

Electoral Commission response to review of the Ofcom Rules on Party Political and Referendum Broadcasts and Proposed Ofcom Guidance for broadcast coverage of elections

Introduction

1. This paper sets out the Electoral Commission's response to the consultation on the Ofcom Rules on Party Political and Referendum Campaign Broadcasts and their proposed Guidance for broadcast coverage of elections. We welcome Ofcom's decision to conduct this review, which is timely given recent changes in the electoral landscape that have resulted in new sets of elections and referendums since Ofcom last consulted in this area.
2. There are a number of areas covered in the consultation document on which the Commission would not take a view. Where we have commented, we have considered the proposals against our key principles of trust, participation and no undue influence and considered their impact on our overarching aim of putting voters first.
3. In this paper we comment on the following areas:
 - The list of 'major parties'
 - The obligation on local television licensees to transmit Party Political Broadcasts (PPBs)
 - The timing of PPBs
 - The allocation of Referendum Campaign Broadcasts (RCBs)
 - The allocation of Party Election Broadcasts (PEBs) to independent candidates in a London Mayoral election
 - Editorial guidance to broadcasters on televised leadership debates

Ofcom Rules on Party Political and Referendum Broadcasts

'Major parties'

4. The Rules on Party Political and Referendum Broadcasts ('the Rules') and Sections Five and Six of the Ofcom's Broadcasting Code currently refer to 'major parties' as those that are eligible for a Party Political Broadcast (PPB) or a Referendum Campaign Broadcast (RCB). Ofcom propose to include the list of major parties in an annexe that will be reviewed on a rolling basis.
5. 'Major parties' is not a definition which is used elsewhere in the electoral process. The existence of such a list appears anachronistic and it is difficult to see what purpose it serves.
6. However, if the proposal is adopted, we recommend a commitment is made to review the list in advance of every major set of elections. This would ensure that the particular circumstances of each set of elections are considered when determining the criteria for receiving broadcasts.
7. The BBC Trust review their criteria ahead of each set of elections and this suggests that the issue of 'inflexibility' referred to in the consultation document can be overcome. It is not entirely clear why, as the consultation document states, such a proposal would lead to greater uncertainty.

Local Television Licensees

8. In the consultation document Ofcom propose two options for local TV licensees:
 - a) that they should have a minimum obligation to re-transmit national Party Election Broadcasts (PEBs) and also transmit local PEBs featuring candidates for Mayoral and Police and Crime Commissioner (PCC) elections, or;
 - b) that they should have a minimum obligation to re-transmit national Party Election Broadcasts (PEBs) and also transmit local PEBs featuring candidates for Mayoral and PCC elections. And in addition, if they so wish, to offer parties the option of a locally-focussed PEBs which do not feature candidates.

9. We would support any proposal to increase public trust, interest and participation in elections and think this is important. However, the proposals to include new rules requiring local digital television licensees to carry locally-focussed broadcasts for mayoral elections and PCC elections, including broadcasts featuring candidates, raise concerns for us about both trust and participation.
10. It is difficult, on the basis of the evidence presented in the consultation document, to say whether the proposals for locally-focussed PEBs could work in practice and it seems quite possible they will not. Until further evidence is presented, we are unable to assess the merits of the two options and suggest OfCom do not pursue either until further work has been done to address the concerns we identify below.
11. While the consultation document states that for mayoral and PCC elections the broadcast footprints are 'broadly and sufficiently coterminous with the electoral area' there is no evidence presented to support this. We also understand from information provided separately from OfCom that the TV licences will cover approximately fifty per cent of the population and that this will be concentrated in urban areas. We therefore recommend that Ofcom map the local television licensee broadcast footprint areas against the electoral areas for which they intend to require broadcasts to be carried before making any final decision.
12. If the broadcast footprint areas for the local television licensees are not sufficiently coterminous with police authority and mayoral electoral areas, there is a risk that large numbers of voters could be excluded from seeing broadcasts that are relevant to them and in turn this could be considered to unfairly disadvantage candidates that might expect these voters to support them.
13. Similarly, if local television licensees were to accept locally focussed PEBs or PEBs featuring candidates, these PEBs could be shown to large numbers of voters for whom they are not relevant, which could lead to confusion. In the absence of any robust analysis of the relationship between the local TV licence broadcast footprint area and electoral boundaries it is difficult to assess the extent to which these issues will create a problem for voter participation and trust in the elections.

