



Response of Channel 5 Broadcasting Ltd to Ofcom Review of Party Political and Referendum Broadcast Rules and Election Coverage Guidance

INTRODUCTION

Channel 5 is pleased to respond to this consultation, but believes Ofcom has missed an opportunity to undertake a wider-ranging review of the current system of Party Political and Referendum Broadcasts (PPRBs), potentially in collaboration with the BBC Trust and the Electoral Commission.

This is the first time the PPRB Rules have been reviewed as a whole since they were introduced in the wake of devolution legislation in the late 1990s. Although Ofcom has twice consulted on aspects of the Rules, on both occasions it made clear it was not conducting a wide ranging review¹; on each occasion it indicated that one would follow shortly², although this did not happen in practise.

It is somewhat disappointing then, that in the first review of the PPRB Rules for some 15 years, Ofcom has not asked more fundamental questions about the role of PPRBs in the current age – especially if it is going to be another 15 years before there is another full review. While Channel 5 agrees with Ofcom that in several respects the current Rules are indeed “fit for purpose”, such a view should have been the conclusion of an in-depth review, not the starting point.

We find it disappointing that Ofcom’s consultation document does not start from an assessment of how the political landscape has changed since the Rules were last reviewed and the implications of this for PPRBs. Such an assessment might have looked at such issues as: the increasing fragmentation of political support and the growth in support for smaller parties and independent candidates; and the changing value of PPBs from a pre-internet, analogue age - when they were the single major

¹ Ofcom’s 2004 consultation on its *Rules on Party Political and Referendum Broadcasts* stated “Ofcom is seeking views on whether the attached draft rules follow the right approach to the allocation of referendum broadcasts...no other changes of policy are proposed” (24 June 2004). Ofcom’s 2009 consultation on its *Review of the Rules on Party Political and Referendum Broadcasts* stated “Ofcom is not proposing more extensive changes of policy within the PPRB Rules at the present time” (16 September 2009).

² “research on Party Election Broadcasts will be considered when Ofcom comes to review the rules on party political broadcasting”, Ofcom press release, *Viewer attitudes to television coverage of the 2005 General Election*, 9 September 2005; “we recognise the need to conduct a more broad ranging review of the rules which we intend to conduct after the General Election this year”, Ofcom statement on its *Review of the Rules on Party Political and Referendum Broadcasts*, 25 February 2010.

way in which political parties could be guaranteed unmediated access to millions of viewers - to a multi-channel age when they are watched by much smaller audiences and parties have greatly enhanced abilities to communicate directly with voters through social media and the internet more generally.

For Ofcom to say it “is not considering the question of public engagement with PEBs, PPBs and RCBs (i.e. the public appetite for such broadcasts)”³ means that it runs the risk of regulating in a vacuum.

It is similarly unfortunate that Ofcom is reviewing the PPRB Rules independently of sections Five and Six of the Broadcasting Code. This has meant some issues (such as the “major party” concept) cannot be addressed properly as they bridge both the PPRB Rules and the Code. A more thoroughgoing review jointly of the Rules and sections Five and Six, as hinted at by Ofcom’s chairman recently⁴, would have made better sense than this partial exercise.

Channel 5 is not affected directly by all the PPRB Rules. However, we do have a concern that the PPRB system should be robust, which is reflected in this response.

CONSULTATION QUESTIONS

Question 1: Do you agree with amending Rule 11 of the PPRB Rules and Section Six of the Code by inserting the proposed wording set out in paragraph 3.19 above? If you do not agree with this approach, please explain why and, if appropriate, suggest alternative wording.

Channel 5 does not believe the concept of “major parties” has continuing relevance at a time of increasing political flux and fragmentation within the electorate. We believe responsible broadcasters will continue to allocate an appropriate number of Party Election Broadcasts (PEBs) to parties with established national standing – but trying to draw a line between “major” and “non-major” parties is likely to become increasingly hazardous, especially when in some elections parties that are not “major” consistently outpoll those that are.

A further risk is that new parties are only ever added to the list and none are ever removed. Ofcom’s proposal to include the Alliance Party in Northern Ireland among the list of major parties there, without any discussion of the alternatives, appears to demonstrate this. While there is clearly a case for increasing the number of Northern Ireland “major parties” to five, there is also a case for shortening it to just two⁵.

