



Politicians acting as newsreaders, news interviewers or news reporters

On 28 February 2025, following a judicial review claim by GB News, the High Court quashed two Ofcom breach decisions against GB News and remitted them to Ofcom for reconsideration. Ofcom decided not to reinvestigate these two programmes. On 13 March 2025, Ofcom withdrew the three other breach decisions against GB News and one not pursued decision dated 18 March 2024. Ofcom removed all these decisions from GB News' compliance record. For information, we have made available this archived version.

Summary

This document sets out Ofcom's Decisions on five cases involving politicians acting as newsreaders, news interviewers or news reporters on television.

Our Broadcasting Code requires that broadcast news, in whatever form, must be presented with due impartiality, and that a politician cannot be a newsreader, news interviewer or news reporter unless, exceptionally, there is editorial justification.

Ofcom recognises that, in accordance with the right to freedom of expression, broadcasters have editorial freedom and can offer audiences a wide range of programme formats, including using politicians as presenters. Politicians can present current affairs programmes and they may appear in broadcast news content as an interviewee or any other type of guest, provided they are not used as a newsreader, interviewer or reporter (unless there is exceptional editorial justification), and the programme otherwise complies with the Code.

Ofcom considered that five programmes raised issues warranting investigation under our due impartiality rules. These were two editions of *Jacob Rees-Mogg's State of the Nation* and *Friday Morning with Esther and Phil*, and one edition of *Saturday Morning with Esther and Phil*, broadcast on GB News in May and June 2023.

Ofcom found that these five programmes breached the Code for the reasons set out in full in each corresponding Decision. Politicians acted as a newsreader, news interviewer or news reporter in sequences which constituted news for the purposes of Section Five of the Code, without exceptional justification, and news was therefore not presented with due impartiality.

Ofcom considered that the programmes in question were both news and current affairs programmes. Programmes can feature a mix of news and non-news content and move between the two. However, if a licensee chooses to use a politician as a presenter, it must take steps to ensure they do not act as a newsreader, news interviewer or news reporter.

We are also publishing our [reasons](#) for deciding that a sixth programme, a separate edition of *Jacob Rees-Mogg's State of the Nation*, did not raise issues warranting investigation under these rules, in order to provide broadcasters with an example of what constitutes exceptional editorial justification as allowed by Rule 5.3.

The rationale for the restriction on politicians acting as newsreaders, news interviewers or news reporters is clear – politicians represent a political party or position and are therefore inherently partial on topical issues. Ofcom's Decisions also recognise the special status of broadcast news, which is afforded additional statutory protections because of its fundamental importance in a democratic society.

GB News has not previously breached Rules 5.1 or 5.3. These five programmes were broadcast in May and June 2023 and we have only had reason to open one further investigation into GB News' programming under these rules since we opened these investigations¹. GB News is on notice that any repeated breaches of Rules 5.1 and 5.3 may result in the imposition of a statutory sanction.

¹ This investigation relates to an episode of *Farage* broadcast on 17 January 2024, opened on 4 March 2024.

Ofcom's Decisions

Introduction

GB News is a UK-based channel that broadcasts a range of news and current affairs programmes. It describes itself as “Britain’s News Channel”. The licence for GB News is held by GB News Limited (“GB News” or “the Licensee”).

Ofcom received complaints that the following five programmes were not duly impartial:

- *Jacob Rees-Mogg’s State of the Nation*, 9 May 2023, 20:00
- *Friday Morning with Esther and Phil*, 12 May 2023, 10:00
- *Saturday Morning with Esther and Phil*, 13 May 2023, 10:00
- *Jacob Rees-Mogg’s State of the Nation*, 13 June 2023, 20:00
- *Friday Morning with Esther and Phil*, 23 June 2023, 10:00

In accordance with our published procedures,² Ofcom assessed the relevant content and considered all five programmes raised issues warranting investigation under the following rules of the [Ofcom Broadcasting Code](#) (“the Code”):

Rule 5.1: “News, in whatever form, must be... presented with due impartiality”.

Rule 5.3: “No politician may be used as a newsreader, interviewer or reporter in any news programmes unless, exceptionally, it is editorially justified. In that case, the political allegiance of that person must be made clear to the audience”.

Initially, with the exception of one programme³, Ofcom requested comments from the Licensee on how each programme complied with Rule 5.3 of the Code. After consideration of these, we then requested further comments from the Licensee on how the programmes also complied with Rule 5.1.

This document sets out Ofcom’s Decisions on the five programmes. Before setting out our Decision in relation to each programme, we have set out some general considerations that are relevant to all five investigations in relation to the:

- application of [Section Five](#) of the Code;
- background to Ofcom’s due impartiality regime; and
- specific rules on politicians presenting and appearing in programmes.

² [Procedures for investigating breaches of content standards for television and radio](#)

³ From the outset, we requested the Licensee provide its comments on how *Saturday Morning with Esther and Phil*, 13 May 2023 complied with Rules 5.1 and 5.3 of the Code.

In response to Ofcom's formal request for comments, GB News provided representations on the content of each programme as well as general representations which applied to all five programmes. These have been summarised below in the 'GB News' general representations' section.

In response to Ofcom's Preliminary Views finding all five programmes in breach of Rules 5.1 and 5.3⁴, GB News provided further representations. These included general representations across all the investigations, set out below under GB News' response to Ofcom's Preliminary Views', as well as representations specific to each programme.

We have set out a summary of the content and Ofcom's Decision for each investigation, as well as any reasoning specific to a particular programme, individually. We considered GB News' general and specific representations each time we reached a decision.

Background to Ofcom's due impartiality regime

Reflecting our duties under the Communications Act 2003 ("the Act"), Section Five of the Code requires that the due impartiality requirements of sections 319 and 320 of the Act are met.

Ofcom must perform its duties in accordance with the right to freedom of expression set out in Article 10 of the European Convention on Human Rights. Freedom of expression is one of the essential foundations of a democratic society. As is well established, it encompasses the broadcaster's right to freedom of expression as well as the audience's right to receive information and ideas without interference⁵. It applies not only to the content of information but also to the means of transmission or reception⁶. Any interference must be prescribed by law, pursue a legitimate aim, and be necessary in a democratic society (i.e. proportionate to the legitimate aim pursued and corresponding to a pressing social need). Decisions at both a domestic level and before the European Court of Human Rights make clear the scope for restrictions on freedom of expression is likely to be especially limited in two overlapping fields, namely political speech and on matters of public interest. Accordingly, a high level of protection of freedom of expression will normally be accorded, with the authorities having a particularly narrow margin of appreciation.

It is well established that the freedom of expression of licensed broadcasters may legitimately be restricted where such measures are necessary to achieve the positive objective of maintaining fair and equal democratic discourse on influential media platforms to the benefit of society generally⁷. The due impartiality standards required under sections 319 and 320 of the Act form part of a tripartite series of measures (the others being a prohibition on paid political advertising⁸ and the

⁴ These included Ofcom's Revised Preliminary View in relation to *Jacob Rees-Mogg's State of the Nation*, 9 May 2023.

⁵ *Lingens v Austria* (1986) 8 EHRR 407.

⁶ *Autronic v Switzerland* (1990) 12 EHRR 485.

⁷ *Animal Defenders v United Kingdom* [2013] EMLR 28 and *R (On The Application of Animal Defenders International) v Secretary of State For Culture, Media and Sport* [2008] 1 AC 1312 and *Animal Defenders v United Kingdom* [2013] EMLR 28.

⁸ See s.319(2)(g) and 321(2) of the Act.

provision of free party political and party election broadcasts according to defined rules⁹) which aim to safeguard the integrity of democratic debate on matters of public concern by preventing influential broadcast media platforms from being hijacked by wealthy or well-placed interests promoting a partial agenda.

As the Government's White Paper¹⁰ published in advance of the Communications Bill in December 2000 explained:

"...one of the cornerstones of broadcasting in the UK has been the obligation on all broadcasters to present news with due accuracy and impartiality. There are also important impartiality obligations applying to other programming. The Government believes that these obligations have played a major part in ensuring wide public access to impartial and accurate information about our society and the opportunity to encounter a diverse array of voices and perspectives. They ensure that the broadcast media provide a counter-weight to other, often partial, sources of news. They therefore contribute significantly to properly informed democratic debate. Responses to the consultation indicated general support for retaining them".

In considering the provenance and importance of the due impartiality provisions in the Act in 2020, the Divisional Court found that "Ofcom has consistently found that audiences say that impartiality and accuracy in broadcast news is important to them (para 1.13 [of Ofcom's [Guidance to Section Five of the Code](#) ("the Guidance")]). Further, industry responses to a 2007 Discussion Paper published by Ofcom were overwhelmingly in favour of retaining the due impartiality requirements, for the reason, amongst others, that they secure the credibility of broadcast media in the United Kingdom"¹¹.

In passing the Act, Parliament set out in legislation the restrictions prescribed by law and which it judged to be necessary in our democratic society. The legitimate aim is for the protection of the rights of others. The statutory framework set by Parliament specifically assigns an area of judgment, to be exercised by Ofcom, as to how the requirements of the legislation are to be applied to the facts of each case.

Section 319 specifically requires that "news is presented with due impartiality". Section 319(8) also states that, for this purpose, "'news' means news in whatever form it is included in a service". In Ofcom's view, the rationale for the Code's restriction on politicians being used as a newsreader, interviewer or reporter in any news programme is clear.

⁹ Section 333 of the Act provides that licences for certain broadcasters must require the inclusion of free broadcasts and the observance of the Ofcom Rules on Party Political and Referendum Broadcasts. Those Rules regulate party political broadcasts (offered to qualifying parties outside election periods); party election broadcasts (offered to qualifying parties during election periods); and referendum campaign broadcasts (offered to each designated referendum organisation before each referendum).

¹⁰ [Communications White Paper](#) (Safeguarding the interests of citizens, 6.6.1).

¹¹ *R (on the application of Autonomous Non-Profit Organisation TV-Novosti) v Ofcom* [2020] EWHC 689 (Admin) paragraphs 22 and 24.

Politicians are political representatives. They represent a particular political party each with its own political ideology, attitudes and policy positions. Politicians are therefore likely to be widely understood by audiences as people who both hold, and who also have an inherent interest in promoting, a partial view on topical issues¹².

It is essential in a democratic society that audiences have access to impartial and accurate news: the requirements of due impartiality are highest for news. Due impartiality in UK broadcast news is particularly important because other sources of news media, such as social media and the internet, are often partial. The broadcasting sector as a whole benefits from UK due impartiality regulation in terms of building trust, and both audiences and society as a whole benefit from the fact that broadcast news in the UK must meet Ofcom's standards of due impartiality and due accuracy. It is essential then that audiences can trust and expect that news programmes that they watch on regulated broadcasting services are presented with due impartiality.

We therefore consider that politicians being used to present news risks undermining the integrity and credibility of regulated broadcast news. As set out above, in setting and applying the Code, it is important for Ofcom to maintain audience trust in broadcast news and audience expectations that it will be presented with due impartiality. Rule 5.3 of the Code therefore serves to reinforce and promote the general standard of due impartiality for broadcast news which is required by Rule 5.1.

Each and every time Ofcom applies the Code to broadcast content, Ofcom gives careful consideration to the broadcaster's and the audience's Article 10 rights. In order to reach decisions on whether due impartiality was maintained in each of the programmes, Ofcom has had careful regard to the Article 10 rights and all relevant contextual factors.

Specific rules on politicians presenting and appearing in programmes

The rules on politicians presenting and appearing in programmes are part of a wider legislative scheme which seeks to maintain audience trust in broadcast news and ensure that it is presented with due impartiality. A similar rule featured in the Independent Television Commission (ITC)'s Programme Code.

Section 319 of the Act requires Ofcom to set standards to secure a range of objectives, including that "news included in television and radio services is presented with due impartiality..." (Section 319(2)(c) of the Act).

The Act also makes clear that the references in Section 319 to "news" means news "*in whatever form* it is included in a service" (Section 319(8)).

This is reflected in the fundamental principles set out at the beginning of Section Five of the Code, notably the first principle that Section Five serves to "...ensure that news, *in whatever form*, is reported with due accuracy and presented with due impartiality". Likewise Rule 5.1 states: "News, *in whatever form*, must be reported with due accuracy and presented with due impartiality" and the

¹² We note that in a previous decision Ofcom found that "This [Rule 5.3] is to ensure that the news is presented, and is perceived to be presented, with due impartiality" – see *News*, London Greek Radio, [Broadcast Bulletin Issue number 65 \(ofcom.org.uk\)](https://www.ofcom.gov.uk/broadcast-bulletin/issue-number-65)

Guidance accompanying Section Five makes clear that “news *in whatever form* would include news bulletins, news flashes and daily news magazine programmes”¹³ [emphases added].

The regulatory framework was designed to be flexible enough to respond to technological change and innovation, based on overarching principles which can be applied consistently to an evolving broadcasting landscape. Given the fundamental importance of maintaining audience trust in broadcast news, and in view of the fact that programme genres and editorial techniques can change significantly over time, no definition of “news” is included in the Code. It is important to note that Parliament did not define “news” in the Act and it was clear that it was intended to be wide ranging and to apply to “news in whatever form” (section 319(8)).

Therefore, Ofcom takes the approach of considering whether or not a programme, or a section of a programme, is news or current affairs (or both) depending on a number of factors, including its content and format¹⁴. Factors that could lead us to classify content as news might include:

- a newsreader presenting directly to the audience;
- a running order or list of stories, often in short form;
- the use of reporters or correspondents to deliver packages or live reports; and/or
- a mix of video and reporter items.

Factors that could lead us to classify content as current affairs might include:

- a more long-form programme;
- the presence of extensive discussion, analysis or interviews with guests, often live; and
- long-form video reports.

It is important to note that Ofcom considers that a programme can be both a news and current affairs programme¹⁵. In other words, a programme can contain a mix of both types of content. This approach reflects the modern media environment in which there are a range of rolling news channels and programme formats.

Outside of news programmes, there is no Ofcom rule that prevents a politician from hosting or appearing on a television or radio programme – provided they are not standing as a candidate in an election taking place, or about to take place, or are a representative of a permitted participant, as designated by the Electoral Commission, in a UK referendum¹⁶. This means that politicians are allowed to present current affairs programmes such as audience phone-ins and discussion programmes. Both news programmes and current affairs programmes, and programmes which contain both types of content, must comply with all relevant rules in the Code, including the need to

¹³ See paragraph 1.8 of the Guidance.

¹⁴ As set out in: [Can politicians present TV and radio shows? How our rules apply - Ofcom](#).

¹⁵ We also note that section 405(1) of the Act states that “‘programme’ includes an advertisement and, in relation to a service, anything included in that service which is an individual item (irrespective of length)”.

¹⁶ This is prohibited under Rule 6.6 of the Code.

preserve due impartiality on matters (as well as major matters) of political or industrial controversy or current public policy.¹⁷

GB News' general representations

The Licensee said that there was “increasing uncertainty” about this area of the Code, noting wider public discussion of the issue of politicians presenting programmes, which it said was often ill-informed concerning the actual regulatory position. In support of its claim that there was uncertainty about the application of Rule 5.3, GB News pointed to statements made by Ofcom acknowledging the changing broadcasting environment, as well as Ofcom’s decision to undertake audience research into attitudes towards politicians presenting programmes¹⁸.

The Licensee also said that Ofcom has acknowledged that it is not absolutely clear-cut whether something is ‘news’ or ‘other’ content, for example current affairs.

GB News observed that the broadcasting landscape was evolving, with the consequence that some definitions used in the regulation of broadcast content were now less clear-cut than they had been previously. In these circumstances, the Licensee argued that Ofcom should leave up to the broadcaster’s discretion decisions about “routine matters”, unless there is an “obvious breach” of the Code.

The Licensee also commented on the wording of the rule, which refers to “exceptional” circumstances under which it might be editorially justified for a politician to be used as a newsreader, interviewer or reporter in a news programme. It said that there was no explanation of what would constitute exceptional circumstances in the Code, Ofcom’s [Guidance to Section Five of the Code](#) or any relevant precedent cases. It further observed that the Guidance, which states that “news in whatever form would include news bulletins, news flashes and daily news magazine programmes”, was open to interpretation. It suggested that “further definition would be helpful”.

GB News reiterated its position that the distinction between news and non-news content is unclear. In its view, Ofcom had previously provided reasonable definitions of “news” and “current affairs” but had recently begun treating programmes which more closely conformed to the definition of “current affairs” as news content. It further suggested that Ofcom had taken the approach of classifying as news content any programme that “includes a single element that might be described as ‘news-like’”, on which basis the whole programme was then treated as news. GB News considered this approach to be unfair and unreasonable. It argued that, where a grey area exists in regulation, Ofcom should allow broadcasters greater discretion to exercise their editorial judgement.

GB News said that by insisting that the distinction between news and non-news content is sufficiently clear, Ofcom was potentially failing to act proportionately, consistently and targeting only those cases where action is needed, in line with its statutory duties. Further, Ofcom was not performing its duties so as to guarantee an appropriate level of freedom of expression, according to the Licensee. It acknowledged that Ofcom’s role was a challenging one, but it was nevertheless concerned about how these investigations had been conducted. It requested further engagement with Ofcom.

¹⁷ As required by Rules 5.5 and 5.11 of the Code.

¹⁸ <https://twitter.com/ofcom/status/1668245646187413504?s=46>

GB News' response to Ofcom's Preliminary Views

As noted above, GB News responded separately to Ofcom's Preliminary Views for each programme under investigation. In each response it emphasised points applicable to all five programmes.

Overall, the Licensee argued Ofcom's approach to Rules 5.1 and 5.3 was "unfair", "dangerous" and does not uphold freedom of expression. It urged Ofcom's final stage decision-maker to reverse the conclusions of the Preliminary Views and to find the programmes not in breach of Rules 5.1 and 5.3.

The Licensee made the following points applicable to each of the five programmes:

- There was no breach of Rule 5.3 because the broadcast did not constitute a "news programme" as required by the rule. In each case, GB News contended that the broadcast was a current affairs programme, albeit one which in the case of the *Friday Morning with Esther and Phil* and *Saturday Morning with Esther and Phil* programmes contained some 'news-like' elements. The Licensee believed its interpretation was supported by Ofcom's acknowledgement in the Preliminary Views that: the news bulletins were clearly differentiated from rest of the programme; the inclusion of content Ofcom deemed to be news within the current affairs segments did not make the entire programme a news programme; and the programme as a whole included several features that are typical of current affairs content.
- The content in question did not engage Rule 5.1. GB News disagreed that the sequences identified by Ofcom constituted news for purposes of Rule 5.1. It said these sequences variously included the presenters giving viewers "short factual" updates, interviewing guests or engaging in exchanges with other GB News staff on topical issues. GB News contended in relation to four out of the five programmes that these items were "straightforward" and "uncontroversial", are equally appropriate in a "modern current affairs programme as in news output and did not somehow turn one into the other", and in classifying this content as news for the purposes of Rule 5.1, GB News believed Ofcom's approach went "well beyond [its] discretion to interpret its own Code". It argued that if Ofcom wants different rules it should consult on changing them. It reiterated its point, made in previous submissions, that the distinction between news and non-news is "less clear-cut" than acknowledged by Ofcom. In these circumstances, GB News considered that it was exercising legitimate editorial judgement in including the sequences in question in the programme.
- Even if Rule 5.1 is applied there was no actual lack of impartiality in the content. GB News noted that in two cases Ofcom acknowledged that there was no partial comment on, or discussion of, the wider issue involved. In the other three cases, the Licensee argued Ofcom failed to effectively demonstrate a lack of due impartiality in the programme. GB News took issue with Ofcom's claim that any news content presented by a politician is 'likely to be perceived' to lack due impartiality. It argued this was a "dangerous" interpretation of Rule 5.1. It believed Ofcom's approach "did not stand up to scrutiny".
- Given the above, Ofcom's actions are unfair, disproportionate and outside its narrow margin of appreciation. GB News noted that Ofcom is required to act proportionately and that any interference in a broadcaster's freedom of expression must pursue a legitimate aim and correspond to a pressing social need. GB News suggested where Ofcom itself acknowledged a programme did not include partial comments or lack alternative views, it was "very hard to see how Ofcom's actions can be proportionate to the legitimate aim" of preserving due impartiality.

GB News also asserted that, given the high level of protection the European Court of Human Rights accords to freedom of expression on issues of public interest, Ofcom was acting outside its “narrow margin of appreciation”. GB News further argued that contrary to Ofcom’s claims to value broadcasters’ and audience’s Article 10 rights, Ofcom was “taking an ultra-interventionist approach”.

Jacob Rees-Mogg's State of the Nation

Type of case	Broadcast Standards
Outcome	In Breach
Service	GB News
Date & time	9 May 2023, 20:00
Category	Due impartiality
Summary	A Conservative MP was used as a newsreader, and the news was not presented with due impartiality. In breach of Rules 5.1 and 5.3 of the Code.

Introduction

Jacob Rees-Mogg's State of the Nation is an hour-long programme broadcast four evenings a week on GB News. It is presented by Jacob Rees-Mogg, a Conservative Party MP¹⁹ and former Cabinet Minister. The programme typically features comment and debate about topical issues, including monologues, interviews and panel discussions with guests from the worlds of politics and journalism. The programme also included a scheduled news bulletin, presented by a news anchor, lasting approximately three minutes.

Ofcom received 40 complaints about the programme *Jacob Rees-Mogg's State of the Nation* broadcast on GB News on 9 May 2023. Complainants considered that the programme did not meet the due impartiality requirements in Section Five of the Code.

Programme summary

This episode of *Jacob Rees-Mogg's State of the Nation* responded to recent news stories and political debates and covered a range of topical issues including: the verdict in Donald Trump's civil trial; King Charles III's purported political views; the UK Government's immigration policy; inheritance tax; and arrests of protestors on the day of the King's Coronation.

The programme also included a scheduled news bulletin, presented by a news anchor, lasting approximately three minutes.

¹⁹ Jacob Rees-Mogg is the Conservative MP for North East Somerset.

During the introduction to the programme, which was preceded by the title sequence for the programme, on-screen text identified Jacob Rees-Mogg as the Conservative MP for North East Somerset. Jacob Rees-Mogg introduced the upcoming topics to be discussed during the programme and at the end said:

"...Also, the rape trial of former US President Donald Trump is expected to announce a verdict imminently. We will bring you more as it happens. State of the Nation starts now".

[The title sequence for the programme was then played again].

