



Complaint by Mr Robert Phillips about *John Darvall*

Type of case	Fairness and Privacy
Outcome	Upheld
Service	BBC Radio Bristol
Date & time	11 September 2023, 10:00
Category	Fairness
Summary	Ofcom have upheld this complaint about unjust or unfair treatment in the programme as broadcast.

Case summary

The programme included a discussion between the presenter and the Mayor of the West of England Combined Authority (“WECA”) about transport in the area. During the programme, a clip was played of the complainant expressing his dissatisfaction with the local bus service and the Mayor’s handling of the transport system. In response, the Mayor referred to Mr Phillips as an “*extreme right-wing person*” who he “*had to deal with...when he had a signed [photo]graph of Adolf Hitler on his, house, home window and the police came*” and that “*he’s not coming neutrally, he’s got an agenda*”.

The complainant said that he was treated unfairly in the programme because the comments made about him were untrue and that he had no “agenda” other than highlighting the poor bus service in the area. He also complained that he was not offered an opportunity to respond to the comment.

Ofcom’s decision is that the broadcaster did not take reasonable care to satisfy itself that material facts had not been presented, disregarded, or omitted in the programme in a way that was unfair to Mr Phillips, and he was not given an opportunity to respond to these comments. For these reasons, therefore, we considered that Mr Phillips was treated unfairly in the programme as broadcast.

Programme summary

On 11 September 2023, BBC Radio Bristol broadcast an edition of *John Darvall*, a music, news, and current affairs programme presented by Mr John Darvall. In this programme, the presenter was joined by Mr Dan Norris, the Mayor of the WECA to discuss his responsibilities and concerns about transport and the possibility of bus franchising in the local area. Part of the discussion centred on the introduction of a new “Birthday Bus” scheme in the WECA area, where throughout the month a passenger’s birthday falls, they can claim free travel on buses across the West of England.

The following exchange took place between Mr Darvall and Mr Norris:

Mr Darvall: *“So, just explain what Birthday Buses is. And did you have to get agreement from anybody to do that, or was it just your thing only?”*

Mr Norris: *Birthday Buses is something that is a separate income stream, I hate to be technical, but its money that the Government-*

Mr Darvall: *But people need to understand this-*

Mr Norris: *It’s money that the government gives for new and innovative things because what, the idea is, is that if you carry on in the same way that the bus usage has been going, subsidised monies are not going to be enough to keep services going in places where there is social need but they’re not profitable for commercial operators to do. So, the idea is with this money that I’ve been able to use for Birthday Buses and some other things is to encourage people to use the buses, to get on them, so that they bring in income, that we can expand bus routes then, rather than being in a situation of contraction. But the reality is Birthday Buses is something that is only going to cost [£]8 million, I’ve often heard this figure, because that’s an estimate of its cost if it’s successful. If it isn’t successful, it won’t cost that because I only pay when people use the bus. If they don’t use it, it won’t cost anywhere near that.*

Mr Darvall: *Ok, so, we know from Birthday Buses from North Somerset council, because I’d had the leader, Mike Bell of North Somerset Council in the studio last week. Since its launch on the 1 August, over 19,800 people across the West of England have signed up to receive their free birthday pass, making nearly 42,000 journeys, so I’m guessing they have gone there and come back again. Is that successful?*

Mr Norris: *It’s successful for the stage we’re at, but it has to build up over time because-*

Mr Darvall: *So, what should it be, by the end of it?*

Mr Norris: *I don’t know, is the straight answer.*

Mr Darvall: *Really? You haven’t got a plan?*

Mr Norris: *Well, what I've got is, my plan is to make it as successful as possible.*

Mr Darvall: *Double that? Triple that?*

Mr Norris: *We've estimated 8 million and that would be-*

Mr Darvall: *8 million journeys?*

Mr Norris: *£8 million to spend on that, so-*

Mr Darvall: *Constituting how many journeys?*

Mr Norris: *Well, you can do the sums very roughly, if you say its roughly £2 a journey-*

Mr Darvall: *Ok.*

Mr Norris: *So, it would depend-*

Mr Darvall: *So, 4 million journeys?*

Mr Norris: *I don't know is the straight answer, the experts will have to tell me. But what I know is, because [£]8 million also includes the set-up costs and websites and all that so I'm not. If you don't mind, I won't get into the fine detail.*

