House of Lords Library Briefing

Online Political Advertising: On a Road to Regulation?

Summary

Online political advertising has grown dramatically since 2011. In 2017, campaigners in the UK spent nearly half (43%) of their total advertising budget on online advertising, compared to less than 1% (0.35%) of their total advertising budget in 2011.

Campaigners, such as the Electoral Reform Society, have argued that there is "a near-total lack of regulation of online political advertising" and have called for legislative reform. The debate around political advertising generally falls within three categories:

- factchecking;
- microtargeting; and
- disclosure of the source of adverts.

In 2018 and 2019, both the Electoral Commission and the Digital, Culture, Media and Sport Committee investigated the increased use of digital campaigns. Their reports gave recommendations on legislative changes that could be implemented, including the possible introduction of an imprint requirement for digital adverts. This would give information such as the name of the person or the group that paid for it. They also flagged up areas that they did not believe needed changing, such as the introduction of legal requirements to factcheck claims made in political adverts.

Following allegations of widespread misuse of users' data in the UK and US elections in 2016, some social media platforms voluntarily updated their policies on political advertising. In October 2019, Twitter CEO Jack Dorsey announced that the platform would no longer allow political adverts on its site. In addition, Facebook and Google made changes to the way political advertisers could engage with voters.

In May 2019, the Government committed to implementing an imprint requirement for digital adverts. This was not introduced before the December election. The Government has since reaffirmed its commitment to extending regulations covering the identification of campaigners offline to the online sphere. It also has pledged to "launch a consultation on electoral integrity that will consider measures to […] refresh our laws for the digital age".

Sally Dray | 5 February 2020

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Introduction

In the last few years, UK political campaigners have been focusing more of their time and money online. The Electoral Commission found that campaigners spent 43% of their total advertising budget on digital adverts in 2017. In 2011, the total was 0.35%.[1] The commission has said this "raised important issues" for regulators, organisations, and the commission itself.[2]

In 2018, allegations of the misuse of individuals' data on Facebook in 2016 were documented by the *Observer*.[3] These reports led to international investigations by the UK Information Commissioner's Office (ICO) and the US Federal Trade Commission. The investigations resulted in the company being fined under data protection laws in both the UK and the US.[4]

The increased use of online political advertising, coupled with concerns about users' rights, has prompted a debate about the laws related to digital political advertising. Campaign groups, such as the Electoral Reform Society, have stated that there is "a near-total lack of regulation of online political advertising".[5] In 2018, the House of Commons Digital, Culture, Media and Sport (DCMS) Committee investigated the increased use of digital campaigning.[6] In its interim report into *Disinformation and Fake News*, the DCMS committee stated that "in this rapidly changing digital world our electoral law is no longer fit for purpose".[7]

Social media companies, such as Twitter and Facebook, have commented on their role too. Facebook has defended its platform's approach to hosting political advertisements, stating that it has based its policy on "the principle that people should be able to hear from those who wish to lead them […] and what they say should be scrutinised in public".[8] Twitter, however, banned all political advertising on Twitter globally from November 2019. The company said it believed "political message reach should be earned, not bought".[9]

The UK Government has been consulting on the introduction of a regulatory framework for online platforms as part of its online harms white paper.[10] It is also considering the introduction of imprints for online materials.[11] The House of Lords Democracy and Digital Technologies Committee has launched an inquiry into the impact of digital technologies on democracy.[12] To date, it has taken

[1] Electoral Commission, 'Report: Digital Campaigning—Increasing Transparency for Voters', 1 June 2018.

[2] ibid.

[3] Carole Cadwalladr, '"I Made Steve Bannon's Psychological Warfare Tool": Meet the Data War Whistleblower', *Observer*, 18 March 2018.

[4] Information Commissioner's Office, 'ICO Issues Maximum £500,000 Fine to Facebook for Failing to Protect Users' Personal Information', 25 October 2018; and BBC News, 'Facebook "To Be Fined $5bn Over Cambridge Analytica Scandal"', 13 July 2019.

[5] Electoral Reform Society, *Fair Elections Under Threat? The Loophole List*, October 2019, p 4.

