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NA hÉIREANN

BROADCASTING
AUTHORITY
OF IRELAND

Broadcasting Authority of Ireland
Rule 27 Guidelines
General Election Coverage

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1. Introduction

Rule 27 of the BAI *Code of Fairness, Objectivity and Impartiality in News and Current Affairs* requires broadcasters to comply with Guidelines in respect of coverage of elections.¹ In this context, these Guidelines set out a number of requirements for broadcasters in respect of their coverage of the forthcoming General Election and apply in addition to the rules of the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*. The Guidelines also provide guidance to broadcasters on the manner in which fairness, objectivity and impartiality may be achieved in their coverage.

2. Legal Requirements

The Broadcasting Act 2009 details the legal requirements placed on broadcasters in respect of their coverage of news and current affairs issues, including coverage of elections. In this regard:

General requirements for broadcasters in terms of news and current affairs coverage are set out in Section 39 (1) of the Broadcasting Act, which states:

"Every broadcaster shall ensure that:-

- a) *all news broadcast by the broadcaster is reported and presented in an objective and impartial manner and without any expression of the broadcaster's own views;*
- b) *the broadcast treatment of current affairs, including matters which are either of public controversy or the subject of current public debate, is fair to all interests concerned and that the broadcast matter is presented in an objective and impartial manner and without any expression of his or her own views, except that it should prove impracticable in relation to a single broadcast to apply this paragraph, two or more related broadcasts may be considered as a whole, if the broadcasts are transmitted within a reasonable period of each other."*

¹ Rule 27 of the BAI's Code states: "Coverage of an election or a referendum shall comply with Guidelines and codes of practice issued from time to time by the BAI."

Requirements in respect of **party political broadcasts** are set out in Section 39 (2) of the Broadcasting Act, which states:

“(2) Nothing in subsection (1) (a) or (1) (b) shall prevent a broadcaster from transmitting political party broadcasts provided that a broadcaster does not, in the allocation of time for such broadcasts, give an unfair preference to any political party.”

Requirements in respect of **advertising** are set out in Section 41(3) of the Broadcasting Act which states:

“A broadcaster shall not broadcast an advertisement which is directed towards a political end...”

The requirement for the BAI to develop the *Code of Fairness, Objectivity and Impartiality in News and Current Affairs* is set out in sections 42(1), 42(2)(a) and 42(2)(b) & (e) of the Broadcasting Act, which states:

- (1) The Authority shall prepare, and from time to time as occasion requires, revise, in accordance with this section, a code or codes governing standards and practice (“broadcasting code”) to be observed by broadcasters.*
- (2) Broadcasting codes shall provide –*
 - (a) that all news broadcast by a broadcaster is reported and presented in an objective and impartial manner and without any expression of the broadcaster’s own views,*
 - (b) that the broadcast treatment of current affairs, including matters which are either of public controversy or the subject of current public debate, is fair to all interests concerned and that the broadcast matter is presented in an objective and impartial manner and without any expression of the broadcaster’s own views,*
 - (e) that a broadcaster does not, in the allocation of time for transmitting party political broadcasts, give an unfair preference to any political party.*

3. Scope & Jurisdiction

The Guidelines apply to broadcasters within the jurisdiction of the Republic of Ireland and shall not apply to other services commonly received in this State but licensed in Britain, Northern Ireland or in other jurisdictions. The BAI encourages broadcasters outside of the jurisdiction, whose services are receivable in the Republic of Ireland and who cover Irish news, to be mindful of the Guidelines, where appropriate, when deciding on their approach to coverage of the forthcoming General Election. These Guidelines do not apply to print content, online print or online audiovisual content.

4. Effective Date

These Guidelines come into effect immediately upon the dissolution of the 31st Dáil and will remain in effect until the closing of polling stations on the day of the General Election.

5. Achieving Fairness, Objectivity and Impartiality

Broadcasters play an important and valuable role in the manner in which information about an election is communicated to, and discussed by, the Irish public. For this reason, broadcasters are encouraged to cover the forthcoming General Election in as comprehensive a manner as possible, taking into account the resources available to them, their target audience and the type of programming that the broadcaster provides to the audience. In their approach to coverage, broadcasters are asked to have regard to the following:-

- Fairness, objectivity and impartiality can be achieved by a variety of means, for example, through the selection of contributors, the airtime afforded, the scope of the debate, the structure of the programme, the presenter's handling of the topic, the make-up of audiences or through other suitable means.
- Broadcasters should note that elections are dynamic events and they should give active consideration to their approach to coverage over the duration of a campaign and amend this approach if they consider it necessary and appropriate. Broadcasters are encouraged to seek out the widest range of opinions on the issues raised during the General Election.
- It is appropriate that decisions in respect of editorial coverage of the General Election rest solely with broadcasters. In this context, broadcasters must develop mechanisms in respect of their approach to coverage that are open, transparent and fair to all interested parties. These mechanisms should be considered and developed at an early stage and information on the approach being adopted should be available to all interested parties.

