GRA

GIBRALTAR REGULATORY AUTHORITY

STATEMENT TO CONSULTATION

Summary of all relevant stakeholders' views and the Authority's determination regarding the review of the Code on objectivity, impartiality, accuracy and undue prominence.

Publication Date: 12th February 2018

BC 02/18

FOREWORD

This response to consultation contains all the relevant stakeholders' views on the proposed amendments to the Code on objectivity, impartiality, accuracy and undue prominence.

The Authority has considered all responses to this consultation and made its determination.

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EXECUTIVE SUMMARY

In accordance with the provisions of Sections 22 and 23, and Schedule 3 of the Broadcasting Act 2012 (the "Act"), the Gibraltar Regulatory Authority (the "Authority") is required to issue codes of practice for the content of programmes included in television and radio services in Gibraltar on matters concerning news, political broadcasts, elections and referendums. The Authority also has a duty to review a code from time to time.

The Authority received representations from Mr. Keith Azopardi QC, the leader of the Gibraltar Social Democrats, "GSD", political party, requesting that the Code on objectivity, impartiality, accuracy and undue prominence (the "Code"), be amended to adequately cater for the situation that currently exists where the Leader of the Main opposition party is not the same person as the Parliamentary Leader.

In the interests of best practice, the Authority decided to consult relevant stakeholders on reviewing the Code, given that the Authority has a duty to do so from time to time, to address the points raised by the leader of the GSD.

On the 15th January 2018, the Authority opened a public consultation for a review of the Code, specifically Second Section, Political Broadcasts, Part 1 – "Political broadcasts NOT made in relation to any election or referendum", paragraphs 6 and 7.

The Authority received submissions from the following respondents by the close of the consultation period on 29th January 2018:

- Gibraltar Broadcasting Corporation (GBC)
- Gibraltar Social Democrats (GSD)
- Gibraltar Socialist Labour Party (GSLP)
- Gibraltar Liberal Party (GLP)
- Marlene Hassan Nahon (Independent MP)
- Lawrence Llamas (Independent MP)

The Authority thanks all respondents for their submissions. Having considered the views of all respondents, the Authority sets out in this document its conclusions.

1. INTRODUCTION

Scope of this review

The purpose of the consultation was to allow stakeholders, to put forward any recommendations or comments, to the amendments as proposed by the leader of the GSD in Section 2 of the consultation document. All comments and personal information submitted to the Authority as part of a response to this public consultation were processed in line with the Privacy Statement published on the consultation webpage.

Background

In 2012, following a consultation process with all relevant stakeholders, the Authority published the Code of Practice on due impartiality, due accuracy and undue prominence (the "Code"), which became effective on 1st January 2013. The Authority received several representations in 2013, namely from GBC, requesting clarifications in order to minimise uncertainty and possible misinterpretations in the future.

An extensive redraft of that Code was carried out and the new version was published on the 13th April 2015. The document, with reference No. BC01/15, was retitled "Code on objectivity, impartiality, accuracy and undue prominence" and is available on the Authority's website. This document is the current valid Code and has been in effect since 20th April 2015.

On 9th January 2018 the Authority received a request from the leader of the GSD seeking amendments to the Code to "adequately reflect the current political situation". Mr. Azopardi, who had recently been elected as Leader of the GSD, is currently not a Member of Parliament. He is the leader of the main opposition party but it is Mr. Elliott Phillips who was identified and recognised as the "Leader of the Opposition" on the 5th January by Parliament.

At present, the Code only makes reference to the right of reply to Ministerial statements by the Leader of the Opposition. The leader of the GSD argues that, in certain cases, it would be in the public's interest that the leader of the main opposition party should have the opportunity to reply to Ministerial statements.

Review of the Code

As a result of the request by the Leader of the GSD, the Authority considered the matter and decided to start a consultation on the proposed amendments to the Code, specifically the Second Section, Political Broadcasts, Part 1 – "Political broadcasts NOT made in relation to any election or referendum", paragraphs 6 and 7.

2. SUMMARY OF RESPONSES AND GRA'S COMMENTS

Extract from the Code: Second Section, Political broadcasts NOT made in relation to any election or referendum, paragraph 6.

Government Ministerial Statements

A Gibraltar public service broadcaster (for example, The Gibraltar Broadcasting Corporation) shall include Government Ministerial Statements in its radio and television broadcasting schedules. Government Ministerial Statements are statements that Government Ministers may make on television or radio for the purpose of communicating information, explaining legislation passed by Parliament or seeking the co-operation of the general public on a given matter. Government Ministerial Statements shall not exceed 15 minutes' duration per broadcast.

