



Adam Baxter

Ofcom

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Dear Adam,

Re: ITN submission to Ofcom Consultation on the review of the Ofcom PPRB Rules and Proposed Guidance for broadcast coverage of elections

I am writing in response to the invitation to comment on the review of the Ofcom PPRB Rules and Proposed Guidance for broadcast coverage of elections. ITN is pleased to be given an opportunity to respond.

Background

ITN is the UK's biggest independent producer of public service broadcast news. The news services we produce for our main customers – ITV, Channel 4 and Channel 5 - reach around 10 million people every day. For ITV, we produce regional news for London in addition to national news.

ITN's award-winning journalism is also watched by millions more viewers worldwide, through global partnerships with outlets such as Reuters, CNN and NBC, and platforms including YouTube and MSN.

As well as providing high-quality, trusted broadcast news output, ITN operates two other divisions: footage sales arm ITN Source and video creation business ITN Productions.

ITN has four shareholders: ITV plc (40%), Daily Mail and General Trust (20%), Reuters (20%) and United Business Media (20%).

The Review

The theme of this response is similar to ITN's response to the Consultation on the Ofcom Guidance on the Police and Crime Commissioners Elections, which outlined some recommendations that we believe would facilitate a more

practical framework to encourage and facilitate more substantial reporting of candidates and election issues.

Our proposals were not accepted by Ofcom on that occasion but, in light of the record low turnout of less than 15% of the electorate for the PCC Elections, we hope that Ofcom will now re-consider our recommendations as a way to facilitate and encourage compelling news reporting of elections that can engage viewers in the key issues and the democratic process

We do not object to the relatively modest changes proposed by Ofcom in the review - which are in line with previous rules and guidance set down by Ofcom - but ITN's main area of concern is in the area of constituency reporting. We note that the review states at 2.18 that the rules on constituency coverage and electoral area coverage are "generally fit for purpose". However we believe in the area of election reporting more could and should be done to encourage reporting of elections. In particular we believe the area of reporting constituency issues is over-regulated and over-prescriptive. There is no other area of news reporting in any format - broadcast, print or online - in which so many regulatory hurdles are placed in the way of getting a report on-air.

We fully support the principle of due impartiality in news reporting. Our central point is that election reporting should be governed by the principle of due

impartiality and there should not be specific regulatory requirements for reports on constituency issues.

As stated in the Ofcom review, the present rules on constituency are “technical and complicated”. The requirement to feature specific candidates under Rules 6.9, 6.10 and 6.11 means that the Code largely predetermines who is or who is not included in constituency reports.

Effect of the present rules

The effects of the present rules are numerous.

1. They restrict certain types of reporting, making it difficult to broadcast the following:
 - A profile of a candidate
 - Constituency reports that are short in length, given the need to include a number of candidates in the report
 - A report focused solely on the two leading candidates in a constituency

2. The present rules do not take into account time issues:

- In practical terms when preparing constituency reports a disproportionate amount of time can be spent on the logistics of tracking down and arranging interviews with individuals / parties in order to "tick box" that they have been spoken to. For example, reports in England require at the very least the three major parties need to be spoken to, reports in Scotland and Wales at least four candidates and now with the change proposed in N Ireland there are five parties / candidates. A disproportionate amount of time can be taken on setting up, arranging, travelling to and carrying out the interviews that are stipulated by the Code.
- In addition the rules presume there is always time in a report to include up to five people. For news bulletins that have strict time restrictions dictated by the length of the programme, this can prove difficult. For longer news reports this may not be a problem but in a shorter programme or a short news report it can be a key factor on whether the news piece is included in a news bulletin. The rules as they presently stand are geared towards long form reports.

