

## Note to Broadcasters

### Election programming

On 6 May 2021, the following elections are currently scheduled to take place: Local (and mayoral) elections in parts of England; the London Assembly and London mayoral elections; Police and Crime Commissioner elections in England and Wales; and elections to the Welsh Parliament and Scottish Parliament. Some of these elections were postponed from May 2020 due to the Coronavirus.

- Ahead of the May 2021 elections, we would like to clarify the application of Ofcom’s broadcasting rules in three specific areas relating to election programming:
- the participation of politicians in election programming;
- the definition of what constitutes a “candidate” under the rules relating to elections in Section Six<sup>1</sup> of the Code; and,
- the treatment of independent candidates under Ofcom’s rules on Party Political and Referendum Broadcasts (“the PPRB Rules”).<sup>2</sup>

#### *The participation of politicians in election programming*

Politicians will often take part in different types of election programming ranging from: interviews with individual candidates or panels of candidates; audience phone-in programmes; to set piece debates between groups of candidates or leaders of political parties. In recent years, Ofcom has received a large number of complaints about broadcasters’ treatment of politicians who choose not to take part in election programmes and the related issue of ‘empty-chairing’. The editorial technique of ‘empty-chairing’ refers to where a programme, usually a live debate or interview, draws attention to the absence of a political figure, either through comments made by the presenter or, quite literally, by representing the absent person with an empty-chair or vacant lectern. This is not a new practice, but the December 2019 General Election saw several high-profile examples that resulted in complaints being made to Ofcom<sup>3</sup>.

The format of election programming is a matter of editorial freedom for individual broadcasters, as long as the programming, as broadcast, complies with the Code. Our rules on due impartiality require that when broadcasters are providing election programmes, an appropriately wide range of significant views must be included and given due weight in each programme or in clearly linked and timely

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<sup>1</sup> Please see [Section Six](#) of the Code.

<sup>2</sup> Please see Ofcom’s rules on [Party Political and Referendum Broadcasts](#).

<sup>3</sup> For example, see [Decision](#) of the Ofcom Election Committee on a due impartiality complaint brought by the Conservative Party in relation to Channel 4’s *Channel 4 News Climate Debate*, 28 November 2019.

programmes. Due weight must be given to the coverage of parties and individual candidates during the relevant election period.

However, given the level of concern around due impartiality in election programming and the importance of broadcast coverage during elections, we consider that broadcasters may benefit from additional Ofcom guidance in this area. The following guidance is intended to provide advice to broadcasters on the issue of inviting politicians to take part in election-related programmes, including if a politician chooses *not* to participate, and the use of “empty-chairing” as an editorial technique:

- It is an editorial matter for the broadcasters, following agreement with the relevant parties, as to the structure, format, and style of any leaders’ debates or election programming.
- Broadcasters should recognise that there is no obligation on politicians to take part in election programming. Equally, no party or politician can have a veto on whether a programme goes ahead or not. However, if a broadcaster does go ahead with a debate, it must maintain due impartiality.
- While it is within the discretion of the broadcaster to use empty-chairing in election programming, there will also be circumstances where the use of such a technique could affect due impartiality in the programme. For example, it would be difficult to maintain due impartiality in the case of a two-person leaders’ debate, where one of the two protagonists is empty-chaired, while the other is given the opportunity to discuss their political views and criticise their opponent without challenge.
- Where a political figure is empty chaired, broadcasters should take care in how they present that person’s absence to their audiences to ensure that the viewpoints of politicians or parties not participating in the programme are given due weight, and that due impartiality is maintained.
- If a politician feels they have been treated unfairly by a broadcaster they can make a fairness complaint under Section Seven of the Broadcasting Code (whether they appeared in a programme or not).

*The definition of what constitutes a “candidate” under the rules relating to elections in Section Six of the Code*

Rule 6.6 of the Code states:

Rule 6.6: “Candidates in UK elections, and representatives of permitted participants in UK referendums, must not act as news presenters, interviewers or presenters of any type of programme during the election period. BBC ODPS are not required to remove archive content for the election or referendum period”.

Section Six of the Code defines a “candidate” as follows:

“Candidate has the meaning given to it in section 93 of the Representation of the People Act 1983 (as amended) [“the RPA”] and

means a candidate standing nominated at the election or included in a list of candidates submitted in connection with it”.

As a result of enforcement work during the December 2019 General Election, we would like to clarify the meaning of “candidate” as it relates to our application of Rule 6.6.

Under Rule 6.6, Ofcom will take into account the meaning of a “candidate...standing nominated” under section 93 of the RPA; as well as the relevant election rules that apply.<sup>4</sup> In the case of a Parliamentary election, the relevant rules are the Election Rules set out in Schedule 1 of the RPA.

