

Commons says regulating political advertising would inhibit freedom of expression and democracy

LNB NEWS 09/10/2019 66

The House of Commons (HoC) has set out its reasoning for excluding political advertising from the regulatory remit of the Advertising Standards Authority (ASA). In the briefing paper, the HoC provides an overview of the functions and remit of the ASA and the current advertising regulatory system and explains that political ads are exempt due to reasons including preserving freedom of speech and protecting 'the democratic process'. The HoC also confirms that it is not in favour of establishing a separate code through which political advertising could be regulated. Tim Rickard, associate at Fieldfisher, says the report highlights the 'unsatisfactory' situation where lack of regulation allows political parties to 'publish misleading political advertisements with very little fear of reproach or restriction' and calls for a new regulator to monitor political ads.

Why is political advertising exempt?

The ASA ensures general advertising in the UK is legal, decent, honest and truthful, by enforcing its advertising codes for non-broadcast ads (the CAP code) and broadcast ads (the BCAP code).

Since October 1999, the ASA's remit does not extend to non-broadcast advertisements whose principal purpose is 'to influence voters in a local, regional, national or international elections or referendums', because such ads are exempt from the CAP and BCAP codes. Under the [Communications Act 2003](#), political advertisements cannot be broadcast on television or radio. Instead parties are given airtime via party political broadcasts which are not classified as advertising. This legislation is enforced by Ofcom.

Rickard points out that 'this was not always the case', and that prior to October 1999, non-broadcast political advertising was subject to the CAP code and therefore within the ASA's remit but 'following the 1997 General Election, there were concerns that the impartiality of the advertising self-regulatory system could be damaged by rulings for or against political parties'.

Protecting freedom of political speech

Political advertising has been under increasing scrutiny in recent years, such as the leave Brexit campaign, and the Cambridge Analytica controversy, with reports such as the Electoral Commission's [report](#) on digital political campaigning in 2018, and its [report](#) in 2004 on political advertising practices.

The Electoral Commission, however, deems it inappropriate to regulate political advertising on the grounds that it infringes freedom of speech under the [Human Rights Act 1998](#):

'The argument for a statutory code on political advertising is in our view unsustainable, both because of the protection given to free political speech in the Human Rights Act and because it would be inconsistent with, and stricter than, the regulation of other non-broadcast advertising. Any regulation of political advertising would therefore need to be voluntary. Even with a voluntary code, it would seem inappropriate and impractical to seek to control misleading or untruthful advertising, given the often subjective nature of political claims.'

Allowing democratic practices

As for the ASA, it considers regulating political ads as inappropriate as it would 'intervene in the democratic process':

'Often political ads, and the parties, issues and policies they promote, can be emotive. As political ads fall outside our remit, this naturally raises questions about how to complain about the ads we think are problematic and who is responsible for regulating them.'

'Unsatisfactory' regulation and misleading ads

The paper shows that neither the ASA, Electoral Commission, nor any other organisation sees it as their role to monitor and regulate political advertisements. This means that complaints about political bias must either be sent to Ofcom (if the ad is displayed on TV or radio) or directly to the party responsible for the advertising.

Rickard criticises this as an unsatisfactory regime as it leaves a lot of room for politically misleading messages and few options to hold the responsible parties to account:

'Clearly this is not satisfactory because it means that political parties can publish misleading political advertisements with very little fear of reproach or restriction. In a world where it can be difficult for consumers to establish whether a political advertisement is honest or misleading, it is clear that a regulator for political advertising should be established for that very purpose, as an independent body tasked with ensuring that any political advertisements are legal, decent, honest and truthful.'

Written by Samantha Gilbert.

The views expressed by our Legal Analysis interviewees are not necessarily those of the proprietor.

Source: [Political advertising](#)

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