Should the Opposition seek to reply to such statements on the grounds that the matters raised are of public or political controversy, public debate or relate to current public policy (as those terms are defined in the Guidance Notes to Standard 1 of Part 2 of the First Section of the Code) the public service broadcaster that has broadcast the Government Ministerial Statement shall allocate time to the Leader of the Opposition to enable the opposition to respond. Such a broadcast shall not exceed the duration of the Government Ministerial Statement or 10 minutes, whichever is the lesser.

Proposed amendments to paragraph 6

Option 1: Replace "Leader of the Opposition", in the second paragraph, with the text "leader of the Opposition Party" or;

Option 2: Replace "Leader of the Opposition" with the text "the Leader of the largest Opposition Party".

Question 1: Do you object to the Code being changed to reflect either of the proposed amendments? Please provide reasons for your reply.

SUMMARY OF STAKEHOLDERS' RESPONSES

GBC: The broadcaster did not agree with the changes. In their view, they consider these statements to be *"a vehicle for parliamentarians (Chief Minister and the Leader of the Opposition) to make statements via television and radio."* However, they did say that party political broadcasts provide members of Parliament *"with the alternative vehicle for other persons to appear on the broadcast on their own or their party's behalf."*

GLP: The political party objected to any changes given that the "Leader of the Opposition" is recognised in Parliament.

GSLP: The political party objected to the proposed amendments stating that *"the rights and privileges afforded to Members of Parliament cannot be extended to the leader of a political party with parliamentary representation if s/he is not also a Parliamentarian."* Furthermore, they stated that Mr. Azopardi is not the Leader of the Opposition as he is not in Parliament and the Leader of the Opposition is an individual recognised by the Speaker in Parliament.

Hon Lawrence Llamas MP: Mr. Llamas stated that the "Leader of the Opposition" refers to the leader with the largest party in Parliament and added that *"Leadership of the opposition must be inextricably linked to Parliament."* Mr. Llamas also stated that any person elected or appointed outside of Parliament would be at *"a democratic disadvantage to one elected in the House."*

Question 2: In the case that you disagree with either of these proposed amendments, would you instead propose that the term "Leader of the Opposition" be replaced with an alternative term, if so, which term?

SUMMARY OF STAKEHOLDERS' RESPONSES

GBC: The broadcaster could not propose any changes to the wording given that they disagreed *"with the principle of opening the Right of Reply to Ministerial Statements to non-Parliamentarians."*

GLP: The political party did not agree, as the term "Leader of the Opposition" is the correct term.

GSLP: The political party were clear that the wording "Leader of the Opposition" works for Gibraltar and *"must remain so in keeping with the Parliamentary traditions of our democracy."*

Hon Lawrence Llamas MP: Mr. Llamas requested the proposed changes be disregarded as these could *"...give rise to the possibility of a leader of a political force unrepresented in the Parliament, which claims to be larger in terms of its general membership or public support than that of the 'Official' parliamentary opposition..."*

AUTHORITY'S CONCLUSIONS TO QUESTIONS 1 AND 2

The Code currently identifies the "Leader of the Opposition" as the contact for broadcasters to offer the opposition the opportunity to reply to Ministerial Statements. The Authority recognises that the GSD is the political party with the largest number of Members of Parliament on the Opposition benches, and that the proposed changes seek to clarify who the broadcasters need to contact to offer a right of reply.

The Authority is of the view that the term "Leader of the Opposition" is appropriate and correct and that Second Section, Paragraph 6 of the Code should not be amended.

The Authority remains of the opinion that the term the "Leader of the Opposition" is the best reference for broadcasters when considering the right of reply to Ministerial Statements, as this is the only Member specifically nominated in Parliament to represent all the elected Members on the Opposition benches. Any changes to the recognition of a Member of Parliament as the Leader of the Opposition are recorded in the published Hansard reports and is therefore a clear and unambiguous contact person for broadcasters. The following extract from Hansard of 5th December 2017, highlights how the Leader of the Opposition is traditionally nominated:

Proceedings of Parliament - extract from Hansard 5th December 2017:

> ***"Mr Speaker:*** *Hon. Members, yesterday the Hon. Roy Clinton formally signified to me his intention to step down as Leader of the Opposition. In a parliamentary democracy such as ours it is the long-established convention that the post of Leader of the Opposition is held by that elected Member of the Opposition who commands majority support from his elected colleagues sitting on the Opposition benches. I have also been formally notified in writing that the elected Members of the GSD decided yesterday morning that the Hon. Elliott Phillips should, as from today, discharge the duties of the post of Leader of the Opposition. Accordingly, I now formally recognise him and congratulate him as such. Consequentially, this Parliament will also now recognise the hon. Member as the Leader of the Opposition."*

The comments received from all stakeholders, except the GSD political party, were **not** in favour of the proposed changes to the Code and most emphasised the importance of maintaining the link with the democratic parliamentary system.