Mr Darvall: *So, we're talking millions of journeys?*

Mr Norris: *I think we're talking about hundreds of thousands of journeys.*

Mr Darvall: *Hundreds of thousands of journeys.*

Mr Norris: *Yes, hundreds of thousands.*

Mr Darvall: *So, you've got, that you put aside. So, I want to play you a clip from Rob. Now, Rob, Robert Phillips is from Clandown, which is in Bath and north east Somerset. He was on our breakfast programme this morning talking about his experience related to Birthday Buses, but specifically about WESTlink [an on-demand local bus service]. You'll need to put your headphones on, Dan, otherwise you won't hear it. I can't mime unfortunately, not, not with my shoulder at the moment. Here we go".*

A clip was then played of Mr Phillips being interviewed by another presenter in an earlier programme:

Mr Phillips: *"I've booked to ride at, I think it was 08:20 to 08:40. I had to be in Bath by 10 o'clock. I got a message through the WESTlink app that 'your ride will be arriving at 10 past nine'. Within five minutes of that message, I got another message and this message said: 'Hi Robert, we've successfully cancelled your ride'. It turned out that there was no*

bus and there was no rider so it was never going to come again. I've had three and a half months of this. I've had buses arrive an hour early when I've been in the hospital.

Presenter: *We do have Dan Norris on Radio Bristol later. What would you like to say to him?*

Mr Phillips: *I think, actually, he has single-handedly destroyed the rural transport system out here, and there is absolutely nothing now. We had a wonderful little service, and he spent 8 million, 8 million on his Birthday Bus gimmick”.*

The programme then returned to the discussion between Mr Darvall and Mr Norris:

Mr Darvall: *“There's the accusation, and he's not the only person who's sort of cited WESTlink and Birthday Buses and rural transport. It all sort of comes together with Rob's view there. What's your answer to Rob?*

Mr Norris: *Well, I appreciate it's more than Rob, but just in relation to Rob, Rob is someone who's known to me. I have to say, Rob is an extreme right-wing person. I had to deal with him when he had a signed autograph of Adolf Hitler on his, house, home window and the police came. So, he's a difficult man-*

Mr Darvall: *A known individual-*

Mr Norris: *He's a known individual.*

Mr Darvall: *But he made some interesting points that others have made on this programme.*

Mr Norris: *Well, that's why I said that other people - so I just want to deal with Mr Phillips because he's not coming neutrally, he's got an agenda. But look, what I'd say is we're obviously doing things on an experimental basis. I remember when I was talking to Claire Kavanagh about the launch of the WESTlink and I said, look, you know, she was, she was kind of criticising me in an appropriate way where she was saying, well you don't sound terribly, like you're not bigging this up and you're not going to say it's going to be marvellous. And there was a very deliberate reason was because I knew it would be tough. And I also knew we only had, we had a third shortage of the drivers we needed, and that has been a big problem. Just as we found with the main bus routes, we've now partly sorted that. We've got many more drivers for the main bus routes and bus passenger numbers are up by 10% since the pandemic. So, that's an area where getting new drivers in has really made a difference. We're still in that phase, I'm afraid, with WESTlink. And if you haven't got drivers, it's very hard to provide the service that you want”.*

The discussion, and the programme, continued without any further references to the complainant.

Summary of the complaint and broadcaster's response

Complaint

Mr Phillips complained that he was treated unjustly or unfairly in the programme as broadcast because Mr Norris, the Mayor for the WECA, said in the programme that Mr Phillips had:

- Displayed a signed photograph of Adolf Hitler in his window, and that the police had been called. Mr Phillips said that this claim was false, and that he neither owned or had displayed such a photograph in his window, nor had the police been called over such a matter.
- Mr Phillips also complained that Mr Norris had stated that he had an “agenda”, which was false and unfair. Mr Phillips said that his interview on the programme had only been about the WESTlink bus service and his concern about the lack of buses. He said that he had “every right” to explain his experience and that he “had no agenda other than highlighting the poor [bus] service”. He said that his political beliefs were irrelevant to this issue.

Mr Phillips said that the listeners would have been left with the untrue and therefore unfair impression that he had displayed a signed photograph of Adolf Hitler in his window which had resulted in a visit from the police, and that he had political “agenda” for making his comments about the bus service.

Mr Phillips also said that he was entitled to and wanted a “right to reply” to the remarks made by Mr Norris and said that he had contacted the broadcaster after the programme, but had received no response.

Broadcaster's response

The BBC said that the programme was a live broadcast, and that ideally, the presenter would have distanced himself and the BBC more clearly from Mr Norris' comments given at that stage he had no knowledge of Mr Phillips beyond what he had said about local bus services. The broadcaster said, however, that the presenter had steered the conversation back to the topic by saying that Mr Phillips had made “some interesting points” about shortcomings in the bus service.