³ condoc, Paragraph 2.12

⁴ At a Royal Television Society event on 10 July 2012, Colette Bowe said of TV election coverage “At Ofcom we have started looking at our rules around all of this because we are concerned about whether the rules are right and whether they are flexible enough to be able to cope with changing political circumstances”. *Television* magazine, September 2012, page 23

⁵ At the first Northern Ireland Assembly elections in 1998, four parties came within a few percentage points of a 20% vote share: the SDLP received 22% of first preference votes, the UUP 21%, the DUP 18%, Sinn Féin 18% and the Alliance Party 6.5%. Since then there has been a distinct trend of two of these parties gaining vote share and two losing it; in the 2011 Assembly elections, the DUP won 30% of first preference votes and Sinn Féin won 27%; while the SDLP won 14%, the UUP 13% and the Alliance Party 8%. (source: House of Commons Library Research Paper 12/43, 7 August 2012, p 37)

Channel 5 is not here expressing a preference between these options – but we think it is illustrative of how Ofcom might respond in future to the changing political landscape, and of the dangers of dividing parties between “major” and “non-major” while in practice the clear distinctions of 15 years ago no longer exist.

Ofcom’s stated reasons⁶ for keeping the “major parties” concept are essentially that it provides certainty and stability. However, because a system has worked well in the past does not mean it will necessarily continue to work well in future; as we have stated, the political landscape is changing and the ground on which the “major parties” Rule was built is not as solid as it once was. We also question whether the Rule provides the sort of help to broadcasters that Ofcom suggests; broadcasters are used to making fine judgements about how many PEBs each party should receive ahead of each election. The dangers of lack of consistency between broadcasters are inherent within the present system; the Broadcasters Liaison Group (BLG) provides an established mechanism through which broadcasters can discuss together issues of allocation before coming to their own decisions.

We recognise that there would be an inconsistency if a major party Rule existed in section Six of the Broadcasting Code and not in the PPRB Rules. But such an inconsistency would be the result of Ofcom’s decision to review the Rules independently of the Code – it is an argument about process, not substance.

Channel 5 does not accept that removing the list of major parties would be “unworkable”⁷. We find such a statement insulting; broadcasters are used to making fine and balanced judgements, and we do not see why we would not be able to in the absence of such a list. The BBC has no “major parties” rule and makes fair and balanced allocations of PEBs. Ofcom should allow public service broadcasters the space to make mature and informed decisions, rather than seeking to micro-regulate their choices.

If Ofcom persists with a “major parties” list, it needs to be much clearer about the nature, timescale and frequency of the proposed reviews of which parties are on that list. It is unsatisfactory for Ofcom to say such reviews should occur “regularly”⁸ (i.e. at equal intervals) and then be opaque about their precise frequency.

Question 2: Do you agree with amending Rules 10 of the PPRB Rules by inserting the proposed wording set out in paragraph 3.31 above? If you do not agree with this approach, please explain why, and, if appropriate, suggest alternative wording.

Channel 5 welcomes Ofcom’s recognition that qualification requirements for PEBs exist to ensure that only parties with serious electoral intent qualify for broadcasts, and that broadcasters’ schedules (and viewers’ time) are not taken up with an undue number of PEBs at election times.

⁶ Condoc, paragraph 3.12

⁷ Condoc, paragraph 3.14

⁸ Condoc, paragraph 3.15

It is clearly sensible that independent candidates with clear levels of support should be able to qualify for PEBs in certain circumstances. However, it would be very difficult for relevant broadcasters to allocate PEBs to such candidates once an election period had started.

Question 3: Do you agree with amending Rule 9 of the PPRB Rules by inserting the proposed wording set out in paragraph 3.40 above? If you do not agree with this approach, please explain why, and, if appropriate, suggest alternative wording.

We agree with the principle of this. However, to be more accurate and to avoid the potential for “double qualifying” identified by Ofcom⁹, the Rule’s wording could be changed from “...Greater London Authority Election, London Mayoral Elections; and...” to “...Elections for the Greater London Assembly and London Mayor; and...”.

Question 4: Do you agree with amending Rules 7 to 9 of the PPRB Rules by inserting the proposed wording, including new Rule 9A, set out in paragraph 3.51 above? If you do not agree with this approach, please explain why, and, if appropriate, suggest alternative wording.