In Ofcom’s view, for the purposes of the Code and section 93 of the RPA, a “candidate standing nominated at the election” refers to someone who has made an administrative commitment to becoming a candidate. For a Parliamentary election, this involves: submitting, to the returning officer, within the period for delivery of the nominations, the formal nomination paperwork (demonstrating that person’s eligibility and consent to be nominated); and paying the necessary fee. Therefore, we consider that a person cannot be considered a “candidate standing nominated” by announcing – for example – their intention to run as a candidate on social media. Other rules may apply depending on the type of election.<sup>5</sup>

Ofcom accepts that in practice, until the statement of persons nominated is made public, broadcasters (and Ofcom), may lack certainty when determining who is or is not standing nominated to contest a forthcoming election. We also recognise that, in some elections, there may be a lacuna period between the dissolution of parliament or publication of the notice of election, and the opening of the window for delivery of nominations and that, in practical terms, this window itself may only be a matter of two to five days.

We would like to remind broadcasters that until the statement of a persons nominated in a particular election is made public, and during the small window for the delivery of nomination papers, particular care needs to be taken when broadcasting programmes featuring those who might possibly become an election candidate especially where he or she is appearing as a presenter, interviewer, or discussing constituency or electoral area issues. For instance, where someone has announced their intention to become a candidate in an election, is already holding that office, or whose possible candidacy is the subject of considerable media speculation, we would expect broadcasters to take reasonable steps to confirm that he or she has not submitted the formal nomination papers and paid the necessary fee, in accordance with the applicable election rules, before the programme is broadcast.

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<sup>4</sup> For example:

[The Scottish Parliament \(Elections etc.\) Order 2015](#);  
[The National Assembly for Wales \(Representation of the People\) Order 2007/236](#);  
[Local Elections \(Principal Areas\) \(England and Wales\) Rules 2006/3304](#);  
[Greater London Authority Elections Rules 2007/3541](#);  
[Local Authorities \(Mayoral Elections\) \(England and Wales\) Regulations 2007/1024](#); and  
[Police and Crime Commissioner Elections Order 2012/1917](#).

<sup>5</sup> *Ibid.*

### *The treatment of independent candidates under Ofcom's PPRB Rules*

Ofcom's PPRB Rules set out the minimum requirements which certain Ofcom licensees and the BBC (in accordance with the BBC Agreement) ("the Relevant Services") are required to follow in determining the length, frequency, allocation and/or scheduling of party political or referendum campaign broadcasts. They are not intended to fetter the discretion of Relevant Services to exceed these minimum requirements.

Ahead of the elections being held in May 2021, we consider now is an appropriate time to remind broadcasters of our previously stated position with regard to the allocation of party election broadcasts ("PEBs") to independent candidates under the PPRB Rules. By way of background, in 2012/13 Ofcom conducted a review<sup>6</sup> of the PPRB Rules, and as part of this process, considered the application of the PPRB Rules to independent candidates. In our review, we said that it would be a disproportionate and impracticable obligation to impose on Relevant Services a requirement that any candidate contesting any election be allocated a PEB, irrespective of their level of support. For example, due to the number of elections and candidates, it would be impractical and potentially unfair to require national and regional broadcasters to offer PEBs to all independent candidates in all elections. However, we stated that there are certain elections which relate to a single electoral area returning a single candidate and where a Licensee's broadcast footprint is broadly and sufficiently coterminous with the electoral area, which means that it would be appropriate to require PEBs to be offered to independent candidates where they can demonstrate a certain level of support. An example of such an election would be London Mayoral elections, the next cycle of which will be contested in May 2021. We therefore proposed amendments to the PPRB Rules to allow the possibility for independent candidates to qualify in principle for PEBs.

In our published statement,<sup>7</sup> which concluded our 2012/13 review, we referred to the Electoral Commission's response to our consultation which stated that, under the existing legal framework<sup>8</sup>, independent candidates, as individuals, do not qualify for PEBs or PPBs. Although we are not bound by any view expressed by the Electoral Commission, we must "have regard" to any such views before making any rules in relation to party political broadcasts.<sup>9</sup> We considered that the Electoral Commission had given a very clear statement on the legal framework concerning independent candidates in PEBs. For these reasons, we therefore decided that we would not be amending the PPRB Rules to include independent candidates at that time.

Given that there has been no change in the law, our position remains that independent candidates are not eligible for PEBs and our guidance to broadcasters on this matter remains unchanged. Therefore, Ofcom would like to confirm to broadcasters that independent candidates do not qualify as eligible for PEBs. Should the law in this area be changed, we would revisit this matter at the earliest opportunity.

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<sup>6</sup> A review of the [Ofcom Rules on Party Political and Referendum Broadcasts and Proposed Ofcom Guidance for broadcast coverage of elections](#).

<sup>7</sup> *Ibid.*

<sup>8</sup> Section 37 of the Political Parties, Elections and Referendums Act 2000 ("PPERA").

<sup>9</sup> Section 333(5) of the Communications Act 2003.