

Ofcom Broadcast and On Demand Bulletin

Issue 422
8 March 2021

Newsnight

Type of case Broadcast Standards Complaint Assessment

Outcome Not Pursued

Service BBC 2

Date & time 26 May 2020, 22:45

Category Due impartiality

Summary We considered that an appropriate range of significant views were reflected in this programme. However, we also considered that the presenter's opening remarks had the potential to be perceived by some viewers as an expression of her personal view on a matter of major political controversy and major matter relating to current public policy. In light of the action already taken by the BBC, we did not consider the programme raised issues warranting investigation. However, we have reminded the BBC that when preparing programme introductions in news programmes, which are designed to catch the audience's attention – particularly in matters of major political controversy – presenters should ensure that they do not inadvertently give the impression of setting out personal opinions or views.

Summary

During the opening segment of an edition of *Newsnight*, presenter Emily Maitlis commented on the then recent events involving the Chief Advisor to the Government at the time, Dominic Cummings¹. Her comments included that:

- Mr Cummings had “*broke[n] the rules*” during the first Coronavirus lockdown;
- he had “*made those who struggled to keep to the rules feel like fools*”;
- there had been a “*deep national disquiet*” about the incident; and
- the Government’s response had amounted to “*blind loyalty*” being shown to Mr Cummings.

The following section of the programme, lasting approximately 20 minutes, discussed the story in more detail and included the Government’s public response and other reactions from members of the public, ministers and experts.

The BBC received complaints that the presenter’s opening comments were biased and inaccurate. In accordance with the BBC First process², the BBC considered these complaints against its Editorial Guidelines.

The BBC Executive Complaints Unit (ECU) published its [finding](#) on 3 September 2020 that the complaints were “resolved”, stating that although a breach of standards was identified in the introduction (which it noted had been intended to “set the scene” and to “explain the questions *Newsnight* planned to raise about Mr Cummings’ trips”), no further action was required. In its finding, the ECU said that Ms Maitlis’ introduction represented her: “legitimate professional, rather than personal, opinion”. However, the ECU concluded on the content of Ms Maitlis’s introduction as follows:

“BBC News has conceded that the introduction did not meet the required standards on accuracy or impartiality. In earlier responses it accepted that more should have been done to explain the purpose of the piece, and that the script risked giving the perception that the BBC was taking sides and voicing an opinion on a controversial matter. Whilst some complainants believe BBC News should have gone further, in the ECU’s view this is sufficient to judge the editorial matter resolved. This means that although a breach of standards has been identified, no further action is required”.

Ofcom received five complaints which had completed the BBC’s process. Two of the complainants were dissatisfied with the original broadcast and did not think the BBC’s resolved finding went far enough. Three of the complainants were unhappy with the BBC’s finding, as they believed the

¹ On 27 March 2020, Dominic Cummings drove his family from London to Durham believing that his wife was infected with the Coronavirus. Then on 12 April 2020, Mr Cummings drove his family 30 miles to Barnard Castle, explaining that he wished to test his eyesight before returning to London the following day. Following media and public reaction, the Prime Minister expressed support for Mr Cummings’ position that he had acted within the lockdown rules.

² As set out in paragraphs 1.14-1.15 of [Ofcom’s Procedures for investigating breaches of content standards on BBC broadcasting services and BBC on demand programme services](#).
Issue 422 of Ofcom’s Broadcast and On Demand Bulletin
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programme was duly accurate and duly impartial and the original complaints about the broadcast should not have been upheld.

Ofcom considered that the programme constituted news and dealt with a matter of major political or industrial controversy and a major matter relating to current public policy³, namely the actions of Dominic Cummings (the then Chief Advisor to the Government) during the first Coronavirus lockdown. We therefore assessed the content against the following rules in the Ofcom Broadcasting Code (“the Code”):

- Rule 5.1: “News, in whatever form, must be reported with due accuracy and presented with due impartiality.”
- Rule 5.9: “Presenters and reporters (with the exception of news presenters and reporters in news programmes), presenters of “personal view” or “authored” programmes or items, and chairs of discussion programmes may express their own views on matters of political or industrial controversy or matters relating to current public policy. However, alternative viewpoints must be adequately represented either in the programme, or in a series of programmes taken as a whole...”
- Rule 5.11: “In addition to the rules above, due impartiality must be preserved on matters of major political and industrial controversy and major matters relating to current public policy by the person providing a service...in each programme or in clearly linked and timely programmes.”
- Rule 5.12: “In dealing with matters of major political and industrial controversy and major matters relating to current public policy an appropriately wide range of significant views must be included and given due weight in each programme or in clearly linked and timely programmes. Views and facts must not be misrepresented.”

In enforcing the Code, Ofcom must have regard to the need to secure the application of broadcasting standards in the manner that best guarantees an appropriate level of freedom of expression. In our assessment of these complaints, we have taken account of the broadcaster’s right to freedom of expression and the audience’s right to receive ideas and information without undue interference, as set out in Article 10 of the European Convention on Human Rights.

³ Section Five of the Code defines matters of political or industrial controversy as “political or industrial issues on which politicians, industry and/or the media are in debate.” The definition of matters relating to current public policy states these “need not be the subject of debate but relate to a policy under discussion or already decided by a local, regional or national government or by bodies mandated by those public bodies to make policy on their behalf, for example non-governmental organisations, relevant international institutions, etc.” The Code further defines matters of major political or industrial controversy and a major matter relating to current public policy as follows: “These will vary according to events but are generally matters of political or industrial controversy or matters of current public policy which are of national, and often international, importance, or are of similar significance within a smaller broadcast area”.