Question 5: Do you agree with either Option (A) or Option (B) in relation to inserting new Rules 17A and 17B, as set out in paragraph 3.68 above? If you do not agree with either of the proposed options, please explain why and, if appropriate, suggest alternative wording.

While these are not matters of direct concern to Channel 5, we would wish to be assured that Ofcom’s Rules do not place an undue burden on fledgling businesses.

Question 6a): Do you agree with the ‘one sixth’ threshold set out in Rule 13 of the PPRB Rules? If you do not agree with the threshold, please explain why, and, if appropriate, suggest an alternative.

We are disappointed that, having set out the arguments for a threshold higher than one-sixth in Wales and Northern Ireland¹⁰, Ofcom offers no arguments as to why differential qualification hurdles in those parts of the UK should not be introduced. We believe there is a genuine problem of parties or other organisations standing candidates in either territory purely to secure a broadcast.

If Ofcom is opposed to Rules with differential hurdles, it could consider raising the threshold to say one quarter throughout the UK. Broadcasters covering England, Scotland or the UK as a whole could then use their discretion to offer parties in those territories a PEB if they reached a lower threshold such as the existing one-sixth (this would be similar to the practice of Channel 5 and Channel 4 in offering PEBs to parties standing in one-sixth of the seats in Great Britain, even if they do not meet

⁹ Condoc, paragraph 3.36

¹⁰ Condoc, paragraphs 3.71-2

Ofcom’s qualifying criteria of standing in one-sixth of the seats in England and one-sixth of the seats in Scotland and one-sixth of the seats in Wales).

Ofcom asked for views on amending the allocation Rule for elections conducted under proportional representation systems¹¹. Channel 5 believes the idea of “adapting appropriately” the one-sixth qualification requirement for first past the post elections to PR-based elections has never been thought through properly. In practice two quite different sets of criteria are used. Therefore, the words “adapted appropriately” should be replaced by the word “set”.

Question 6b): Do you agree with amending Rules 12 14 and 17 of the PPRB Rules by inserting the proposed wording, including new Rule 13A, set out in paragraph 3.83 above? If you do not agree with this approach, please explain why, and, if appropriate, suggest alternative wording.

We are happy with the amendments to Rules 12 and 14. However, we think the new rule about PEBs and referenda should not be bolted on to Rule 17, which is essentially about PEBs on UK-wide broadcasters – it should be a separate stand-alone Rule.

We think that new Rule 13A sits uncomfortably between Rules 13 and 14, as it interrupts the flow of the main allocation rules and is not relevant to some of the rules that follow (for example, Rules 15 and 16). It would be better to place it after existing Rule 17.

Question 7: Do you agree with:

a) Any of the Options (C1), (C2), (D1) or (D2) in relation to amending Rule 20 of the PPRB Rules in relation to television, by inserting the proposed wording as set out in paragraph 3.93 above?

b) Either Option (E1) or Option (E2) in relation to amending Rule 20 of the PPRB Rules in relation to radio, by inserting the proposed wording as set out in paragraph 3.93 above.

If you do not agree with any of the proposed options, please explain why, and, if appropriate, suggest alternative wording.

Channel 5’s ideal preference would be for Ofcom to specify a minimum duration (to ensure PPRBs are not so short they risk being mistaken for advertisements) and then leave it to broadcasters to set either a specific duration or a choice of durations from which parties can select.

Our preferred option might read: “the length of broadcasts on TV shall be no shorter than 2’. The precise length shall be set out by broadcasters well ahead of the broadcasts taking place. For radio...”

¹¹ Condoc, paragraph 3.75

Out of the options suggested by Ofcom, we prefer Option C2 (all broadcasts at 2'40", which is length of the great majority of PPRBs now). If this does not prove acceptable, we would opt for the status quo (Option C1).

We are wholly opposed to giving parties the opportunity to decide the length of broadcasts (which would be the effect of Options D1 or D2). Like all programmes, PPRBs need to be fitted into a schedule and timed to the second. All other programmes delivered to Channel 5 by external suppliers have to be of a precise length. We do not see why an exception should be made for PPRBs.

If parties were able to choose from an open-ended range of timings, practical difficulties would arise if they did not communicate the precise duration to broadcasters until late in the process, such as the day of delivery. This would be a particular problem if there was a wide range of flexibility, as contained in Option D2.

