

Note to Broadcasters

Election programming

On 2 May 2024 there will be: local (and mayoral)¹ elections taking place in some parts of England; London Assembly and London mayoral elections; and elections for Police and Crime Commissioners (“PCCs”) for England and Wales.

Ofcom reminds all broadcasters that they must comply with the rules for election-related programming – in particular [Section Five](#) (Due Impartiality)² and [Section Six](#) (Elections and Referendums)³ of the Broadcasting Code (“the Code”), as well as the prohibition on political advertising contained in section 321 of the Communications Act 2003 and reflected in Section 7 of the BCAP Code.

As in previous years we have published an [annual digest of past electoral and current support](#). The digest also sets out the factors we consider when making decisions on election-related programming, including putting more weight on evidence of past electoral support than evidence of current support (e.g. opinion polls).

The rules in Section Six of the Code will apply when Ofcom defines the ‘election period(s)’ to have commenced. These periods will commence on different dates depending on the election being contested.

We have taken account of all relevant information and discussed this matter with the specialist elections regulator – the Electoral Commission – with which Ofcom is under a statutory duty⁴ to consult when setting rules in the area of elections. For the purposes of the Broadcasting Code, for the May 2024 elections Ofcom has determined that the start of the election periods will be:

- 19 March 2024, in the case of London Assembly and London Mayoral elections; and
- 26 March 2024, in the case of English Local and Mayoral elections and PCC elections.

In each case, the election period ends with the close of the poll.

If a complaint raises a substantive due impartiality issue about any election-related programming (both news and non-news) during the election periods which Ofcom considers might require redress before the election, it will be considered by Ofcom’s Election Committee⁵. In these cases, it will be necessary for Ofcom to act quickly to determine the outcome in a proportionate and transparent manner before the election and broadcasters should be prepared to engage with Ofcom on short timescales.

¹ This includes combined authority mayoral elections in: East Midlands; Greater Manchester; Liverpool City Region; North East; South Yorkshire; Tees Valley; West Midlands; West Yorkshire; and York and North Yorkshire. There is also a single authority mayoral election in Salford.

² See also Ofcom’s published [Guidance to Section Five](#).

³ See also Ofcom published [Guidance to Section Six](#).

⁴ See section 93 of the Representation of the People Act (as amended).

⁵ See Ofcom’s Election Committee’s [Terms of Reference](#).

Ofcom will consider any breach arising from election-related programming to be potentially serious and will consider taking appropriate regulatory action, which could include the imposition of a statutory sanction.

For further information about the forthcoming elections in May 2024, broadcasters should visit the Electoral Commission website at www.electoralcommission.org.uk.

In addition, we are reproducing, with minor updates, various pieces of election-related guidance we have published in [previous notes](#) on the following issues:

- politicians who are not standing as candidates acting as presenters during the election period;
- the participation of politicians in election programming;
- the definition of what constitutes a “candidate” under the rules relating to elections in Section Six of the Code;
- the treatment of independent candidates under Ofcom’s [rules on Party Political and Referendum Broadcasts](#) (“the PPRB Rules”); and
- synthetic media (including deepfakes) in broadcast programming.

Politicians who are not standing as candidates acting as presenters during the election period

We remind broadcasters of Rule 6.6 of Ofcom’s Broadcasting Code (“the Code”), which states:

“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”.

This means that no candidate who is standing nominated at the start of the appropriate election period may appear as a presenter of any type of programme, and not just programmes dealing with election or political issues, until after the close of the poll. The Code defines a “candidate” as having the meaning given to it in section 93 of the Representation of the People Act 1983 (as amended), i.e. a candidate standing nominated at the election or included in a list of candidates submitted in connection with it⁶. This rule is designed not just to prevent electoral issues from being reported in a partial manner, but also to help secure the integrity of the democratic process, and the public’s trust in that integrity, by preventing any unfair electoral advantage being afforded to a particular candidate through their appearance on licensed services. Broadcasters should ensure they keep informed as to whether any programme presenters are standing as candidates in elections being contested.

In addition, Rule 5.3 states that:

“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”.

Section Five (due impartiality and due accuracy) of the Broadcasting Code and the [Guidance](#) accompanying it make clear that this section of the Code applies to broadcast news “in whatever form” it appears in a licensed service (reflecting the statutory provisions in this area). For example, this would include news bulletins, news flashes and daily news magazine programmes. As we have publicly confirmed⁷, outside of news, there is no Ofcom rule that prevents a serving politician or political candidate from hosting or appearing on a TV or radio show – provided they aren’t standing as a candidate in an election in that election period. This means that politicians are allowed to present current affairs programmes such as audience phone-ins and discussion programmes, unless they are standing as a candidate in an election in that election period.

Broadcasters should note that programmes can contain both news and current affairs content. Determining the format for a specific segment in a programme is an editorial decision for broadcasters, provided it complies with the Code. We approach each case on the facts to determine whether the content constitutes news or current affairs, based on the evidence.

Whether or not a programme contains news or current affairs depends on a number of factors, including its content and format.

Additional factors may also be relevant for broadcast content to constitute news. These 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

⁶ For more information on the definition of what constitutes a “candidate” under the rules relating to elections in Section Six of the Code, see our [Note to Broadcasters](#) published on 11 January 2021 which is also reproduced later in this document.