Jacob Rees-Mogg then introduced the guests who would be joining him on the programme and provided details of how viewers could get in contact. He then said: *"And now it's time for a swift refresh of the news with Polly Middlehurst"*. A GB News title sequence was played followed by the news bulletin, which was presented from a separate GB News studio to the one where Jacob Rees-Mogg was presenting his programme and lasted approximately three minutes. The news bulletin made no reference to the civil trial of Donald Trump. The news anchor ended the news bulletin by saying *"This is GB News, the people's channel"* and this was immediately followed by the GB News title sequence and then the *Jacob Rees-Mogg's State of the Nation* title sequence.

Jacob Rees-Mogg then delivered a monologue about the UK's constitutional requirement for the monarch to remain politically neutral. In making a comparison between the roles of heads of state in the UK and the US, he said:

"We may be reporting later on Donald Trump, we sometimes report on Joe Biden. They are politically divisive figures..."

At 20:08, one of the scrolling headlines in the ticker at the bottom of the screen read: *"Jury has reached its verdict on the Donald Trump civil rape trial"*. This continued to scroll, together with other headlines, until 20:19.

At 20:15, Jacob Rees-Mogg said:

"Coming up next, we have a verdict coming live from New York on Mr Donald Trump, and we'll be bringing you the results with GB News' very own Nigel Farage and Republican candidate Kari Lake. This will be so exciting you will be glued to your television set".

This was accompanied by on-screen text reading: *"TRUMP VERDICT"*.

Following an advertisement break, Jacob Rees-Mogg provided two viewer opinions on topics which had been discussed previously in the programme and then said at 20:19:

"We said we'd bring some updates about the Donald Trump civil case. The jury, deliberating in the rape trial of Donald Trump, has found the former US president [pause] not guilty of the rape charges made against him. The civil lawsuit was brought by writer E. Jean Carroll, who accused Mr Trump of raping her in a Manhattan department store in the 1990s. The verdict was returned as 'not guilty' on rape charges. However, it did find that he sexually abused her. The ex-president was also found to have defamed Miss Carroll in a Truth Social post in

2022. The jury has awarded Miss Carroll \$20,000 in punitive damages for battery claims against Mr Trump, along with \$2.7 million in compensatory damages for defamation by Mr Trump. The total amount of damages awarded to Miss Carroll is \$5 million, so that's about £4 million. I'm now joined by the US midterm Republican candidate for Arizona and supporter of Mr Trump, Kari Lake, and our very own Nigel Farage”.

As Jacob Rees-Mogg spoke, the on-screen text read:

“BREAKING. TRUMP RAPE TRIAL VERDICT. Ex-President found not guilty of raping E. Jean Carroll in the 1990s”.

This remained on-screen during the discussion that followed, as Jacob Rees-Mogg interviewed his guests Kari Lake and Nigel Farage about this breaking news story. The discussion continued until 20:27.

Throughout the remainder of the programme, which covered other topics and contained further interviews and panel discussions with guests, the scrolling text along the bottom of the screen included the following headline:

“BREAKING: Jury finds former US President Donald Trump did not rape E. Jean Carroll, but that he sexually abused and defamed her”.

Initial response

In addition to GB News’ general representations as summarised above, GB News argued that Jacob Rees-Mogg’s comments on the verdict in Donald Trump’s civil trial did not constitute news for the purposes of Rule 5.3.

GB News acknowledged statements by Ofcom which listed some typical factors that could lead Ofcom to classify content as a news programme or a current affairs programme²⁰. Based on these factors and on the definition of a “current affairs programme” as set out in Section Nine of the Code,²¹ the Licensee considered that *Jacob Rees-Mogg’s State of the Nation* was “clearly a current affairs programme”. In GB News’ view, the programme did not constitute news, and therefore Rule 5.3 did not apply.

GB News stated that Jacob Rees-Mogg was clearly identified at the outset of the programme as a Conservative MP. In his introduction to the programme, he listed the topics that would be discussed over the following hour and “also alerted viewers to the fact that the verdict in the Donald Trump rape civil trial would be made public at some stage during the programme”. The Licensee said that Jacob Rees-Mogg “then handed over to a newsreader in a separate studio to provide a full news summary lasting several minutes. At the end of the summary the newsreader handed back to...[Jacob] Rees-Mogg”. The Licensee stated: “GB News goes to great pains to differentiate ‘News’

²⁰ [Can politicians present TV and radio shows? How our rules apply](#)

²¹ “A current affairs programme is one that contains explanation and/or analysis of current events and issues, including material dealing with political or industrial controversy or with current public policy” - see [Section Nine of the Code](#) regarding commercial references in television programmes.

and other content on the channel”, through the use of a different presenter in a separate studio, and also by inserting channel idents and programme titles either side of news bulletins.

GB News acknowledged the references to Donald Trump’s civil trial that appeared in scrolling text at the bottom of the screen during the programme. It also addressed the section of the programme (described in the ‘Programme summary’ above) in which Jacob Rees-Mogg provided details of the verdict. The Licensee emphasised the brevity of this sequence, which lasted under a minute, calling it “a short, factual announcement of the verdict for the purposes of setting up a wider discussion in the studio” with guests Kari Lake and Nigel Farage. It pointed out that there was no video report, and no reporter on location at the court, or other interviews and reaction from the scene. The discussion that followed focused on the “broader aspects of the case”, such as the role of judicial processes in the US political system as compared with the UK, according to GB News.

The Licensee argued that this sequence did not have the effect of making the content news, “even briefly”. It did not consider it necessary for the breaking news story to be delivered by a newsreader from a separate studio, as with the hourly news bulletins on the channel. Instead, Jacob Rees-Mogg providing a “short factual summary, without any wider reporting, seemed to us to be a better and more practical way of delivering the story, particularly as it was not a matter with any bearing on UK politics”. Its purpose was to give the audience a “snapshot of information about the Trump verdict to provide wider context for the discussion that followed”. GB News considered that determining the appropriate format for this sequence was an editorial decision that it had discretion to make, provided it complied with the Code.

With regard to the typical factors that could lead Ofcom to classify content as a news programme, the Licensee said that only one of these was present in this case, namely Jacob Rees-Mogg presenting directly to the audience during the sequence about the verdict in Donald Trump’s civil trial. It argued that presenting directly to the audience is a generic feature commonly used in programming other than news content, including current affairs programmes, and reiterated that there were no “reportorial” elements in the sequence. In its view, Jacob Rees-Mogg was not used as a newsreader at any point during the programme. For all these reasons, the Licensee did not believe that the content was in breach of Rule 5.3.

Response to First Preliminary View

Ofcom issued a First Preliminary View (“the First Preliminary View”) setting out that the programme was in breach of Rule 5.3 of the Code because Jacob Rees-Mogg had presented news in the sequence in question. The First Preliminary View also set out that the rest of the programme did not raise issues under Section Five of the Code. We provided it to the Licensee for its comments.

Following receipt of the Licensee’s representations on Ofcom’s First Preliminary View, oversight of this investigation moved to a second stage decision maker.

After careful consideration of the case and the Licensee’s representations to date, the second stage decision maker decided that, in addition to Rule 5.3, the sequence in which Jacob-Rees Mogg reported on a breaking news story about the verdict in Donald Trump’s civil trial should also be considered under Rule 5.1 of the Code. We therefore requested further comments from the Licensee under Rule 5.1.

GB News' further representations following receipt of Ofcom's First Preliminary View in relation to Rules 5.3, and its comments in relation 5.1, are set out below.

Rule 5.3

The Licensee argued that the First Preliminary View was based on an overly narrow interpretation of Section Five of the Code and that Ofcom had failed to strike the right balance between the purposes of the Code and the Licensee's right to freedom of expression. In GB News' view, the First Preliminary View failed to establish that there had been a breach of Rule 5.3 and Ofcom's rationale for applying the rule in this case was not made sufficiently clear.

In relation to Rule 5.3, GB News restated its position that the programme was current affairs and did not constitute news. It disagreed with Ofcom's assessment, as set out in the First Preliminary View, that the sequence where Jacob Rees-Mogg read out a breaking news story about the verdict in Donald Trump's civil trial constituted news for the purposes of Rule 5.3, because of the nature of the content and other relevant factors to do with its presentation. In the Licensee's view, this content was not obviously news, and its inclusion did not make the programme as a whole, or a discrete section of it, a news programme. In addition, GB News again underlined the short duration of the sequence in question; pointed out that in its view only one of the typical factors that could lead Ofcom to classify content as a news programme was present (namely Jacob Rees-Mogg presenting directly to the audience during the sequence in question); described the steps it takes to ensure that its hourly news bulletins are clearly differentiated from other content on the channel; and questioned whether the distinction between news and current affairs programming had been made sufficiently clear by Ofcom.

In relation to the right to freedom of expression set out in Article 10 of the European Convention on Human Rights, GB News said that it supported the requirement for due impartiality in the Code and acknowledged the preservation of due impartiality as a legitimate aim justifying proportionate restrictions on freedom of expression. The Licensee further noted that the First Preliminary View made clear that Rule 5.3 is intended to contribute to the preservation of due impartiality. However, GB News argued that the finding of a breach of the rule in this case was inconsistent with Ofcom's application of the rules in Section Five of the Code, and therefore it did not believe that the interference with its freedom of expression was justified.

GB News referred to the following as set out by Ofcom in the First Preliminary View: "Having taken into consideration the broadcaster's and audience's rights to freedom of expression, and all relevant contextual factors as well as audience expectations, our assessment was that the programme included alternative viewpoints, content, challenge and context sufficient to preserve due impartiality on matters of current public policy or political or industrial controversy". GB News cited this as evidence that Ofcom had definitively concluded that the programme as a whole, and the sequence in question, were duly impartial.

On this basis, the Licensee considered that the finding of a breach of Rule 5.3 could not be sustained, given that the ultimate purpose of this Rule is to ensure that due impartiality is preserved. It argued that the programme as a whole should be classified as current affairs, and that it was compliant with the special impartiality requirements which apply to this type of content under the Code. The Licensee reiterated that the sequence where Jacob Rees-Mogg read out a breaking news story about the verdict in Donald Trump's civil trial should not be classified as news, for the reasons set out above. In any case, GB News argued that the inclusion of this sequence did not mean that the

programme as a whole should be classified as news. As Rule 5.3 “refer[s] specifically to a ‘news programme’, not just a news item”, the Licensee maintained that the rule did not apply in this case.

Rule 5.1

GB News said it was unclear what part of the programme was the focus of the investigation in this regard, and further, how this content was defined.

The Licensee stated that Rule 5.1 only applies to news programmes. The sequence in this programme where Jacob Rees-Mogg provided details of the verdict in Donald Trump’s civil trial did not, in the Licensee’s view, constitute news for the purposes of Rule 5.1. In any case, GB News considered that this sequence was “straightforward, accurate and factual” with “no lack of due impartiality within it”.

The Licensee also commented on the process conducted by Ofcom. It said that Ofcom’s decision to request representations under Rule 5.1 suggested that “its analysis of the programme up until that point had been mistaken”.

GB News requested that Ofcom provide it with clarification on the points it had raised before proceeding further²². In particular, the Licensee said that it was willing to discuss this programme with Ofcom, as well as the wider compliance issues involved in distinguishing news and non-news content.

Response to Revised Preliminary View

Following receipt of GB News’ representations on Ofcom’s First Preliminary View (including its comments in relation to Rule 5.1), Ofcom issued a Revised Preliminary View finding the programme in breach of Rules 5.3 and 5.1.

The Revised Preliminary View was provided to the Licensee for its comments. In its response, GB News stated that it stood by its previous representations in this case. It made a number of points that are set out above under ‘GB News’ response to Ofcom’s Preliminary Views’ (see page 8 above). In summary, GB News argued that:

- There was no breach of Rule 5.3 because the content in question did not constitute “a news programme” as required by the rule.
- The content did not engage Rule 5.1 because the content was current affairs rather than news.
- Even if Rule 5.1 is applied there was no actual lack of impartiality in the content.
- Given the above, Ofcom’s actions are unfair, disproportionate and outside its narrow margin of appreciation.

In addition to these general representations, GB News also made comments that were specific to this case, which are summarised below.

²² Ofcom wrote to GB News on 28 September 2023 to clarify that Rule 5.1 would be considered in relation to the coverage of the verdict in the Donald Trump civil trial in the programme and the issue of whether a politician delivered the news.

Rule 5.3

Further to its argument that the content was not in breach of Rule 5.3 because it did not constitute “a news programme” as required by the rule, the Licensee cited two passages in the Revised Preliminary View which it said demonstrated Ofcom had in fact accepted its interpretation.

The first passage concerned Ofcom’s acknowledgement of GB News’ representations in response to the First Preliminary View. This passage accepted that the Licensee had taken steps to differentiate the hourly news bulletin from the rest of the programme, for example by using a different presenter. The Revised Preliminary View stated that “the hourly news bulletin was unmistakably news content and was clearly separated from the content presented by Jacob Rees-Mogg”. It also noted that the programme as a whole included a number of features that are typical of current affairs content.

The second passage in the Revised Preliminary View cited by GB News stated that Ofcom did not consider that the inclusion of the sequence about the verdict in Donald Trump’s civil trial made “the entire programme” a news programme, but only the sequence in question.

On the basis of these passages in the Revised Preliminary View, GB News considered that Ofcom had accepted its argument that the broadcast was not a news programme as required by Rule 5.3 and that the item in question did not have the effect of making the broadcast “a news programme”. The Licensee claimed that Ofcom had “cherry-picked” the wording in this rule to justify a provisional breach of Rule 5.3.

Rule 5.1

GB News’ argument that Rule 5.1 did not apply because the content was current affairs rather than news is set out above under ‘GB News’ response to Ofcom’s Preliminary Views’. In relation to this case, the Licensee again emphasised the brevity of the sequence in question and its factual nature.

If Rule 5.1 did apply, GB News’ view was that the content was in any case reported with due accuracy and presented with due impartiality. It first stated that there was no suggestion of inaccuracy in this case. It then argued that the content was in no way “tainted by bias” or “overlaid with personal opinion”. In support of this assessment, the Licensee cited an additional passage in the Revised Preliminary View in which Ofcom described the content as “a brief factual statement covering key information about the trial and the verdict, which did not include any partial comment on, or discussion of, the wider issues involved”. It also highlighted the same passage in the First Preliminary View that it had quoted in its previous response, where Ofcom set out its view (at that stage) that the programme as a whole included alternative viewpoints, content, challenge and context sufficient to preserve due impartiality. The Licensee described this passage in the First Preliminary View as “an unmistakeable and comprehensive endorsement [by Ofcom] of the impartiality of the item in question”. On this basis, GB News considered that Ofcom had accepted that the content was duly impartial.

The Licensee disputed what it called Ofcom’s “totally new interpretation” of Rule 5.1.

Additional comments

The Licensee considered that Ofcom was not acting proportionately, as set out above under ‘GB News’ response to Ofcom’s Preliminary Views’. It urged Ofcom’s final stage decision-maker to reverse the conclusion of the Revised Preliminary View.

Decision

As set out above, following receipt of the Licensee's representations on Ofcom's First Preliminary View, oversight of this investigation moved to another decision maker who had not been involved in the First Preliminary View who requested further comments from the Licensee on how the sequence in question complied with Rule 5.1. Taking these representations into account, Ofcom prepared a Revised Preliminary View provisionally finding that the programme had breached Rules 5.1 and 5.3 of the Code and oversight of the investigation moved to another decision maker who had not been involved in any earlier stages of the investigation.

In reaching Ofcom's Decision, we took into account the considerations set out above under the 'Background to Ofcom's due impartiality regime' and 'Specific rules on politicians presenting and appearing in programmes' sections, as well as GB News' general representations.

Rule 5.3

We first considered whether the content amounted to news.

As set out above, GB News argued that this programme was not news and that therefore the requirements of Rule 5.3 did not apply.

Under Ofcom's rules, politicians typically cannot be a newsreader, interviewer or reporter in any news programme. They are permitted to present other kinds of programmes, including current affairs. Sometimes those programmes may be on channels that also broadcast news. As set out above, there are some typical factors that could lead us to classify content as news or current affairs, which we consider in relation to the programme in question below.

The nature and subject of the content

As explained above, the programme was presented by Jacob Rees-Mogg, a Conservative MP. Ofcom considered that the programme contained both news and current affairs and therefore was a news and current affairs programme.

We acknowledged that the programme included a number of features that are typical of current affairs content: it was a long-form programme (an hour in total), comprising live discussions, analysis and interviews with guests. In these respects, the format of the programme differed from the scheduled hourly news bulletin on GB News, which was broadcast shortly after the programme started.

We acknowledged the Licensee's submissions in response to Ofcom's First Preliminary View in which it reiterated that as a matter of production policy and practice, the programme clearly differentiated news content from the rest of the current affairs output by having "a separate studio; a different presenter; a different on-screen logo; video news 'idents' before and after the bulletin; programme titles; verbal 'handovers'". We accepted the Licensee's representation that the scheduled hourly news bulletin was unmistakably news content and was clearly separated from the content presented by Jacob Rees-Mogg. In particular, we recognised that the news bulletin consisted of short factual reports delivered by a newsreader at a news desk in a separate studio and a mix of videos and live reports from reporters on location, and the bulletin was preceded by the broadcast of a GB News title sequence, which was distinct from the title sequence for *Jacob Rees-Mogg's State of the Nation*.

GB News submitted that Ofcom's approach to classifying news and non-news content is unclear, and that where a grey area exists in regulation, Ofcom should allow broadcasters greater discretion to exercise their editorial judgement. In its representations on Ofcom's Revised Preliminary View, GB News submitted that Ofcom had accepted that the item in question did not have the effect of making the broadcast a "news programme". It also submitted that Ofcom refuses to acknowledge "the widely accepted fact that the distinction between news and current affairs is far less clear-cut than Ofcom likes to pretend. Media industry commentary, Ofcom's own statements on the matter, and its decision to hold a public consultation about it support that view".

However, as reflected in the Code and Guidance, section 319(8) of the Act makes it clear that references to "news" means news in whatever form it is included in a service. We consider that a programme can be both a news and current affairs programme in that it can contain a mix of both types of content. For example, news bulletins are commonly included within a current affairs or magazine programme. It is also possible for content that constitutes news to be included within a non-news programme, without it being clearly demarcated from the rest of the programme as with a news bulletin. In Ofcom's view, this approach reflects the reality of live news and current affairs programming, particularly in the context of rolling news and current affairs channels. For example, a breaking news event could occur during a live current affairs programme – and in such circumstances, if that breaking news event is reported in that programme, it will typically be classified as news content and the relevant rules in the Code will apply.

We also note that, contrary to GB News' submission, Ofcom has not decided to hold a public consultation on this issue²³.

As set out in the 'Programme summary', at the start of the programme Jacob Rees-Mogg introduced the upcoming topics to be discussed during the programme and then said:

"...Also, the rape trial of former US President Donald Trump is expected to announce a verdict imminently. We will bring you more as it happens. State of the Nation starts now".

During the programme, Jacob Rees-Mogg then said:

"We said we'd bring some updates about the Donald Trump civil case. The jury deliberating in the rape trial of Donald Trump has found the former US president [pause] not guilty of the rape charges made against him. The civil lawsuit was brought by writer E. Jean Carroll, who accused Mr Trump of raping her in a Manhattan department store in the 1990s. The verdict has returned as 'not guilty' on rape charges. However, it did find that he sexually abused her. The ex-president was also found to have defamed Miss Carroll in a Truth Social post in 2022. The jury has awarded Ms Carroll \$20,000 in punitive damages for battery claims against Mr Trump, along with \$2.7 million in compensatory damages for defamation by Mr

²³ We understand this submission to be referring to research Ofcom has commissioned from an external agency, as part of our ongoing research programme, on audience attitudes to politicians presenting news and current affairs programmes. This report is not yet complete and the research has not been taken into account in this investigation.

Trump. The total amount of damages awarded to Ms Carroll is \$5 million, so that's about £4 million".

Ofcom considered that this statement was clearly news. It was reporting on a breaking news story, providing the audience with an update on Donald Trump's civil trial shortly after the verdict was announced. This had been expected imminently, as was flagged by Jacob Rees-Mogg at the start of the programme. The content consisted of a brief factual statement covering key information about the trial and the verdict, which did not include any comment on or discussion of the wider issues involved. In its representations, the Licensee described the content in these terms, emphasising its factual nature. In Ofcom's view, the subject matter and nature of the content contributed to it being classified as news. It was immaterial that the story did not concern UK politics.

The Licensee also emphasised the brevity of the sequence. In its view, the fact that this sequence was less than a minute in duration, in the context of an hour-long programme, was relevant to a consideration of whether it constituted news. GB News argued that the inclusion of such a brief sequence did not make the programme as a whole news. However, as explained above, it is clear that references in the Code to "news" mean news in whatever form it is included in a service. It is possible for a programme to be both a news and current affairs programme in that it can contain a mix of both types of content. The duration of a sequence is not determinative of whether or not the rules covering news content apply.

The Licensee argued that the purpose of the sequence was to set up the longer discussion that followed. It added that this discussion focused on wider issues, such as the role of judicial processes in the US political system as compared with the UK. Ofcom agreed that the content and format of the subsequent discussion was current affairs content, but we remained of the view that the preceding content was news, so the programme was a news and current affairs programme.

Other relevant factors

As set out above, there is an indicative and non-exhaustive list of factors that could lead Ofcom to classify content as news, especially when they are combined with other relevant factors. In its representations on Ofcom's First Preliminary View, the Licensee said that only one of the typical factors of news content was present (the presenter talking directly to the audience), and that it was not fair or reasonable for Ofcom to consider the programme "news" on the basis of a single factor.

Ofcom acknowledged that some of the indicative factors associated with news content, including the use of reporters or correspondents to deliver packages or live reports, and a mix of video and reporter items, were not present in this edition of *Jacob Rees-Mogg's State of the Nation*. However, the absence of any potential contributory factor, such as a video report or a reporter on location, does not mean that content should be classified as non-news. In this instance, we considered a range of other presentational factors contributed to this content being classified as news.

References to Donald Trump's civil trial appeared in scrolling text at the bottom of the screen during the programme, as the Licensee acknowledged. These included the following scrolling headlines: *"Jury has reached its verdict on the Donald Trump civil rape trial"* and *"BREAKING. TRUMP TRIAL VERDICT. Ex-President found not guilty of raping E. Jean Carroll in the 1990s"*. The first of these headlines reported the news that a verdict had been reached shortly after it happened. The second headline explicitly referred to the story as *"BREAKING"*.

The use of features familiar to audiences of news programmes, including scrolling text containing updates on stories and terminology such as “*BREAKING*”, does not in itself make content news. However, as set out above, these features can contribute to content being classified as news, especially where they are combined with other relevant factors. In this case, Ofcom considered that the use of these presentational features in the sequence where Jacob Rees-Mogg read out a breaking news story about the verdict in Donald Trump’s civil trial would have reinforced to the audience that this was news content, taking into account all the factors set out above.

