

Appendix one

BBC Producers' Guidelines 1993 — Selected Extracts

Chapter 17: Broadcasting during the Elections

1. Introduction

Broadcasting during elections is specifically governed by Section 93 of the Representation of the People Act, 1983 (the "RPA"). In addition, the BBC has a body of editorial policy which, though not as a result of any legal obligation, has been developed to help ensure that we remain fair in our coverage of the elections.

These guidelines apply to elections of all types within the United Kingdom, except where otherwise specified.

2. The law

The law is designed to prevent "personal electioneering" on the air, and it is important that programmes observe it carefully. If the law is broken the candidate taking part in the programme may be prosecuted, and so may the BBC: This what the RPA says, together with a guide to what the key words in it are held to mean:

- (a) "Pending" such an election it shall not be lawful for any item about the constituency or electoral area to be broadcast from a television or other wireless transmitting station in the United Kingdom if any of the persons who are for the time being candidates at the election takes part in the item and the broadcast is not made with his consent; and
- (b) where an item about a constituency or electoral area is so broadcast pending such an election there, then if the broadcast either is made before the latest time for delivery of nomination papers, or is made after that time but without the consent of any candidate remaining validly nominated, any person taking part in the item for the purpose of promoting or procuring his election shall be guilty of an illegal practice, unless the broadcast is so made without his consent."

"Pending"

The pending period always ends with the close of the polls, but when it begins varies according to the type of election:

General Election: from when the Queen announces the intention to dissolve Parliament or, if there is no such announcement, from the date of dissolution.

By-election: from the date of the issue of the writ for the election, or from any earlier date on which a certificate of the vacancy is notified in the Gazette.

Local Government Election: from the 25th day before the day of the election. To calculate the period you must exclude all intervening Saturdays, Sundays and Bank Holidays. In addition the following are also excluded, where relevant: Christmas Eve, Christmas Day, Maundy Thursday and Good Friday.

Local Government Election to fill a Casual Vacancy: from the date of publishing the notice of election.

European Assembly Election: the pending period is the same as for a local government election.

"Candidates"

A candidate is anyone who has declared an intention to stand in a specified constituency or electoral area. Candidates may not have been formally adopted but if by any common sense standards they have emerged as candidates, then their participation in a broadcast is restricted either by the law or by our own guidelines.

"Taking Part"

"Taking part" in a broadcast has been legally defined as involving active and conscious participation by the candidate. A news item or a report presented by BBC journalists about a candidate's activities does not constitute "taking part", nor does news film of a candidate making a speech addressed to his constituents. A candidate does not "take part" simply by conducting normal electioneering activities, such as addressing a public meeting, even though we may record them, provided that the meeting has not been arranged mainly with a view to its being broadcast. Similarly, a candidate does not "take part" in a broadcast of a news conference open to the media at large.

A candidate does "take part" when specifically addressing a television or radio audience. A candidate who is interviewed by a reporter with a microphone or camera must be deemed to be "taking part". If a question is put to a candidate by a BBC reporter while the candidate is conducting normal electioneering activities, that may not constitute "taking part" although a full interview in such circumstances would. Careful judgement is required, and advice should be sought from the Chief Political Adviser.

A constituency profile is not affected by the restriction on a candidate "taking part" when it uses film of candidates without sound of their voices, filmed extracts from speeches addressed to their constituents, or film of candidates' "walkabouts". A studio discussion about a specific constituency or electoral area between the candidates in the constituency or electoral area requires the consent of all the candidates since they would be "taking part".

3. The rules

3.1

Between the start of the pending period and the close of nominations, no candidate may take part in any broadcast about the constituency or electoral area.

Legally speaking, candidates may "take part" in programmes so long as they do not speak about constituency matters and are also in no way identified with their constituency and the programmes is not about the constituency.

The BBC's policy is to avoid giving advantage to a particular candidate at a time (namely, between the start of the pending period and the close of nominations) when we simply do not know for certain who the other candidates will be and we cannot therefore treat them all fairly.