The Authority would like to stress that the Code does not stipulate that the Leader of the Opposition is the only person that can reply to Ministerial Statements. If a Government Statement is broadcast and delivered by a Minister it would be the responsibility of the Leader of the Opposition to determine firstly, whether the Opposition would like to reply and secondly, who would be best suited from the members of the Opposition to provide the reply. In most cases, the respective "Shadow" Member of Opposition would deliver the reply. Nevertheless, in line with the Code it would be the Leader of the Opposition, as a Member of Parliament, who would acknowledge, in writing, to the broadcaster that the Opposition intends to avail themselves of their right of reply.

As recognised by one of the stakeholders, the Code is built on principles of fairness, equality, political impartiality and independence.

The Code also provides guidelines on Party Political Broadcasts and requires the public service broadcaster to allocate a number of television broadcasting periods to the parties and independent members in the Gibraltar Parliament. These provide a fair distribution of air time and provide an alternative avenue for a response or for additional comments to Ministerial Statements.

Extract from the Code: Second Section, Political broadcasts NOT made in relation to any election or referendum, paragraph 7.

National interest

In exceptional circumstances, on matters of serious national interest, a public service broadcaster (for example, The Gibraltar Broadcasting Corporation) shall, at the request of the Chief Minister, make available to the Chief Minister a programme time slot of a maximum of 30 minutes' duration.

Within a reasonable period of time after that broadcast, and exercising its editorial judgment, the public service broadcaster that has made available the programme time slot to the Chief Minister shall grant the Leader of the Opposition an equivalent programme time slot to enable him or her to express his/her view on the matter.

Proposed amendments to paragraph 7

Option 1: Replace "Leader of the Opposition" with the text "leader of the Opposition Party" or;

Option 2: Replace "Leader of the Opposition" with the text "the Leader of the largest Opposition Party".

Question 3: Do you object to the Code being changed to reflect either of the proposed amendments? Please provide reasons for your reply.

SUMMARY OF STAKEHOLDERS' RESPONSES

GBC: The broadcaster did not agree with the proposed changes.

GLP: The political party repeated their response to question 1 above.

GSLP: The political party did not agree with any changes being made. They further added that *"we consider the proposal to be setting a potentially dangerous precedent which would allow a political party in future to appoint a Leader, who would have rights and privileges otherwise only available to elected Parliamentarians, and who would not be an acceptable voice of the People of Gibraltar."*

Hon Lawrence Llamas MP: Mr. Llamas requested the proposed changes be disregarded for the same reasons given in questions 1 and 2 above.

Question 4: In the case that you disagree with either of these proposed amendments, would you instead propose that the term "Leader of the Opposition" be replaced with an alternative term, if so, which term?

SUMMARY OF STAKEHOLDERS' RESPONSES

GBC: The broadcaster restated what they responded to in question 2 above.

GLP: The political party restated their response to question 2 above.

GSLP: The political party restated their response in question 2 above and once again highlighted that *"the term "Leader of the Opposition" is the correct term to employ in this context to denote to the relevant Member of Parliament and we will not support or countenance any changes in this respect."*

Hon Lawrence Llamas MP: Mr. Llamas requested the proposed changes be disregarded for the same reasons given in questions 1 and 2 above, but added that if any amendments were needed it should be one that *"affirms the position that it must be the Parliamentary Leader of the Official Opposition in Parliament who should enjoy the right of reply to Chief Ministerial broadcasts."*

AUTHORITY'S CONCLUSIONS TO QUESTIONS 3 AND 4

The Authority is of the view that the term "Leader of the Opposition" is appropriate and correct and the proposed changes to Second Section, Paragraph 7 of the Code should not be amended.

The Leader of the Opposition is mentioned in the Constitution of Gibraltar and is clearly recognised by Parliament as shown in the above extract from Hansard. The Authority is of the opinion that the "Leader of the Opposition" should remain the reference for broadcasters, for replies to national interest broadcasts. It should be noted that these broadcasters can only be requested by the Chief Minister in exceptional circumstances and for matters of serious national interest.