3. The rules favour certain parties - the Conservatives, Labour and Liberal Democrats - and place a disadvantage onto smaller parties, independents and new parties. Specifically:

- Concerns raised here by ITN about the restrictive nature of the present rules have also been raised elsewhere, most notably by independent candidates and those from smaller parties, for example during the 2012 London Mayoral elections. The concerns raised are that the current rules favour the major parties and limit access to alternative voices by not facilitating reporting of candidates who had no previous electoral experience and/or were independent candidates.
- One of the major expected issues at the next General Election is how the coalition parties separate from each other and defend the Government's record. Hypothetically, in a Liberal Democrat / Conservative marginal seat Labour may be an irrelevance in electoral terms for that constituency but perhaps UKIP might be among the three most popular parties – making the 'minor' party more editorially important for that marginal. However, the current rules dictate that Labour must be interviewed for the piece, not adding much editorial value. It may be unfeasible and/or unwieldy in the

duration of a standard television news package to include all the four parties.

4. The rules do not take into account basic editorial issues that apply across all other forms of broadcast news – such as editorial justification or editorial merit. In effect they place a requirement to shoe-horn a number of candidates into a news report regardless of editorial merit and whether or not the person to be interviewed is a significant person in the story and has anything to say of news significance. It can lead in news reports to less discussion of relevant issues and less opportunity to hold an individual candidate to account. In addition the danger is that if the rules are over prescriptive they have a “chilling effect” on reporting constituency issues. The need to include candidates of all the major parties could lead to the consequence that a whole area of legitimate reporting and public interest – local issues - is not covered as well as it could or should be. This is particularly important because local issues such as hospitals, schools and police in a particular area are often vital important issues to the public in an election.
5. The rules also generally produce a formulaic approach that gives little room for editorial judgment or deeper analysis of individual constituency issues or candidates or holding any candidate to account. It means that reports are severely confined to one formula and one path if one

candidate is interviewed. However it could be legitimately asked, *as long as due impartiality is satisfied* if a candidate is interviewed why should the report not be able to interview members of the public to put an opposing view or the view of another party – without the need to get the other actual candidate on-screen.

6. Disparity with the BBC: There is currently a disparity between commercial television news organisations and the BBC. The BBC is subject to lighter regulation on election reporting than commercial broadcasters subject to the Ofcom Broadcasting Code. For example, the BBC Election Guidelines for the 2010 General Election, the 2011 Election for the Scottish Parliament, Welsh and North Ireland Assemblies and Local Government in England and Wales and the PCC Elections in 2012 did not refer to "major parties". In the General Election and the 2011 election there was a requirement in reports on specific electoral areas to give "*due weight to candidates of parties which have demonstrated substantial electoral support in that area*". This disparity also applies in the area of lists – the television broadcast services on the BBC do not always have to display the list of candidates in every broadcast - for 3 or 4 minute packages the list has to be shown in full once and thereafter an online reference can be made.

There is now a significant gap between the regulations in the commercial sector and those rules that govern the BBC. The BBC should not be given an advantage over commercial broadcasters. This will apply in the next General Election unless there is change that goes beyond the modest changes proposed.

7. From a legal perspective, it could be argued the rules do not sufficiently reflect the changes brought about by the Human rights Act 1998 and in particular the developments on the issue of freedom to impart information set out under Article 10 of the Human Rights Act 1998. In addition we note that it is stated that major changes may require legislative change and Parliamentary approval. Certainly this would be the case for changing the basic principle of due impartiality in news – but we are not aware that the Communications Act 2003 imposes such detailed rules on electoral reporting on who should or who should not be interviewed. The statute under s319 and 320 requires due impartiality in news but is silent on constituency reports. In other words, Ofcom can change the rules on constituency reports , providing the rules are in line with the statutory requirement of due impartiality.

The importance of due impartiality

We believe a lighter touch to regulation would encourage more election reporting, make election reporting less formulaic and provide greater information for the viewer. It is important that the rules do not unduly restrict reporting and indeed actively encourage impartial reporting of the elections.

We believe that due impartiality being the sole yard-stick would have the positive effect of encouraging and facilitating election reporting. Any reporting would still have to pass the test of due impartiality (and other requirements such as fairness and accuracy) and broadcasters would have to defend editorial decisions and news judgments against the context and benchmark of due impartiality.

If due impartiality was solely the benchmark the practical reality is likely to be that in most cases the candidates of the major parties are interviewed in constituency reports and there would be a list of candidates at the end, as is the case now. However we would state that in some circumstances it may be justifiable and within the boundaries of due impartiality not to include candidates of all the major parties.