Broadcasters should be in a position to demonstrate how these mechanisms have ensured fairness, objectivity and impartiality in instances where complaints are received directly by the broadcaster or referred to the BAI.

- The *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* and guidance notes for this code set out in detail how fairness, objectivity and impartiality can and should be achieved. Broadcasters should ensure that all staff are familiar with this Code and these Guidelines. The BAI will provide advice on request and such requests should be sent in writing to election@bai.ie. The BAI can also be contacted by phone on 01 644 1200.

6. Conflicts of Interest

The *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* requires that each broadcaster put in place, and implement, appropriate policies and procedures to address any conflicts of interests that may exist or arise in respect of anyone with an editorial involvement in any news or current affairs content, whether such person works on-air or off-air.² This requirement is of particular importance in the context of coverage of a General Election.

In this context, it is the view of the BAI that it is not appropriate for persons involved with election interests³ to present programmes during the election campaign period. However, it is a matter for broadcasters to decide on a case-by-case basis the appropriate arrangements, in the context of the contractual, employment or volunteer relationship, between the presenter and the broadcaster and in the context of their statutory obligations.

Endorsements by broadcasters of election candidates, participating political parties or election interests are not permitted. In addition, endorsements on-air by staff (who are employed, contracted or who volunteer with a broadcaster) of election candidates, participating political parties or election interests, are also not permitted.

Broadcasters should note that comments made off-air, for example in print publications or social media, by programme presenters in respect of the General Election, particularly presenters of news and current affairs, may have the potential to undermine the perceived impartiality of their coverage. It is a matter for broadcasters to deal with such issues in the context of their contractual, employment or volunteer relationship with presenters.

² Rule 23.

³ 'Election interests' include, but is not limited to, political parties, elected representatives, the Government, organisations established specifically for the purpose of campaigning during the General Election, individuals (including those holding or formerly holding a public office) campaigning for a particular outcome to the General Election, as well as existing social and civil society groups engaging in a campaign in respect of the General Election.

7. Opinion Polls

Opinion polls are a useful tool to inform the audience of voting intentions. Where opinion polls are being used as part of coverage of the General Election, coverage should be accompanied by information to assist viewers/listeners to understand the significance of the opinion poll. Information on the details of the date of the poll, the name of the organisation that has commissioned and/or paid for it, the company/organisation who conducted it and the number of people polled must be provided on-air. In representing the findings of opinion polls to viewers and listeners, broadcasters are advised to take into account not only the interpretation of the findings provided by those who have undertaken the opinion poll but to also have regard to their own analysis of the results.

8. Social Media

Broadcasters are reminded that they are required, further to the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*, to have in place appropriate policies and procedures for handling on-air contributions via social media. These policies and practices must be applied where social media is referenced on-air in the context of coverage of the General Election. Given the importance of a General Election, additional steps should be implemented by broadcasters to ensure that on-air references to social media are accurate, fair, objective and impartial.

9. Advertising

Section 41(3) of the Broadcasting Act 2009 provides that a broadcaster shall not broadcast an advertisement which is directed towards a 'political end'. In this context, broadcasters shall ensure that advertising is free of material that promotes candidates, political parties or election interests, as well as content that addresses election issues or which might be reasonably considered as being directed towards a 'political end' in contravention of Section 41(3). This prohibition also applies to advertising for events, notices regarding meetings or other events being organised by election interests as part of their activities.

In determining whether an advertisement may contravene the statutory prohibition on advertising directed towards 'a political end', the BAI is of the view that it is reasonable for broadcasters to take into account the following three factors:-

- The content of the advertisement;
- The context in which the advertisement is broadcast;
- The aims and objectives of the advertiser and of the advertising campaign.

It is the BAI's experience to date that one or more of the three factors may play a determining role in deciding whether an advertisement complies with the statutory prohibition.

10. Party Political Broadcasts

Party political broadcasts are permitted during election campaigns further to section 39(2) of the Broadcasting Act 2009. While there is no obligation on broadcasters to transmit party political broadcasts, those that do so shall ensure that party political broadcasts are transmitted at times that are aimed at achieving a similar audience for all such broadcasts. Similar broadcast treatment shall be provided for all party political broadcasts, both at their introduction and at their conclusion. Such broadcasts may only be availed of by political parties included on the *Register of Political Parties* as provided for under Irish law.

To ensure that a party political broadcast does not rank as an advertisement (which is prohibited by Section 41(3) of the 2009 Act) no payment or similar consideration shall be applied for such broadcasts.

Notwithstanding the above, broadcasters should consider whether the transmission of party political broadcasts may in practice result in an imbalance in coverage of an election, including coverage of non-party political candidates who cannot avail of such broadcasts, and whether that imbalance should accordingly be addressed via other election programming.