The Authority has reviewed all of the stakeholders' comments and most have stated they do not support the proposed amendments to paragraph 7. Furthermore, there was a proposal that any change should affirm the position of the "Leader of the Opposition". The Authority has considered this new proposal and has determined that the current wording is adequate, clear and concise and does not require any changes.

The Authority points out that for national interest broadcasts there are no stipulated time limits for a response and the broadcaster must exercise its editorial judgement and offer an equivalent programme timeslot to the Leader of the Opposition.

The Authority would also highlight the response from GBC that made reference to Party Political Broadcasts as an "*alternative vehicle for other persons to appear on the broadcast on their own or their party's behalf."*

STAKEHOLDERS' ADDITIONAL COMMENTS

GBC: The broadcaster highlighted that *"…when producing its current affairs and news programmes it will have the freedom to invite parliamentarians and non-parliamentarians to be interviewees or form part of debating panels. This allows for the Leader of the GSD party to appear on such programmes…"*.

GSD: The Leader of the GSD Party, Mr. Azopardi, commented that the Code does not cater for the *"democratic reality in which we are currently living"* as the main opposition party is led by someone that is not in Parliament. He added that *"the public would expect the leaders of the GSLP and GSD to be those principal spokespersons for both political blocs in Parliament as the House is currently constituted."*

Mr. Azopardi also highlighted that if the Code were not amended then it would *"allow the leader of the GSLP (and lead political spokesman for the Government) an in-built ability to present his views but not have these answered by the leader of the GSD (as lead spokesperson for the Opposition party)".* This, Mr. Azopardi considered, would be "…*unfair, undemocratic and unconstitutional."*

Mr. Azopardi added that in order to ensure that such matters do not occur then the proposed amendments "…*would allow the GSD Leader (as the democratically elected principal spokesman for the main Opposition party) the opportunity on the national broadcaster to have equivalent opportunity of response to the GSLP leader (as the democratically elected spokesman for the main Government party) would safeguard the core values inherent in the Code and ensure these live on."*

Hon Ms. M D Hassan Nahon MP: Ms. Hassan Nahon thanked the Authority for the consultation and trusted that "*a fair and obvious conclusion would be reached"*. Ms. Hassan Nahon stated that the Chief Minister delivers an address not as a party leader, but as an elected Parliamentarian and the rights of reply are covered by elected counterparts.

AUTHORITY'S CONCLUSIONS TO ADDITIONAL COMMENTS

One of the GSD's concerns was that the current wording of the Code was unfair and provided the parties in Government with an advantage depriving the public of the opposite point of view by the principal interlocutor of the GSD. The Authority does not share these concerns and the Code is specifically linked to the democratic parliamentary system to ensure fairness. The Code provides guidelines on the allocation of television coverage for Ministerial Statements irrespective of the number of parties that constitute the Government at the time, and likewise for the Opposition similar allocations should be offered to the Leader of the Opposition, irrespective of the number of parties and independents that occupy the Opposition benches.

The Authority would also like to highlight GBC's additional comments above, that they produce current affairs programmes which are not directly linked to Parliament and are open to all political parties.

3. COMMENTS OUTSIDE OF THE SCOPE OF THE CONSULTATION

Although the purpose of this consultation was to allow all relevant stakeholders the opportunity to make representations to the proposed amendments contained in section 2 of this document, it also provided the opportunity for stakeholders to contact the Authority if they had any additional concerns with the Code.

GBC's COMMENTS

GBC: The broadcaster raised several points concerning the duration of party political broadcasts and the need for setting limits to the number of Ministerial Statements.

GBC's concerns regarding the 8 minute duration of party political broadcasts, is that they are *"too long in this day and age, when TV scheduling has become much more sophisticated, and viewers are accustomed to short snappy items on television"*. In their opinion, a party political broadcast should be limited to a maximum duration 4'40", as allowed in the UK. GBC said that *"this would be in keeping with international trends and be less disruptive to their schedules at a time when GBC is modernising its TV service"*.

GBC also expressed their concerns that Ministerial Statements are not limited in number and this *"could very easily be abused to become additional political broadcasts".* GBC believes that tightening the criteria for the use of such statements would prove useful.

AUTHORITY'S RESPONSE

The Authority notes that the issue of the length of party political broadcasts was raised by GBC in the previous public consultation in 2014. The Authority, at this point in time, does not agree with any reduction in the maximum duration of party political broadcasts. The Authority is conscious that, if party political broadcasts were to be reduced to less than the current 8 minute duration they could no longer be considered as an alternative avenue for response to Ministerial Statements.

However, if GBC has serious concerns that the duration of political broadcasts could cause greater disruptions to their scheduling in the future, the Authority would be willing to consider a new public consultation addressing the duration of all political broadcasts that are stipulated in the Code.