Question 8: Do you agree with the scheduling requirements set out in Rules 21 and 22 of the PPRB Rules? Please give reasons for your response.

We accept that PPRBs should be shown at times when the majority of viewers are available to watch them. However, we would like the scheduling rules to be made more flexible – even though in practise this would be unlikely to change the well-established times at which PPRBs are currently shown.

We note that the BBC does not have a peak time definition for its PPRBs and often shows them outside Ofcom's definition of peaktime; for example at 17.55 on BBC Two and sometimes at 22.35 on BBC One.

One effect of the Rules is that PEBs by major parties cannot be shown at the end of the teatime (5pm) edition of *5 News* but have to be shown at the end of our peaktime (6.30pm) news – even though the earlier programme is far more popular¹². This can have the somewhat perverse effect that, on those days when two PEBs have to be shown, we schedule a PEB from a major party after our less popular news and a PEB from a minor party after our more popular programme.

One possible Rule change would be for Ofcom to specify that all broadcasts would normally need to be shown between 5pm and midnight – providing greater flexibility for broadcasters, especially when more than one broadcast needs to be shown on the same day.

Question 9: Do you agree with amending Rules 9 and 18 by inserting the proposed wording set out in paragraph 3.101 above? If you do not agree with this approach please explain why and, if appropriate, suggest alternative wording.

This is not a matter that directly affects Channel 5. However, we note that although Ofcom's ambition is to "bring the PPRB Rules into line with the BBC Trust's rules in

¹² In 2012, the 5pm edition averaged 677,000 viewers (an audience share of 5.2%) while the 6.30pm edition averaged 210,000 viewers (a 1.1% share)

this area”¹³, the BBC Trust rules do not contain any definition of when seasons begin and end¹⁴. Ofcom creates potential problems for both parties and broadcasters by proposing strict time limits. In particular, in years when European elections as well as local elections are held, the periods from early April to early May and from early May to early June are both election periods – so under Ofcom’s proposed Rules, the only time when a non-election PPB could be screened would be in the last two or three weeks of June – directly after a period in which viewers, broadcasters and parties have had to cope with two sets of elections and PEBs.

Question 10: Do you agree with amending Rules 8, 9 and 19 by inserting the proposed wording set out in paragraph 3.110 above? If you do not agree with this approach, please explain why and, if appropriate, suggest alternative wording.

Channel 5 supports the change to Rule 19. We recognise that in future there may be referenda of such importance that it will be appropriate to allocate several RCBs to each of the opposing sides. But there may also be referenda covering lesser matters where a single RCB for each side will suffice. We think it sensible to retain the flexibility to allocate one, two or more RCBs depending on their relative importance at the time.

Question 11: Are there any other issues arising from the PPRB Rules, not already covered, which you wish to raise?

We would like all references to “Five” to be changed to “Channel 5” throughout.

Question 12:

- a) Are the provisions of the Proposed Code Guidance set out above appropriate?*
- b) If you do not agree that any provisions of the Proposed Code Guidance are appropriate, please explain why and suggest alternative wording.*

We have one observation. Rule 6.7 states that “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...” However, the guidance talks about programmes that “have already been made” – which is more restrictive than “planned or scheduled”. There may well be recorded programmes at a late stage of post-production or live events for which a broadcaster has already bought the rights which are “planned or scheduled” but which are not “made”, in the sense of a master tape being finished and ready for transmission.

We think the guidance should be broadened to better reflect the Rule. Such revised guidance might read:

¹³ Condoc, paragraph 3.98

¹⁴ The BBC Trust rules read “A registered political party...will qualify for a PPB in Autumn, Winter and Spring”

The purpose of Rule 6.7 is to ensure that candidates or representatives of permitted participants in UK referendums do not appear in non-political programmes to try to gain political advantages. Rule 6.7, however, acknowledges that some programmes may have already been made without the knowledge that an election or referendum is about to be called. In some other cases, where programmes are scheduled without the knowledge that an election or referendum is about to be called and are being made and broadcast in accordance with that schedule, Rule 6.7 acknowledges that, in those cases, appearances by candidates may continue following the calling of the election or referendum. Depending on the circumstances, Rules 6.8 to 6.13 may apply (see below).

Chanel 5 Broadcasting Ltd

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