A useful contrast is how Ofcom obliges television news broadcasters to take special care with pre-watershed content: Ofcom doesn't prescribe how we exercise that rule, but it can adjudicate and deliver sanctions against us if we fail to comply. ITN believes that the same should be true of political and

election reporting – Ofcom absolutely should require us to be impartial, and act against us if we are not; but it should not prescribe how that rule should be applied in detailed specific terms that can harm election reporting itself.

Three suggestions

1. The wording could be changed on 6.9 so it would read:

Present wording:

6.9 If a candidate takes part in an item about his/her particular constituency, or electoral area, then candidates of each of the major parties must be offered the opportunity to take part. (However, if they refuse or are unable to participate, the item may nevertheless go ahead.)

Proposed wording:

6.9 If a candidate takes part in an item about his/her particular constituency, or electoral area, then candidates of each of the major parties would normally be offered the opportunity to take part. (However, if they refuse or are unable to participate, the item may nevertheless go ahead.)

A similar change could be made to rule 6.10 concerning other parties with significant support.

2. A change should be made to 6.11 to bring television in line with radio services.

Present wording

6.11 Any constituency or electoral area report or discussion after the close of nominations must include a list of all candidates standing, giving first names, surnames and the name of the party they represent or, if they are standing independently, the fact that they are an independent candidate. This must be conveyed in sound and/or vision. Where a constituency report on a radio service is repeated on several occasions in the same day, the full list need only be broadcast on one occasion. If, in subsequent repeats on that day, the constituency report does not give the full list of candidates, the audience should be directed to an appropriate website or other information source listing all candidates and giving the information set out above.

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3. We question the reference to the adjudication concerning ITV News in 4.25 of the proposed guidance. The result was accepted and we have no issue with the adjudication. However it should be noted that the adjudication has been queried in the leading legal textbook in this area, *Media Law* (Penguin, fifth edition 2008) by G. Robertson QC and Andrew Nicol QC (now a High Court judge) – see p. 909. The relevant passage in the textbook reads as follows: “In 2007 ITV News reported that, in the interview with Michael Parkinson, the Prime Minister had said that his belief in God played an important part in deciding to go to war in Iraq and that he had prayed over the decision before embarking on military action. Ofcom ruled that, when examined with care, the only statements that were clear in the interview were that Mr Blair struggled with his own conscience about the decision to go to war, and that he believed history and God would make the judgement on whether he was right. Ofcom held that ITV had reported as fact its interpretation of the interview, which was at the very least ambiguous and open to different interpretations. If ITV had noted the ambiguity and stated that its view was one possible interpretation of Mr Blair’s replies, it would not have been in breach of the Code. This adjudication is questionable: under the impetus of Downing Street, Ofcom took the role of editor rather than judge. Doubtless it was a better editor, in hindsight, than the ITV editor on the night, but the

interpretation offered was not necessarily inaccurate: it was a matter for editorial discretion, not for Ofcom judgement.”

Summary

We hope that these observations and recommendations are useful as Ofcom consults on this important issue that is part of the democratic process. ITN strongly believes that due impartiality in broadcast news is important. We do believe that fresh thinking is needed in the area of constituency reporting and we question whether the rules on constituency report are fit for purpose for reporting the next General Election and note the rules are significantly more restrictive than for BBC news programmes.

ITN is offering these recommendations as we recognise the central role that impartial television news plays in the democratic process. As we provide news for all three commercial public sector broadcasters, we feel it vital that our journalists are enabled to report election issues to the best of their ability and to most benefit to millions of ITV, Channel 4 and Channel 5 viewers.

While ITN has answered the questions put forward by Ofcom in its consultation, we pose two questions ourselves that may be of use when considering this matter:

- Do we need the mandatory rules on constituency reporting if broadcasters are subject at all times to due impartiality?
- How do the rules of Ofcom compare with those of the BBC Trust?

Here at ITN we comply with Ofcom's rules on elections and we will of course continue to do so.

ITN is eager to engage with Ofcom on this matter and we would like to meet to discuss the issues raised.

Yours sincerely,

ITN