The BBC said that Mr Phillips had complained that the claim regarding the signed photograph of Adolf Hitler was false, and that he neither owned or displayed such a photograph in this window, nor had the police been called over such a matter. The BBC also said that Mr Norris had misspoken when he referred to a “signed autograph” in the programme and had meant to say: “signed photograph”. The BBC submitted that the claim made in the programme was not unfair to Mr Phillips, because what Mr Norris had said was true.

The broadcaster provided Ofcom with a statement made by Mr Norris, in which he confirmed that he had known the complainant for over two decades and had a number of dealings with him, and that he stood by what he had said in the programme. The BBC said that while Mr Norris said Mr Phillips had a signed photograph of Adolf Hitler in his home and that the police came, he did not say that Mr Phillips owned the photograph. In support of its position, the BBC provided Ofcom with articles published on [Mail Online](#), [The Mirror](#) and [VINnews](#), which it said appeared to confirm that

Mr Phillips had a signed photograph of Adolf Hitler in his house while living with his mother and that the police had been involved. The broadcaster said that Mr Norris' statement also confirmed that Mr Phillips was a constituent of his when he was an MP, and he came into contact with the complainant on a number of occasions, including about the seizure of the photograph by the police, and that he was a regular correspondent and attendee of constituency surgeries.

In regard to the aspect of Mr Phillips' complaint that related to Mr Norris' statement that he had an "agenda", the BBC said that Mr Norris had regional oversight of transport in the west of England, including the WESTlink bus service, and had confirmed that Mr Phillips was banned from travelling on WESTlink buses. The broadcaster said that it considered it was entirely reasonable for Mr Norris to infer that someone banned from the buses would have an "agenda" and would not be "coming neutrally" when commenting on the service provider which had banned him.

The broadcaster said, in relation to the complainant's assertion that he was "entitled to and wanted a 'right to reply' to the remarks made by Mr Norris, and... he had contacted the broadcaster after the programme, but had received no response", that efforts were made to contact Mr Phillips. The BBC said that Mr Phillips rang the station to complain about the comments on the day of broadcast, which were passed to a senior journalist. It said that the following morning (12 September 2023), the journalist made three unsuccessful attempts to get hold of the complainant, and instead left a voicemail. The broadcaster said that despite being unable to contact Mr Phillips to discuss the matter on the morning of 12 September, it was considered that in fairness to Mr Phillips a statement should be broadcast on the same programme as soon as possible, and at the same time as the original interview. It said that just after 12:00 on 12 September 2023, Mr Darvall read the following statement:

"Now, on yesterday's show at this time, Dan Norris from the West of England Combined Authority was discussing buses with us and said something about the political persuasions about Robert Phillips who was complaining about 'Birthday Buses'. We'd like to say that we don't have any knowledge of Mr Phillips' politics, it's not relevant to his political persuasion as to the comments he makes about the state of the buses, so we just want to make that absolutely clear".

The broadcaster said that it considered this was a fair and timely way to resolve the issue in hand. It said that after the journalist had left for the day, Mr Phillips called the station on several occasions. However, the BBC said that Mr Phillips had made it difficult for the programme makers to resolve any remaining issues.

Ofcom's Preliminary View

Ofcom prepared a Preliminary View that Mr Phillips's complaint should be upheld. Both parties were given the opportunity to make representations on the Preliminary View, but neither chose to do so.

Decision

Ofcom's statutory duties include the application, in the case of all television and radio services, of standards which provide adequate protection to members of the public and all other persons from unjust or unfair treatment in programmes on such services.

In carrying out its duties, Ofcom has regard to the need to secure that the application of these standards is in the manner that best guarantees an appropriate level of freedom of expression.

Ofcom is also obliged to have regard, in all cases, to the principles under which regulatory activities should be transparent, accountable, proportionate, and consistent and targeted only at cases in which action is needed.

In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording and transcript of the programme, and both parties' written submissions.

When considering complaints of unjust or unfair treatment, Ofcom has regard to whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 of Ofcom's Broadcasting Code ("[the "Code"](#)"). In addition to this Rule, Section Seven (Fairness) of the Code contains "practices to be followed" by broadcasters when dealing with individuals or organisations participating in, or otherwise directly affected, by programmes. Following these practices will not necessarily avoid a breach of Rule 7.1 and failure to follow these practices will only constitute a breach where it results in unfairness to an individual or organisation in the programme.