GB News said that it did not consider it necessary for the update on Donald Trump’s civil trial to be delivered by a newsreader from a separate studio, as with the hourly news bulletins on the channel. In its view, it was “a better and more practical way” for Jacob Rees-Mogg to deliver this story. The Licensee believed that determining the format of this content was an “editorial” and “routine” matter, over which it had discretion.

We acknowledge that politicians have not presented programmes on the scale we have seen in recent years. However, as set out above, the broadcasting regulatory framework was designed to be flexible enough to respond to changes in services. As part of this, the Act set overarching objectives which provide a framework within which the rules in the Code should be interpreted. These objectives are set out in section 319(2) and include section 319(2)(c) – that news included in television and radio services is presented with due impartiality. This objective is then included as an overarching principle at the start of Section Five of the Code, as well as being reflected in Rule 5.1. Ofcom considers it is clear that the rules in Section Five should always be interpreted in light of this objective.

As stated above, Ofcom attaches great value to broadcasters’ right to freedom of expression and audiences’ right to receive information and ideas, and therefore the broadcasters’ right to make programming, creative and editorial choices. However, all broadcast content must comply with the Code. In particular, Rule 5.3 requires broadcasters to ensure that politicians are not used as a newsreader, interviewer or reporter in any news programmes, unless exceptionally, it is editorially justified (in which case, the political allegiance of the person must be made clear to the audience). In this regard, the Licensee said that Jacob Rees-Mogg was clearly identified as a Conservative MP at the outset of the programme, and that there was no guidance on what would constitute exceptional circumstances for the purpose of this rule.

If a licensee chooses to use a politician as a presenter in a programme which includes both news and current affairs content, then the licensee must take steps to ensure that it complies with the requirements of Rule 5.3, bearing in mind the overarching standards objective that news in whatever form is presented with due impartiality. For the avoidance of doubt, broadcasters retain the editorial freedom to create programmes which move between non-news content and news content but if the licensee chooses to use a politician as the host of such a programme, the licensee will have to take steps so that the politician does not act as a newsreader, news interviewer or news reporter in that programme.

What constitutes exceptional circumstances in the context of Rule 5.3 will always depend on the particular circumstances of a case. In our view, there were not any exceptional grounds to editorially justify using Jacob Rees-Mogg as a newsreader here. It was clear from the beginning of the programme that the verdict was due imminently and Jacob Rees-Mogg had previously trailed the

programme's intention to report on the outcome as soon as it was delivered. In these circumstances, where the presenter of the programme was an MP, the Licensee had advance notice to take additional steps to ensure that the MP did not present this news item, for example by handing over to another presenter. Ofcom did not consider that taking such steps in these unexceptional circumstances would have constituted an undue or disproportionate restriction on the Licensee's editorial discretion or freedom given its obligations under Rule 5.3 of the Code.

For the reasons set out above, it is Ofcom's Decision that the content was in breach of Rule 5.3.

Rule 5.1

Having established that the content in question was news, and that a politician had acted as a newsreader without exceptional editorial justification, we then turned to consider whether this news content had been presented with due impartiality.

We acknowledged GB News' representations on the First Preliminary View, which highlighted Ofcom's assessment, at that stage, that the programme as a whole did not raise potentially substantive issues warranting investigation under rules in Section Five of the Code, other than Rule 5.3. As set out in Ofcom's published [Procedures for Investigating Breaches of Content Standards for Television and Radio](#), a Preliminary View "is only provisional and may be subject to change in the light of subsequent representations/material provided by the broadcaster"²⁴. Following careful consideration of the Licensee's representations on the First Preliminary View, Ofcom decided to issue a Revised Preliminary View, in which we considered whether the programme complied with Rule 5.1.

Rule 5.1 of the Code reflects section 319 of the Act, which specifically requires that "news is presented with due impartiality".

As already stated, in Ofcom's view the rationale for the Code's restriction on politicians being used as a newsreader, interviewer or reporter in any broadcast news content (unless exceptionally editorially justified) is clear. Politicians are political representatives. They represent – and will be understood by viewers to represent – a particular political party or position and they are therefore likely to be widely viewed as being inherently partial on topical issues.

In setting and applying the Code, Ofcom seeks to maintain audience trust in broadcast news because of its fundamental importance in a democratic society. News is a special category of programming which is afforded additional protection under the Code. This special status of news is reflected by the underlying legislation, which requires that broadcast news, in whatever form, is presented with due impartiality. We took this into account in considering whether the content complied with Rule 5.1.

As also stated above, Ofcom attaches great value to broadcasters' right to freedom of expression and audiences' right to receive information and ideas, and therefore the broadcasters' right to make programming, creative and editorial choices. However, all broadcast content must comply with the Code.

The Licensee's view was that the content did not amount to news. It would therefore follow that it would not consider that Rule 5.1, which specifically relates to news, would be engaged. However, for

²⁴ See paragraph 1.29.

the reasons we have set out above, we did consider that the above content was news, and that Jacob Rees-Mogg was used as a newsreader in this programme without exceptional editorial justification.

The Licensee argued that in any event, the sequence in question was duly impartial, in terms of the nature of the content. As noted in the First Preliminary View, Ofcom accepted that the content delivered by Jacob Rees-Mogg contained a brief factual statement covering key information about the trial and the verdict, which did not include any partial comment on, or discussion of, the wider issues involved. However, as set out above, there are additional protections afforded to news because of its fundamental importance in a democratic society. In Ofcom's view, particular care needs to be taken to preserve the due impartiality of news content on licensed services – not only in terms of the content itself, but also in respect of its presentation and how it is likely to be perceived by viewers. Politicians have an inherently partial role in society and news content presented by them is likely to be viewed by audiences in light of that perceived bias. For that reason, we consider that the presentation of broadcast news content by a politician without exceptional editorial justification gives rise to an inherent lack of due impartiality which conflicts with the fundamental standard in Rule 5.1 of the Code.

Therefore, we considered the fact that a politician was used as a newsreader in this programme meant that there was a breach of Rule 5.1 in the circumstances.

For these reasons, Ofcom's Decision is that news was not presented with due impartiality and the programme was therefore also in breach of Rule 5.1.

Conclusion

For all the reasons set out above, Ofcom's Decision is that the sequence in *Jacob Rees-Mogg's State of the Nation*, in which he read out a breaking news story about the verdict in Donald Trump's civil trial, was news for the purposes of Rules 5.1 and 5.3 of the Code.

From the beginning of the programme, the Licensee knew the verdict was due imminently and that the presenter of the programme was a politician. In the absence of exceptional circumstances, it was necessary for the Licensee to ensure that the politician did not present the breaking news item.

Ofcom considered that a politician was used as a newsreader in a sequence which constituted news content for the purposes of Section Five of the Code, without exceptional editorial justification, and the news was therefore not presented with due impartiality. Ofcom's Decision is that the programme was in breach of Rules 5.1 and 5.3.

We consider that our Decision meets the requirements of Article 10(2) of the European Convention of Human Rights, as being prescribed by law, in the pursuit of a legitimate aim and, in particular, that a finding of breach is necessary and proportionate in these circumstances. The Act and the Code as set out above are the applicable law for the purposes of Article 10(2). All Ofcom's licensees must comply with the Act as implemented by the Code and are aware of these obligations. The legitimate aim pursued by the Act and the Code is protecting the rights of others, specifically by aiming to maintain fair and equal democratic discourse on influential media platforms to the benefit of society generally, protecting audiences from harmful partial broadcast news by ensuring the availability of accurate and impartial news services, and ensuring that a range of viewpoints are received by viewers who may then participate on an informed basis in democratic processes. As noted in the

White Paper and by the Divisional Court in 2020²⁵, the requirements of due impartiality seek to “ensure that the broadcast media provide a counter-weight to other, often partial sources of news. They therefore contribute significantly to properly informed democratic debate”.

In considering the proportionality of our Decision, and whether it is justifiable to intervene in this case, we had regard to all of the factors set out above and in particular to Ofcom’s duty to uphold standards protecting audiences from harm and the importance of maintaining audience trust and public confidence in the UK broadcasting regime. The due impartiality rules in particular guard against the risk that democratic debate would become distorted if partial programming was permitted to be broadcast on licensed services. As explained above, additional protections are afforded to news because of its fundamental importance in a democracy. Politicians have an inherently partial role in society and news content presented by them is likely to be viewed by audiences in light of that perceived bias. In our view, the use of politicians to present the news risks undermining the integrity and credibility of regulated broadcast news. We therefore considered it was necessary and proportionate to find a breach of Rules 5.1 and 5.3 in these circumstances.

Breaches of Rules 5.1 and 5.3

²⁵ *R (on the application of Autonomous Non-Profit Organisation TV-Novosti) v Ofcom* [2020] EWHC 689 (Admin), paragraph 22.

Friday Morning with Esther and Phil

Type of case	Broadcast Standards
Outcome	In Breach
Service	GB News
Date & time	12 May 2023, 10:00
Category	Due impartiality
Summary	Two Conservative MPs were used as newsreaders and news interviewers, and the news was not presented with due impartiality. In breach of Rules 5.1 and 5.3 of the Code.

Introduction

*Friday Morning with Esther and Phil*²⁶ was a weekly two-hour discussion programme covering a broad range of topics and presented by Esther McVey and Philip Davies, two Conservative MPs.²⁷ The programme typically consisted of comment and debate about contemporary issues, including interviews and studio discussions with a range of guests and commentators, including four scheduled news bulletins.

Ofcom received a complaint about the programme as broadcast on GB News on 12 May 2023. The complainant alleged that the programme breached the due impartiality requirements in Section Five of the Code.

Programme summary

This edition of *Friday Morning with Esther and Phil* included discussions and interviews around a range of recent news stories including: a teenager awaiting sentencing on terrorism offences; the UK's economic growth; President Biden's visit to Ireland; House of Commons Speaker, Sir Lindsay Hoyle and his dispute with Kemi Badenoch MP in the House of Commons; the anniversary of Blackadder and celebratory stamp collection; International Nurses Day; and, EU legislation.

²⁶ In response to Ofcom's request for formal comments about this content, GB News said that *Friday Morning with Esther and Phil* was no longer being broadcast.

²⁷ Esther McVey is the Conservative MP for Tatton and as of November 2023 holds the Government post of Minister without Portfolio (Cabinet Office). Philip Davies is the Conservative MP for Shipley.

During the programme there was also:

- a report on the national rail strikes which included a live report by Tony McGuire from Glasgow Central Station picket line (“rail strikes report”); and
- a report on The Duke of Sussex’s court case against the Mirror Group newspapers, including a live report by Paul Hawkins from outside the Royal Courts of Justice (“Duke of Sussex court case report”).

The programme also included four scheduled news bulletins, presented by a news anchor, lasting approximately five minutes each.

The episode began at 10:00 with the presenters, Ms McVey and Mr Davies, reading out the following introduction:

Ms McVey: *“Good morning and welcome to Friday morning with Esther and Phil here on GB News. It’s a very busy show today, so let’s see what’s coming up”.*

Mr Davies: *“Yes, some things never change; train drivers are on strike again, with workers from 16 companies staging a walkout over pay. We’ll be getting the latest on this from our reporters on the scene”.*

Ms McVey: *“And the teenager who admitted to surveillance and plots to attack policemen and military personnel, is set to be sentenced imminently. Former Met police detective Peter Bleksley will give us live reaction as it happens”.*

Mr Davies: *“Prince Harry is one of a number of public figures involved in a court case against the Mirror Group over phone hacking allegations. Our reporter, Paul Hawkins, is at the Royal Courts of Justice and he’ll give us all the latest news from there”.*

Ms McVey: *“And the UK economy grew slightly in the first quarter of the year but slumped unexpectedly in March. We’ll get analysis from economist Vicky Pryce on these developments”.*

The presenters then handed over to the GB News news anchor for a news bulletin which reported on: the national rail strikes; UK economic growth; the war in Ukraine; former Pakistan Prime Minister, Imran Khan’s appearance in court on corruption charges; car rental price increases; and astronomers witnessing the largest cosmic explosion ever seen.

During the programme, rolling news headlines were displayed along the bottom of the screen. At 10:00, one of these headlines read: *“Rail passengers warned of travel disruption as Aslef union members strike in long-running dispute over pay”*. This continued to scroll, together with other headlines, until the end of the programme.

The programme, presented by two MPs, was two hours in length and featured discussion, analysis and interviews with guests on topical events. It contained scheduled news bulletins presented by a news anchor in a different studio. We considered that this programme consisted of both news and

current affairs content. At times during the programme, the presenters were acting as newsreaders and news interviewers – for example during the rail strikes report and the Duke of Sussex court case report. We explain our reasons in detail below.

Rail Strikes Report

The programme returned to the main studio at 10:07 and Ms McVey introduced the report on the rail strikes that were underway across parts of the UK.

Throughout this report, which lasted from 10:08 to 10:12, the on-screen text read:

“BRITAIN ON STRIKE: Train drivers across 16 companies stage walkout today over pay dispute”.

Ms McVey: *“Thank you Rhiannon and welcome back. Drivers and other workers from 16 different train companies have staged a walkout today, citing long running pay disputes”.*

Mr Davies: *“Rail passengers face nationwide disruption over the next few days, with two further walkouts scheduled for the 31st of May and the third of June. Obviously today’s, this weekend’s [is] affecting the Eurovision song contest, the third of June will affect the FA Cup Final between Manchester City and Manchester United and, of course, the Epsom Derby”.*

Ms McVey: *“Now the rail union ASLEF says they received a risible pay offer from the rail delivery group but point out that their workers have not received a salary increase since 2019”.*

Mr Davies: *“Let’s get the latest on this from our reporter Tony McGuire. Tony, what’s the latest from the front line of the picket line?”*

The broadcast then went to GB News Scotland reporter Tony McGuire who was reporting live from the picket line at Glasgow Central Station. While Mr McGuire was speaking, the words *“Live, Glasgow”* featured on the top left-hand corner of the screen:

Mr McGuire: *“Hello, good morning. I am in Glasgow, outside Glasgow Central Station, outside one of three picket lines across Scotland today. ASLEF workers here are joined by Edinburgh Waverley Workers as Avanti West Coast trains cease to be operating today. Now this is part of targeted strikes to make sure that an 11 month pay dispute with train drivers [sic]. In that time, just [to] put it in some sort of context, teachers have been awarded a pay increase, nurses, NHS staff, but still 11 months on, train drivers are concerned that their salaries have not seen a rise in several years. Now, as you mentioned there, this, of course, affects the Eurovision song contest. Anyone expecting to get from Scotland down to England, to Liverpool, tomorrow is going to have a hard time of it. Some lines will be working, but certainly Avanti West Coast will not be one of them. Now passengers have been*

advised to look for alternative ways of travel, not to try and attempt to, to come to any of the stations and instead to get a refund and to look at other means. Now I know that there's going to be a kind of an emergency express train from Manchester Airport to Liverpool Lime Street. But still, that doesn't really help any of the Scottish fans looking to travel down to London for tomorrow's, sorry, to Liverpool for tomorrow's big event. Now the parties involved, Avanti West Coast, has obviously said that tomorrow with the RMT strikes due to happen across the country, that the last train to depart the city in Liverpool will be earlier than Eurovision fans would like. Now I can't imagine after making the trip to Liverpool for this big event in support of Ukraine, who obviously can't hold the event this year after winning last year, they won't want to miss the grand finale. And certainly ASLEF have said that the pay should be increased to keep pace with inflation, as their pay has been frozen for a number of years. And RMT General Secretary Mick Lynch has said that [RMT is] striking with employers so the Government can actually feel and see the anger among train drivers so many months after talks began. Now it's unclear as to how close that we are to a deal, but certainly this weekend and the weekend of the FA Cup final seems to be some quite bad timing. And it's going to leave a lot of the members of the public quite disappointed that the plans they've been looking forward to for so many months may hit a bit of a snag. So we'll wait and see, certainly ASLEF – the head of ASLEF is going to be here later today to join the picket line. I'll be interested to see if we can talk to him and see what his plans are and what he hopes to gain from this weekend of mass disruption”.

The broadcast then returned to the studio:

Mr Davies: *“Thank you, Tony McGuire there, and we'll have more updates from him later on in the show. And he's quite right, that disruption for so many people across the country I'm quite sure will backfire for them and their demands”.*

The presenters returned to this story again at 11:07 after a news bulletin.

Mr Davies: *“Rail workers are yet again staging strike action today, with nationwide disruption expected over the coming days”.*

Ms McVey: *“Yes, two further walk outs are scheduled for May the 31st and June the third, the day of the FA Cup final between Manchester City and Manchester United. And, of course, this weekend, with the Eurovision Song contest in Liverpool”.*

Mr Davies: *“Will these rail disputes ever end? Still with us is GB News reporter Tony McGuire to bring us up to date from the picket line in Glasgow”.*

The broadcast returned to Mr McGuire who was still reporting live from the picket line at Glasgow Central Station. While Mr McGuire was speaking, the words “Live, Glasgow” featured on the top left-hand corner of the screen.

Mr McGuire: *“Hello. Good morning. Yes, I’m outside Glasgow Central Station. This is one of three picket lines across Scotland today, the other two being outside Edinburgh Waverley and Polmadie Rail Depot. ASLEF is on strike today, and most effective, really in Scotland is Avanti West Coast. Now they supply trains and shepherd the people of Scotland down to England and, of course, in Northern Wales. Now the big headline really here is that tomorrow is Eurovision and any Scottish fans who’d be looking to take an Avanti West Coast train down for the big event in Liverpool tomorrow is going to have to find a different route now. Certainly, they may have to find a different mode of travel altogether, the current advice is to, if you have an Avanti West Coast train that is heading down today, and certainly Avanti West Coast is only one of 16 or more rail services that are affected today. The advice is to get a refund and to look for an alternative means of travel. Now Northern Railways, they have a Eurovision Express line that is shepherding people from Manchester Airport to Liverpool Lime Street. But unfortunately, that’s not going to be much help to people a few 100 miles north of there in Scotland. Now we’ve heard from Avanti West Coast, who have said that their last train to depart Liverpool tomorrow will be much earlier than the end of the event and you Eurovision fans are going to be left sorely disappointed. So commuters, I would imagine 11 months into these rail disputes are going to be giving the rail companies nil points”.*

Mr Davies: *“Tony McGuire. Thanks ever so much for keeping us up to date from the front line of that dispute in Glasgow”.*

Duke of Sussex Court Case Report

The report at 10:28 was the Duke of Sussex’s court case, alongside other high-profile individuals, against the Mirror Group newspapers. Ms McVey and Mr Davies introduced the report as follows:

Ms McVey: *“Prince Harry’s latest court case against the Mirror Group newspapers has begun, and the Duke of Sussex is part of a joint lawsuit on historical phone hacking, which includes members of Girls Aloud and former footballer Ian Wright”.*

Mr Davies: *“Prince Harry will take the stand to give evidence in the case in June, which will see him become the first senior royal to give evidence in a courtroom since the 19th century”.*

Ms McVey: *“Well, is Prince Harry right to pursue this alleged intrusion into his private life, or given his known ‘like’ for media attention and his dislike*

of the media, is he just courting extra attention for himself, or maybe a new Netflix documentary?"

Mr Davies: *"Let's go to the High Court now, where our reporter, Paul Hawkins, can tell us what to expect as the trial rumbles on. What's going on, Paul?"*

The broadcast moved to a live report from news reporter Paul Hawkins who was outside the Royal Courts of Justice. While Mr Hawkins was speaking, the words *"Live, Royal Courts of Justice"* featured on the top left-hand corner of the screen:

Mr Hawkins: *"Yeah, so today guys, so this trial lasts six to seven weeks. And just to give you the overview you mentioned, the former Girls Aloud singer Cheryl Cole, the footballer Ian Wright. That's a, there's a big group of high-profile individuals that have brought this claim against Mirror Group newspapers. Four test cases have been pulled from the representative cases. Two actors, plus the former wife of the comedian Paul Whitehouse and Prince Harry most notably. So those are the four cases that are being heard at this trial. This is the first trial against a publisher. The other hearing is against other newspapers that Prince Harry [is] involved with, they're preliminary trial hearings. But this is the full trial that's due to last six to seven weeks, started on Wednesday, and for the last two days and today we've heard the opening from the lawyer, David Sherborne, for the claimants and effectively, he's been supplying the court with documentation, evidence from whistle blowers, phone records, emails, invoices, receipts and the allegation is that at Mirror Group newspapers they were unlawfully obtaining information to write stories about these people, that they were hacking phones, that they were using private investigators etcetera and in fact, the use of private investigators was, in the words of David Sherborne yesterday, 'systemic and widespread'. Now, Mirror Group newspapers have always said that there was no phone hacking going on at the newspaper. It has admitted some... made a limited admission that private investigators were used in one case to obtain information about Prince Harry and two of the other claimants. So they have made that admission already. But generally speaking, this case is about, was there phone hacking going on? Was information unlawfully obtained? Who knew about it and was there a cover up? The allegation from the lawyer, David Sherborne, is that senior executives at the paper, and they've mentioned the name of Piers Morgan, did know about this. Now Piers Morgan has always denied any knowledge or involvement in phone hacking. But essentially, that's what's been happening for the last two and a half days. Today, David Sherborne will finish his opening, and then we'll*

hear the opening from the lawyers representing Mirror Group newspapers who deny all those claims”.

Mr Davies: *“Paul, I just wondered. I thought that the Mirror Group ages ago had admitted that they’d been involved in stories that involve phone hacking and that they’d actually paid out and made provision for hundreds of millions of pounds in compensation. I just wondered why this case was so different from those previous admissions and previous payments that they’ve made”.*

Mr Hawkins: *“Yeah, that was a different group of individuals, and they had made a limited admission of unlawfully obtaining information. That’s in the case, I think it goes back to 2015. Then they had to pay out hundreds of thousands of pounds, as you say Phillip, in compensation. But this is a separate trial. This is involving Prince Harry, and as I say, it’s four test cases from a wider pool of people. So if they do, if they are successful in their claim against Mirror Group newspapers, this will set the bar where damages can be brought and then you’ll hear claims from the other people at a later date”.*

Mr Davies: *“Paul, thanks ever so much for keeping us up to date with what’s going on in court”.*

Throughout this report, which took place between 10:28 and 10:32, the following on-screen text was shown:

“PRINCE HARRY VS DAILY MIRROR: Phone hacking trial of celebrities against Mirror group at High Court”; and

“PHONE-HACKING TRIAL: Case brought against Mirror group by celebrities enters its third day”.

