

### Introduction

This paper provides guidance to HBA members about the legal restrictions on broadcasters during an election period, and their applicability to hospital broadcasters.

It also covers restrictions on political campaigning by charities during an election period.

### Applicability

Legal restrictions (contained in the Representation of the People Act 1983, and the Communications Act 2003) only apply to the BBC, S4C and broadcasters licensed by Ofcom. Ofcom, in turn, includes election broadcasting rules in its Broadcasting Code, to which all its licensees must abide.

HBA members that hold an Ofcom broadcasting licence must ensure that they comply with its Broadcasting Code.

HBA strongly recommends that all other member stations also comply with the section of the Ofcom Broadcasting Code relating to elections and referendums, to the maximum degree possible given their individual circumstances; this will help to ensure that any coverage they provide is fair and balanced, and to avoid any accusations of bias.

The restrictions on charities campaigning for candidates, or giving certain candidates more of a platform than others, during an election campaign apply to all charities.

### Summary of the Ofcom rules

Section 5 and Section 6 of the [Ofcom Broadcasting Code](#) cover "due impartiality" and "elections and referendums" respectively. Ofcom also publishes [guidance](#) as to how to interpret both Section 5 and Section 6 of its Broadcasting Code.

The following is a brief summary:

#### Meaning of "due impartiality"

Impartiality itself means not favouring one side over another. "Due" means adequate or appropriate to the subject and nature of the programme. So "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 every argument has to be represented. The approach to due impartiality may vary according to the nature of the subject, the type of programme and channel, the likely expectation of the audience as to content, and the extent to which the content and approach is signalled to the audience.

#### Meaning of "matters of political controversy"

Matters of political controversy are issues on which politicians are in debate.

#### Meaning of "election"

An election includes a parliamentary general election, parliamentary by-election, local government election, mayoral election, Police and Crime Commissioner election, Scottish Parliament election, Welsh, Northern Ireland and London Assembly elections, and European parliamentary election.

#### Meaning of "referendum"

A referendum includes a UK-wide, national or regional referendum but does not extend to a local referendum.

#### Meaning of "election period"

This period begins:

- for a parliamentary general election, with the dissolution of Parliament;

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- for a parliamentary by-election, with the issuing of a writ calling the by-election;
- for the Scottish Parliament elections and National Assembly for Wales elections, with the dissolution of the Parliament or Assembly or, in the case of a by-election, with the date of the occurrence of a vacancy;
- for the Northern Ireland Assembly, the London Assembly and for local government elections, on the last date for publication of notices of the election; and
- for European parliamentary elections, on the last date for publication of the notice of election, which is 25 days before the election.

In all cases the period ends with the close of the poll

### **Meaning of "referendum period":**

For referendums different periods may apply.

- A referendum held under the Northern Ireland Act 1998 (as amended) begins when the draft of an Order is laid before Parliament for approval by each House.
- In the case of a referendum held under other Acts, the time at which a referendum period commences is given in the individual Acts.
- In the case of an Order before Parliament, the time will be given in that Order. In all cases the period ends with the close of the poll.

### **Meaning of "electoral area"**

An "electoral area" is the local government equivalent to the parliamentary term "constituency" – for example electoral division, borough ward.

### **"Major Parties" and Editorial Decisions Guidance**

Ofcom previously maintained a list of "major parties" for each nation in the United Kingdom. Following a consultation in 2016, Ofcom has now decided to remove this list. The new requirement is that broadcasters must base editorial decisions about election coverage on evidence of past electoral support and/or current support.

In order to help broadcasters to take editorial decisions during election campaigns, Ofcom will publish an [annual digest of past electoral and current support in the lead up to each set of May elections](#).

### **The rules**

- News, in whatever form, must be reported with due accuracy and presented with due impartiality.
- Views and facts must not be misrepresented. Views must also be presented with due weight over appropriate timeframes.
- Due impartiality on matters of political controversy must be preserved. This may be achieved within a programme, or over a series of programmes taken as a whole.
- The broadcast of editorially-linked programmes dealing with the same subject matter (as part of a series in which the broadcaster aims to achieve due impartiality) should normally be made clear to the audience on air.
- If a candidate takes part in an item about his/her particular constituency or electoral area, then all candidates within the constituency or electoral area representing parties with previous significant electoral support, or where there is evidence of significant current support, must be offered the opportunity to take part. This also applies to independent candidates. (However, if they refuse or are unable to participate, the item may nevertheless go ahead.)

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- To be authoritative, it is right to make some distinction in the weight of the contribution between the main candidates and others.
- Constituency items which involve candidates should also include some participation from candidates representing parties with either previous significant electoral support (for example parties which have gained a few seats in other recent elections, or individuals who have been elected before under another label), or parties with evidence of significant current support.
- Where a party or an individual is mounting a significant campaign in a particular region, this should be reflected appropriately in the coverage.
- To be comprehensive and fair, full-length constituency reports or debates should include a list of all candidates standing. If a constituency is being reported on several times on the same station in a day, it may be enough to broadcast the full list once a day, with audiences directed to a full list of candidates (station website etc) at other times.
- Programmes may decide to use either candidates or party representatives. But if the candidate from one of the parties is invited to take part, the other participants should, where at all possible, also be candidates. In exceptional circumstances, if a candidate is genuinely unavailable, the opportunity may be offered instead to a suitable party representative from within the constituency (e.g.: party official, agent or Councillor), but it should be made clear to the audience that the missing candidate was invited, and why they were unable to take part or declined to put forward any spokesperson. If a party declines to put forward any representative the item/programme can go ahead without them.
- Appearances by candidates (in UK elections) or representatives (of permitted participants in UK referendums) in non-political programmes that were planned or scheduled before the election or referendum period may continue, but no new appearances should be arranged and broadcast during the period.
- 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.
- Programmes must exclude all expressions of the views and opinions of the broadcaster on matters of political controversy.
- Any personal interest of a reporter or presenter, which would call into question the due impartiality of the programme, must be made clear to the audience.
- Presenters and reporters (with the exception of news presenters and reporters in news programmes), and chairs of discussion programmes may express their own views on matters of political controversy. However, alternative viewpoints must be adequately represented either in the programme, or in a series of programmes taken as a whole. Additionally, presenters must not use the advantage of regular appearances to promote their views in a way that compromises the requirement for due impartiality. Phone-ins must encourage and must not exclude alternative views.
- Discussion and analysis of election and referendum issues must finish when the poll opens. (This refers to the opening of actual polling stations. This rule does not apply to any poll conducted entirely by post.)
- Broadcasters may not publish the results of any opinion poll on polling day itself until the election or referendum poll closes. (For European Parliamentary elections, this applies until all polls throughout the European Union have closed.)

### Charities, elections and referendums

In England and Wales, the Charity Commission has issued a [range of guidance](#) around political activity by charities, including specific guidance on what charities are, and are not, allowed to do during an election or referendum period.

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OSCR has also issued [guidance](#) for Scottish charities, and the Charity Commission for Northern Ireland has issued [guidance](#) for charities based in Northern Ireland.