In considering this complaint, Ofcom had regard to the following Code Practices:

Practice 7.9: "Before broadcasting a factual programme, including programmes examining past events, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation..."

Practice 7.11: "If a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond".

Ofcom considered Mr Phillips' complaint that he was treated unjustly or unfairly in the programme as broadcast because Mr Norris claimed that Mr Phillips had displayed a signed photograph of Adolf Hitler in his window, and that the police had been called. We acknowledged that the programme had made reference to him as having displayed a signed "*autograph*", rather than a photograph of Adolf Hitler. However, we considered that listeners would have understood that the allegation was that he had displayed some form of memorabilia which was clearly recognisable as being associated with Adolf Hitler. Mr Phillips also complained that Mr Norris referred to him as having an "*agenda*". Mr Phillips said that his interview on the earlier programme had only been about the WESTlink bus service and his concern about the lack of buses and he had "every right" to explain his experience, and that he had no "*agenda*" as described by Mr Norris.

In assessing the complaint, we recognised there was a dispute of fact between the parties relating to whether or not Mr Phillips had displayed a photograph of Adolf Hitler in his window and whether the police had been called. However, Ofcom's role in this case is an adjudicatory one, and not to reach a finding of fact in relation to the comments made about Mr Phillips in the programme. Our role was to consider whether the broadcaster took reasonable care not to present, disregard or omit material facts in a way that resulted in unfairness to Mr Phillips. Whether a broadcaster has taken reasonable care to present material facts in a way that is not unfair to a person will depend on all the particular facts and circumstances of the case, including, for example, the way in which a person is portrayed, the seriousness of any allegations and the context within which they were presented in the programme; and whether the person had the opportunity to respond. Therefore, we began by

considering whether the matters complained of had the potential to materially and adversely affect listeners' opinions of the complainant in a way that was unfair to him.

As set out in the "Programme summary" above, the presenter and Mr Norris discussed local transport issues and the "Birthday Buses" scheme. During this discussion, a recording of the complainant expressing his views and experience of the scheme and WESTlink was included. He was introduced as "*Rob, Robert Phillips is from Clandown, which is in Bath and north east Somerset*":

"I've booked to ride at I think it was 08:20 to 08:40. I had to be in Bath by 10 o'clock. I got a message through the WESTlink app that 'your ride will be arriving at 10 past nine'. Within five minutes of that message, I got another message and this message said: 'Hi Robert, we've successfully cancelled your ride'. It turned out that there was no bus and there was no rider, so it was never going to come again. I've had three and a half months of this. I've had buses arrive an hour early when I've been in the hospital...

I think actually, he has single-handedly destroyed the rural transport system out here, and there is absolutely nothing now. We had a wonderful little service and he spent 8 million, 8 million on his 'Birthday Bus' gimmick".

In response to Mr Phillips' contribution, Mr Norris said: "*...in relation to Rob, Rob is someone who's known to me... Rob is an extreme right-wing person. I had to deal with him when he had a signed autograph of Adolf Hitler on his, house, home window and the police came*". The presenter then said that the complainant was a "*known individual*" and that "*he made some interesting points that others have made on this programme*". Mr Norris continued: "*That's why I said that other people- so I just want to deal with Mr Phillips because he's not coming neutrally, he's got an agenda. But look, what I'd say is we obviously are doing things on an experimental basis...*". Mr Norris then responded to the general criticism of WESTlink and the "Birthday Buses" scheme.

We recognised that the allegations about Mr Phillips had been made by the guest, Mr Norris, rather than the presenter. However, a specific statement had been made that Mr Phillips had displayed a signed autograph of Adolf Hitler in his window, and this was presented as fact. Further, the statement went beyond the fact that Mr Phillips did not agree with some of the actions and policies of the Mayor, and related specifically to alleged behaviour of Mr Phillips which was unconnected to the topic of discussion. We also considered that it would have left listeners with the impression that the matter was serious enough to have resulted in the police being called, without it being made clear if any further action had been taken as a consequence, or when the alleged incident was supposed to have taken place (which we understood had occurred in 2006). In our view, this, along with the reference to Mr Phillips as being "*an extreme right-wing person*", would have been likely to have led listeners to draw an adverse inference about Mr Phillips. Ofcom therefore considered that the statements were serious in nature, and in our view amounted to a significant allegation which had the clear potential to materially and adversely affect listeners' opinions of Mr Phillips. We considered that the seriousness was compounded in the programme by the further comments expressed by Mr Norris that Mr Phillips was coming to the issue of the buses with an "*agenda*", without any explanation as to the reason the Mayor considered this to be the case.