The BBC's Editorial Guidelines and Ofcom's Broadcasting Code

When Ofcom assesses complaints about broadcast programmes, we do so against the Code. The Code reflects the standards objectives set out in the Communications Act 2003.

When the BBC assesses complaints about its programmes, it does so against its own Editorial Guidelines, which apply in addition to the Code. The BBC Editorial Guidelines are set by the BBC. Whilst content made in accordance with the BBC Editorial Guidelines will comply with the rules in the Code, the two sets of rules are not identical. The BBC is entitled to go further than the Code in setting out best practice requirements for its own journalists to follow.

Our Assessment

Rules 5.1, 5.11 and 5.12

As the discussion about the actions of Mr Cummings was included in a news programme, the obligation under Rule 5.1 to preserve due impartiality in news applied. In addition, we considered the debate surrounding the behaviour of Mr Cummings and its possible ramifications for the Westminster Government's Coronavirus lockdown restrictions in England was of national importance within England. We therefore considered this issue was a matter of major political controversy and a major matter relating to current public policy, which also engaged Rules 5.11 and 5.12.

Section Five of the Code makes clear that "due" is an important qualification to the concept of impartiality. Impartiality itself means not favouring one side or another. "Due" means adequate or appropriate to the subject and nature of the programme. It does not mean an equal division of time has to be given to every view, or that every argument and every facet of every argument has to be represented. Context is important – the approach to due impartiality may vary according to the nature of the subject, the type of programme and channel, the likely expectation of the audience as to content, and the extent to which the content and approach is signalled to the audience.

To assist broadcasters in complying with the due impartiality rules in Section Five of the Code, Ofcom has published [Guidance](#). Among other things, Ofcom's Guidance makes clear that it is an editorial matter for the broadcaster how due impartiality is preserved, as long as the Code is complied with; and there are a range of editorial techniques for maintaining due impartiality.

When assessing whether content was duly impartial, Ofcom does not consider one section of a programme in isolation – we take into account the whole programme.

Following the presenter's one minute opening segment about Mr Cummings' actions, we noted that the Government's position and other alternative views were reflected at various points throughout the full segment, including:

- a message from Conservative MP Danny Kruger, supporting the Prime Minister's view that Mr Cummings' actions had been within the lockdown guidelines;
- a question from a member of the public, which had been included during the daily Government press briefing, asking if the Government would review lockdown penalties for the public and Heath Secretary Matt Hancock MP's response;
- footage of Transport Secretary Grant Shapps MP supporting Mr Cummings' account of his trip to Durham during the daily press briefing;

- footage of Mr Cummings giving his account of events during a press briefing;
- footage of Health Secretary Matt Hancock MP stating that his view was “*what [Mr Cummings] did was within the guidelines*”;
- a clip of the Chancellor of the Duchy of Lancaster, Michael Gove MP, supporting Mr Cummings’ position; and
- an interview with the leader of the SNP, Ian Blackford MP, and a Government Whip Craig Whittaker MP who were critical of Mr Cummings, as well as Conservative MP Andrew Bridgen who was supportive of Mr Cummings. In the interview Mr Bridgen said that: Mr Cummings had explained himself “*really well*”; the criticism of Mr Cummings was “*turning into a media witchhunt*”; and under the Coronavirus lockdown rules “*there was leeway for childcare*”.

Given the above, we considered that an appropriate range of significant views on the subject matter were included and given due weight, and the programme when considered as a whole did not raise issues warranting investigation under Rules 5.1, 5.11 and 5.12.

Rule 5.9

Under Rule 5.9, presenters of news programmes such as *Newsnight* cannot express their personal views on matters of political or industrial controversy, or matters relating to current public policy. As set out above, we consider Mr Cummings’ actions during the first Coronavirus lockdown, while he was the Chief Advisor to the Government, amounted to a matter of major political controversy and major matter relating to current public policy.

In assessing the programme under this rule, we took into account that the presenter’s introduction was short, lasting approximately 60 seconds. It was intended to set the scene for the subsequent news item relating to Mr Cummings and his trip to Durham, including the questions that were going to be raised. We also noted that the BBC had concluded that Ms Maitlis’ comments were “a legitimate professional, rather than personal, opinion”. However, we also considered that the content and delivery of the presenter’s introduction was highly critical of Mr Cummings and the Government. The presenter took a particular position on the events which were the subject of controversy and debate, for example that Mr Cummings had broken lockdown rules. Accordingly, the presenter’s opening remarks had the potential to be perceived by some viewers as an expression of her personal view on a matter of major political controversy and major matter relating to current public policy.

It is an important reminder that when preparing programme introductions in news programmes, which are designed to catch the audience’s attention – particularly in matters of major political controversy – presenters should ensure that they do not inadvertently give the impression of setting out personal opinions or views.

In addition to assessing the content of the whole programme, we considered the action taken by the BBC in response to these complaints under the BBC First process established under the Charter and Agreement. We noted that BBC News had conceded that the programme did not meet the BBC’s Editorial Guidelines for accuracy and impartiality, and the BBC’s ECU found these complaints to be “resolved”. Given the steps taken and the position reached by the BBC, Ofcom considers no further regulatory action is required.

Conclusion

For the reasons set out above in relation to Rules 5.1, 5.9, 5.11 and 5.12 and in light of the action already taken by the BBC, we do not consider the programme raised issues warranting investigation under Section Five of the Code.

Assessment outcome: Not pursued