GSD ENQUIRY

GSD: Mr. Azopardi enquired about providing additional comment outside of the consultation period once the summary of responses had been published.

AUTHORITY'S RESPONSE

The Authority informed the GSD that, in line with previous public consultations, the decision would be taken, solely, based on the comments received during the consultation period.

4. THE AUTHORITY'S CONCLUSION

The Authority, having considered all stakeholders' responses and additional comments submitted within the consultation period, has concluded the following:

1. The term "Leader of the Opposition" continues to be appropriate and correct and Second Section, Paragraph 6 of the Code should not be amended.

2. The term "Leader of the Opposition" continues to be appropriate and correct and Second Section, Paragraph 7 of the Code should not be amended.

ANNEX A: CONSULTATION QUESTIONS

Question 1

Do you object to the Code being changed to reflect either of the proposed amendments? Please provide reasons for your reply.

Question 2

In the case that you disagree with either of these proposed amendments, would you instead propose that the term “Leader of the Opposition” be replaced with an alternative term, if so, which term?

Question 3

Do you object to the Code being changed to reflect either of the proposed amendments? Please provide reasons for your reply.

Question 4

In the case that you disagree with either of these proposed amendments, would you instead propose that the term “Leader of the Opposition” be replaced with an alternative term, if so, which term?

ANNEX B: DISCLOSURE OF STAKEHOLDERS' CONTRIBUTIONS

Gibraltar Broadcasting Corporation
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24th January 2018

Mr Paul canessa
Chief Executive
Gibraltar Regulatory Authority
2nd Floor
Eurotowers 4
1 Europort Road
Gibraltar

Dear Paul

Re: REVIEW OF THE CODE ON OBJECTIVITY, IMPARTIALITY, DUE ACCURACY AND UNDUE PROMINENCE

Thank you for your letter dated 15th January 2018 on the above captioned matter, and to which we have given due consideration. Below are the points we wish to raise.

Question 1

Do you object to the Code being changed to reflect either of the proposed amendments? Please provide reasons for your reply.

The Corporation is not in agreement with the changes proposed. In our view, these statements are designed to provide a vehicle for parliamentarians (Chief Minister and Leader of the Opposition) to make statements via television and radio. On the other hand, Party Political Broadcasts provide Members of Parliament with the alternative vehicle for other persons to appear on the broadcast on their own or their party's behalf. Therefore, it is our view that the reasons outlined for the proposed changes are already adequately catered for in the Code.

Question 2

In the case that you disagree with either of these proposed amendments, would you instead propose that the term "Leader of the Opposition" be replaced with an alternative term, if so, which term?

The Corporation disagrees with the principle of opening the Right of Reply to Ministerial Statements to non-Parliamentarians. Therefore, we cannot propose any changes to the terminology currently used.

Question 3

Do you object to the Code being changed to reflect either of the proposed amendments? Please provide reasons for your reply.

The Corporation does not agree with the changes proposed for the reasons outlined above.

Question 4

In the case that you disagree with either of these proposed amendments, would you instead propose that the term "Leader of the Opposition" be replaced with an alternative term, if so, which term?

The Corporation disagrees with the principle of opening the Right of Reply to National Interest programmes to non-Parliamentarians. Therefore, we cannot propose any changes to the terminology currently used.

Regardless of the above, and when producing its own current affairs and news programmes, the Corporation will continue to enjoy the freedom to invite parliamentarians and non-parliamentarians to be interviewees or form part of debating panels. This allows for the Leader of the GSD party to appear on such programmes, as has already been the case since his election. It must be noted that these programmes are quite distinct to the programmes and statements that fall within the scope of this review, and which are exclusively for the Chief Minister and the Leader of the Opposition.

In relation to Point 4 of the Public Consultation document, the Corporation would like to make the following points, given that despite them having been rejected at the time of the previous review, we continue to attach importance to them

1. Political broadcasts – Part 1 – 3

We remain of the view that a duration of 8'00" is too long in this day and age, when TV scheduling has become much more sophisticated, and viewers are accustomed to short and snappy items on television. We continue to propose emulating the durations allowed by OfCom in the United Kingdom, where Parties may choose a length of up to 4'40". This would be in keeping with international trends and less disruptive to our schedules, at a time when we are modernising our TV service.

2. Political broadcasts – Part 1 – 6

We propose that limits are set on the number of statements, as this could very easily be abused to become additional political broadcasts. A tighter criterion for the use of these statements would also be useful.

Should you require any further clarification, please feel free to contact us.

