



Guidance Note – Advertising Directed Towards a Political End

Section 4.6 of the BAI General Commercial Communications Code reflects the provisions of Section 41(3) of the Broadcasting Act 2009. Both prohibit advertisements directed towards a ‘political end’.

Definition of Political End

The BAI, in the absence of a legal definition of ‘an advertisement directed towards a political end’, defines it, with reference to a key High Court judgement - Colgan vs. the IRTC (1998), as an advert directed towards: -

- Furthering the interests of a particular political party, or;
- Procuring changes in the laws of this country, or countering suggested changes in those laws, or;
- Procuring changes in the laws of a foreign country or countering suggested changes in those laws, or;
- Procuring a reversal of Government policy or of particular decisions of Governmental authorities in this country or countering suggested reversals thereof, or;
- Procuring a reversal of Governmental policy or of particular decisions of Governmental authorities in a foreign country or countering suggested reversals thereof.

As such, the legislation is not restricted solely to adverts which further the interests of a political party nor is it restricted to political matters relating to the jurisdiction of the Republic of Ireland.

It is the BAI’s view that the prohibition also applies to advertisements which further the interests of individual politicians (at local, national, and European levels) whether they are a member of a political party or an independent politician, whether elected or seeking to be elected. It also applies to campaigns promoted by an organisation that is seeking to broadcast a message directed towards a political end, as set out above. The prohibition applies during election and referenda campaigns as well as outside of these periods.

Approach to Determining ‘Political End’

Broadcasters should note that they are responsible in the first instance for assessing whether an advert is “directed towards a political end”. In determining whether an advert may contravene the statutory prohibition, broadcasters are advised to have regard to the following considerations: -

- **What is the content of the advert?** For example, is the advertising copy (including any website to which the advert directs audiences) directed towards a political end? In certain circumstances the text may be fundamentally problematic even if the advertiser is not political or exclusively political in nature.



- **What is the context in which the advert is broadcast?** The current political context may have a strong bearing in determining whether an advert complies. In this regard, consideration should be given, insofar as possible, to when the advert will be aired as the context at the time of booking may be different to the context in which the advert will air. For example, is the advert proposed for broadcast one that is airing during an election or referendum campaign period or in circumstances where the issue referenced in the advertisement is the subject of debate by an elected body such as a county council, the Houses of the Oireachtas or the European Parliament? Similarly, is it the subject of current public debate?
- **What are the aims and objectives of the advertiser and of the advertising campaign?** This may be evident either from the copy or from information in the public domain about the advertiser and/or the campaign. Advertisements that advance the interests of organisations whose sole or predominant purpose is of a political nature have a higher potential to fall foul of the prohibition e.g., political parties, politicians, special interest lobby groups etc. However, an advert for a campaign whose aims and whose objectives are directed towards a political end may also be problematic even where the organisation behind the campaign is not one whose sole or predominant purpose is political. For this reason, consideration should be given not only to the aims and objectives of the advertiser but also to the advertising campaign as a whole and not simply what will be carried on-air.
- **Is the content informational or promotional in nature?** The BAI believes that it is appropriate to make a distinction between advertisements that merely convey information and promotional advertisements that should be prohibited as they are 'directed towards a political end'. In determining whether an advert falls into the latter category, broadcasters should take a common-sense approach having regard to the statutory prohibition and this guidance note.

For example, an informational advertisement that is limited to highlighting the date/s, time/s and location/s of a constituency clinic to be held by an elected official might be acceptable. However, an advertisement which promotes the merits of a politician (and their impact on their constituency) or of a political party or is one which advocates a political position (whether advocated by a politician, political party or an organisation) might be problematic.

Broadcasters should note that each individual advertisement proposed will require separate and individual consideration.

The BAI will have regard to the aforementioned when determining whether **other commercial communications**, including sponsorship and product placement, contravene the prohibition set out in Section 4.6 on commercial communications directed towards a political end.

The prohibition set out in Section 4.6 and the Broadcasting Act 2009 does not apply in the case of party-political broadcasts provided that a broadcaster does not, in the allocation of time for such broadcasts, give an unfair preference to any political party. In addition, the prohibition will also not apply to announcements of the Referendum Commission.



Please also note that the BAI will not consider complaints in respect of party-political broadcasts or announcements broadcast at the request of the Referendum Commission. Complaints in this regard fall outside the powers of the BAI as set down in the Broadcasting Act 2009.

The guidance provided in this note should not be regarded as a complete or authoritative statement of law. The note is non-binding and provided to assist broadcasters, advertisers, and the general public to interpret and apply this provision of the Code.

The Broadcasting Authority of Ireland accepts no responsibility or liability in respect of the guidance provided and reserves the right to revise and review the guidance. Broadcasters should, as part of their own internal copy clearance procedures, make their own independent assessment after taking their own advice and making inquiries/research as appropriate. This document does not purport to explain considerations pertaining to this provision of the Code nor give an exhaustive list of possible applications.