[6] House of Commons Digital, Culture, Media and Sport Committee, *Disinformation and Fake News: Interim Report*, 29 July 2018, HC 363 of session 2017–19.

[7] ibid, p 3.

[8] Rob Leathern, 'Expanded Transparency and More Controls for Political Ads', Facebook blog, 9 January 2020.

[9] Jack Dorsey, 'Personal Twitter Account', 30 October 2019.

[10] Department for Digital, Culture, Media and Sport, 'Online Harms White Paper', 26 June 2019.

[11] Cabinet Office, 'Government Safeguards UK Elections', 5 May 2019.

[12] House of Lords Democracy and Digital Technologies Committee, 'Should Democracies Embrace or Fear Digital Technologies?', 22 July 2019.

evidence from think tanks, academics and the Advertising Standards Authority (ASA). It is due to report in March 2020.

Online Political Advertising

The debate around political advertising often centres around three main areas; factchecking, micro-targeting and the disclosure of advertisement funding. These are considered below.

Fact Checking

Since 1999, political adverts have been exempted from the rules which traditionally govern all other forms of advertising in the UK.[13] Prior to 1999, political adverts had to adhere to some of the principles contained in the Committees of Advertising Practice (CAP) code. This was enforced by the Advertising Standards Authority (ASA). These principles required the adverts to be "legal and decent", but not to be "truthful".[14]

Some campaigners, such as the Coalition for Reform in Political Advertising, have argued that "all objective factual claims used in political adverts should be substantiated".[15] However, regulatory bodies have consistently argued against introducing a truthfulness requirement for political advertising. In 2004, the Electoral Commission stated that "it would seem inappropriate and impractical to seek to control misleading or untruthful advertising, given the often subjective nature of political claims".[16] In 2018, the commission reaffirmed that it "is not in a position to monitor the truthfulness of campaign claims, online or otherwise".[17] Recently, Full Fact, an independent fact checking charity in the UK, published an article considering the content of the two main parties' advertisements on Facebook during the 2019 general election campaign.[18] It was critical of both parties. The Conservatives', it said, was "typified by exaggeration of its own policy platform, and misrepresentation of the opposition's". Likewise Labour's online ad campaign "featured multiple instances of misleading or exaggerated claims".[19]

Microtargeting

Microtargeting is defined by the ICO as a "form of online targeted advertising" that uses "personal data to identify the interests of a specific audience or individual in order to influence their actions".[20] Some journalists have noted that microtargeting is not specifically a result of online advertising but has been used in real-world canvassing for some years. A report by Sky News stated that both Labour and the Conservatives had used databases to classify voters and to target specific leaflets to their

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[13] The Committee on Standards in Public Life recommended in its 1999 report that political adverts should be removed from the CAP Code. (ASA and CAP News, 'Why We Don't Cover Political Ads', 15 August 2019).

[14] Electoral Commission, *Political Advertising—Report and Recommendations*, June 2004, p 3.

[15] Coalition for Reform in Political Advertising, 'About', accessed 18 December 2019.

[16] Electoral Commission, *Political Advertising—Report and Recommendations*, June 2004, p 4.

[17] Electoral Commission, 'Report: Digital Campaigning—Increasing Transparency for Voters', 1 June 2018.

[18] Abbas Panjwani, 'The Facts Behind Labour and Conservative Facebook Ads in this Election', Full Fact, 11 December 2019.

[19] ibid.

[20] Information Commissioner's Office, 'Microtargeting', accessed 18 December 2019.

areas in the 2015 and 2017 elections.[21]

The *Sunday Times* found the Conservative Party had used "sophisticated digital targeting" during the 2019 election.[22] The party used Facebook to target "postcodes and demographics". In addition, "images of Boris Johnson were used heavily in Leave areas where he is popular, but not in Remain areas, where ads attacked Jeremy Corbyn instead".[23] The *New Statesman* commented that the Conservative's spending of over £200,000 on YouTube advertisements indicated that the party was moving away from microtargeting to return to "traditional, brute force advertising".[24] It noted the party bought two banner adverts that sat at the top of the YouTube homepage. These were viewable by anyone visiting the page during that time.[25]