Candidates who were due to appear in programmes scheduled before the election was announced may do so but they must not be linked to the election or constituency, nor should they be allowed to talk about constituency issues. After the election is announced, no candidate must enter into a new programme commitment for transmission before polling day.

We make an exception for candidates involved in a significant news story. Candidates who find themselves involved (e.g. through being sent a letter bomb) may be interviewed in that connection, and if their candidacy is part of the story it may be referred to. But we would not apply this "news priority" exemption to stories which were themselves merely political; we would not interview a candidate in a news programme simply because the candidate had made some newsworthy electoral pledge.

Other cases not specifically covered here must be referred to Chief Political Adviser if there is any doubt about what to do.

3.2

After nomination day and up to the declaration of the poll, no candidate may "take part" in a broadcast about a constituency or electoral area without the consent of all candidates.

The RPA says that a candidate who takes part in a broadcast, contrary to the above rules, "shall be guilty of an illegal practice" if he does so for the purpose of promoting or procuring his election. In practice the BBC might also find itself subject to proceedings. Care must therefore be taken to ensure that from nomination day until the close of poll a candidate takes part in a broadcast about the constituency or electoral area only with the consent of all other candidates.

6. Making programmes in which the candidates take part

4.1. Securing consent

We must secure consent of all the candidates. When they all agree to take part in a broadcast an oral agreement is sufficient. If a candidate declines to take part but agrees nonetheless that the other candidates can take part, a written consent is required. The form of consent is shown at the end of this section. It is the producer's responsibility to ensure that the form has been completed before the broadcast and to keep it on file.

It is sometimes difficult to contact a candidate who is not active in the election. Several attempts should be made by all practicable means and record kept of these approaches. If

all efforts fail, reference should be made to Chief Political Adviser or The Legal Adviser before the broadcast goes ahead.

4.2. Programme repeats

If we know, at the time we are gathering consents from candidates who decide not to take part, that a programme is likely to be repeated, the consent form should include an acknowledgement of this. If no such plans exist but there is a subsequent decision to repeat the programme in full or in part it may be necessary to secure additional written waivers and the Chief Political Adviser must be consulted.

We should not base an entire programme or magazine item on edited extracts of a previously recorded programme unless all of those who took part in the original programme also take part in the edited version, and unless the necessary additional waivers have been obtained.

4.3. Fair treatment

The law makes no requirement about the way time is allocated between candidates in a programme. But BBC policy requires fair treatment for all concerned, and rough parity of treatment for all the major candidates. We recognise that many modern elections feature a range of fringe candidates who are certain to attract only marginal support, and such candidates may be treated by programmes in a way which recognises the differences between them and the principal contenders. The Chief Political Adviser can help programmes determine these decisions.

5. Other questions answered

5.1. Do we have to name all the candidates?

As a general BBC rule whenever we broadcast a constituency or campaign report we should mention all the candidates if we mention any. We should ensure that the terms in which we mention them maintain rough parity between the major candidates, but it may be appropriate to list the fringe candidates together in some other terms (such as a graphic in television). We recognise that, particularly at by-elections, the number of candidates may make it impractical to mention them all by name on every occasion, especially on radio. Chief Political Adviser will give guidance on the best practical way

of approaching this problem as and when each election is called.

5.2. Can candidates appear as party spokesmen?

Candidates may appear in broadcasts in their role as party spokesmen, provided that the programme is not about their constituency or electoral area and that they are not identified as candidates or allowed to talk about issues directly connected with the constituency or electoral area in which they are standing.

5.3. What is meant by broadcasts by candidates which are not "about" the constituency or electoral area?

These would include broadcasts during an election campaign in which neither the candidates nor the broadcast refers to specific constituency issues or their own candidature. Such broadcasts are not legally restricted under the RPA, even if they are made in the speaker's own constituency. The decision whether to use them must therefore be based on editorial judgements.