Initial Response

Rule 5.3

In addition to GB News’ general representations as summarised above, GB News stated that it “differentiate[s] its ‘news’ output in its news bulletins from other content”. The Licensee explained that it does this by identifying bulletins with a “separate presenter, different studio, verbal handovers and distinguishing ‘idents’ and titles”. GB News said that this format was used during this edition of *Friday Morning with Esther and Phil* to make these distinctions clear.

GB News argued that the majority of its ‘non-news’ content in the programme consisted of “discussion, debate and opinion on a wide range of subjects”. The Licensee explained that some of these subjects were “topical” such as the stories on the rail strikes and new Office of National Statistics figures on economic growth, however it pointed out that other topics were “less so” such as the *Blackadder* comedy series and International Nurses’ Day discussions.

The Licensee explained that “the intention of the programme was to ensure that the ‘non-news’ elements remained conversational and opinion-led”, and that the majority of the programme featured this kind of content. However, GB News accepted that outside of the news bulletins “the programme featured some elements more recognisable as news”. It acknowledged that due to the high likelihood of news stories breaking on a Friday morning it was “not an appropriate time to broadcast such a programme presented by two politicians”, as it would be “unavoidable for the presenters to discuss and analyse them as they unfolded”.

GB News explained that as a result of this timing, the programme had been “dropped from the schedule” several weeks prior to the complaint being made and while Ofcom was still considering the complaint. In light of these factors, GB News requested Ofcom to consider the case as ‘resolved’.

GB News argued that a ‘resolved’ outcome is used “fairly regularly” by Ofcom in its investigations. It said this action would be “appropriate in this instance”. It commented that there is no document outlining how Ofcom decides if a case is resolved, and no reference to this in the Communications Act 2003 or Ofcom’s [Procedures for Investigating Breaches of Content Standards for Television and Radio](#). It noted that Ofcom exercises its “reasonable discretion” in such cases. GB News provided several examples of investigations which had been resolved by Ofcom and argued that the current case would have caused “considerably less potential harm” and had “more mitigation” than in the examples provided²⁸.

Rule 5.1

The Licensee said it considered that there was no part of the programme “whether ‘news’ or ‘current affairs’ in which due impartiality seems to be lacking”.

The Licensee requested Ofcom to identify a particular segment of the programme it considered to raise potential due impartiality concerns for the Licensee’s consideration before Ofcom concludes its Preliminary View²⁹.

GB News also reiterated that although it regarded *Friday Morning with Esther and Phil* to be a current affairs programme, it recognised there were some elements “which aligned more closely with Ofcom’s definition of ‘news’”. GB News also repeated its call for Ofcom to consider the matter ‘resolved’.

²⁸ GB News cited the following cases: a [Sky News broadcast](#) (10 September 2022) which inaccurately described images shown of the protests held in London relating to the death of Chris Kaba, as a crowd going to pay tribute to the late Queen; an edition of [Talksport Breakfast](#) (2 August 2022) and [Competition with Jagdeep](#), Kanshi TV (14 January 2021) both relating to broadcast competitions; an episode of [Ant and Dec’s Saturday Night Takeaway](#), ITV (14 March 2020), an episode of [Veep](#), Sky Comedy (30 November 2020), and an edition of [Jeremy Vine](#), Channel 5 (14 February 2020) all of which contained offensive language before the watershed; various [Sky services](#) (various dates during October 2019) for scheduling a Sky Cinema Halloween trailer pre-watershed; and the programme [DJ Tiiny](#), Capital XTRA (various dates January 2021) relating to commercial communications on radio.

²⁹ Ofcom wrote to GB News on 28 September 2023 to clarify that Rule 5.1 will be applied to any content in the programme where we consider Ms McVey and/or Mr Davies potentially delivered the news.

Response to Preliminary View

Following receipt of GB News' representations, Ofcom issued a Preliminary View finding the programme in breach of Rules 5.3 and 5.1.

In response to the Preliminary View, GB News made a number of points that are set out above under 'GB News' response to Ofcom's Preliminary Views' (see page 8 above). In summary, GB News argued that:

- There was no breach of Rule 5.3 because the content in question did not constitute "a news programme" as required by the rule.
- The content did not engage Rule 5.1 because the content was current affairs rather than news.
- Even if Rule 5.1 is applied there was no actual lack of impartiality in the content.
- Given the above, Ofcom's actions are unfair, disproportionate and outside its narrow margin of appreciation.

In addition to these general representations, GB News also made comments that were specific to this case, which are summarised below.

Rule 5.3

In relation to the argument that the content in question did not constitute "a news programme" as required by Rule 5.3, the Licensee stated that *Friday Morning with Esther and Phil* was "a current affairs programme which contained a number of news-like elements". It quoted a passage in the Preliminary View in which Ofcom: noted that the programme as a whole included some features that are typical of current affairs content; and acknowledged the steps taken by the Licensee to differentiate the hourly news bulletins from the rest of the programme. It cited another passage in which Ofcom clarified that the inclusion of the rail strikes report and the Duke of Sussex court case report did not make "the entire two-hour programme" a news programme, but only the relevant sequences. GB News claimed that these passages in the Preliminary View demonstrated that there was no breach of Rule 5.3.

Rule 5.1

As also set out above under 'GB News' response to Ofcom's Preliminary Views', GB News argued that the content in question was current affairs rather than news. It described the rail strikes report and the Duke of Sussex court case report as "simple, journalistic, factual exchanges of information and background detail". On this basis and for the reasons set out above, the Licensee maintained that the content did not engage Rule 5.1.

Even if Rule 5.1 is applied, GB News considered that "it is absolutely clear in any reasonable view of the matter that there was no breach of Rule 5.1 anyway". It claimed that Ofcom had failed to point to any evidence of any lack of impartiality in the programme, with the exception of "one passing reference to a single sentence (to our mind an uncontentious one) in a two-hour programme". It also strongly contested Ofcom's interpretation of Rule 5.1, as set out above under 'GB News' response to Ofcom's Preliminary Views'. It said that in this case the approach was "not justified by

the facts” because the content “obviously was impartial and all parties – including Ofcom themselves – agreed as much”. GB News suggested that Ofcom was “designating brief and unremarkable exchanges between presenters and reporters in a current affairs show as ‘news’ and using it to manufacture a claim of lack of impartiality”. It added that Ofcom should “not act as though the existing rules say something they do not” and that Ofcom’s approach “rewrites the plain language definition of impartiality to equate ‘perception’ of lack of impartiality with an offence of the same, even if not justified by the facts”.

Additional comments

The Licensee considered that Ofcom was not acting proportionately, as set out above under ‘GB News’ response to Ofcom’s Preliminary Views’. It urged Ofcom’s final stage decision-maker to reverse the conclusion of the Preliminary View.

Decision

In reaching Ofcom’s Decision, we took into account the considerations set out above under the ‘Background to Ofcom’s due impartiality regime’ and ‘Specific rules on politicians presenting and appearing in programmes’ sections, as well as GB News’ general representations.

Rule 5.3

We first considered whether the content amounted to news.

As set out above, GB News argued that “the majority of the ‘non-news’ output during the two hours in question clearly consisted of discussion, debate and opinion on a wide range of subjects”. However, it acknowledged “that at certain points outside the news bulletins the programme featured some elements more recognisable as news content”.

Under Ofcom’s rules, politicians typically cannot be a newsreader, interviewer, or reporter in any news programme. They are permitted to present other kinds of programmes, including current affairs. Sometimes those programmes may be on channels that also broadcast news. As also set out above, there are some typical factors that could lead us to classify content as news or current affairs, which we consider in relation to the programme in question below.

The nature and subject of the content

As explained above, the programme was presented by Ms McVey and Mr Davies, two Conservative MPs. Ofcom considered that the programme contained both news and current affairs and therefore was a news and current affairs programme.

We acknowledged that the programme included a number of features that are typical of current affairs content: it was a long-form programme (two hours in total) comprising live discussions, analysis and interviews with guests. The presenters’ discussions were clearly separate from the scheduled news bulletins which comprised of short factual reports delivered by a newsreader at a news desk in a separate studio, and were preceded by the broadcast of a GB News ‘ident’ that was distinctive from the title sequence of *Friday Morning with Esther and Phil*.

GB News submitted that Ofcom’s approach to classifying news and non-news content is unclear, and that where a grey area exists in regulation, Ofcom should allow broadcasters greater discretion to

exercise their editorial judgement. While GB News admitted that there was some “news-like” content in the programme, it argued this did not make the entire programme definitively “a news programme” for the purposes of Rule 5.3, and that Ofcom had accepted that in acknowledging that the programme had separated news content from current affairs content. In its representations on Ofcom’s Preliminary View, GB News submitted that Ofcom refuses to acknowledge “the widely accepted fact that the distinction between news and current affairs is far less clear-cut than it likes to pretend, or than may have existed in past times. Ofcom’s own statements on the matter and its decision to hold a public consultation about it support that view”.

However, as reflected in the Code and Guidance, section 319(8) of the Act makes it clear that references to “news” means news in whatever form it is included in a service. We consider that a programme can be both a news and current affairs programme in that it can contain a mix of both types of content. For example, news bulletins are commonly included within a current affairs or magazine programme. It is also possible for content that constitutes news to be included within a non-news programme, without it being clearly demarcated from the rest of the programme as with a news bulletin. In Ofcom’s view, this approach reflects the reality of live news and current affairs programming, particularly in the context of rolling news and current affairs channels. For example, a breaking news event could occur during a live current affairs programme – and in such circumstances, if that breaking news event is reported in that programme, it will typically be classified as news content and the relevant rules in the Code will apply.

We also note that, contrary to GB News’ submission, Ofcom has not decided to hold a public consultation on this issue.³⁰

In this programme, the presenters Ms McVey and Mr Davies reported on a number of topical and developing news stories, for example the rail strikes report and the Duke of Sussex court case report. In Ofcom’s view, these reports had characteristics which contributed to them being classified as news content. We also acknowledged that the Licensee accepted that: “the programme featured some elements more recognisable as news content”.

As stated above, one characteristic of news content is programming which includes a running order or list of stories in short form. In this case, we observed that certain stories were trailed by the presenters at the start of the programme, for example the rail strikes report and the Duke of Sussex court case report:

Mr Davies: *“Yes, some things never change: train drivers are on strike again, with workers from 16 companies staging a walkout over pay. We’ll be getting the latest on this from our reporters on the scene”.*

Mr Davies: *“Prince Harry is one of a number of public figures involved in a court case against the Mirror Group over phone hacking*

³⁰ We understand this submission to be referring to research Ofcom has commissioned from an external agency, as part of our ongoing research programme, on audience attitudes to politicians presenting news and current affairs programmes. This report is not yet complete and this research has not been taken into account in this investigation.

allegations. Our reporter Paul Hawkins is at the Royal Courts of Justice and he'll give us all the latest news from there".

In Ofcom's view, the topical and developing nature of these events and the tone and style of these introductory statements, signalled to the audience that these were news stories and they would be receiving the latest updates on them during the programme. For example, the presenters said that they would be getting *"the latest on this from our reporters on the scene"*; the *"latest news"*; and *"live reaction as it happens"*.

In addition, the presenters also used brief factual statements to convey key information on these stories while presenting these directly to the audience, which we detail further below.

Rail Strikes Report

The rail strikes report provided the audience with the latest updates on the strikes, pay negotiations and the potential impact for people travelling to forthcoming entertainment and sports events. In our view, in addition to the topical and developing nature of the events themselves, there were several factors which contributed to this report being classified as news:

- the presenters directly addressed the audience to provide brief factual updates which provided the latest information about the strikes (*"Drivers and other workers from 16 different train companies have staged a walkout today..."*; *"Rail passengers face nationwide disruption over the next few days, with two further walkouts scheduled for the 31st of May and the third of June"*; and *"now the rail union ASLEF says they received a risible pay offer from the rail delivery group but point out that their workers have not received a salary increase since 2019"*);
- the presenters signalled to the audience on several occasions that this was a developing news story and they would be providing the latest updates (*"We'll be getting the latest on this from our reporters on the scene"* and *"... we'll have more updates from him [reporter Tony McGuire] later on in the show"*);
- it featured two live reports from a GB News reporter at the scene of the picket line in Glasgow, which was indicated on screen with the words *"Live, Glasgow"*; and
- the story featured in the on-screen scrolling news headlines which were shown throughout the programme: *"BRITAIN ON STRIKE: Train drivers across 16 companies stage walkout today over pay dispute"*.

We also noted that Mr Davies provided a personal opinion on this news story when the reporter handed back to him in the studio at the end of the report. Mr Davies said: *"And he's quite right, that disruption for so many people across the country I'm quite sure will backfire for them and their demands"*.

Ofcom acknowledged that the individual use of any of the features listed above in a programme may not in itself necessarily mean that the content amounts to news. However, in this case we considered that the nature of the events being reported on, together with all these features, which would be familiar to audiences of news content, meant this was clearly news content.

Duke of Sussex Court Case Report

This report provided an update on the Duke of Sussex's court case against Mirror Group newspapers. We took into account that, in addition to the topical and developing nature of the events in question, the reporting also contained some of the same features as the rail strikes report, for example:

- the presenters directly addressed the audience and provided brief factual updates about developments in the trial (*"Prince Harry's latest court case against the Mirror Group newspapers has begun..."*; and *"Prince Harry will take the stand to give evidence in the case in June, which will see him become the first senior royal to give evidence in a courtroom since the 19th century"*); and
- it included a live report from a reporter at the scene outside the Royal Courts of Justice, which was indicated on screen with the words *"Live, Royal Courts of Justice"* and with Mr Davies' exchange with Paul Hawkins (*"Our reporter, Paul Hawkins is at the Royal Courts of Justice and he'll give us all the latest news from there"*).

We also considered that during the live report outside the Royal Courts of Justice, the presenters were also acting as news interviewers when Mr Davies asked the reporter: *"Paul, I just wondered. I thought that the Mirror Group ages ago had admitted that they've been involved in stories that involve phone hacking and that they'd actually paid out and made provision for hundreds of millions of pounds in compensation. I just wondered why this case was so different from those previous admissions and previous payments that they've made"*.

In our view, the topical and developing nature of this story and these factors, taken together, meant the Duke of Sussex court case report was clearly news content.

In light of the factors outlined above, in Ofcom's view, these reports focused on topical, developing events and contained a number of features which led us to classify them as news content for the purposes of Rule 5.3 of the Code. For example, the reports included: the presenters speaking directly to the audience, short form updates for the audience about topical and developing events and live footage and/or reports from reporters at the scene. We also took into account that GB News also accepted that some of the content in this programme had news like features and in particular that the report on the rail strikes was "topical".

Other relevant factors

As set out above, there is an indicative and non-exhaustive list of factors that could lead Ofcom to classify content as news, especially where they are combined with other relevant factors.

Conversely, the absence of any potential contributory factor, such as a video report or a reporter on location, does not mean that content should be classified as non-news. In this case, taking into account the factors set out above, Ofcom considered that the rail strikes report and the Duke of Sussex court case report both constituted news content.

We acknowledge that politicians have not presented programmes on the scale we have seen in recent years. However, as set out above, the broadcasting regulatory framework was designed to be flexible enough to respond to changes in services. As part of this, the Act set overarching objectives which provide a framework within which the rules in the Code should be interpreted. These objectives are set out in section 319(2) and include section 319(2)(c) – that news included in

television and radio services is presented with due impartiality. This objective is then included as an overarching principle at the start of Section Five of the Code, as well as being reflected in Rule 5.1. Ofcom considers it is clear that the rules in Section Five should always be interpreted in light of this objective.

As stated above, Ofcom attaches great value to broadcasters' right to freedom of expression and audiences' right to receive information and ideas, and therefore the broadcasters' right to make programming, creative and editorial choices. However, all broadcast content must comply with the Code. In particular, Rule 5.3 requires broadcasters to ensure that politicians are not used as a newsreader, interviewer or reporter in any news programmes, unless exceptionally, it is editorially justified (in which case, the political allegiance of the person must be made clear to the audience). If a licensee chooses to use a politician as a presenter in a programme which includes both news and current affairs content, then the licensee must take steps to ensure that they comply with the requirements of Rule 5.3, bearing in mind the overarching standards objective that news in whatever form is presented with due impartiality. For the avoidance of doubt, broadcasters retain the editorial freedom to create programmes which move between non-news content and news content but if the licensee chooses to use a politician as the host of such a programme, the licensee will have to take steps so that the politician does not act as a newsreader, news interviewer or news reporter in that programme.

What constitutes exceptional circumstances in the context of Rule 5.3 will always depend on the particular circumstances of a case. In our view, there were not any exceptional grounds that provided editorial justification to use Ms McVey and Mr Davies to act as newsreaders or news interviewers, as they did in the reports set out above. It was clear from the beginning of the programme that these were developing news stories and the presenters had previously trailed the programme's intention to report on the latest updates as they happened. In these circumstances, where the presenters of the programmes were MPs, the Licensee had advance notice to take additional steps to ensure that the MPs did not present these news items, for example by handing over to another presenter. Ofcom did not consider that taking such steps in these unexceptional circumstances would have constituted an undue or disproportionate restriction on the Licensee's editorial discretion or freedom given its obligations under Rule 5.3 of the Code.

For all the reasons set out above it is Ofcom's Decision that the above content was in breach of Rule 5.3.

Rule 5.1

Having established that the content in question was news, and that two politicians had acted as newsreaders and news interviewers without exceptional editorial justification, we then turned to consider whether this news content had been presented with due impartiality.

Rule 5.1 of the Code reflects section 319 of the Act, which specifically requires that "news is presented with due impartiality".

As already stated, in Ofcom's view the rationale for the Code's restriction on politicians being used as a newsreader, interviewer or reporter in any broadcast news content (unless exceptionally editorially justified) is clear. Politicians are political representatives. They represent – and will be understood by viewers to represent – a particular political party or position and they are therefore likely to be widely viewed as being inherently partial on topical issues.

In setting and applying the Code, Ofcom seeks to maintain audience trust in broadcast news because of its fundamental importance in a democratic society. News is a special category of programming which is afforded additional protection under the Code. This special status of news is reflected by the underlying legislation, which requires that broadcast news, in whatever form, is presented with due impartiality. We took this into account in considering whether the content complied with Rule 5.1.

As also stated above, Ofcom attaches great value to broadcasters' right to freedom of expression and audiences' right to receive information and ideas, and therefore the broadcasters' right to make programming, creative and editorial choices. However, all broadcast content must comply with the Code.

In this case, we acknowledged that the Licensee accepted that "the programme featured some elements more recognisable as news content". However, GB News also argued that there was no part of the programme "whether 'news' or 'current affairs' in which due impartiality seems to be lacking". However, as set out above, there are additional protections afforded to news because of its fundamental importance in a democratic society. In Ofcom's view, particular care needs to be taken to preserve the due impartiality of news content on licensed services – not only in terms of the content itself, but also in respect of its presentation and how it is likely to be perceived by viewers. Politicians have an inherently partial role in society and news content presented by them is likely to be viewed by audiences in light of that perceived bias. For that reason, we consider that the presentation of broadcast news content by politicians without exceptional editorial justification gives rise to an inherent lack of due impartiality which conflicts with the fundamental standard in Rule 5.1 of the Code.

Therefore, we considered the fact that politicians were used as newsreaders and news interviewers in this programme meant there was also a breach of Rule 5.1 in the circumstances.

Moreover, we noted that in addition, in the rail strikes report Mr Davies provided a personal opinion on the news story when the reporter handed back to him in the studio. Mr Davies said: *"And he's quite right, that disruption for so many people across the country I'm quite sure will backfire for them and their demands"*. As explained above, politicians are inherently partial and hold political views on news events. In this case, we considered Mr Davies provided a partisan comment on a topical news story in which he was a newsreader and news interviewer, which exacerbated the breach of Rule 5.1.

For all these reasons, Ofcom's Decision is that news was not presented with due impartiality and the programme was therefore also in breach of Rule 5.1.

Licensee's request for a Resolved outcome

In its representations the Licensee explained that due to the high likelihood of news stories breaking on a Friday morning it was "not an appropriate time to broadcast such a programme presented by two politicians", as it would be "unavoidable for the presenters to discuss and analyse them as they unfolded". GB News further explained that as a result of this timing, the programme was "dropped from the schedule" several weeks before the complaint was received by Ofcom and is "no longer broadcast". In light of this action, GB News requested that Ofcom resolved this case because, in its

view, the content would have caused “considerably less potential harm” and had “more mitigation” than in other recent resolved investigations³¹.

Ofcom decides each case on its individual facts, taking account of all contextual factors as appropriate. We noted the Licensee’s submission that Friday mornings were not an appropriate time for this programme presented by two MPs, given the likelihood of breaking news stories. It also explained that it had therefore decided not to continue broadcasting this programme on a Friday morning. However, given the Licensee’s continuing practice of using MPs to present similar programmes, and that news stories can of course break on any day and at any time, we did not consider a resolved outcome would be appropriate in this case.

Conclusion

For all the reasons set out above, Ofcom’s Decision is that the reports outlined above – the rail strikes report and the Duke of Sussex court case report – in *Friday Morning with Esther and Phil* were examples of news content for the purposes of Rules 5.1 and 5.3 of the Code.

In Ofcom’s view, in addition to the topical and developing nature of the stories and events being covered, the reports contained a number of features which led us to classify them as news content for the purposes of Rule 5.3 of the Code. For example, the reports included: the presenters speaking directly to the audience; short form updates for the audience about the developing events; and live footage and reports from reporters at the scene. We also took into account that the Licensee accepted that some of the content in this programme had news-like features and in particular that the report on the rail strikes was “topical”.

Ofcom considered that politicians were used as newsreaders and news interviewers in these stories which constituted news content for the purposes of Section Five of the Code, without exceptional editorial justification, and the news was therefore not presented with due impartiality. Ofcom’s Decision is that the programme was in breach of Rules 5.1 and 5.3.

We consider that our Decision meets the requirements of Article 10(2) of the European Convention of Human Rights, as being prescribed by law, in the pursuit of a legitimate aim and, in particular, that a finding of breach is necessary and proportionate in these circumstances. The Act and the Code as set out above are the applicable law for the purposes of Article 10(2). All Ofcom’s licensees must comply with the Act as implemented by the Code and are aware of these obligations. The legitimate aim pursued by the Act and the Code is protecting the rights of others, specifically by aiming to maintain fair and equal democratic discourse on influential media platforms to the benefit of society generally, protecting audiences from harmful partial broadcast news by ensuring the availability of accurate and impartial news services, and ensuring that a range of viewpoints are received by viewers who may then participate on an informed basis in democratic processes. As noted in the White Paper and by the Divisional Court in 2020³², the requirements of due impartiality seek to “ensure that the broadcast media provide a counter-weight to other, often partial sources of news. They therefore contribute significantly to properly informed democratic debate”.