The Electoral Reform Society argues using this kind of targeting in political campaigning means that "different voters can be targeted with conflicting information without the sender facing any scrutiny".[26] However, research from the Electoral Commission found "targeted messages from campaigners could be helpful if it meant they got information that was more relevant and interesting to them".[27]

Disclosure of Funding

Under the Representation of the People Act 1983, printed election materials must contain an 'imprint'. An imprint details the name and address of the printer, the promoter and any person on behalf of whom the material is being published.[28]

There is no similar requirement for online political adverts to contain the same information, although the Electoral Commission recommends that campaigners do so.[29] In 2018, the Electoral Commission recommended extending the imprint requirement to cover digital election materials.[30]

Similarly, in February 2019, the DCMS committee called for "enforcement of greater transparency in the digital sphere, to ensure that we know the source of what we are reading, who has paid for it and why the information has been sent to us".[31] This was also supported by several groups such as the Electoral Reform Society,[32] the Coalition for Reform in Political Advertising,[33] and the Institute of

[21] Rowland Manthorpe, 'Data Protection Experts Want Watchdog to Investigate Conservative and Labour Parties',
Sky News, 26 October 2019.

[22] Mark Bridge and Billy Kenber, 'Election 2019 Result: How Social Media Gave Labour False Hope', *Sunday Times* (£),
14 December 2019.

[23] ibid.

[24] Chris Stokel-Walker, 'The Tories are Spending Big on YouTube Ads. Here's Why', *New Statesman*, 9 December 2019.

[25] ibid.

[26] Jessica Garland, 'Reining in the Political "Wild West": Why We Need Campaign Rules for the 21st Century', Electoral
Reform Society, 4 February 2019.

[27] Electoral Commission, 'Report: Digital Campaigning—Increasing Transparency for Voters', 1 June 2018.

[28] Electoral Commission, *Factsheet For Candidates: Election Material and Imprints—Great Britain*, May 2016, p 2.

[29] ibid.

[30] Electoral Commission, 'Report: Digital Campaigning—Increasing Transparency for Voters', 1 June 2018, p 3.

[31] House of Commons Digital, Culture, Media and Sport Committee, *Disinformation and Fake News: Final Report*,
18 February 2019, HC 1791 of session 2017–19, p 5.

[32] Electoral Reform Society, 'Imprints—Finally Some Action to Update Our Analogue Laws for the Digital Age',
7 May 2019.

Practitioners in Advertising (IPA).[34]

Most social media companies have their own regulations for disclosure of advertisers on their platforms.[35] However, there is no regulator to enforce these rules. For example, in the 2019 UK election, Google ran two advertisements on its search engine without disclosing who they were funded by. The first advert was paid for by the Conservatives and directed users to labourmanifesto.co.uk, which attacked the Labour party for the contents of its manifesto. The second advert was paid for by Labour, and directed users to read their manifesto at labour.org.uk. [36]

In 2018, Facebook and Google announced they would introduce advert library databases. These online databases give approximate information on all adverts run by a particular party or campaign group, such as how much was spent on an advert, how many people saw it and what the content of the advert was, even if the advert was not targeted to that user.[37]

The databases are intended to be searched by the general public, as well as academics and journalists. However, the Facebook advert library has been criticised as being "effectively useless" by the *New York Times*. Its researchers found the database was "plagued by bugs and technical constraints".[38] During the 2019 general election campaign, it was reported that Facebook's ad library was not showing "huge numbers of ads" two days before election day. [39] These adverts were restored the next day.

Government Policy

Online Harms White Paper

On 8 April 2019, the Government launched a consultation on its online harms white paper. The paper considered a wide range of measures to "keep UK users safe online". These included:

- the establishment of a new regulatory framework;
- a new independent body to oversee and enforce the framework; and
- the development of an online media literacy strategy.[40]

The white paper covered a number of different areas of online harm, including the rise of terrorism, the impact of screen time and cyberbullying.

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[33] The Coalition for Reform in Political Advertising, 'About', accessed 18 December 2019.