Sincerely

Gerard J Teuma
Chief Executive

RE: GSD/GRA Public Consultation on the review of the "Code on objectivity, impartiality, accuracy and undue prominence"

Subject : RE: GSD/GRA Public Consultation on the review of the "Code on objectivity, impartiality, accuracy and undue prominence"

To : 'GRA Broadcasting' <broadcasting@gra.gi>

Thanks Peter

We welcome the opportunity of making further comment ahead of the 29 Jan deadline. Having said that however, the nature of our request was to have an opportunity to comment on representations received from others after 29 Jan and before the GRA takes a decision. For clarity our point is that other parties will have commented on an issue which directly affects the GSD. In so doing they may have made points which are unfair, inaccurate or simply require a response so that you can form a balanced view having taken into account everything. Our concern is that if we are deprived of that opportunity the process by which the GRA reaches a decision will be flawed and potentially unfair to the GSD.

In so far as the broad consultation issued by the GRA and to add to the points we have already made we would be grateful if the GRA would also take account of the following points as part of its consultation:

1. We consider that the current Code does not cater for the democratic reality in which we are currently living – namely that the main opposition party is led by someone not in the Parliament;
2. There is no doubt however that the democratic reality is that the parliamentary leader of the GSD – ie the person who leads the Party and Opposition in Parliament is not its leader;
3. The Code is premised on the principle that the persons who lead the principal Party In Government and the principal party in Opposition will have equal opportunities to respond to each other;
4. This is important so that the public through the national broadcaster get a balanced range of diverse political views from the principal political participants of the time;
5. The public would expect the leaders of the GSLP and GSD to be those principal spokespersons for both political blocs in Parliament as the House is currently constituted;
6. It is undemocratic and unfair not to have regard to such democratic realities;
7. If the Code is not amended then it would allow the leader of the GSLP (and lead political spokesman for the Government) an in-built ability to present his views but not have these answered by the leader of the GSD (as lead spokesperson for the Opposition party);
8. This is not good for democracy or in the public interest;
9. It is also unfair and provides the parties in Government an advantage depriving the public of the opposite point of view by the principal interlocutor of the GSD;
10. Such a system would be wrong in principle, unfair, undemocratic and unconstitutional;
11. The Code is built on principles of fairness, equality, political impartiality and independence. All these values should be preserved and are supported by us;
12. To ensure that political events do not lead to a situation that the Code no longer protects such principles the Code needs to stay dynamic and respond to political events in a way that ensures that its core values are indeed preserved and enhanced;
13. We consider that the suggestions that have been made which would allow the GSD Leader (as the democratically elected principal spokesman for the main Opposition party) the opportunity on the national broadcaster to have equivalent opportunity of response to the GSLP leader (as the democratically elected spokesman for the main Government party) would safeguard the core values inherent in the Code and ensure these live on.

We hope you find these points useful

Rgds

Keith

The Gibraltar Socialist Labour Party

Mr Paul Canessa
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29th January 2018

Dear Paul,

Azopardi Consultation

I write further to your letter of 15th January inviting me to comment, as leader of the Gibraltar Socialist Labour Party, on your review of the Code on due impartiality, due accuracy and undue prominence. The review apparently arises from a letter received by you from Mr Keith Azopardi QC, who was recently elected the leader of the Gibraltar Social Democrats in an internal election of that party.

My party is entirely against the amendments requested by Mr Azopardi. We consider that they are anti-democratic and are designed to ignore the results of General Elections in Gibraltar. The reforms sought by Mr Azopardi are purely self-serving and not in the best interests of democracy in Gibraltar. Indeed, it is our view that to accede to Mr Azopardi's requests would create severe partiality in favour of Mr Azopardi personally, it would result in a lack of accuracy in media reporting of the reality of Gibraltar's Parliamentary activity and would give Mr Azopardi undue prominence in a manner designed to favour him politically in a partisan and unfair manner.

We would therefore answer the questions posed by your consultation as follows:

Question 1

Do you object to the Code being changed to reflect either of the proposed amendments? Please provide reasons for your reply.

