times of elections (see Appendix II).)

#### 6.4(ii) IMPARTIAL CHAIRMAN

When every possible care has been taken over the selection of suitable participants for a discussion programme, fairness and due impartiality will still not be achieved without suitable control of the proceedings by the discussion's chairman. On the chairman will devolve the task of ensuring that all participants – some perhaps with less television experience than others – get a fair opportunity to express their views; and that the discussion moves forward as coherently and logically as possible.

#### 6.4(iii) COMPOSITION OF THE STUDIO AUDIENCE

Studio audiences for discussion programmes should be so selected as to reflect as far as possible the spread of opinion among those members of the general public interested in the topic under discussion. In so far as they are expected to play an active role in the programme, they should be subject to the same kind of firm impartial control by the chairman as he exercises towards the main parties to the discussion. The producer should brief his studio audience on the role they are expected to play. The main speakers should always be warned in advance that a live audience will be present and told what briefing the audience has been given.

## 6.5 Conduct of Interviews

Interviews are of course subject to the normal general requirements about fairness and impartiality. In addition, it is important in normal circumstances to ensure:

- (a) that an interviewee chosen as a representative of an organised group is in a position to speak on behalf of others involved;
- (b) that, whether the interview is recorded or live, the interviewee has been made adequately aware of the format, subject matter and purpose of the programme to which he or she has been invited to contribute, and the way in which his or her contribution is likely to be used;
- (c) that the interviewee has been told the identity and intended role of any other proposed participants in the programme.

If exceptional circumstances require departure from these normal practices, there should be consultation with the IBA in advance.

Particular points for attention arise over the editing of interviews, and these are dealt with in the following section.

#### 6.5(i) EDITING OF INTERVIEWS

Factual and unscripted (or loosely scripted) programmes are likely to be better if they are pre-recorded, so that redundancies, confusions and irrelevancies can be edited out. This advantage is especially valuable in recording interviews. Some of the most useful and relevant interview material has to be obtained from persons who are unlikely to be able to spare time for lengthy preliminary briefing and rehearsal (or retakes). To minimise risks of misunderstanding, or even resentment, the producer should tell the interviewee (what almost any experienced public figure already knows) that the recording will be much longer than the edited version used in the programme. There are in addition a number of other precautions that need to be taken, if the integrity and fairness of the programme is to be maintained beyond reasonable dispute.

Care should be taken to ensure that the shortened version of the interview does not misrepresent the interviewee's contribution. Due weight should be given to any qualifying remarks

continued



that may perhaps weaken the force of an answer but to which the interviewee is likely to attach importance. There is no justification for picking out a brief extract to support a particular line of argument to which the interviewee does not himself subscribe without qualification.

The context in which extracts from a recorded interview are used is also important. It is quite defensible to run together a number of different answers made by different contributors to the same question. But an interview should not be edited so as to appear by juxtaposition to associate a contributor with a line of argument which he would probably not accept and on which he is given no opportunity to comment in the programme. Care should be taken not to present separately recorded statements by two or more persons in such a way as to suggest that they are in actual conversation with one another.

There is no general obligation to offer a preview of the edited programme to those whose contributions have been used. On the other hand it is possible that particular circumstances will make a preview by an interviewee desirable or even essential, and producers and/or managements should always give thought to this before completing their programme.

**6.5(i) USE OF RECORDED LIBRARY MATERIAL**  
Care needs to be taken over the use of library material to ensure that it is not presented in a misleading manner. For example, it should not be taken for granted that the views expressed by an interviewee on a particular subject, as recorded on a previous occasion, are still held by him when it is proposed to rebroadcast the extract in a possibly different context. When library material is included in a programme, it is important to indicate the date it was originally recorded.

**6.5(ii) STUDIO TRIAL BY TELEVISION**  
Likely to be a rarity in television, but to attract particular attention when it is arranged and presented, is the programme in which a person is answering charges of alleged criminal wrongdoing. There is an obvious need for the company to be aware in planning such a programme of the legal risks of defamation and contempt of court (see 10.1, 10.2, and Appendix III). In addition every effort should be made in the conduct of the programme to ensure fairness and the appearance of fairness. The following guidelines need to be observed:

- The subject of any accusations which are to be made must be disclosed in detail to the person who is to defend himself/herself against them, and sufficiently in advance to allow answers to be prepared.
- The person must know from whom the accusations are to come, and if he or she wishes must be allowed to have present witnesses prepared to support him/her.
- If there is to be an audience, he/she must be

told of its presence, the way in which it is to be composed, and the role allotted to it, and, if it has been arranged that the audience includes people who will be making complaints against him/her, must be able, if he or she wishes, to secure the inclusion in it of those who will defend him/her.

(d) The presenter or chairman must act, and be seen to act, in an independent and impartial manner.

(e) There must be no verdict, for even were it thought proper for a verdict to be reached through the processes of television, the time available is insufficient for the necessary sifting or completion of evidence.

## 6.6 Right of Reply

Despite all the efforts which are made by the companies and the IBA to observe fairness, accuracy and due impartiality, there may be occasions when an individual or organisation is misrepresented in a programme. A mis-statement of fact can sometimes be simply corrected, particularly if the programme is live, since there is then the opportunity for a correction to be made within the programme itself. If this is not possible, then, unless the need for correction is urgent, it may be best, if the error has occurred in a regular news or current affairs programme, to wait until the next bulletin or edition from the station in question. Corrections of factual errors should in any event be broadcast as soon as is sensibly possible after the original error.

Calls for a right of reply may also come from those who feel that a programme as a whole or in part has been misleading and unfair in a more general sense than that resulting from straightforward mis-statement of fact. Requests for such a reply may come either direct to the IBA or to the company itself. In both situations the IBA will normally need to be involved in discussion with the company before a decision is taken whether to grant a reply, and if so what form it should take. Some programme series have built-in 'access' or 'come-back' slots which offer time for comment on the content of previous programmes. Major network current affairs series cannot so easily accommodate regular replies, though brief statements can be made at the beginning or end of subsequent programmes. In some circumstances, it may be appropriate for a statement to appear instead in print. Where a complaint is not upheld by the company or the IBA it is now open to the complainant, provided he or she has a direct interest in the programme, to refer it to the Broadcasting Complaints Commission (Appendix V).