11. Moratorium

Radio and television broadcasters shall observe a moratorium on coverage of the General Election. The moratorium shall operate from 2pm on the day before the poll takes place and throughout the day of the poll itself until polling stations close.⁴

During the period, broadcasters shall ensure compliance with the following:-

Electioneering and/or references to issues linked to the General Election and/or references by any on-air personnel, including guests, to the merits or otherwise of an election candidate(s) and/or their policies shall not be broadcast while the moratorium is in operation.

⁴ The BAI recognises that on some of the islands of Ireland polling will commence earlier than elsewhere in Ireland. In some instances, polling will also occur earlier via post. However, the moratorium will only apply from 2pm on the day prior to the opening of the majority of polling stations in Ireland until they close on the day of the poll.

Applying the Moratorium

In applying the moratorium, broadcasters will need to strike a balance between requirements to keep the public informed over this period and ensuring that programming does not contravene the moratorium as set out above.

When considering how to apply the moratorium, broadcasters should note the following:

- The moratorium is not intended to preclude coverage during this period of legitimate news and current affairs stories that are unrelated to the General Election. However, broadcasters should avoid airing content (including breaking news stories) that the broadcaster believes is intended and/or likely to influence or manipulate voters' decisions during the moratorium period. This is an editorial matter to be considered on a case-by-case basis.

Particular care should be taken around the opinions expressed by any programme contributors during the period covered by the moratorium.

- Steps should be taken to ensure that overnight programme repeats scheduled during the moratorium do not contain material that would breach the moratorium. Broadcasters are advised to either edit programmes (if practical) or schedule an alternative programme so as to avoid accidental breaches of the moratorium.
- Coverage of uncontroversial facts related to the poll are permitted (e.g. the opening hours of polling stations, factual reports on voting by political party leaders) once such coverage abides by the moratorium.
- The moratorium extends to all areas of programming, including newspaper reviews, coverage of opinion polls, information announcements etc. Particular care is necessary when commenting upon or covering newspaper reviews as the print media are not subject to a moratorium.
- Exit polls, which are conducted outside polling stations on voting day, are to be broadcast only after the closure of the polling booths.

12. Irish Language

It is an objective of the BAI to promote and stimulate the development of Irish language programming. In this context, the BAI encourages English language services to provide opportunities to cover the General Election in the Irish language.

13. Complaints

How to make a complaint

Viewers and listeners who believe programme material has not complied with the Guidelines or with the *Code of Fairness, Objectivity and Impartiality in News and Current Affairs* are entitled to make a complaint. Complaints should be made, in the first instance, to the broadcaster and broadcasters are legally obliged to consider the complaint and to make a decision in respect of this complaint.⁵

When making a complaint to the broadcaster, the relevant programme broadcast should be identified. It is also necessary and important to set out clearly the grounds of the complaint and the reasons why the programme material does not comply with the BAI's Code or Guidelines.

Each broadcaster is legally required to consider complaints in line with its *Code of Practice for Complaints Handling* and complainants should refer to the broadcaster's *Code of Practice* when making a complaint to the broadcaster. The *Code of Practice* should explain how a broadcaster will consider and assess the complaint. A copy of the *Code of Practice* should be readily available on the broadcaster's website or available upon request from the broadcaster.

How Complaints will be assessed by the BAI

In circumstances where a complainant has not received a response from the broadcaster or where s/he is not satisfied with the response, the complaint may be referred to the BAI. The BAI will consider the programme material complained of in whole and in context, with reference to:-

- The matters identified in the complaint;
- The principles and rules of the *Code of Fairness, Objectivity and Impartiality in News and Current Affairs*, including the requirements of these Guidelines;
- The provisions of the Broadcasting Act 2009;
- The procedures, practices and policies of the BAI.

In assessing a complaint, the BAI will have regard to the broadcast and to the arguments set out by the complainant and those included in the response by the broadcaster. The BAI's decision will relate to whether the broadcast did or did not comply with the relevant legal requirements and with its codes. The decisions of the Compliance Committee do not constitute endorsement or support for the views of either parties to the complaint. The BAI will not carry out a separate or independent assessment outside of the matters raised in the complaint. Further information on the complaints process can be found on the BAI's website www.bai.ie or by telephone on 01 6441200.

⁵ Section 47 of the Broadcasting Act 2009.

NOTE

These Guidelines refer to the forthcoming General Election. They are not intended to set a precedent for future elections and do not purport to constitute a comprehensive statement of the law. The Authority reserves the right to amend these Guidelines if it deems it necessary or prudent to do so.

The Authority may provide informal guidance, without liability. This will not affect its discretion to decide upon cases/complaints after broadcast nor the exercise of its regulatory duties. Broadcasters should seek their own legal advice on compliance issues. Requests for guidance should be emailed to election@bai.ie.