5.4. What is an "electoral area"?

"Electoral area" is defined in the RPA as "any electoral division or ward or, in the case of a parish or community in which there are no wards, the parish or community for which the election of a councillor is held under the Local Government Act". If, pending a district council election, we want to interview a candidate the restrictions apply only if the interview, item or programme is "about" the specific electoral area in which the candidate is standing. Note, however, that nothing should be broadcast which is for the purpose of promoting or procuring the election of any single candidate. If it is proposed to interview or feature a candidate, the consent or participation of all the competing candidates in the same electoral area is required. In the case of a ward candidate in a district council election it would be necessary to approach all the candidates in the relevant ward, but not those in other wards.

5.5. Must all candidates be given exactly equal treatment?

There is no legal requirement but the BBC tries to preserve approximate parity at elections between the main parties contesting a given seat. Fringe candidates cannot necessarily

expect parity, especially if they are absentee candidates or do not appear to be campaigning with any diligence.

5.6. Unlike Parliament, local councils do not "dissolve" before an election. During the six weeks prior to an election, may Councillors be interviewed about continuing council business?

The legal position is not straightforward and particular care is needed. The RPA would seem to suggest Councillors could be interviewed after the latest time for the delivery of nomination papers only if all the competing candidates either take part or sign waivers. However, the RPA says that an offence is committed only where the candidate takes part "for the purpose of promoting or procuring his election". Although that seems to relate to the state of the interviewee's mind, the effect of the words used must also be taken into consideration.

From the available case law, it would appear that if the candidate's dominant intention in agreeing to be interviewed was to promote his or her election, the interview would be subject to the rules contained in the RPA. On the other hand, if the candidate could establish that the predominant intention was to make available information which it was in the public interest for the citizen to know (even if the interview had the side effect of promoting the candidate's election) the rules in the RPA would not apply and it would not be necessary to obtain the consent of other candidates. These are difficult judgements and the Chief Political Adviser needs to be consulted.

5.7. Does a local station have to suspend broadcasting the proceedings of Council and Committee meetings during the six week pending period if sitting members are also candidates?

No

5.8. To what extent is a local station able to use speakers who are candidates in local or parliamentary elections outside the station's area?

In these circumstances it would be difficult to argue that the candidate is taking part in the programme for the purpose of securing his election. So we have decided to allow programmes

to use candidates from electoral areas clearly outside their transmission range and to let them to talk about election issues — but the programme items must not be repeated on network broadcasts. For example, Radio London could use a candidate from Merseyside.

5.9. What other BBC rules govern news coverage of the campaign?

Candidates' speeches and news about candidates in any election may be reported up to midnight before polling day if they have genuine news value. This is legitimate, even if the effect might be to help one candidate more than others on any one day, if the motive is demonstrably the reporting of significant news. Although it is not a legal requirement, it is BBC policy that in national bulletins reporting the general election, all the main parties should be reflected fairly and fully over the election period. Account should be taken of the electoral position of the SNP and Plaid Cymru in their respective areas.

Chief Political Adviser will advise network programmes on appropriate coverage of the nationalist parties.

5.10 May candidates appear in election editions of Any Questions and similar national, regional or local programmes?

Yes. So long as their candidature is not mentioned, nor their constituencies. The panel should always represent the main parties, and also offer appearances to prominent minor parties. No party fighting a substantial proportion of seats, nationally or locally, should be able to claim that its case has been unfairly neglected in such programmes.

5.11. May an actor, musician or singer who is a candidate appear during the "pending period"? Many an author-candidate have his works broadcast or discussed?

Yes, if the broadcast was scheduled before the "pending period". Professional broadcasters who are candidates should not be used after the start of the pending period unless they are the natural persons for the job and there are not good alternatives.

5.12. What is the position of a candidate's spouse, spouse-to-be or other close relative?

There is no legal inhibition on broadcasts by relatives of candidates but the BBC is opposed to any interviews with spouses or other relations which might gain electoral advantage for candidates. There is not prohibition but the circumstance in which they are invited to broadcast during such periods must be editorially justifiable and reference made to Chief Political Adviser.