14. It is also not clear from the consultation document what evidence there is that local political parties and candidates have the resources or inclination to produce local radio and television broadcasts for these elections. Producing broadcasts of sufficient quality for TV is time consuming and costly and it is possible that some parties will not be able to do it in the way the consultation document suggests. We recommend that further consultation takes place with political parties on this point.

15. We understand that the Broadcasters' Liaison Group (BLG) will be submitting a joint response highlighting the potential practical implications of these proposals for local TV licenses based on their experience of operating under the existing rules.

The timing of PPBs

16. We welcome in principle Ofcom's proposal to change the timing of PPBs from around the time of significant electoral events to allocating them on 'a seasonal basis', which is broadly in line with the BBC Trust's current approach. This will provide consistency across the broadcasting spectrum which should be beneficial for political parties by providing greater flexibility in the scheduling of PPBs. This approach also recognises the realities of devolution. We would, however, encourage that any views presented by the political parties about the specific time periods suggested are considered carefully before any final decision is made.

Allocation of Referendum Campaign Broadcasts

17. Ofcom propose to amend the Rules relating to the allocation of Referendum Campaign Broadcasts (RCBs) to designated organisations in a referendum held under the Political Parties, Elections and Referendums Act 2000 (PPERA) from 'a series' to 'one or more'. In our view the allocation criteria, including numbers of broadcasts awarded, for each referendum should be decided on a case by case basis (as they are by the BBC Trust), but it is difficult to see under what circumstances the allocation of only one RCB would be appropriate. We would have concerns if this proposal were adopted and it led to a reduction in the number of broadcasts awarded. For that reason we would prefer that the current reference to 'a series' is kept.

Allocation of Party Election Broadcasts in a London Mayoral Election

18. In the Commission's report on the 2012 Greater London Authority (GLA) elections we said we would discuss with the BBC and Ofcom ahead of the 2016 GLA elections whether there is any scope within the current law for introducing more flexibility in the criteria for the allocation of Party Election Broadcasts (PEBs), to enable independent candidates to qualify for them. We are therefore pleased that Ofcom is looking at this issue.

19. We agree with Ofcom that independent candidates should in principle be eligible for a PEB if they meet the qualification criteria. Our understanding is that under s.37 PPERA as it stands, independent candidates are not eligible to qualify for "party political broadcasts" (which presumably includes "PEBs", as defined by Ofcom, as well as other broadcasts). There appears to be a clear intention in s.37 that no entities except registered political parties should be permitted party political broadcasts by the relevant broadcasters.

20. We see no reason why an independent candidate should be treated differently from a party candidate and feel that the current situation is potentially exclusionary and that the law presents a barrier to participation in elections. We therefore recommend a change to the law to enable independent candidates to be eligible to qualify for a PEB. We will raise this issue with the Government recommending that a change in the law is made at the appropriate opportunity

21. We will in the spring be commencing a review looking into the rules around candidates standing for election. We expect it to cover, among other issues, the thresholds for standing as a candidate and the benefits available to candidates. We will be making recommendations in autumn 2013 and it is possible they will cover this area. If we do, these recommendations may have some bearing on the qualification criteria for candidates' eligibility for a PEB. If Ofcom were to review the allocation criteria ahead of each set of elections as we suggest, and as the BBC Trust do, this could provide sufficient flexibility to ensure that the criteria are kept up to date with this, and any other, potential developments.

Proposed Ofcom Guidance for broadcast coverage of elections

Televised leadership debates

22. In the consultation document Ofcom acknowledge that leadership debates are 'now likely to become an established feature across the UK', that the editorial content of these is a matter for the broadcaster and if they do broadcast them they must comply with the rules on electoral area reports or discussions.
23. The leadership debates at the 2010 UK general election were widely seen as a very significant feature of the campaign ahead of that election. The structure and format of any future debates - if there is agreement to hold them - will be considered by the broadcasters within their overall duty to ensure impartiality and there will be many issues to consider, including any related coverage parties receive that are not directly part of the main debates between party leaders.
24. We do not have any fixed view about how this impartiality is best achieved but given the significance likely to be attached to the debates, Ofcom might wish to discuss with the broadcasters it regulates whether or not additional guidance would help in advance of the 2015 UK general election.

The Electoral Commission
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