Ofcom next considered whether the presentation of the allegation in the programme as broadcast resulted in unfairness to Mr Phillips.

We understood that the programme was broadcast live, and we recognise that live broadcasts can create the risk of unexpected comments being made by contributors, making it difficult to obtain responses from others during the broadcast. We took into account the broadcaster's submission that the presenter had attempted to steer the conversation back to the topic by saying "*but* [Mr Phillips] *made some interesting points*" about alleged shortcomings in the bus service. We acknowledged that by prefacing his comment with the word "*but*", the presenter may have been attempting to highlight that Mr Norris' allegations were not relevant to the topic under discussion, however we did not consider that this was sufficient to mitigate any potential damage the allegations may have caused. We took into account too that the broadcaster had said that, ideally, the presenter would have distanced himself and the BBC more clearly from Mr Norris' comments given at that stage the presenter had no knowledge of Mr Phillips beyond what he had said about local bus services. Given that the discussion was focused on local transport and the WESTlink bus service, we recognised that the presenter would not have expected Mr Norris to make allegations of the nature he did about Mr Phillips, specifically in the context of a discussion about transport in the WECA area.

Nevertheless, broadcasters need to be particularly aware that they are required to ensure that reasonable care is taken that the broadcast material is consistent with the requirements of the Code and does not mislead viewers or listeners or portray people in a way that is unfair. As said above, there are inherent risks with live programming, including the risk that unexpected comments are made by contributors. However, broadcasters are expected to anticipate this possibility and mitigate against such risks in order to avoid unjust or unfair treatment of individuals or organisations in programmes. This may include briefing presenters and contributors about fairness requirements in advance of the programme, ensuring that any allegations made during the programme are properly tested or challenged, as well as providing appropriate training for presenters and production staff in dealing with unexpected and potentially unfair comments made in a live programme. The importance is that the programme must not mislead listeners or portray people or organisations in a way that is unfair.

In this case, as set out above, while we acknowledged the broadcaster's submission that the presenter had tried to move away from the comments made by Mr Norris and get back to the topic of the bus services under discussion, we did not consider merely stating "*but he made some interesting points*" amounted to sufficient challenge by the presenter. We considered that there was little, or no attempt made by him to challenge Mr Norris' comments or to mitigate against any potential damage the comments may have caused. For instance, by questioning the relevance of the comments to Mr Phillips' opinion on the bus service, or explaining that Mr Phillips had not had an opportunity to respond to those comments. We also took into account that Mr Norris was likely to be considered by listeners as a person who spoke with some authority given his role as Mayor of the WECA. We acknowledged that Mr Phillips said that he had contacted the broadcaster after the programme was broadcast but had received no response. We recognised that the broadcaster said that efforts were made by the programme makers to contact Mr Phillips after he had initially contacted them on the day of broadcast (11 September 2023); the BBC said that a senior journalist made three unsuccessful attempts to get hold of the complainant on the 12 September 2023, and instead left a voicemail. The broadcaster submitted that in fairness to Mr Phillips, it decided to broadcast a statement the following day at the same time on the same programme, which said:

"Now, on yesterday's show at this time, Dan Norris from the West of England Combined Authority was discussing buses with us and said something about the

political persuasions about Robert Phillips who was complaining about 'Birthday Buses'. We'd like to say that we don't have any knowledge of Mr Phillips' politics, it's not relevant to his political persuasion as to the comments he makes about the state of the buses, so we just want to make that absolutely clear".

We recognised the broadcaster's submission that it considered the statement was a fair and timely way to resolve the issue in hand and took into account its comments that Mr Phillips made it difficult for the programme makers to resolve the issues with him. However, we noted that the statement related to Mr Phillips' "*political persuasions*" and made no reference to the allegations about the incident with the autograph in 2006. Mr Phillips' viewpoint in relation to this specific allegation was therefore not reflected.

It was Ofcom's view that when taken together, both the fact that Mr Norris' significant allegations about Mr Phillips were not challenged, and that he was then not given an appropriate and timely opportunity to respond to those allegations, resulted in unfairness to Mr Phillips. This was likely to have materially and adversely affected some listeners' opinions of Mr Phillips in a manner that was unfair to him. In these circumstances, therefore, and taking all of the above factors into consideration, we considered that the broadcaster had not taken reasonable care in this respect to ensure that Mr Phillips was not treated unjustly or unfairly in the programme as broadcast.

Ofcom has upheld Mr Phillips's complaint of unjust or unfair treatment in the programme as broadcast.