5.13. Election publicity, posters, etc.?

Nothing that might inadvertently help a candidate should be seen or hear in our output unless all candidates are treated equally. It is especially important not to place interviewees in front of candidates' posters when we are recording for television. BBC people should have confidence in asking for posters to be removed from platforms if it proves impossible to record a speech without the poster being visible.

5.14. What happens on polling day itself?

Polling day reporting at all elections must avoid any references to election issues and, until the close of poll, we restrict ourselves to factual news about the election. Public opinion polls and reviews of the morning papers may be included. So too may statements of news importance by the parties, but we must ensure that counter-statements by opposing parties are broadcast as well.

5.15. Can we use candidates between elections?

It is BBC policy that between elections care must be taken not to build up the "image" of an prospective candidate.

Prospective candidates who depend wholly or partly for their livelihood on broadcasting in news and current affairs programmes present a special problem. The BBC should try to avoid penalising such a candidate's livelihood, but we have to be fair to all prospective candidates. Each case should be considered on its merits. Relevant factors are nearness to an election, the nature of the programme, and the prospective candidate's role in it.

In other programmes the BBC should try not to increase or lessen the prospective candidate's earnings or reputation in

the time before the "pending period". If possible, the candidate should continue to be used to the same extent as previously. There should be no reference to the prospective candidature.

Consent Form

The following form of consent should be used when a candidate declines to take part in a broadcast but agrees to rivals taking part:

The BBC is organising a radio/television programme to be broadcast on or about.....(date) concerning the.....constituency or electoral area where I am the.....(party) candidate in the election/by election to be held on.....(date). I understand that under Section 93 of the Representation of the People Act 1983 the consent of all the candidates in the constituency or electoral area is required for the broadcast to take place. I consent to the other candidates taking part in the broadcast without me. (I understand that the broadcast may be repeated in whole or in part).

Signed

Address

Date

Chapter 15: Politics and Politicians

3. Elections

Broadcasting during elections and by-elections, whether European, national or local, has to have regard to the provisions of Section 93 of the Representation of the People Act, 1983.

3.1 Party Election Broadcasts

There is a separate series of broadcasts before a general election. When an election is imminent the broadcasters make a proposal to the Committee on Party Political Broadcasting on the allocation of party election broadcasts. If the Committee fails to reach an agreement the broadcasters impose the allocation. There is no precise mathematical formula for the allocation of time for party election broadcasts. But the judgement is made on the basis of votes cast at the previous general election, together with votes cast at intervening by-elections, local government elections and European elections. This allows significant political change to be taken into

account. There is also a provision that any party contesting 50 seats should be entitled to a five minute broadcast on television and radio.

3.2 Balance in Coverage

Over the period of a campaign, coverage of each of the parties in news and current affairs programmes reflects broadly the allocation of party election broadcast to the major parties. In accordance with this principle the BBC undertakes to maintain balance, over the period of a campaign, in its recorded actuality of political speeches and in film, videotape, and studio contributions from politicians. Editors requiring advice on this should refer to the Chief Political Adviser.

Editors must also be aware that the voices of the Nationalist parties fighting in Scotland and in Wales should be represented in UK coverage.

News values continue to apply in covering election stories, whether national or local.

4. Appearances by politicians

4.1 Position of candidates

Parliamentary candidatures are often announced well in advance of formal adoption procedures by a constituency party. Adoption before such an announcement ought not to affect invitations to prospective candidates to take part in programmes, though they should not be given the opportunity to advance their own candidacy.

Once an election or by-election is imminent the BBC may decide that fair play dictates that programmes behave as though the Representation of the People Act applied, and appearances by candidates or prospective candidates may be restricted accordingly to avoid giving one an unfair advantage over the others. The BBC's Chief Political Adviser will rule on this and can advise programmes accordingly.