³¹ See footnote 28.

³² *R (on the application of Autonomous Non-Profit Organisation TV-Novosti) v Ofcom* [2020] EWHC 689 (Admin), paragraph 22.

In considering the proportionality of our Decision, and whether it is justifiable to intervene in this case, we had regard to all of the factors set out above and in particular to Ofcom's duty to uphold standards protecting audiences from harm and the importance of maintaining audience trust and public confidence in the UK broadcasting regime. The due impartiality rules in particular guard against the risk that democratic debate would become distorted if partial programming was permitted to be broadcast on licensed services. As explained above, additional protections are afforded to news because of its fundamental importance in a democracy. Politicians have an inherently partial role in society and news content presented by them is likely to be viewed by audiences in light of that perceived bias. In our view, the use of politicians to present the news risks undermining the integrity and credibility of regulated broadcast news. We therefore considered it was necessary and proportionate to find a breach of Rules 5.1 and 5.3 in these circumstances.

Breaches of Rules 5.1 and 5.3

Saturday Morning with Esther and Phil

Type of case	Broadcast Standards
Outcome	In Breach
Service	GB News
Date & time	13 May 2023, 10:00
Category	Due impartiality
Summary	Two Conservative MPs were used as newsreaders and news interviewers, and the news was not presented with due impartiality. In breach of Rules 5.1 and 5.3 of the Broadcasting Code.

Introduction

Saturday Morning with Esther and Phil was³³ a weekly two-hour discussion programme covering a broad range of topics and presented by Esther McVey and Philip Davies, two Conservative MPs³⁴. The programme typically consisted of comment and debate about contemporary issues, including interviews and studio discussions with a range of guests and commentators, including three scheduled news bulletins.

Ofcom received two complaints about a segment of *Saturday Morning with Esther and Phil* broadcast on GB News on 13 May 2023. The complainants alleged that the programme breached the due impartiality requirements in Section Five of the Code.

Programme summary

This edition of *Saturday Morning with Esther and Phil* included discussions and interviews on a range of topics including: the first conference organised by the Conservative Democratic group; Mental Health Awareness Week, which featured an interview with Olympic Champion Sir Steve Redgrave; the planned weekend train strikes; the Eurovision final due to take place in Liverpool that evening, and discussion about the UK's entry; former Conservative MP, Andrew Bridgen, joining the Reclaim Party; and discussion about whether SATs examinations for children should be scrapped. The

³³ Ofcom understands that *Saturday Morning with Esther and Phil* has not been broadcast since November 2023.

³⁴ Esther McVey is the Conservative MP for Tatton and as of November 2023 holds the Government post of Minister without Portfolio (Cabinet Office). Philip Davies is the Conservative MP for Shipley.

programme also included three scheduled news bulletins, presented by a news anchor, lasting approximately five minutes each.

The programme, presented by two MPs, was two hours in length and featured discussion, analysis and interviews with guests on topical events. It contained the scheduled news bulletins presented by the news anchor in a different studio. We considered that this programme consisted of both news and current affairs content. At times during the programme, the presenters were acting as newsreaders and news interviewers, for example, during the interview with London Mayoral Candidate for the Reform Party, Howard Cox. We explain our reasons in detail below.

At 11:33 the presenters, Ms McVey and Mr Davies, interviewed London Mayoral Candidate for the Reform Party, Howard Cox, live from the location of a demonstration against the expansion of London's Ultra Low Emission Zone ("ULEZ")³⁵ which was due to take place at 12:00. The text "Live, Orpington" appeared in the top-left hand corner of the screen when Howard Cox was speaking.

Mr Davies: *"...Now our viewers and listeners might remember him as the founder of Fair Fuel UK. But since this week, Howard Cox has also become the candidate for the Reform Party for next year's London Mayoral election".*

Ms McVey: *"Howard's top priority is to scrap ULEZ, so let's go live to Orpington, where he is attending an anti-ULEZ protest rally. So we'll say you are the voice of the motorist trying to scrap these Ultra Low Emission Zones. Tell us what's happening with you now. What's the protest about?"*

Mr Cox: *"Well, hello Esther, Phil. Thank you for having me on your show. Well, this is the start. It starts about 12 o'clock. There's going to be a big anti-ULEZ protest in far flung Orpington close to the M25, one of the last areas before ULEZ doesn't actually kick in. But this is where ULEZ will be kicking in, in August and we've got a huge amount of people. I think there's going to be a lot of tractors, lorries, motorbikes, all coming around here at the Orpington War Memorial. So if you're not here yet, come along down here and show this dishonest Mayor³⁶ just why we've got to get rid of ULEZ".*

Mr Davies: *"Howard, just tell us about your decision to stand for election to the, to the, for the London Mayor's Office for the Reform Party. I mean, why have you decided to do that? I mean, I understand it gives you, it gives you a platform as the Reform Party candidate, I just wondered if you didn't win the election would that then undermine the campaign*

³⁵ The Ultra Low Emission Zone is an area where an emissions standard based charge is applied to non-compliant road vehicles.

³⁶ This is a reference to the current London Mayor and Labour Party Member, Sadiq Khan.

against ULEZ? Because people say ‘Well, you stood on that platform and you didn’t get elected so obviously people don’t agree with you when they when they might actually’”.

Mr Cox: *“Phil as you know, you’ve said all the right things there. You’re absolutely right. But I’ve been 13 years campaigning alongside the Conservative government, and I’m grateful for their freezing fuel duty. But they’re still not getting rid of ULEZ completely. They’re going to keep ULEZ right up to the North and South Circular. It’s getting a bit noisy here [emergency sirens in background], and also they’re not going to scrap the 2030 ban. And they’re not going to get rid of net zero. They’re not going to cut fuel duty at all, any further. And I was approached by Richard Tice of the Reform Party and he offered all of the things that my 1.7 million supporters want. I’ve still got a lot of friends in the Tories and I’d like to think, count you two as that as well, especially slightly right of centre, true traditional Tories who would agree everything what we’re trying to do. I’m with Reform UK; it’s going to be an uphill battle and I want to rally all of the anti-Khan groups to get behind me so that we can actually knock this dishonest Mayor out as soon as possible”.*

Mr Davies: *“I thought it was the ‘Thought Police’ were coming after you then for minute when I heard those sirens, Howard. I mean so, I mean, it’s a slightly different system of election for the London Mayoral contest in the, in the sense that you have 1st, 2nd, 3rd, 4th choices, so will, when you stand obviously, you want everybody to vote for you as their first choice. I absolutely get that. Will you be encouraging people to vote tactically for their 2nd and 3rd choices? Is the main ambition to get rid of Sadiq Khan as Mayor of London?”*

Mr Cox: *“Phil I have to correct you. It’s this time – it’s the first time ever it’s going to be ‘first past the post’³⁷. They’re not doing the ‘proportional approach’, and that’s one reason that helped me do it. And I’m going to be working with a lot of the Tory people. I’m already getting a lot of Tory people calling me and MPs saying, ‘Good, go for it Howard. We need to do this’. The important thing Phil and Esther is ULEZ is a crippling, crippling tax on low-income families, sole traders, etcetera. I produced a report about, about a month ago now. The CEBR³⁸ actually produced a report to show that ULEZ has cost, and will cost even more, £1 billion a year to London’s economy. And these are the sorts of*

³⁷ In a ‘first past the post’ election, voters can only select one candidate from the ballot paper. The candidate with the most votes is declared the winner.

³⁸ Centre for Economics and Business Research.

things that this cash-grabbing Mayor doesn't seem to get. And even his own Transport for London have shown that extending the ULEZ to the M25 will not make a shed load of difference at all to the air we breathe. It's purely a cash grab”.

Ms McVey: *“Howard Cox. Thank you very much indeed. He's definitely starting the fight back for the motorist. He's been talking about this for a long time, but I don't think it's had traction until now, and then people are realising, ‘Oh, it's going to cost me too much. It doesn't have the impact they're saying’. We'll have to have him back on to find out about the rest of his manifesto, but still to come on Saturday this morning...”.*

Initial Response

In addition to GB News’ general representations as summarised above, GB News stated in its response to Ofcom’s initial request for comments regarding the compliance of the content set out above with Rules 5.1 and 5.3 of the Code that it did not consider the segment was ‘news’ and therefore argued that neither Rule 5.1 nor 5.3 was applicable in this case.

GB News said the broadcast in question was a more long-form programme and featured extensive discussion, analysis or interviews with guests or “in other words, the main elements of a current affairs programme as defined by Ofcom”. It added that within the hour in question, the presenters focused on only six stories and there were no video packages, reports by correspondents or running order of stories.

The Licensee argued that news bulletins at the top of the hour and “about halfway through” provided further reasoning for defining the programme as ‘other’ content rather than news. It said these news bulletins were carefully differentiated from the rest of the programme because of a number of features such as: the use of a different studio and presenter, on-screen graphics in the form of logos and bulletin idents, and clear verbal handovers between the presenters and the newsreader.

With reference to the interview with Howard Cox, GB News argued that the fact that the presenters interviewed the guest from the location of a protest did not make this portion of the programme news. GB News reiterated that the news elements of the hour (i.e. the two news bulletins) were clearly identified and differentiated from the rest of the content and therefore the presenters were not acting as newsreaders.

The Licensee concluded that, in its view, owing to the above factors, Rule 5.3 did not apply in this case. It said that as the item was not news, Rule 5.1 did not apply either, however it added that notwithstanding this, it also believed that the segment was presented with due impartiality.

Additional comments

The Licensee subsequently provided further representations in relation to the programme. GB News repeated its view that the programme was a current affairs programme and fitted Ofcom’s definition of current affairs much more closely than the definition of news. It stated that within the two-hour

broadcast, separate and clearly identified news bulletins were provided, differentiated from the rest of the output.

Response to Preliminary View

Following receipt of GB News' representations, Ofcom issued a Preliminary View finding the programme in breach of Rules 5.3 and 5.1.

In response to the Preliminary View, GB News stated that it stood by its previous representations in this case. It made a number of points that are set out above under 'GB News' response to Ofcom's Preliminary Views' (see page 8 above). In summary, GB News argued that:

- There was no breach of Rule 5.3 because the content in question did not constitute "a news programme" as required by the rule.
- The content did not engage Rule 5.1 because the content was current affairs rather than news.
- Even if Rule 5.1 is applied there was no actual lack of impartiality in the content.
- Given the above, Ofcom's actions are unfair, disproportionate and outside its narrow margin of appreciation.

In addition to these general representations, GB News also made comments that were specific to this case, which are summarised below.

Rule 5.3

In relation to the argument that the content in question did not constitute "a news programme" as required by Rule 5.3, the Licensee stated that *Saturday Morning with Esther and Phil* was "a current affairs programme which contained some news-like elements". It quoted a passage in the Preliminary View in which Ofcom noted that the programme as a whole included some features that are typical of current affairs content; and acknowledged the steps taken by the Licensee to differentiate the hourly news bulletins from the rest of the programme³⁹. It cited another passage in which Ofcom clarified that the inclusion of the interview with Howard Cox did not make "the entire two-hour programme" a news programme, but only the relevant sequence. GB News claimed that these passages in the Preliminary View demonstrated that there was no breach of Rule 5.3.

Rule 5.1

In support of its argument that the content did not engage Rule 5.1 because it was current affairs rather than news, GB News argued that the interview with Howard Cox was "topical, straightforward and factual".

If Rule 5.1 was engaged, GB News' view was that there was no breach of this rule in any case. It cited the following as evidence of Mr Davies "robustly" challenging Howard Cox's claim to represent a

³⁹ The Licensee quoted a passage relating to *Friday Morning with Esther and Phil*, but we understood it to be referring to the equivalent passage in Ofcom's Preliminary View on *Saturday Morning with Esther and Phil*.

popular view, by suggesting that this claim would prove unfounded if his bid for election as Mayor of London was unsuccessful:

“Howard, just tell us about your decision to stand for election to the, to the, for the London Mayor's Office for the Reform Party. I mean, why have you decided to do that? I mean, I understand it gives you, it gives you a platform as the Reform Party candidate, I just wondered if you didn't win the election would that then undermine the campaign against ULEZ? Because people say ‘Well, you stood on that platform and you didn't get elected so obviously people don't agree with you when they when they might actually’”.

GB News disagreed with the Preliminary View that the interview with Howard Cox was not presented with due impartiality because it had failed to include alternative viewpoints. It claimed that Ofcom had “provide[d] no evidence that the content in question was lacking any impartiality”. It suggested that Ofcom was “designating a brief and unremarkable item in a current affairs show as ‘news’ and using it to manufacture a claim of automatic lack of impartiality”. GB News added that Ofcom should “not act as though the existing rules say something they do not” and that Ofcom’s approach “rewrites the plain language definition of impartiality to equate ‘perception’ of lack of impartiality with an offence of the same, even if not justified by the facts”.

It emphasised that the content of the programme itself “should be the correct and only test of Rule 5.1”, but that in all five cases Ofcom gave “more weight to what [GB News] believe is a dangerous and unjustifiable argument about Rules 5.1 and 5.3: that content presented by a politician must automatically lack impartiality even when that is clearly not the case”.

Additional comments

The Licensee considered that Ofcom was not acting proportionately, as set out above under ‘GB News’ response to Ofcom’s Preliminary Views’. It urged Ofcom’s final stage decision-maker to reverse the conclusion of the Preliminary View.

Decision

In reaching Ofcom’s Decision, we took into account the considerations set out above under the ‘Background to Ofcom’s due impartiality regime’ and ‘Specific rules on politicians presenting and appearing in programmes’ sections, as well as GB News’ general representations.

Rule 5.3

We first considered whether the content amounted to news.

As set out above, GB News submitted that this programme was not news and that therefore the requirements of Rule 5.3 did not apply.

Under Ofcom’s rules, politicians typically cannot be a newsreader, interviewer or reporter in any news programme. They are permitted to present other kinds of programmes including current affairs. Sometimes those programmes may be on channels that also broadcast news. As set out above, there are some typical factors that could lead us to classify content as news or current affairs, which we consider in relation to the programme in question below.

The nature and subject of the content

As explained above, the programme was presented by Ms McVey and Mr Davies, two Conservative MPs. Ofcom considered that the programme contained both news and current affairs and therefore was a news and current affairs programme.

We acknowledged that the programme included a number of features that are typical of current affairs content: it was a long-form programme (two hours in total) comprising live discussions, analysis and interviews with guests. The presenters' discussions were clearly separate from the scheduled news bulletins which comprised short factual reports delivered by a newsreader at a news desk in a separate studio and were preceded by the broadcast of a GB News 'ident' that was distinctive from the title sequence of *Saturday Morning with Esther and Phil*.

GB News submitted that Ofcom's approach to classifying news and non-news content is unclear, and that where a grey area exists in regulation, Ofcom should allow broadcasters greater discretion to exercise their editorial judgement. While GB News admitted that there was some "news-like" content in the programme, it argued this did not make the entire programme definitively "a news programme" for the purposes of Rule 5.3, and that Ofcom had accepted that in acknowledging that the programme had separated news content from current affairs content. In its representations on Ofcom's Preliminary View, GB News submitted that Ofcom refuses to acknowledge "the widely accepted fact that the distinction between news and current affairs is far less clear-cut than it likes to pretend or than may have existed in past times. Ofcom's own statements on the matter and its decision to hold a public consultation about it support that view".

However, as reflected in the Code and Guidance, section 319(8) of the Act makes it clear that references to "news" means news in whatever form it is included in a service. We consider that a programme can be both a news and current affairs programme in that it can contain a mix of both types of content. For example, news bulletins are commonly included within a current affairs or magazine programme. It is also possible for content that constitutes news to be included within a non-news programme, without it being clearly demarcated from the rest of the programme as with a news bulletin. In Ofcom's view, this approach reflects the reality of live news and current affairs programming, particularly in the context of rolling news and current affairs channels. For example, a breaking news event could occur during a live current affairs programme – and in such circumstances, if that breaking news event is reported in that programme, it will typically be classified as news content and the relevant rules in the Code will apply.

We also note that, contrary to GB News' submission, Ofcom has not decided to hold a public consultation on this issue⁴⁰.

In its response the Licensee said that although the presenters interviewed Howard Cox from the location of a demonstration, this did not make this segment of the programme news. Ofcom agreed that this was not the determining factor. As set out above, while there are some typical factors that

⁴⁰ We understand this submission to be referring to research Ofcom has commissioned from an external agency, as part of our ongoing research programme, on audience attitudes to politicians presenting news and current affairs programmes. This report is not yet complete and this research has not been taken into account in this investigation.

could lead us to classify content as news – none of these are decisive and each case will be considered on its facts.

For the reasons set out below, Ofcom considered the segment relating to the Howard Cox interview was news.

We considered that Ms McVey's introduction to this segment signalled to the audience that this was a developing news story about the forthcoming demonstration and they would be hearing the latest update:

"Howard's top priority is to scrap ULEZ, so let's go live to Orpington, where he is attending an anti-ULEZ protest rally. So we'll say you are the voice of the motorist trying to scrap these Ultra Low Emission Zones. Tell us what's happening with you now. What's the protest about?"

Howard Cox's response provided a short, factual update about the imminent demonstration:

"...It starts about 12 o'clock. There's going to be a big anti-ULEZ protest in far flung Orpington close to the M25, one of the last areas before ULEZ doesn't actually kick in. But this is where ULEZ will be kicking in, in August and we've got a huge amount of people. I think there's going to be a lot of tractors, lorries, motorbikes, all coming around here at the Orpington War Memorial".

In our view, Howard Cox provided the latest information about the demonstration to the presenters and the audience. This was reinforced by the fact he was providing this update live from the location of this developing event, which was indicated on screen with the words *"Live, Orpington"*. While we acknowledged Howard Cox went on to talk more generally about the aim of the demonstration from his perspective and his candidacy for the London Mayoral Election in 2024, in light of the factors above, Ofcom considered this segment amounted to a news report. It covered a topical and developing news story, providing the audience with an at the scene update on a large demonstration, covering key information about the purpose, size, timing and location of the demonstration. Ofcom considered that the subject and nature of the reporting in this segment constituted a news report during which Ms McVey and Mr Davies were used as newsreaders and news interviewers.

We also noted that Ms McVey provided a personal opinion on this news story at the end of the interview. Ms McVey said: *"Howard Cox. Thank you very much indeed. He's definitely starting the fight back for the motorist"*.

Other relevant factors

As set out above, there is an indicative and non-exhaustive list of factors that could lead Ofcom to classify content as news, especially where they are combined with other relevant factors.

Conversely, the absence of any potential contributory factor, such as a video report or a reporter on location, does not mean that content should be classified as non-news. In this case, taking into account the factors set out above, Ofcom considered that the Howard Cox segment constituted news content.

We acknowledge that politicians have not presented programmes on the scale we have seen in recent years. However, as set out above, the broadcasting regulatory framework was designed to be

flexible enough to respond to changes in services. As part of this, the Act set overarching objectives which provide a framework within which the rules in the Code should be interpreted. These objectives are set out in section 319(2) and include section 319(2)(c) – that news included in television and radio services is presented with due impartiality. This objective is then included as an overarching principle at the start of Section Five of the Code, as well as being reflected in Rule 5.1. Ofcom considers it is clear that the rules in Section Five should always be interpreted in light of this objective.

As stated above, Ofcom attaches great value to broadcasters' right to freedom of expression and audiences' right to receive information and ideas, and therefore the broadcasters' right to make programming, creative and editorial choices. However, all broadcast content must comply with the Code. In particular, Rule 5.3 requires broadcasters to ensure that politicians are not used as a newsreader, interviewer or reporter in any news programmes, unless exceptionally, it is editorially justified (in which case, the political allegiance of the person must be made clear to the audience). If a licensee chooses to use a politician as a presenter in a programme which includes both news and current affairs content, then the licensee must take steps to ensure that they comply with the requirements of Rule 5.3, bearing in mind the overarching standards objective that news in whatever form is presented with due impartiality. For the avoidance of doubt, broadcasters retain the editorial freedom to create programmes which move between non-news content and news content but if the licensee chooses to use a politician as the host of such a programme, the licensee will have to take steps so that the politician does not act as a newsreader, news interviewer or news reporter in that programme.

What constitutes exceptional circumstances in the context of Rule 5.3 will always depend on the particular circumstances of a case. In our view, there were no exceptional grounds that provided editorial justification to use Ms McVey and Mr Davies as newsreaders and news interviewers, as they did in the report set out above. The content in this instance was a planned news item that was scheduled to coincide with the build-up to an imminent demonstration. In these circumstances, where it was clear that the ULEZ demonstration was a developing news story and the presenters of the programme were MPs, it was necessary for the Licensee to take additional steps to ensure that the MPs did not present a news item, for example by handing over to another presenter. Ofcom did not consider that taking such steps in these unexceptional circumstances would have constituted an undue or disproportionate restriction on the Licensee's editorial discretion or freedom given its obligations under Rule 5.3 of the Code.

For all the reasons set out above it is Ofcom's Decision that the above content was in breach of Rule 5.3.

Rule 5.1

Having established that the content in question was news, and that two politicians had acted as newsreaders and news interviewers without exceptional editorial justification, we then turned to consider whether this news content had been presented with due impartiality.

Rule 5.1 of the Code reflects section 319 of the Act, which specifically requires that "news is presented with due impartiality".

As already stated, in Ofcom's view the rationale for the Code's restriction on politicians being used as a newsreader, interviewer or reporter in any broadcast news content (unless exceptionally editorially justified) is clear. Politicians are political representatives. They represent – and will be understood by viewers to represent – a particular political party or position and they are therefore likely to be widely viewed as being inherently partial on topical issues.

In setting and applying the Code, Ofcom seeks to maintain audience trust in broadcast news because of its fundamental importance in a democratic society. News is a special category of programming which is afforded additional protection under the Code. This special status of news is reflected by the underlying legislation, which requires that broadcast news, in whatever form, is presented with due impartiality. We took this into account in considering whether the content complied with Rule 5.1.

As also stated above, Ofcom attaches great value to broadcasters' right to freedom of expression and audiences' right to receive information and ideas, and therefore the broadcasters' right to make programming, creative and editorial choices. However, all broadcast content must comply with the Code.

The Licensee's view was that the content did not amount to news, and so Rule 5.1 was not engaged. It also stated that in any event, the content was duly impartial. However, for the reasons we have set out above, the broadcast of this programme included a sequence which we considered constituted news content, where politicians were used as newsreaders and news interviewers, with no exceptional editorial justification.