We strenously object to the code being changed to reflect both of the proposed amendments. The results of the General Election in Gibraltar determine who are the seventeen individuals elected to represent the people. The rights and privileges afforded to Members of Parliament cannot be extended to the leader of a political party with parliamentary representation if s/he is not also a Parliamentarian. To do so would, in effect, entirely disregard the decision of the People of Gibraltar as expressed in the General Election. In this respect it is worth highlighting that 16,475 people voted in the last General Election (amounting to 70.77% of the voting

population) which resulted in the Parliament as presently constituted. Of those, in the region of 10,500 voted for the GSLP candidates and 5,000 for the GSD candidates. Mr Azopardi garnered none of those votes because he decided not to stand for election in 2015. In fact, to set his request in its proper context, Mr Azopardi has been elected leader of the GSD allegedly with in the region of 165 votes. He is clearly not the person the voting public in Gibraltar have elected to lead the Opposition. He is the person elected to lead the GSD. The two are distinct and different as much in Opposition as in Government. In Parliament, therefore, the functions of the Leader of the Opposition are now discharged by Hon Elliott Phillips. Mr Azopardi is not the Leader of the Opposition and it was clear that he could not be, as he is not in Parliament and the Leader of the Opposition is an individual recognised by Mr Speaker in Parliament. In the circumstances, it is absolutely right and proper that the functions of the Leader of the Opposition - in general and not just in Parliament - are discharged by the Leader of the Opposition, Hon Mr Phillips. That must include any functions, rights and privileges that attach to the ability of the Leader of the Opposition to address the public via the media.

Question 2

In the case that you disagree with either of these proposed amendments, would you instead propose that the term "Leader of the Opposition" be replaced with an alternative term, if so, which term?

It is clear that the terminology of "Leader of the Opposition" works perfectly well for Gibraltar. It must remain so in keeping with the Parliamentary traditions of our democracy. This terminology happens not to work for Mr Azopardi today, but it is otherwise absolutely the appropriate terminology for us to continue to employ in respect of the Code and elsewhere in our laws in respect of the rights of representation of the people. The best example is the payment of an additional allowance in respect of salary to the Leader of the Opposition. That amount is paid to Mr Phillips now. There is no question of the law being changed to allow Mr Azopardi or a person in a similar situation to receive the Leader of the Opposition's allowance. An apposite consideration will be the programme "The Opposition Your Questions." That programme was created by the Gibraltar Broadcasting Corporation to provide balance to "Direct Democracy" which features the incumbent Chief Minister. It is introduced with shots of Parliament and specifically refers to "The Oppositon." That programme can only legitimately feature elected members of the Parliament as they are the only ones in "Opposition". Mr Azopardi is presently just a member of a political party (having said he rejoined the GSD a few months before the leadership election) and has no "Opposition" role.

Although as party leader of the GSD he could obviously direct one of his "subordinates" (to use this nomenclature for Hon Mr Phillips) to stand down so that he could seek election to Parliament in a by-election).

Question 3

Do you object to the Code being changed to reflect either of the proposed amendments? Please provide reasons for your reply.

For all the reasons set out above, the Gibraltar Socialist Labour Party will strenuously resist any attempt to change the Code as proposed. We consider this self-serving proposal by Mr Azopardi to be designed for his own personal benefit given his current political situation. We consider it to be a proposal that flies in the face of the democratic will of the People of Gibraltar as expressed in General Elections. Additionally, we consider the proposal to be setting a potentially dangerous precedent which would allow a political party in future to appoint a Leader, who would have rights and privileges otherwise only available to elected Parliamentarians, and who would not be an acceptable voice of the People of Gibraltar. Indeed, in this respect it should be noted that although Mr Azopardi was a Member of the House of Assembly from 1996 to 2003, he failed to get elected when he stood for election in 2007 and 2011. The party he led also failed to obtain Parliamentary representation in the by-election of 2013.

Question 4

In the case that you disagree with either of these proposed amendments, would you instead propose that the term "Leader of the Opposition" be replaced with an alternative term, if so, which term?

For the reasons set out in answer to all questions above, but more particularly to Question 2 above, we in the GSLP consider that the term "Leader of the Opposition" is the correct term to employ in this context to denote to the relevant Member of Parliament and we will not support or countenance any changes in this respect. We will strenuously resist any attempt to undermine democracy, the public's confidence in democracy and its outcomes and general elections by allowing any change this terminology.

Best wishes

Fabian Picardo
Leader
Gibraltar Socialist Labour Party

GRA Code

[redacted]

Subject : GRA Code

To : peter hyde <peter.hyde@gra.gi>, broadcasting@gra.gi

Dear Paul,

Thank you for your letter of 15 January following the representations made to the GRA by Mr Keith Azopardi.

Answer to Question One: Yes.
Reason: There is a Leader of the Opposition so recognised by the Gibraltar Parliament so the existing wording should not be changed.

Answer to Question Two: No.
Reason: The term Leader of the Opposition is the correct term.