⁷ In a [letter](#) dated 21 March 2023 from Dame Melanie Dawes, Chief Executive of Ofcom, to Rt Hon Damian Green MP, Acting Chair of the Digital, Culture, Media and Sport House of Commons Select Committee.

of video and reporter items. Factors that could lead us to classify content as current affairs include a longer-form programme; extensive discussion, analysis or interviews with guests, often live; and long-form video reports.

Both news and current affairs content must comply with all other relevant rules in Sections Five and Six of the Code which apply to content broadcast during election periods. This includes the rules relating to matters of major political or industrial controversy and major matters relating to current public policy (Rules 5.11 and 5.12). It is the broadcaster's responsibility to ensure that due impartiality in such programmes is maintained.

It is an editorial matter for the broadcaster as to how it maintains due impartiality in programmes, and there is a range of editorial techniques it may use to do this, such as: the inclusion of interviewees who can offer alternative viewpoints; a presenter summarising an alternative viewpoint; and/or a presenter challenging the views of interviewees.

Please see our website for further details on our rules on politicians appearing on TV and radio and our published [Guidance to Section Five](#) and [Guidance to Section Six](#).

This is the current position as we approach the English local elections, London Assembly and Mayoral elections and Police and Crime Commissioner elections in England and Wales taking place in May 2024. Ofcom will keep this issue under review.

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, and the December 2019 General Election saw several high-profile examples that resulted in complaints being made to Ofcom⁸.

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 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.

⁸ 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.

- 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 apply⁹. 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 election¹⁰.

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

⁹ 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](#).

¹⁰ Ibid.

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.

The treatment of independent candidates under Ofcom’s rules on Party Political and Referendum Broadcasts (“the 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 2024, 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 review¹¹ 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 2024. We therefore proposed amendments to the PPRB Rules to allow the possibility for independent candidates to qualify in principle for PEBs.

In our published statement¹², which concluded our 2012/13 review, we referred to the Electoral Commission’s response to our consultation which stated that, under the existing legal framework¹³, 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 broadcasts¹⁴. 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.

¹¹ A review of the [Ofcom Rules on Party Political and Referendum Broadcasts and Proposed Ofcom Guidance for broadcast coverage of elections](#).

¹² Ibid.

¹³ Section 37 of the Political Parties, Elections and Referendums Act 2000 (“PPERA”).

¹⁴ Section 333(5) of the Communications Act 2003.

Synthetic content (including deepfakes) in broadcast programming

On 3 April 2023 we published a Note to Broadcasters on the use of [“synthetic media” \(including deepfakes\) within broadcast programming](#). We would like to highlight the importance of the information contained within this Note to all our licensees as we approach the election period.

“Synthetic content” is an umbrella term for video, image, text or voice that has been generated in whole or in part by artificial intelligence algorithms and other digital techniques. This includes, but is not limited to, content created by GenAI models. Deepfakes are a type of synthetic content which can be deliberately designed to mislead or deceive audiences.

As we stated in our April 2023 Note to Broadcasters, in line with the right to freedom of expression, we continue to recognise the benefits such technologies can bring to both broadcasters and audiences. However, the use of this technology also poses challenges to broadcasters and potential risks to audiences. These challenges and potential risks may be heightened during democratic processes. These include:

- **Misinformation and disinformation:** GenAI models could be used to create fake news, propaganda and other forms of disinformation that can spread quickly online leading to challenges for broadcast journalists in authenticating footage from online sources.
- **Trust and credibility degradation:** with the rise of ‘deepfakes’ and other synthetic content, audiences may find it difficult to trust the authenticity of content, and audiences could potentially be misled or harmed if it is not apparent they are watching footage that is ‘deepfake’.
- **Fairness and Privacy:** audiences could mistake synthetic footage of a real person in a way that could result in unfairness to the person or potentially unwarrantably infringe their privacy.

Ofcom emphasises that, consistent with broadcasters’ right to freedom of expression and audiences’ right to receive information and ideas, it is fundamental that both broadcasters and audiences can explore new and emerging technologies, and this includes GenAI models. However, Ofcom licensees have an ongoing responsibility to comply with the Broadcasting Code in order to protect audiences from harm and maintain the high levels of trust in broadcast news, as well as to ensure individuals and organisations are not treated unfairly and/or their privacy is not unwarrantably infringed. We consider that this is of particular importance during election periods, in order to secure the integrity of the democratic process, and retain the public’s trust in that integrity.

As such, Ofcom would act quickly to determine the outcome of any cases raising issues concerning election-related issues and due accuracy or material misleadingness related to synthetic, or other manipulated, footage, in a proportionate and transparent manner during the election period. Broadcasters should therefore be prepared to engage with Ofcom on short timescales. We would also consider any breach arising from such programming to be potentially serious and will consider taking appropriate regulatory action, which could include the imposition of a statutory sanction.

We would therefore advise all licensees to consider carefully whether their compliance processes need to be adapted or developed to account for the potential risks involved in the use of synthetic content within broadcast programming.

If broadcasters would find it helpful to discuss the rules in Sections Five and Six of the Code, they can contact Ofcom (OfcomStandardsTeam@ofcom.org.uk).