We recognised the brevity and factual nature of the content delivered by the presenters but as set out above, there are additional protections afforded to news because of its fundamental importance in a democratic society. In Ofcom's view, particular care needs to be taken to preserve the due impartiality of news content on licensed services – not only in terms of the content itself, but also in respect of its presentation and how it is likely to be perceived by viewers. Politicians have an inherently partial role in society and news content presented by them is likely to be viewed by audiences in light of that perceived bias. For that reason, we consider that the presentation of broadcast news content by politicians without exceptional editorial justification gives rise to an inherent lack of due impartiality which conflicts with the fundamental standard in Rule 5.1 of the Code.

Therefore, we considered the fact that politicians were used as newsreaders and news interviewers in this programme meant there was also a breach of Rule 5.1 in the circumstances.

In addition to the two MPs acting as newsreaders and news interviewers, we also took into account the content of the segment with Howard Cox.

The Code makes clear that the term "due" means adequate or appropriate to the subject matter. "Due impartiality" does not mean an equal division of time has to be given to every view, or that every argument and every facet of the argument has to be represented.

The Code also makes clear that 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 the content and the extent to which the content and approach are signalled to the audience. In addition, context, as set out in Section Two (Harm and Offence) of the Code is important in preserving due impartiality. Context includes a number of factors such as: the editorial content of the programme;

the service on which the material is broadcast; the likely size, composition and expectation of the audience; and the effect on viewers who may come across the programme unawares.

Our Guidance states that the broadcasting of comments either supporting or criticising the policies and actions of, for example, any one state or institution is not, in itself, a breach of the due impartiality rules. Comments which are highly critical in this way may be broadcast, provided the content complies with the Code. However, depending on the specific circumstances of any particular case, it may be necessary to reflect alternative viewpoints or provide context in an appropriate way, to ensure that due impartiality is preserved.

In its representations, the Licensee argued that notwithstanding its view that the segment was current affairs rather than news, it was presented with due impartiality.

We considered that in this segment, Howard Cox made highly critical comments about London Mayor Sadiq Khan and the ULEZ expansion without challenge from the presenters:

“So if you're not here yet, come along down here and show this dishonest Mayor just why we've got to get rid of ULEZ”

“I was approached by Richard Tice of the Reform Party and he offered all of the things that my 1.7 million supporters want. I've still got a lot of friends in the Tories and I'd like to think, count you two as that as well, especially slightly right of centre, true traditional Tories who would agree everything what we're trying to do. I'm with Reform UK; It's going to be an uphill battle and I want to rally all of the anti-Khan groups to get behind me so that we can actually knock this dishonest Mayor out as soon as possible”.

“I'm already getting a lot of Tory people calling me and MPs saying, ‘Good, go for it Howard. We need to do this’. The important thing, Phil and Esther, is ULEZ is a crippling, crippling tax on low-income families, sole traders, etcetera”.

“These are the sorts of things that this cash-grabbing Mayor doesn't seem to get. And even his own Transport for London have shown that extending the ULEZ to the M25 will not make a shed load of difference at all to the air we breathe. It's purely a cash grab”.

Although we acknowledged that Howard Cox referenced some differences in the policy stance between the Reform and the Conservative parties, an alternative view in relation to the expansion of ULEZ and the actions of Sadiq Khan (e.g. explanation of the expansion of ULEZ) was not reflected in this interview. On the contrary, Howard Cox called for viewers, certain members of the Conservative party (“true, traditional Tories”) and elsewhere, to support him in order to defeat Sadiq Khan in the Mayoral Election. Howard Cox went on to describe Sadiq Khan as “cash grabbing” and “dishonest” and his motivation to extend ULEZ to be “a cash grab”. We considered these to be highly critical statements which were not sufficiently challenged or contextualised by the presenters.

Howard Cox had a significant role in this news segment, and his opposition to the ULEZ expansion and criticisms of Sadiq Khan were clear and repeated. Ofcom therefore considered that the representation of an alternative viewpoint was necessary in these circumstances. In this case, alternative perspectives were not included or acknowledged in the programme and the presenters did not challenge or contextualise the statements.

Ms McVey then concluded the interview by thanking Howard Cox and saying he was “*definitely starting the fight back for the motorist*”, “*people were realising oh it's [ULEZ] going to cost me too much*” and it “*didn't have the impact they're saying*”. In our view, these statements appeared to be an endorsement of the views expressed by Howard Cox and in addition represented Ms McVey's personal opinion on the news story. As explained above, politicians are inherently partial and hold political views on news events. In this case, Ms McVey provided partisan comments on a topical news story in which she was a newsreader and news interviewer, which exacerbated the breach of Rule 5.1.

For all these reasons, Ofcom's Decision is that news was not presented with due impartiality and the programme was therefore also in breach of Rule 5.1.

Conclusion

For all the reasons set out above, Ofcom's Decision is that the interview with Howard Cox was an example of news content for the purposes of Rules 5.3 and 5.1 of the Code.

Ofcom considered that politicians were used as newsreaders and news interviewers in this story which constituted news content for the purposes of Section Five of the Code, without exceptional editorial justification, and the news was not presented with due impartiality. Ofcom's Decision is that the programme was in breach of Rules 5.1 and 5.3.

We consider that our Decision meets the requirements of Article 10(2) of the European Convention of Human Rights, as being prescribed by law, in the pursuit of a legitimate aim and, in particular, that a finding of breach is necessary and proportionate in these circumstances. The Act and the Code as set out above are the applicable law for the purposes of Article 10(2). All Ofcom's licensees must comply with the Act as implemented by the Code and are aware of these obligations. The legitimate aim pursued by the Act and the Code is protecting the rights of others, specifically by aiming to maintain fair and equal democratic discourse on influential media platforms to the benefit of society generally, protecting audiences from harmful partial broadcast news by ensuring the availability of accurate and impartial news services, and ensuring that a range of viewpoints are received by viewers who may then participate on an informed basis in democratic processes. As noted in the White Paper and by the Divisional Court in 2020⁴¹, the requirements of due impartiality seek to “ensure that the broadcast media provide a counter-weight to other, often partial sources of news. They therefore contribute significantly to properly informed democratic debate”.

In considering the proportionality of our Decision, and whether it is justifiable to intervene in this case, we had regard to all of the factors set out above and in particular to Ofcom's duty to uphold standards protecting audiences from harm and the importance of maintaining audience trust and public confidence in the UK broadcasting regime. The due impartiality rules in particular guard against the risk that democratic debate would become distorted if partial programming was permitted to be broadcast on licensed services. As explained above, additional protections are afforded to news because of its fundamental importance in a democracy. Politicians have an inherently partial role in society and news content presented by them is likely to be viewed by audiences in light of that perceived bias. In our view, the use of politicians to present the news risks

⁴¹ *R (on the application of Autonomous Non-Profit Organisation TV-Novosti) v Ofcom* [2020] EWHC 689 (Admin), paragraph 22.

undermining the integrity and credibility of regulated broadcast news. We therefore considered it was necessary and proportionate to find a breach of Rules 5.1 and 5.3 in these circumstances.

Breaches of Rules 5.1 and 5.3

WITHDRAWN

Jacob Rees-Mogg's State of the Nation

Type of case	Broadcast Standards
Outcome	In Breach
Service	GB News
Date & time	13 June 2023, 20:00
Category	Due impartiality
Summary	A Conservative MP was used as a newsreader and news interviewer, and the news was not presented with due impartiality. In breach of Rules 5.1 and 5.3 of the Code.

Introduction

Jacob Rees-Mogg's State of the Nation is an hour-long programme broadcast four evenings a week on GB News. It is presented by Jacob Rees-Mogg, a Conservative Party MP and former Cabinet Minister⁴². The programme typically features comment and debate about topical issues, including monologues, interviews and panel discussions with guests from the worlds of politics and journalism. The programme also included a scheduled news bulletin, presented by a news anchor, lasting approximately three minutes.

Ofcom received five complaints about the programme *Jacob Rees-Mogg's State of the Nation* broadcast on GB News on 13 June 2023. Complainants considered that the programme did not meet the due impartiality requirements in Section Five of the Code.

Programme summary

This episode of *Jacob Rees-Mogg's State of the Nation* responded to recent news stories and political debates and covered a range of topical issues including: public sector efficiency; the trial of former US President, Donald Trump, over allegations that he retained classified information from his presidency; the Government's record on tackling illegal migration; and a campaign for a four day

⁴² Jacob Rees-Mogg is the Conservative MP for North East Somerset.

working week. During the programme, Jacob Rees-Mogg also discussed the fatal stabbing attacks that had taken place in the early hours of the morning in Nottingham on 13 June 2023⁴³.

During the introduction to the programme, which was preceded by the title sequence for the programme, on-screen text identified Jacob Rees-Mogg as the Conservative MP for North East Somerset. Jacob Rees-Mogg introduced the upcoming topics to be discussed during the programme, the guest panel and provided details of how the viewers could get in contact. He then said: *“Now it’s time for the news with Polly Middlehurst”*. A GB News title sequence was played followed by the news bulletin, which was presented from a separate GB News studio to the one where Jacob Rees-Mogg was presenting his programme, and lasted approximately three minutes.

The news bulletin included an update from the news anchor on the attacks in Nottingham, which lasted for approximately one minute and featured a 30 second pre-recorded report by GB News Home and Security Correspondent Mark White from outside a police station in Nottingham, and shots of police and forensic teams at the scene of the attacks with the words *“GBN Exclusive”* shown in the top left-hand corner of the screen. The news anchor ended the news bulletin by saying *“This is GB News, the people’s channel”* and this was followed by the GB News title sequence and then the *Jacob Rees-Mogg State of the Nation* title sequence.

This was immediately followed by Jacob Rees-Mogg in the studio, who said:

“This morning we heard the terrible news that three people were murdered and three more injured, following a series of attacks in Nottingham City Centre. This afternoon, it emerged two of the three people were 19 year-old University of Nottingham students, and a man in his fifties was also killed. A 31 year-old man has been arrested on suspicion of murder following the three deaths. GB News sources confirm the suspect involved in the fatal stabbing is a man with a history of violence. Police say they have an open mind on the motive, but counter-terror officers are involved.

Here’s the latest from our Home and Security Editor, Mike White, who is in Nottingham. Mike, what can you tell us? Mark, I’m sorry. What have the police told us so far about what has happened? And what do we know about the suspect?”

Mark White gave a live report on the police investigation, as he stood outside of the Central Police Station, Byron House in Nottingham:

“Well, the very latest information that we have on the ongoing investigation is that those counter-terrorism detectives who have been liaising with their colleagues from Nottinghamshire Police throughout the day as that investigation

⁴³ At approximately 10am on 13 June 2023 Nottinghamshire Police issued a statement announcing that a man had been arrested for murdering three people and an investigation was underway. Thereafter there was widespread national media coverage of the story as it developed throughout the day. For example see: www.theguardian.com/uk-news/live/2023/jun/13/nottingham-people-killed-major-incident-police-latest-updates; <https://www.telegraph.co.uk/news/2023/06/13/nottingham-incident-live-updates-police-road-closures/>.

continues into the horrific events overnight, those counter-terrorism detectives, the Counter Terrorism Command is now stepping back from the investigation and allowing it to be fully controlled by Nottinghamshire Police. It doesn't appear that they have found anything to suggest a terrorist motivation, but they are still keeping an open mind on what the other potential motivating factors might have been.

Another important piece of information that we got from our sources is a confirmation that the prime suspect in the murder of those three individuals and the injury of three others is a West African migrant, someone that we're told has a history of violence. Now, what we don't know is what his status in the country was, whether he was here lawfully, whether he was here illegally, or even an asylum seeker. We don't know that. But there will still, regardless of any of those factors, be questions to be asked about that history of violence, whether that was a history of violence from West Africa and if so, was that something that was declared or even looked into before this man entered the United Kingdom, or indeed, was it violent acts that were committed while in this country, because, of course, there is also an onus on the authorities to look to remove habitually violent offenders who are from overseas but are living in the UK".

Jacob Rees-Mogg then asked *"And at the moment, Mark, we have no idea of motive, we just know that this was a horrible and brutal attack which has killed three people and left three injured?"*, to which Mark White responded:

"Yeah, I mean, all we know is that the events unfolded just before four o'clock in the morning, that these two young students who'd been enjoying a night at a local nightclub had been walking home, were attacked and stabbed to death and a man in his fifties stabbed to death and his van stolen, which was then used to plough into those three other local people in the centre of Nottingham. Quite what the motivation was, we just haven't got to the bottom of that yet. But that's something the detectives here are working on, but not any longer with the assistance of counter-terrorism police".

While Mark White was speaking the words *"Live, Nottingham"* featured on the top left-hand corner of the screen. During this item, shots of police and forensic teams at the scene of the attacks (which had also been shown during the preceding news bulletin) were also included, with the words *"GBN Exclusive"* shown in the top left-hand corner of the screen.

Back in the studio, Jacob Rees-Mogg ended the exchange by stating: *"Well, thank you, Mark. We pray for the souls of those who have been killed and for those who are grieving and, of course, for the recovery of those who have been injured"*.

The exchange lasted approximately three and a half minutes, during which the banners at the bottom of the screen signalled *"Nottingham attack"* and a rolling ticker included the following statements: *"Two 19-year olds and a man in his 50s were killed in attacks"; "Counter-terrorism police are working on the investigation; GB News understands the suspect in fatal stabbing of three people in Nottingham is a West African migrant with a history of violence"*.

Immediately after this sequence, Jacob Rees-Mogg delivered what was described on-screen as “*Jacob’s Moggologue*” on the Government’s Review of Public Sector Efficiency. The Nottingham attacks were not mentioned again in the rest of the programme.

Initial Response

Rule 5.3

In addition to GB News’ general representations as summarised above, GB News argued that “the words spoken” by Jacob Rees-Mogg about the Nottingham attacks “did not constitute ‘News’ to the extent that the programme might have been in breach of Rule 5.3”.

The Licensee commented that Ofcom’s [Guidance to Section Five of the Code](#), which states that “news in whatever form would include news bulletins, news flashes and daily news magazine programmes”, was open to interpretation. It suggested that “further definition would be helpful”.

GB News acknowledged statements by Ofcom which listed some typical factors that could lead Ofcom to classify content as a news programme or a current affairs programme⁴⁴. Based on these factors and on the definition of a “current affairs programme” as set out in Section Nine of the Code⁴⁵ the Licensee considered that *Jacob Rees-Mogg’s State of the Nation* was “clearly designed to be – and was identified as – a current affairs programme”. In GB News’ view, the programme did not constitute news, and therefore Rule 5.3 did not apply.

GB News stated that Jacob Rees-Mogg was clearly identified at the outset of the programme as a Conservative MP. The Licensee emphasised that after Jacob Rees-Mogg introduced the programme by listing the topics that would be discussed over the following hour, he then “handed over to a newsreader in a separate studio to provide a full news summary lasting several minutes”. At the “end of the summary the newsreader handed back to... [Jacob] Rees-Mogg”. The Licensee stated that it “takes care to differentiate ‘News’ and other content on the channel” through several editorial techniques: the use of a different presenter in a separate studio for news bulletins; inserting channel idents and programme titles either side of news bulletins; and scripting that underlines the separate nature of the news bulletins with clear handovers from main programme presenter to newsreader and back again.

GB News also addressed the section of the programme (described in the Introduction above) in which Jacob Rees-Mogg discussed the Nottingham attacks with Mark White. It noted that “the point at issue seems to be whether this brief exchange with the reporter meant that Jacob Rees-Mogg was ‘being used as a newsreader’”. It said that immediately before the exchange, there was a news bulletin read by a newsreader who was being “used as a newsreader”. The Licensee argued that the exchange with Mark White was “not remotely enough, in itself to make Jacob Rees-Mogg a newsreader”. In its view it was a “short conversation about a topical matter within a current affairs programme that was conspicuously and deliberately differentiated from news content”. It also said

⁴⁴ [Can politicians present TV and radio shows? How our rules apply](#)

⁴⁵ “A current affairs programme is one that contains explanation and/or analysis of current events and issues, including material dealing with political or industrial controversy or with current public policy” – see [Section Nine of the Code](#).

that after the conversation with Mark White, “the programme continued as planned” with discussions about the matters that Jacob Rees-Mogg had listed in his introduction.

GB News suggested that the “purpose and intention of Rule 5.3 was surely to stop politicians presenting recognisable news bulletins or summaries, not to prevent the sort of routine item under discussion here”. The Licensee believed that this sequence “did not have the effect of making the programme a ‘News’ broadcast, even briefly, or making Jacob Rees-Mogg ‘a newsreader’”. Rather, it considered it “a simple and factual method of giving the audience useful information within what was clearly a current affairs programme”. GB News argued that “the decision to include this short conversation within a current affairs programme” was an editorial decision it had discretion to make, “particularly in view of the well-known uncertainty surrounding definitions in this area”.

For all these reasons, the Licensee did not believe that the content was in breach of Rule 5.3.

Rule 5.1

GB News said it was unclear what part of the programme was the focus of the investigation in this regard, and further, how this content was defined.

The Licensee reiterated its view that that “the routine factual (and impartial) exchange between Jacob Rees-Mogg and Mark White did not make the broadcast a ‘news programme’”. It therefore did not think that this sequence constituted news for the purposes of Rules 5.1. In any case, GB News said it had reviewed the programme, but could not see “any part of it where due impartiality appears missing”.

GB News requested that Ofcom provide it with clarification on the points it had raised before proceeding further⁴⁶. In particular, the Licensee said that it was willing to discuss this programme with Ofcom, as well as the wider compliance issues involved in distinguishing news and non-news content.

Response to Preliminary View

Following receipt of GB News’ representations, Ofcom issued a Preliminary View finding the programme in breach of Rules 5.3 and 5.1.

In response to the Preliminary View, GB News stated that it stood by its previous representations in this case. It made a number of points that are set out above under ‘GB News’ response to Ofcom’s Preliminary Views’ (see page 8 above). In summary, GB News argued that:

- There was no breach of Rule 5.3 because the content in question did not constitute “a news programme” as required by the rule.
- The content did not engage Rule 5.1 because the content was current affairs rather than news.
- Even if Rule 5.1 is applied there was no actual lack of impartiality in the content.

⁴⁶ Ofcom wrote to GB News on 28 September 2023 to clarify that Rule 5.1 will be applied to any content in the programme where we consider Jacob Rees-Mogg potentially delivered the news.

- Given the above, Ofcom's actions are unfair, disproportionate and outside its narrow margin of appreciation.

In addition to these general representations, GB News also made comments that were specific to this case, which are summarised below.

Rule 5.3

Further to its argument that the content was not in breach of Rule 5.3 because it did not constitute "a news programme" as required by the rule, the Licensee cited two passages in the Preliminary View which it said demonstrated that Ofcom did not dispute this.

The first passage in the Preliminary View cited by GB News concerned Ofcom's acknowledgement of GB News' previous representations. This passage accepted that the Licensee had taken steps to differentiate the hourly news bulletin from the rest of the programme, for example by using a different presenter. The Preliminary View concluded that "the hourly news bulletin was unmistakably news content and was clearly separated from the content presented by Jacob Rees-Mogg". It also noted that the programme as a whole included some features that are typical of current affairs content.

The second passage in the Preliminary View cited by GB News clarified that Ofcom did not consider that the inclusion of the sequence about the Nottingham attacks made "the entire programme" a news programme, but only the sequence in question.

On the basis of these passages in the Preliminary View, GB News considered that Ofcom had accepted its argument that the content was not in breach of Rule 5.3 because it did not constitute "a news programme" as required by the rule.

Rule 5.1

As set out above under 'GB News' response to Ofcom's Preliminary Views', GB News argued that the content in question was current affairs rather than news. It described the sequence about the Nottingham attacks as a "simple, journalistic, factual exchange of information and background". On this basis and for the reasons set out above, the Licensee maintained that the content did not engage Rule 5.1.

Even if Rule 5.1 is applied, the Licensee considered that the content was in any case reported with due accuracy and presented with due impartiality. It first stated that there was no suggestion of inaccuracy in this case. It then argued that the content was in no way "tainted by bias" or "overlaid with personal opinion". In support of this assessment, the Licensee cited the following passage in the Preliminary View: "We recognise the factual nature of the content delivered by Jacob Rees-Mogg, which did not include any partial comment on, or discussion of, the wider issues involved". On this basis, GB News considered that Ofcom had accepted that the content was duly impartial.

The Licensee also disputed what it called Ofcom's "totally new interpretation" of Rule 5.1. It argued that the content in this case was "indisputably" impartial and that Ofcom had accepted this. GB News argued that Ofcom was "designating a brief and unremarkable exchange between presenter and reporter in a current affairs show as 'news' and using it to manufacture a claim of lack of impartiality".

Additional comments

The Licensee further considered that Ofcom recording breaches in this case, despite it allegedly accepting that the content was duly impartial, demonstrated that the regulator was not acting proportionately, as set out above under ‘GB News’ response to Ofcom’s Preliminary Views’. GB News urged Ofcom’s final stage decision-maker to reverse the conclusion of the Preliminary View.

Decision

In reaching Ofcom’s Decision, we took into account the considerations set out above under the ‘Background to Ofcom’s due impartiality regime’ and ‘Specific rules on politicians presenting and appearing in programmes’ sections, as well as GB News’ general representations.

Rule 5.3

We first considered whether the content amounted to news.

As set out above, GB News submitted that this programme was not news and that therefore the requirements of Rule 5.3 did not apply.

Under Ofcom’s rules, politicians typically cannot be a newsreader, interviewer or reporter in any news programme. They are permitted to present other kinds of programmes including current affairs. Sometimes those programmes may be on channels that also broadcast news. As set above there are some typical factors that could lead us to classify content as news or current affairs, which we consider in relation to the programme in question below.

The nature and subject of the content

As explained above, the programme was presented by Jacob Rees-Mogg, a Conservative MP. Ofcom considered that the programme contained both news and current affairs and therefore was a news and current affairs programme.

We acknowledged that the programme included a number of features that are typical of current affairs content: it was a long-form programme (an hour in total), comprising live discussions, analysis and interviews with guests. In these respects, the format of the programme differed from the scheduled hourly news bulletin on GB News, which was broadcast shortly after the programme started.

We acknowledged the Licensee’s submission that it takes care to differentiate ‘News’ by having: a separate presenter in a separate studio; news ‘idents’ before and after the bulletin; programme titles; scripted ‘handovers’. We accepted the Licensee’s representation that the scheduled hourly news bulletin was unmistakably news content and was clearly separated from the content presented by Jacob Rees-Mogg. In particular, we recognised that the news bulletin consisted of short factual reports delivered by a newsreader at a news desk in a separate studio and a mix of videos and a live report from a reporter on location, and the bulletin was preceded by the broadcast of a GB News title sequence, which was distinct from the title sequence for *Jacob Rees-Mogg’s State of the Nation*.