Chapter 16: Opinion Polls

1. What polls are

Polls tell us nothing about future shifts of opinion. They are based on what a sample of people tell the pollsters at a given point in time.

It is never right to say that an opinion poll *proves* or *shows* what the nation at large is thinking. When the polls are accurate, they *indicate* or *suggest* what people were saying at the time the fieldwork was done.

2. The lessons of 1992

Even opinion polls which have been conducted according to the best current practice can be seriously wrong. There may be a flaw in the methodology that needs to be addressed before we give polls credibility.

Voting intentions: In the last voting intention polls carried out in the general election of 1992 by each of the major pollsters, the average estimate of the lead was nine points adrift of what turned out to be the actual result. The pollsters themselves and other professional bodies have been trying to account for this discrepancy. Some of their conclusions are still awaited.

Poll of Polls: The BBC commissioned no voting intention polls during the 1992 campaign, but it did publish its own Poll of Polls - an amalgam of polls commissioned by the national newspapers. A Poll of Polls averages out the results of its constituent polls, but if all of the constituent polls are similarly flawed the Poll of Polls will merely re-enforce and give added credibility to a misleading picture.

Exit Polls: The first results of the BBC's exit poll of 1992 accurately forecast which party had won, but substantially underestimated the margin of victory. Work has continued at subsequent by-elections to identify and correct the reasons for this error, and recent exit polls have been extremely accurate.

Until we are satisfied that polling methodology is more robust:

- * the BBC will not commission any opinion poll purporting to sample party political support or voting intentions in the population at large
- * the BBC will not compile its own Poll of Polls
- * the BBC will not commission an exit poll for use on air before the results of research and experimentation carried out since June 1992 are clear.

3. Reporting opinion polls

Opinion polls have become a part of modern electioneering. All the main political parties conduct their own issue polling at election times, and they study the results of all the published voting intention polls whatever the doubts about their reliability. Politicians seize on apparent evidence of shifts in opinion to encourage their own supporters or to taunt their opponents.

If we report the polls' findings we risk adding to their credibility as an exact science, but if we ignore them we deny our audiences information which is often a driving force behind current political debate.

Faced with this choice, we feel it appropriate to give viewers and listeners the facts about those voting intention polls which have been conducted according to the best current practice, but to treat them with a high degree of caution, concentrating on the political discussion they engender.

We have therefore developed a rigorous series of rules for programmes reporting voting intention polls:

- * do not lead a programme or bulletin simply with the results of a voting intention poll
- * do not headline the result of a voting intention poll (unless reaction to it is so significant as genuinely to merit a headline and reference to the result is necessary to make sense of the reaction. This is likely to be a rare occurrence)
- * never rely on the interpretation given to a poll's result by the publication or organisation which commissioned it: look at the questions, the data and the trend
- * never use language which gives greater credibility to the polls than they merit — results never "prove" or even "show", they simply "suggest"
- * always report the expected margin of error, and where the gap between the two leading contenders is within the combined margin of error say so ("There's a three point margin of error on each figure so the apparent (Labour) lead of five points is within that margin")

- * always report the dates when the fieldwork was carried out, and be prepared to recall significant events which may have had an effect on opinion at the time or since
- * always say who commissioned and who carried out the poll
- * always say if was a telephone poll
- * reflect the seriously-conducted polls equally.....never be tempted to single out one as more "newsworthy"
- * except in the briefest of news summaries we should always report the trend.....It is far more likely to be informative than the snapshot picture
- * on occasion it will be appropriate to remind viewers and listeners of the events of 1992 and for journalists to reflect in their questioning and their scripting due scepticism of the polls' reliability

Time must be allowed in programmes for all the proper details to be given.

Some polls which we would not accept as properly conducted may nevertheless generate significant news — because, for example, of the way in which the parties react to them. In order to report the reaction we may need to report the poll itself, but the way we do so should make clear the limitations in the way it was conducted.

To be worthy of being reported by us, even non-political opinion polls must have been reputably conducted and we should always say by whom they were carried out and for whom.