Best wishes

Joseph Garcia
Party Leader
Liberal Party of Gibraltar

Re: GRA Code

[redacted]

Subject : Re: GRA Code

To : GRA Broadcasting <broadcasting@gra.gi>

Thank you. Needless to say my answers stand also in relation to the questions on paragraphs 6 and 7.

Best wishes

Joseph Garcia

Re: GRA Public Consultation on the review of the "Code on objectivity, impartiality, accuracy and undue prominence"

[redacted]

Subject : Re: GRA Public Consultation on the review of the "Code on objectivity, impartiality, accuracy and undue prominence"

To : GRA Broadcasting <broadcasting@gra.gi>

Dear Mr. Hyde,

I write in connection with the enclosed request.
As much as I am grateful for the opportunity to be consulted on this matter, I am of the firm belief that this is an issue for your Authority to manage and I trust that you will come to the fair and obvious conclusion.

When the Chief Minister delivers an address he does so as an elected Parliamentarian and not as party leader. Therefore I would have taken it for granted that rights of reply are covered by their elected counterparts also.

With best wishes and thanking you for your interest in my view,

Sincerely

Marlene Hassan Nahon

Gibraltar Parliament

Hon L F Llamas MP
H M Opposition

29th January 2018

By email:broadcasting@gra.gi

Dear Paul

RE: GRA Public Consultation on the review of the "Code on objectivity, impartiality, accuracy and undue prominence"

In reply to your request dated 15th January 2018 in respect of the above, I am please to contribute the following:-

Question 1

1. The reference to 'Leader of the Opposition' in the relevant section of the Code on Objectivity, Impartiality and Undue Prominence ('the Code') as set out in the consultation document must refer to the leader of the largest party/grouping in Parliament. Leadership of the opposition must be inextricably linked to Parliament.

2. If Parliament is taken out of the equation there can be no empirical method of determining the size of an opposition party relative to others. By way of illustration of the point, it could conceivably be argued by an emerging political force without parliamentary representation that it has grown larger than the party which has the largest number of Opposition seats. It would be impossible to determine, in these circumstances, the political support of one entity relative to the other. The only measure by which the regulator and the broadcaster can reliably make a determination of who leads the opposition must be by reference to Parliament.

3. It is because reference to 'the Leader of the Opposition' must rely on the parliamentary context to provide certainty of definition, that no change to the definition which seeks to bypass the parliamentary context can be allowed. Option 1, suggested in Question 1, must therefore be disregarded.

4. The only democratically legitimate person to whom the rights of reply should apply is to a Member of the Gibraltar Parliament who leads the opposition, without exception.

5. The undeniable and objective facts are that anybody elected (or indeed even appointed) outside parliament will be at a democratic disadvantage to one elected into the House. The following, non-exhaustive, list helps illustrate the point:

    (i) A leader is more than likely to have been elected by a small (relatively speaking) plebiscite, say, the party members, (if he has been elected - appointment is a possibility which cannot be discarded);

    (ii) any of the other party's MPs will command the support of thousands of votes obtained at the last general election in which the wider Gibraltar electorate would have voted; and

    (iii) the votes at a general election will have been the subject of greater scrutiny (eligibility, oversight, security etc.,) than those cast in an internal party election.

    For all these reasons, the democratic legitimacy enjoyed by a member of the House leading the largest party in the House cannot be the same as that enjoyed by an individual elected out of it.

6. Whilst the specific context of Mr Keith Azopardi QC being the Leader of the the party currently in the role of official Opposition may tempt the Regulator to look favourably upon his request, it is incumbent on the Regulator to consider the position objectively, ignoring the specific circumstances of the context before it today, and to rule/issue guidance based on all potential scenarios.

Question 2

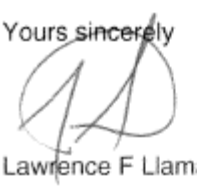
7. For the reasons set out above, Option 2, set out in Question 2, should also be disregarded.

8. The suggested amendments give rise to the possibility of a leader of a political force unrepresented in the Parliament, which claims to be larger in terms of its general membership or public support than that of the 'Official' parliamentary opposition, (even if the size of its support cannot be empirically or objectively determined with any accuracy), accruing the right of reply contained in the Code. Option 2 must, therefore, on those grounds and further to the grounds set out above, be disregarded.

Questions 3 & 4

9. For the reasons set out above, Option 1 and Option 2 must be disregarded. The only amendment that should be made, if any, is an amendment that affirms the position that it must be the Parliamentary Leader of the Official Opposition in Parliament who should enjoy the right of reply to Chief Ministerial broadcasts.

Yours sincerely



Lawrence F Llamas MP

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