We considered the Licensee’s submission that the “purpose and intention of Rule 5.3 was surely to stop politicians presenting recognisable news bulletins or summaries, not to prevent the sort of routine item under discussion here”.

GB News also submitted that Ofcom's approach to classifying news and non-news content is unclear, and that where a grey area exists in regulation, Ofcom should allow broadcasters greater discretion to exercise their editorial judgement. In its representations on Ofcom's Preliminary View, GB News submitted that Ofcom refuses to acknowledge "the widely accepted fact that the distinction between news and current affairs is far less clear-cut than it likes to pretend. Ofcom's own statements on the matter and its decision to hold a public consultation about it support that view".

However, as reflected in the Code and Guidance, section 319(8) of the Act makes it clear that references to "news" means news in whatever form it is included in a service. We consider that a programme can be both a news and current affairs programme in that it can contain a mix of both types of content. For example, news bulletins are commonly included within a current affairs or magazine programme. It is also possible for content that constitutes news to be included within a non-news programme, without it being clearly demarcated from the rest of the programme as with a news bulletin. In Ofcom's view, this approach reflects the reality of live news and current affairs programming, particularly in the context of rolling news and current affairs channels. For example, a breaking news event could occur during a live current affairs programme – and in such circumstances, if that breaking news event is reported in that programme, it will typically be classified as news content and the relevant rules in the Code will apply.

We also note that, contrary to GB News' submission, Ofcom has not decided to hold a public consultation on this issue⁴⁷.

As set out in the Programme summary, during the programme, Jacob Rees-Mogg gave an update on a developing news story, namely the Nottingham attacks, by interviewing GB News' Home and Security Correspondent, Mark White, who was reporting live from the scene in Nottingham. The Nottinghamshire Police had issued a statement about the incident on the morning of 13 June 2023, after which it was reported as a developing story across the national media, including on GB News, throughout the day.

Introducing the update, he said:

"This morning we heard the terrible news that three people were murdered and three more injured, following a series of attacks in Nottingham City Centre. This afternoon, it emerged two of the three people were 19 year-old University of Nottingham students, and a man in his fifties was also killed. A 31 year-old man has been arrested on suspicion of murder following the three deaths. GB News sources confirm the suspect involved in the fatal stabbing is a man with a history of violence. Police say they have an open mind on the motive, but counter-terror officers are involved.

Here's the latest from our Home and Security Editor, Mike White, who is in Nottingham. Mike, what can you tell us? Mark, I'm sorry. What have the police

⁴⁷ We understand this submission to be referring to research Ofcom has commissioned from an external agency, as part of our ongoing research programme, on audience attitudes to politicians presenting news and current affairs programmes. This report is not yet complete and this research has not been taken into account in this investigation.

told us so far about what has happened? And what do we know about the suspect?”

Ofcom considered that this statement, and the exchange that followed between Jacob Rees-Mogg and Mark White, was clearly news. It was reporting on a developing news story – providing the audience with an update on the police investigation into the Nottingham attacks, which had taken place that morning. The content consisted of brief factual statements covering key information about the attacks, which Jacob Rees-Mogg presented directly to the audience, before introducing a live report from Mark White in Nottingham, and a short discussion with him. In its representations, the Licensee described the content in these terms, emphasising its brevity and its factual nature. In Ofcom’s view, the subject matter and nature of the content about a topical and developing story, as well as the fact that Jacob Rees-Mogg presented directly to the audience, contributed to it being classified as news.

The Licensee submitted that Jacob Rees-Mogg was not being used as a newsreader as there had already been a distinct bulletin read by a newsreader. It stated that the discussion with Mark White “was surely not enough, in itself, to make Jacob Rees-Mogg a “newsreader””, and that this was a “short conversation about a topical matter within a current affairs programme that was conspicuously and deliberately differentiated from news content”. However, as explained above, it is clear that references in the Code to “news” means news in whatever form it is included in a service. It is possible for a programme to be both a news and current affairs programme in that it can contain a mix of both types of content. The duration of a sequence is not determinative of whether or not the rules covering news content apply.

Other relevant factors

As set out above, there is an indicative and non-exhaustive list of factors that could lead Ofcom to classify content as news. This includes, for example, the use of reporters or correspondents to deliver packages or live reports. In this case, during the sequence on the Nottingham attacks, Jacob Rees-Mogg interviewed GB News Home and Security Correspondent, Mark White. The exchange consisted of Jacob Rees-Mogg asking for an update regarding the police’s information on the incident, and further to Mark White’s response, a follow-up question regarding the attacker’s motives: *“And at the moment, Mark, we have no idea of motive, we just know that this was a horrible and brutal attack which has killed three people and left three injured?”*.

Ofcom considered that Jacob Rees-Mogg’s update and exchange with Mark White provided viewers with a live report from the scene in Nottingham, which was indicated on screen with the words *“Live, Nottingham”*. It included shots of the scene of the attacks which had also been shown in the preceding news bulletin and were described in text on-screen as *“GBN Exclusive”*, and updated viewers on the developing news story about the police investigation into the attacks. In our view, this contributed further to the content being classified as news.

Ofcom considered the Licensee’s claim that the sequence concerning the attacks in Nottingham amounted to a “routine and uncontentious matter” of “giving the audience useful information within what was clearly a current affairs programme”. We further considered the Licensee’s view that determining the appropriate format of such matters is an “editorial decision” over which it had discretion to make.

We acknowledge that politicians have not presented programmes on the scale we have seen in recent years. However, as set out above, the broadcasting regulatory framework was designed to be flexible enough to respond to changes in services. As part of this, the Act set overarching objectives which provide a framework within which the rules in the Code should be interpreted. These objectives are set out in section 319(2) and include section 319(2)(c) – that news included in television and radio services is presented with due impartiality. This objective is then included as an overarching principle at the start of Section Five of the Code, as well as being reflected in Rule 5.1. Ofcom considers it is clear that the rules in Section Five should always be interpreted in light of this objective.

As stated above, Ofcom attaches great value to broadcasters' right to freedom of expression and audiences' right to receive information and ideas, and therefore the broadcasters' right to make programming, creative and editorial choices. However, all broadcast content must comply with the Code. In particular, Rule 5.3 requires broadcasters to ensure that politicians are not used as a newsreader, interviewer or reporter in any news programmes, unless exceptionally, it is editorially justified (in which case the political allegiance of the person must be made clear to the audience). If a licensee chooses to use a politician as a presenter in a programme which includes both news and current affairs content, then the licensee must take steps to ensure that they comply with the requirements of Rule 5.3, bearing in mind the overarching standards objective that news in whatever form is presented with due impartiality. For the avoidance of doubt, broadcasters retain the editorial freedom to create programmes which move between non-news content and news content but if the licensee chooses to use a politician as the host of such a programme, the licensee will have to take steps so that the politician does not act as a newsreader, news interviewer or news reporter in that programme.

What constitutes exceptional circumstances in the context of Rule 5.3 will always depend on the particular circumstances of a case. In our view, there were not any exceptional grounds to editorially justify using Jacob Rees-Mogg as a newsreader here. As such, although we recognise that Jacob Rees-Mogg's political position was acknowledged via on-screen text at the beginning of the programme, this did not mitigate the fact that there was no exceptional justification for him to be presenting the news content in question. In the circumstances of this case, where it was clear from the beginning of the programme that the police investigation into the Nottingham attacks was a developing news story and the presenter of the programme was an MP, it was necessary for the Licensee to take additional steps to ensure that the MP did not present a news item, for example by handing over to another presenter. Ofcom did not consider that taking such steps in these unexceptional circumstances would have constituted an undue or disproportionate restriction on the Licensee's editorial discretion or freedom given its obligations under Rule 5.3 of the Code.

For the reasons set out above, it is Ofcom's Decision that the content was in breach of Rule 5.3.

Rule 5.1

Having established that the content in question did amount to news, and that a politician had acted as a newsreader or news interviewer without exceptional editorial justification, we then turned to consider whether this news content had been presented with due impartiality.

Rule 5.1 of the Code reflects section 319 of the Act, which specifically requires that “news is presented with due impartiality”.

As already stated, in Ofcom’s view the rationale for the Code’s restriction on politicians being used as a newsreader, interviewer or reporter in any broadcast news content (unless exceptionally editorially justified) is clear. Politicians are political representatives. They represent – and will be understood by viewers to represent – a particular political party or position and they are therefore likely to be widely viewed as being inherently partial on topical issues.

In setting and applying the Code, Ofcom seeks to maintain audience trust in broadcast news because of its fundamental importance in a democratic society. News is a special category of programming which is afforded additional protection under the Code. This special status of news is reflected by the underlying legislation, which requires that broadcast news, in whatever form, is presented with due impartiality. We took this into account in considering whether the content complied with Rule 5.1.

As also stated above, Ofcom attaches great value to broadcasters’ right to freedom of expression and audiences’ right to receive information and ideas, and therefore the broadcasters’ right to make programming, creative and editorial choices. However, all broadcast content must comply with the Code.

The Licensee’s view was that the content did not amount to news. It would therefore follow that it would not consider that Rule 5.1, which specifically relates to news, would be engaged. However, for the reasons we have set out above, we did consider that the above content was news, and that Jacob Rees-Mogg was used as a newsreader in this programme without exceptional editorial justification.

The Licensee argued that in any event, the sequence in question was duly impartial, in terms of the nature of the content. We recognise the factual nature of the content delivered by Jacob Rees-Mogg, which did not include any partial comment on, or discussion of, the wider issues involved. However, as set out above, there are additional protections afforded to news because of its fundamental importance in a democratic society. In Ofcom’s view, particular care needs to be taken to preserve the due impartiality of news content on licensed services – not only in terms of the content itself, but also in respect of its presentation and how it is likely to be perceived by viewers. Politicians have an inherently partial role in society and news content presented by them is likely to be viewed by audiences in light of that perceived bias. For that reason, we consider that the presentation of broadcast news content by a politician without exceptional editorial justification gives rise to an inherent lack of due impartiality which conflicts with the fundamental standard in Rule 5.1 of the Code.

Therefore, we considered the fact that a politician was used as a newsreader in this programme meant that there was a breach of Rule 5.1 in the circumstances.

For these reasons, Ofcom’s Decision is that news was not presented with due impartiality and the programme was therefore also in breach of Rule 5.1.

Conclusion

For all the reasons set out above, Ofcom's Decision is that this sequence in *Jacob Rees-Mogg's State of the Nation*, in which he presented a live report from GB News' Home and Security Correspondent on the attacks in Nottingham, was news for the purposes of Rules 5.1 and 5.3 of the Code.

The Nottinghamshire Police issued a statement about the incident on the morning of 13 June 2023, after which it was reported as a developing story across the national media throughout the day. From the beginning of the programme, the Licensee knew about the ongoing police investigation and that the presenter of the programme was a politician. In the absence of exceptional circumstances, it was necessary for the Licensee to ensure that the politician did not present an update on this news story.

Ofcom considered that a politician was used as a newsreader and news interviewer, this sequence constituted news content for the purposes of Section Five of the Code, and the news was not therefore presented with due impartiality. Ofcom's Decision is therefore that the programme was in breach of Rules 5.1 and 5.3.

We consider that our Decision meets the requirements of Article 10(2) of the European Convention of Human Rights, as being prescribed by law, in the pursuit of a legitimate aim and, in particular, that a finding of breach is necessary and proportionate in these circumstances. The Act and the Code as set out above are the applicable law for the purposes of Article 10(2). All Ofcom's licensees must comply with the Act as implemented by the Code and are aware of these obligations. The legitimate aim pursued by the Act and the Code is protecting the rights of others, specifically by aiming to maintain fair and equal democratic discourse on influential media platforms to the benefit of society generally, protecting audiences from harmful partial broadcast news by ensuring the availability of accurate and impartial news services, and ensuring that a range of viewpoints are received by viewers who may then participate on an informed basis in democratic processes. As noted in the White Paper and by the Divisional Court in 2020⁴⁸, the requirements of due impartiality seek to "ensure that the broadcast media provide a counter-weight to other, often partial sources of news. They therefore contribute significantly to properly informed democratic debate".

In considering the proportionality of our Decision, and whether it is justifiable to intervene in this case, we had regard to all of the factors set out above and in particular to Ofcom's duty to uphold standards protecting audiences from harm and the importance of maintaining audience trust and public confidence in the UK broadcasting regime. The due impartiality rules in particular guard against the risk that democratic debate would become distorted if partial programming was permitted to be broadcast on licensed services. As explained above, additional protections are afforded to news because of its fundamental importance in a democracy. Politicians have an inherently partial role in society and news content presented by them is likely to be viewed by audiences in light of that perceived bias. In our view, the use of politicians to present the news risks undermining the integrity and credibility of regulated broadcast news. We therefore considered it was necessary and proportionate to find a breach of Rules 5.1 and 5.3 in these circumstances.

Breaches of Rules 5.1 and 5.3

⁴⁸ *R (on the application of Autonomous Non-Profit Organisation TV-Novosti) v Ofcom* [2020] EWHC 689 (Admin), paragraph 22.

Friday Morning with Esther and Phil

Type of case	Broadcast Standards
Outcome	In Breach
Service	GB News
Date & time	23 June 2023, 10:00
Category	Due impartiality
Summary	Two Conservative MPs were used as newsreaders and news interviewers, and the news was not presented with due impartiality. In breach of Rules 5.1 and 5.3 of the Broadcasting Code.

Introduction

Friday Morning with Esther and Phil was⁴⁹ a weekly two-hour discussion programme covering a broad range of topics and presented by Esther McVey and Philip Davies, two Conservative MPs⁵⁰. The programme typically consisted of comment and debate about contemporary issues, including interviews and studio discussions with a range of guests and commentators, including four scheduled news bulletins.

Ofcom received two complaints about the programme as broadcast on GB News on 23 June 2023. The complainants alleged that the programme breached the due impartiality requirements in Section Five of the Code.

Programme summary

This edition of *Friday Morning with Esther and Phil* included discussions and interviews around a range of recent news stories including: the implosion of the Titan submersible; Brexit; Royal Ascot; vaping at Glastonbury; the Covid inquiry; and children self-identifying as other genders or non-human beings. During the programme the presenters also read out:

- a report on the five-day strike by junior doctors announced by the British Medical Association (the “doctors’ strike report”); and

⁴⁹ In response to Ofcom’s request for formal comments about this content, GB News said that *Friday Morning with Esther and Phil* was no longer being broadcast.

⁵⁰ Esther McVey is the Conservative MP for Tatton and as of November 2023 holds the Government post of Minister without Portfolio (Cabinet Office). Philip Davies is the Conservative MP for Shipley.

- a live report from Business and Economics Editor Liam Halligan who was on location in Downing Street regarding the expected announcement following a meeting between the Chancellor of the Exchequer and mortgage lenders (the “Downing Street report”).

The programme also included four scheduled news bulletins, presented by a news anchor, lasting approximately five minutes each.

The episode opened with Ms McVey and Mr Davies introducing the show and listing the stories which would be covered in the programme that morning. The presenters then handed over to the news anchor for the 10:00 news headlines. A GB News title sequence was played followed by the news bulletin, which was presented from a separate GB News studio to the one where the presenters were hosting the programme. The news bulletin reported on: the implosion of the Titan submersible; the mortgage rate crisis; a public opinion poll relating to Brexit seven years after the EU referendum; a suspect being charged with attempted murder following an attack at Central Middlesex Hospital; voters without appropriate photo ID being prevented from voting at local elections; growth in the retail sector; NHS funding for artificial intelligence; and the removal of car parking meters in favour of parking apps. The news anchor ended the news bulletin by saying *“This is GB News, we’ll bring you more as it happens. Now though, it’s back to Esther and Phil”*. This was immediately followed by the GB News title sequence and then the *Friday Morning with Esther and Phil* title sequence.

The programme, presented by two MPs, was two hours in length and featured discussion, analysis and interviews with guests on topical events. It contained scheduled news bulletins presented by the news anchor in a different studio. We considered that this programme consisted of both news and current affairs content. At times during the programme, the presenters were acting as newsreaders and news interviewers, for example during the doctors’ strike report and the Downing Street report. We explain our reasons in detail below.

Doctors’ Strike Report

The broadcast returned to the main studio where Ms McVey and Mr Davies discussed the implosion of the Titan submersible. Following this segment, the presenters discussed the Bank of England interest rate rise and introduced studio guests Jonathan Steele and Danny Kelly to give their opinion and commentary. At 10:19, Ms McVey interrupted a discussion on the effect of the interest rate rise on mortgage repayments to report that a doctors’ strike had been announced:

Ms McVey: *“Well, we’ll be speaking to someone a bit later who has had their mortgage deal increased, and we’ll find out what sort of pain they’re going through. But Jonathan, stay with us. Danny, stay with us. We’ll be speaking to you later. Now, junior doctors in England have announced a five-day strike action for July”.*

Mr Davies: *“This is thought to be the longest single period of industrial action in the history of the health service”.*

Ms McVey: *“It comes after the government failed to make a credible pay offer following a 72-hour strike earlier this month. The new strike will begin on July the 13th”.*

During the earlier studio discussion about mortgage rates, the on-screen text read: *"BOOST FOR HIGH STREET: Retail sales volumes rose by 0.3% in May"*. As the presenters announced the doctors' strike, the text changed to: *"BREAKING. JUNIOR DOCTOR STRIKE. Five days industrial action announced the British Medical Association"*. In contrast to the black and white coloured on-screen text during the previous studio discussion, *"BREAKING"* was displayed in red text on a white background while the words *"JUNIOR DOCTOR STRIKE"* were written in white text on a red background.

After the announcement had been delivered, the on-screen text reverted to black and white and read: *"UP NEXT: MORTGAGE MISERY"* while the presenters continued to discuss the increase in mortgage rates.

The programme moved on to discussions about Brexit, Royal Ascot, mortgage rates and disposable vapes. There was a further news bulletin at 11:00. The presenters explained what would be coming up next.

Ms McVey: *"And our first story today, five people on board the missing submersible exploring the wreck of the Titanic have tragically died after what's been called a catastrophic implosion. We'll have the very latest analysis from our reporter Paul Hawkins"*.

Mr Davies: *"We'll cross live to our Business and Economics Editor Liam Halligan at Downing Street, where the Chancellor's been hosting a mortgage summit with the big banks"*.

Downing Street Report

At 11:13, Ms McVey welcomed Jonathan Portes, a Professor of Economics from Kings College, London to discuss the increase in interest rates announced by the Bank of England. Following this interview, Ms McVey introduced Liam Halligan, the Economics and Business Editor, who was interviewed live from Downing Street. Throughout the interview the on-screen text read:

"MORTGAGE MISERY: 2.5m borrowers coming to end of fixed rate deal this year".

Before crossing to Mr Halligan at 11:17, a full screen graphic announced *"GBN LIVE"*. The screen was initially split between the presenters in the studio and Mr Halligan outside Downing Street but swiftly broadcast a full screen live feed of Mr Halligan while he was giving his report. At 11:18 the screen briefly split to show Mr Halligan outside Downing Street alongside video footage of numbers on a computer screen and the Bank of England building. While Mr Halligan was speaking, the words *"Live, Downing Street"* featured in the top left-hand corner of the screen:

Ms McVey: *"Thank you for joining us this morning. Now Jeremy Hunt has been hosting a mortgage summit this morning with the big bank chiefs in Downing Street to see what additional help they can give. But with an increase of mortgage payers throwing the towel in, will this be the year that Britain falls out of being in love with being homeowners? Well, let's cross live now to Downing Street to catch up with our GB News Economics and Business Editor Liam Halligan. So, what's been happening, Liam?"*

Mr Halligan: *“Esther, I’ve been here since eight o’clock this morning when various key figures from the mortgage industry – lenders from companies like Lloyds, like HSBC, like Santander they went in and they talked to Chancellor Jeremy Hunt and his officials because, of course, the Bank of England did raise interest rates sharply yesterday all the way up to 5% from 4.5%. Thirteen interest rate rises in a row. And each month 100... 150,000 odd households are coming off fixed rate mortgage deals that they completed when interest rates were much, much lower and they’re facing big increases in their mortgage payments. Up to 50% more in their monthly payments in some cases. So the Chancellor’s got together with the mortgage industry, and I wouldn’t say he’s forced them, we’re expecting an official announcement pretty much any minute, but the outline of the announcement is that the mortgage providers are going to allow householders who face bigger mortgage payments to move from repayment mortgages to interest only mortgages for a period, to have repayment holidays, and also to extend the terms of their loans and crucially that should keep the increase in their mortgage payments limited. But here is the rub, Esther. The mortgage providers, at the government’s insistence, are saying if householders do make those changes to their loans, their credit rating won’t be affected. It won’t impact their credit score going forward, so they won’t be penalised going forward. That, at least, is the outline of the deal. Until I see the official statement and I see the strength of that language, I can’t be sure the extent to which your credit rating really, really, really won’t be affected if you are struggling with your mortgage payments after coming off your fixed rate deal and have to change the terms”.*

Mr Davies: *“Liam Halligan, thank you very much indeed for bringing us up to date with that. We should also just say that Jonathan Portes was saying that with hindsight, the Bank of England might admit it got things wrong. We shouldn’t forget it was our very own Liam Halligan who called this whole thing right, right from the word go about the mistakes that the Bank of England were making. Liam, thank you for that analysis and insight as to what’s happening”.*

At the end of the report the split screen again showed the presenters in the studio and Mr Halligan at Downing Street.

Initial Response

In addition to GB News’ general representations as summarised above, GB News asked Ofcom to find that there was no breach in this case. GB News considered that Ofcom had “offered no suggestion that the programme was in any way lacking in due impartiality”, and therefore

considered that “[w]e take this to mean that Ofcom accepts that there was no infringement of rule 5.5”⁵¹.

The Licensee acknowledged that “we do not dispute that Esther McVey and Philip Davies are politicians” but argued that “we dispute Ofcom’s assertion that the broadcast ‘Esther and Philip’ was unarguably a ‘news programme’” (emphasis added by Licensee). GB News explained that it had already set out its position on this point in earlier correspondence but that “Ofcom’s approach seems to be to insist that a broadcast must be either ‘a news programme’ or something else and Ofcom reserves the right to decide the matter”. The Licensee contended that broadcasting is more complex than that and that “[i]t is well established that topical, current affairs programmes can [be] and are different from ‘a news programme’, even where there are elements relating to news”.

GB News accepted that the programme “had some elements that could also be found in news output, for instance a presenter talking to camera and discussing active stories with reporters and correspondents” but considered that “it also included elements that marked it out as a current affairs programme, e.g. a discursive approach to subjects and a more in-depth examination of topics”. GB News further maintained that “when there is also no suggestion whatsoever that the programme lacks impartiality, we cannot understand how it could be proportionate or justified for Ofcom to pursue this case” (emphasis added by Licensee).

The Licensee accepted that it had obligations under the Code but argued that Ofcom also had obligations to ensure that its activities should be “proportionate and targeted only at cases where action is needed”, adding that “[w]e do not believe that has happened in this instance”. GB News disputed Ofcom’s view that “either or both of the presenters were being ‘used as a newsreader in a news programme’”, urging Ofcom to note that the Licensee “identifies the ‘news’ content on its channel and distinguishes it clearly from the rest of the output by means of a separate studio, a different presenter, a different on-screen logo, video news ‘idents’ before and after the bulletin, programme titles [and] verbal ‘handovers’”.

GB News also expressed its view that “the action being taken by Ofcom is disproportionate and unnecessary given...the failure to identify any impartiality [sic]”.

The Licensee also provided comments in relation to the application of Article 10 of the European Convention on Human Rights. It stated that it understood and supported the requirement for due impartiality and “the restrictions on freedom of speech that are permitted for legitimate purposes in order that this should be achieved”, whilst also understanding “the limitations on those restrictions”. The Licensee acknowledged that Ofcom has previously made it clear that it must perform its duties in accordance with the right to freedom of speech and that any interference must be “*prescribed by law, pursue a legitimate aim and be necessary in a democratic society (i.e. proportionate to the legitimate aim pursued and corresponding to a pressing social need)*” (italicised by Licensee). The Licensee went on to argue that the legitimate aim and pressing social need relied on by Ofcom to justify Rule 5.3 is the need for due impartiality but that in this case “there has been no suggestion that this programme was anything other than duly impartial” (emphasis added by Licensee).

⁵¹ Rule 5.5 states that “Due impartiality on matters of political or industrial controversy and matters relating to current public policy must be preserved on the part of any person providing a service (listed above). This may be achieved within a programme or over a series of programmes taken as a whole”.

GB News went on to comment that while it did not accept “that the news-like elements in the broadcast made it ‘a news programme’, or that it made the presenters ‘newsreaders’”, an equally important point was that there was “no suggestion that this programme was presented with anything other than due impartiality. There was therefore no threat to ‘audience trust’” (emphasis added by Licensee). It was therefore GB News’s view that “it appears to be Ofcom’s potential position that the unspecified threat of a politician speaking to a reporter or correspondent within a current affairs programme that Ofcom apparently believes was duly impartial outweighs GB News’s rights to freedom of expression and freedom of broadcast” (emphasis added by Licensee). GB News said that “[w]e believe this approach to be fundamentally wrong”.

In support of its argument, the Licensee quoted from a Preliminary View drafted by Ofcom in a similar case which stressed that Ofcom gives careful consideration to the broadcaster’s and the audience’s Article 10 rights when applying the Code. The Licensee argued that section 3(4)(g) of the Act requires Ofcom to “have regard to the desirability of promoting freedom of expression”⁵² but that “[w]here there appears to be a lack of necessity to investigate a case in potential contravention of s.3(3)(2) it would follow that to do so must also be a potential breach of s.3(4)(g)”⁵³. Based on this reasoning, GB News argued that the obligation to have regard to freedom of expression required Ofcom to “provide a proper justification” for pursuing a case such as this “where there is no audience harm”. The Licensee also claimed that Ofcom’s “over-arching obligations under the Communications Act do not seem to have been considered”. It also urged Ofcom not to reach a view that the programme was in breach of the Code while at the same time acknowledging that the delivery of due impartiality, “the purpose of the restrictions”, was actually achieved. The Licensee further claimed that as “duly impartial broadcasting, has been achieved in this programme” it could not be proportionate for Ofcom to find this programme in breach of the Code.

GB News referred to further comments made by Ofcom about decisions of the European Court of Human Rights in which Ofcom emphasised “*there is little scope for restrictions on freedom of expression in two fields, namely political speech and on matters of public interest*” (italicised by the Licensee) and that in these areas public authorities would have a particularly narrow margin of appreciation. GB News argued that “Ofcom’s own decisions make clear that the programme in question did deliver Due Impartiality” and it would therefore be hard to see that action against the programme would fall within this narrow margin.

Summarising its representations, GB News said that “[t]he broadcast in question was clearly not a news programme and we do not believe Ofcom can claim with any confidence that the presenters were being ‘used as... newsreader(s)’”.

⁵² Section 3(4) of the Act requires Ofcom to have regard, in performing its duties, to a range of factors where it appears to Ofcom to be relevant. Subsection 3(4)(g) is the need to secure... the application in the case of television and radio services of standards... in the manner that best guarantees an appropriate level of freedom of expression;

⁵³ Although the Licensee refers to section 3(3)(2) of the Act, Ofcom understands it to mean sections 3(3)(a) or (b). These provisions require Ofcom to have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed and any other principles appearing to Ofcom to represent the best regulatory practice.

Additional comments

As set out above, Ofcom subsequently requested the Licensee's comments under Rule 5.1. The Licensee re-stated its position that Rule 5.3 was not breached because "the broadcast was not a 'news programme'". It further added that "Ofcom had made no suggestion that the programme had been lacking in due impartiality". The Licensee said that "[w]e have reviewed this programme again" and could not see "any part of it where due impartiality seems to have been missing".

The Licensee added that Ofcom usually identified a section or item in a programme when asking about impartiality issues and requested the same here "[b]efore Ofcom produces a Preliminary View", also noting that this case revolved around the distinction between news and current affairs and that "[i]t would be very helpful for Ofcom to provide some idea of its thinking on this matter" before the provision of a Preliminary View so that it could give its views⁵⁴.

Response to Preliminary View

Following receipt of GB News' representations, Ofcom issued a Preliminary View finding the programme in breach of Rules 5.3 and 5.1.

In response to the Preliminary View, GB News stated that it stood by its previous representations in this case. It made a number of points that are set out above under 'GB News' response to Ofcom's Preliminary Views' (see page 8 above). In summary, GB News argued that:

- There was no breach of Rule 5.3 because the content in question did not constitute "a news programme" as required by the rule.
- The content did not engage Rule 5.1 because the content was current affairs rather than news.
- Even if Rule 5.1 is applied there was no actual lack of impartiality in the content.
- Given the above, Ofcom's actions are unfair, disproportionate and outside its narrow margin of appreciation.

In addition to these general representations, GB News also made comments that were specific to this case, which are summarised below.

Rule 5.3

Further to its argument that the content in question did not constitute "a news programme" as required by Rule 5.3, the Licensee stated that *Friday Morning with Esther and Phil* was "a current affairs programme which contained a number of news-like elements". It quoted a passage in the Preliminary View in which Ofcom: noted that the programme as a whole included some features that are typical of current affairs content; and acknowledged the steps taken by the Licensee to differentiate the hourly news bulletins from the rest of the programme. It cited another passage in which Ofcom clarified that the inclusion of the doctors' strike report and the Downing Street report did not make "the entire two-hour programme" a news programme, but only the relevant

⁵⁴ Ofcom wrote to GB News on 28 September 2023 to clarify that Rule 5.1 will be applied to any content in the programme where we considered Ms McVey and/or Mr Davies potentially delivered the news.

sequences. GB News claimed that these passages in the Preliminary View demonstrated that there was no breach of Rule 5.3.

Rule 5.1

In support of its argument that the content did not engage Rule 5.1 because it was current affairs rather than news, GB News stated that “[t]he discussions about topical matters were simple, journalistic, factual exchanges of information and background detail”.

If Rule 5.1 was engaged, the Licensee considered that the content in question was in any case presented with due impartiality. It claimed that Ofcom had failed to point to any instances of a lack of impartiality in the programme, with the exception of “one passing reference to a single sentence (to our mind an uncontentious one) in a two-hour programme”. It also strongly contested Ofcom’s interpretation of Rule 5.1, as set out above under ‘GB News’ response to Ofcom’s Preliminary Views’. GB News suggested that Ofcom was “designating brief and unremarkable exchanges between presenters and reporters in a current affairs show as ‘news’ and using it to manufacture a claim of lack of impartiality”. It added that Ofcom should “not act as though the existing rules say something they do not” and that Ofcom’s approach “rewrites the plain language definition of impartiality to equate ‘perception’ of lack of impartiality with an offence of the same, even if not justified by the facts”.

Additional comments

The Licensee considered that Ofcom was not acting proportionately, as set out above under ‘GB News’ response to Ofcom’s Preliminary Views’. It urged Ofcom’s final stage decision-maker to reverse the conclusion of the Preliminary View.

Decision

In reaching Ofcom’s Decision, we took into account the considerations set out above under the ‘Background to Ofcom’s due impartiality regime’ and ‘Specific rules on politicians presenting and appearing in programmes’ sections, as well as GB News’ general representations.

Rule 5.3

We first considered whether the content amounted to news.

As set out above, GB News argued that this programme was not news and that therefore the requirements of Rule 5.3 did not apply.

Under Ofcom’s rules, politicians typically cannot be a newsreader, interviewer or reporter in any news programme. They are permitted to present other kinds of programmes, including current affairs. Sometimes those programmes may be on channels that also broadcast news. As set out above, there are some typical factors that could lead us to classify content as news or current affairs, which we consider in relation to the programme in question below.

The nature and subject of the content

As explained above, the programme was presented by Ms McVey and Mr Davies, two Conservative MPs. Ofcom considered that the programme contained both news and current affairs and therefore was a news and current affairs programme.

We acknowledged that the programme included a number of features that are typical of current affairs content: it was a long-form programme (two hours in total) comprising live discussions, analysis and interviews with guests. The presenters' discussions were clearly separate from the scheduled news bulletins which comprised of short factual reports delivered by a newsreader at a news desk in a separate studio, and were preceded by the broadcast of a GB News 'ident' that was distinctive from the title sequence of *Friday Morning with Esther and Phil*.

GB News submitted that Ofcom's approach to classifying news and non-news content is unclear, and that where a grey area exists in regulation, Ofcom should allow broadcasters greater discretion to exercise their editorial judgement.

While GB News admitted that there was some "news-like" content in the programme, it argued this did not make the entire programme definitively "a news programme" for the purposes of Rule 5.3, and that Ofcom had accepted that in acknowledging that the programme had separated news content from current affairs content. In its representations on Ofcom's Preliminary View, GB News submitted that Ofcom refuses to acknowledge "the widely accepted fact that the distinction between news and current affairs is far less clear-cut than it likes to pretend or than may have existed in past times. Ofcom's own statements on the matter and its decision to hold a public consultation about it support that view".

However, as reflected in the Code and Guidance, section 319(8) of the Act makes it clear that references to "news" means news in whatever form it is included in a service. We consider that a programme can be both a news and current affairs programme in that it can contain a mix of both types of content. For example, news bulletins are commonly included within a current affairs or magazine programme. It is also possible for content that constitutes news to be included within a non-news programme, without it being clearly demarcated from the rest of the programme as with a news bulletin. In Ofcom's view, this approach reflects the reality of live news and current affairs programming, particularly in the context of rolling news and current affairs channels. For example, a breaking news event could occur during a live current affairs programme – and in such circumstances, if that breaking news event is reported in that programme, it will typically be classified as news content and the relevant rules in the Code will apply.

We also note that, contrary to GB News' submission, Ofcom has not decided to hold a public consultation on this issue⁵⁵.

In this programme, the presenters Ms McVey and Mr Davies reported on a number of topical and developing stories, for example the doctors' strike report and the Downing Street report. In Ofcom's

⁵⁵ We understand this submission to be referring to research Ofcom has commissioned from an external agency, as part of our ongoing research programme, on audience attitudes to politicians presenting news and current affairs programmes. This report is not yet complete and this research has not been taken into account in this investigation.

view, these reports had characteristics which contributed to them being classified as news. We explain the reasons for this below.

Doctors' Strike Report

At 10:19, the presenters interrupted a studio discussion about the Bank of England interest rate rise to report that a doctors' strike had been announced. The presenters directly addressed the audience, stating: *"Now, junior doctors in England have announced a five-day strike action for July"* and *"The new strike will begin on July the 13th"*.

Ofcom considered that this report was an example of news content. It covered a breaking news story, providing the audience with an update shortly after the strike had been announced. The content largely consisted of brief factual statements covering key information about the timing and duration of the strike which did not include any comment on or discussion about the wider issues involved. In Ofcom's view, the subject matter and nature of the content contributed to it being classified as news.

Other presentational factors contributed to this classification. The on-screen graphics during the announcement of the strike emphasised the presenters were reporting on a breaking news story. Ofcom considered that the change in the colour of the text from black and white to red was indicative of an up to the minute news report rather than current affairs programming. Moreover, the wording, *"BREAKING. JUNIOR DOCTOR STRIKE. Five days industrial action announced the British Medical Association"* explicitly referred to the fact that this was a breaking story. While the use of features such as scrolling text updates and the term *"BREAKING"* does not in itself make content news, it can contribute to content being classified as news, especially where combined with other relevant factors.

The doctors' strike had not been reported in the 10:00 news bulletin but was included as the top story in the next news bulletin, which was broadcast at 10:32. The report was described by the newsreader and the on-screen text as *"breaking news"* which in Ofcom's view further highlighted that Ms McVey and Mr Davies had been presenting the news when they first reported on the story minutes before the bulletin.

Downing Street Report

At 11:19, the presenters discussed the increase in interest rates and a summit held that morning between Jeremy Hunt and representatives of the larger banks in Downing Street. Ms McVey announced they would *"cross live now to Downing Street to catch up with our GB News Economics and Business Editor Liam Halligan"* and, following a full-screen graphic which read *"GBN LIVE"*, the screen was split between the presenters in the studio and Mr Halligan reporting live from outside Downing Street. While Mr Halligan was delivering his report, his live feed from Downing Street was initially shown full screen, although during the segment the screen briefly split again to show Mr Halligan at Downing Street next to video footage of the Bank of England building.

Mr Halligan stated that he had been there *"since eight o'clock this morning"* and that he was *"expecting an official announcement pretty much any minute"*. He went on to outline the announcement he expected which would allow householders to adjust their mortgage payments without affecting their credit rating, adding *"that, at least, is the outline of the deal. Until I see the*

official statement and I see the strength of that language, I can't be sure". After Mr Halligan had delivered his report, Mr Davies thanked him for "bringing us up to date with that".

Ofcom considered this live interview with a reporter based in Downing Street to be a news report. Mr Halligan provided up to the minute information on a significant meeting between the Chancellor and representatives of the banks. He described the developing situation in brief, factual terms and without discussion of the wider issues. As set out above, the use of a reporter to deliver a live report is one of the factors which may lead Ofcom to classify content as news. In this case, the reporter was broadcasting live from Downing Street, which was indicated on screen with the words *"Live, Downing Street"*, while awaiting an official announcement. Ofcom considered that the subject and nature of the reporting in this segment constituted a news report during which Ms McVey and Mr Davies were used as news readers and news interviewers.

We noted that Mr Davies expressed support for GB News Economics and Business Editor Liam Halligan, and gave his own personal view on this news story, at the end of the segment: *"We shouldn't forget it was our very own Liam Halligan who called this whole thing right, right from the word go about the mistakes that the Bank of England were making"*.

Other relevant factors

As set out above, there is an indicative and non-exhaustive list of factors that could lead Ofcom to classify content as news, especially where they are combined with other relevant factors. Conversely, the absence of any potential contributory factor, such as a video report or a reporter on location, does not mean that content should be classified as non-news. In this case, taking into account the factors set out above, Ofcom considered that the doctors' strike report and the Downing Street report both constituted news content.

We acknowledge that politicians have not presented programmes on the scale we have seen in recent years. However, as set out above, the broadcasting regulatory framework was designed to be flexible enough to respond to changes in services. As part of this, the Act set overarching objectives which provide a framework within which the rules in the Code should be interpreted. These objectives are set out in section 319(2) and include section 319(2)(c) – that news included in television and radio services is presented with due impartiality. This objective is then included as an overarching principle at the start of Section Five of the Code, as well as being reflected in Rule 5.1. Ofcom considers it is clear that the rules in Section Five should always be interpreted in light of this objective.

As stated above, Ofcom attaches great value to broadcasters' right to freedom of expression and audiences' right to receive information and ideas, and therefore the broadcasters' right to make programming, creative and editorial choices. However, all broadcast content must comply with the Code. In particular, Rule 5.3 requires broadcasters to ensure that politicians are not used as a newsreader, interviewer or reporter in any news programmes, unless exceptionally it is editorially justified (in which case, the political allegiance of the person must be made clear to the audience). If a licensee chooses to use a politician as a presenter in a programme which includes both news and current affairs content, then the licensee must take steps to ensure that they comply with the requirements of Rule 5.3, bearing in mind the overarching standards objective that news in whatever form is presented with due impartiality. For the avoidance of doubt, broadcasters retain the editorial freedom to create programmes which move between non-news content and news content but if the licensee chooses to use a politician as the host of such a programme, the licensee

will have to take steps so that the politician does not act as a newsreader, news interviewer or news reporter in that programme.

What constitutes exceptional circumstances in the context of Rule 5.3 will always depend on the particular circumstances of a case. In our view, there were no exceptional grounds that provided editorial justification to use Ms McVey or Mr Davies to act as newsreaders or news interviewers, as they did in the reports set out above. In the example of the Downing Street report, the presenters had trailed the programme's intention to report on this story in advance. In these circumstances, where the presenters of the programmes were MPs, the Licensee had advance notice to take additional steps to ensure that the MPs did not present the news items, for example by handing over to another presenter. Ofcom did not consider that taking such steps in these unexceptional circumstances would have constituted an undue or disproportionate restriction on the Licensee's editorial discretion or freedom given its obligations under Rule 5.3 of the Code.

For the reasons set out above, it is Ofcom's Decision that the content was in breach of Rule 5.3.

Rule 5.1

Having established that the content in question was news, and that two politicians had acted as newsreaders and news interviewers without exceptional editorial justification, we then turned to consider whether this news content had been presented with due impartiality.

Rule 5.1 of the Code reflects section 319 of the Act, which specifically requires that "news is presented with due impartiality".

As already stated, in Ofcom's view the rationale for the Code's restriction on politicians being used as a newsreader, interviewer or reporter in any broadcast news content (unless exceptionally editorially justified) is clear. Politicians are political representatives. They represent – and will be understood by viewers to represent – a particular political party or position and they are therefore likely to be widely viewed as being inherently partial on topical issues.

In setting and applying the Code, Ofcom seeks to maintain audience trust in broadcast news because of its fundamental importance in a democratic society. News is a special category of programming which is afforded additional protection under the Code. This special status of news is reflected by the underlying legislation, which requires that broadcast news, in whatever form, is presented with due impartiality. We took this into account in considering whether the content complied with Rule 5.1.

As also stated above, Ofcom attaches great value to broadcasters' right to freedom of expression and audiences' right to receive information and ideas, and therefore the broadcasters' right to make programming, creative and editorial choices. However, all broadcast content must comply with the Code.

The Licensee argued that the content did not amount to news. It therefore did not consider that Rule 5.1, which specifically relates to news, was engaged. However, for the reasons we have set out above, the 23 June 2023 edition of *Friday Morning with Esther and Phil* included these two sequences which we considered were news content, where politicians were used as newsreaders and news interviewers.

The Licensee argued that in any event the programme in question was duly impartial, in terms of the nature of the content. However, as set out above, there are additional protections afforded to news because of its fundamental importance in a democratic society. In Ofcom's view, particular care needs to be taken to preserve the due impartiality of news content on licensed services – not only in terms of the content itself, but also in respect of its presentation and how it is likely to be perceived by viewers. Politicians have an inherently partial role in society and news content presented by them is likely to be viewed by audiences in light of that perceived bias. For that reason, we consider that the presentation of broadcast news content by politicians without exceptional editorial justification gives rise to an inherent lack of due impartiality which conflicts with the fundamental standard in Rule 5.1 of the Code.

Therefore, we considered the fact that politicians were used as newsreaders and news interviewers in this programme meant there was also a breach of Rule 5.1 in the circumstances.

Moreover, we noted that in addition, Mr Davies expressed a view on the relevant news story at the end of the Downing Street report. As explained, politicians are inherently partial and hold political views on news events. In this case, we considered Mr Davies provided a partisan comment on a topical news story in which he was used as a newsreader and news interviewer, which exacerbated the breach of Rule 5.1.

For all these reasons, Ofcom's Decision is that news was not presented with due impartiality and the content was therefore also in breach of Rule 5.1.

Conclusion

For all the reasons set out above, Ofcom's Decision is that the reports outlined above – the doctors' strike report and the Downing Street report – in *Friday Morning with Esther and Phil* were examples of news content for the purposes of Rules 5.1 and 5.3 of the Code.

Ofcom considered that politicians were used as newsreaders and news interviewers in reports which constituted news content for the purposes of Section Five of the Code, and the news was not presented with due impartiality. Ofcom's Decision is that the programme was in breach of Rules 5.1 and 5.3.

We consider that our Decision meets the requirements of Article 10(2) of the European Convention of Human Rights, as being prescribed by law, in the pursuit of a legitimate aim and, in particular, that a finding of breach is necessary and proportionate in these circumstances. The Act and the Code as set out above are the applicable law for the purposes of Article 10(2). All Ofcom's licensees must comply with the Act as implemented by the Code and are aware of these obligations. The legitimate aim pursued by the Act and the Code is protecting the rights of others, specifically by aiming to maintain fair and equal democratic discourse on influential media platforms to the benefit of society generally, protecting audiences from harmful partial broadcast news by ensuring the availability of accurate and impartial news services, and ensuring that a range of viewpoints are received by viewers who may then participate on an informed basis in democratic processes. As noted in the White Paper and by the Divisional Court in 2020⁵⁶, the requirements of due impartiality seek to

⁵⁶ *R (on the application of Autonomous Non-Profit Organisation TV-Novosti) v Ofcom* [2020] EWHC 689 (Admin), paragraph 22.

“ensure that the broadcast media provide a counter-weight to other, often partial sources of news. They therefore contribute significantly to properly informed democratic debate”.

In considering the proportionality of our Decision, and whether it is justifiable to intervene in this case, we had regard to all of the factors set out above and in particular to Ofcom’s duty to uphold standards protecting audiences from harm and the importance of maintaining audience trust and public confidence in the UK broadcasting regime. The due impartiality rules in particular guard against the risk that democratic debate would become distorted if partial programming was permitted to be broadcast on licensed services. As explained above, additional protections are afforded to news because of its fundamental importance in a democracy. Politicians have an inherently partial role in society and news content presented by them is likely to be viewed by audiences in light of that perceived bias. In our view, the use of politicians to present the news risks undermining the integrity and credibility of regulated broadcast news. We therefore considered it was necessary and proportionate to find a breach of Rules 5.1 and 5.3 in these circumstances.

Breaches of Rules 5.1 and 5.3