[34] Institute of Practitioners in Advertising, 'IPA Reacts to DCMS Report on Disinformation and Fake News', 19 February 2019.

[35] See table 1 for a summary of these.

[36] Rowland Manthorpe, 'General Election: Google Breaks its Political Advertising Rules for Second Time', Sky News, 4 December 2019.

[37] Facebook, 'Ad Library', accessed 5 January 2020; and Google, 'Political Advertising on Google', accessed 5 January 2020.

[38] Matthew Rosenberg, 'Ad Tool Facebook Built to Fight Disinformation Doesn't Work as Advertised', *New York Times*, 25 July 2019.

[39] Rowland Manthorpe, 'Researchers Fear "Catastrophe" as Political Ads "Disappear" from Facebook Library', Sky News, 11 December 2019.

[40] HM Government, *Online Harms White Paper*, April 2019, CP 57.

The paper also considered the effects that digital technology could have on democracy. In this area, the Government outlined that it would expect the new framework to include:

- the use of fact-checking services, particularly during election periods; and
- improvements in the transparency of political advertising.[41]

The consultation on the white paper closed on 1 July 2019. In the December 2019 Queen's Speech, the Government stated that "it will continue work to develop legislation" in this area.[42]

Digital Imprints

The Government first made a commitment to introducing a digital imprints regime on 5 May 2019.[43] This commitment was part of a series made in response to its consultation, *Protecting the Debate: Intimidation, Influence and Information*. The consultation covered issues such as voter intimidation and foreign influence in elections, in addition to digital political advertising.[44]

In October 2019, some parliamentarians expressed disappointment that an imprint policy had not been implemented in advance of the 2019 general election. In a debate on the Early Parliamentary General Election Bill on 30 October 2019, Lord Puttnam (Labour) said "the sense of Government inaction is incredibly worrying" on the issue of legislating for imprints on digital adverts.[45] The Deputy Leader of the House of Lords, Earl Howe, responded that the Government was "committed to increasing transparency in digital campaigning".[46]

On 5 November 2019, the Paymaster General and Minister for the Cabinet Office, Oliver Dowden, made a statement to the House of Commons about the delay in implementing an imprint regime. Mr Dowden said "it was not possible to legislate for and implement a regime in advance of a December [general] election". He explained that "rushing into a new regime—that could have proved unworkable—could have led to significant issues".[47]

Following the general election, Chloe Smith, the Minister for the Constitution, reaffirmed the Government's commitment to introducing a digital imprint requirement. She stated that the Government was "seeking to extend to the online sphere the regulations covering identification of campaigners offline".[48] The Government's briefing on the Queen's Speech said it would "launch a consultation on electoral integrity that will consider measures to […] refresh our laws for the digital age".[49] In answer to a question in the House of Commons on 22 January 2020, Chloe Smith elaborated on the Government's regulatory approach to political advertising:

We do not assess or regulate political arguments, which can be rebutted as part of normal

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[41] HM Government, *Online Harms White Paper*, April 2019, CP 57, p 71.

[42] Prime Minister's Office, *Queen's Speech December 2019: Background Briefing Notes*, 19 December 2019, p 58.

[43] Cabinet Office, 'Government Safeguards UK Elections', 5 May 2019.

[44] Cabinet Office, 'Protecting the Debate: Intimidation, Influence and Information', 29 July 2018.

[45] HL *Hansard*, 30 October 2019, col 970.

[46] ibid, col 993.

[47] House of Commons, 'Written Statement: Update on Tackling Intimidation in Public Life', 5 November 2019, HCWS100

[48] HC *Hansard*, 19 December 2019, col 139.

[49] Prime Minister's Office, *Queen's Speech December 2019: Background Briefing Notes*, 19 December 2019, p 126.

debate. In a free democracy it is for voters to decide on the value of those political arguments, but we think that our regulation should empower voters to do so and be modernised. That is why we are taking forward the digital imprints regime.[50]

Facebook, Twitter and Google Policy

Although there is currently no legal requirement to do so, Facebook, Twitter and Google have all voluntarily updated their policies on political advertising in the last year. From November 2019, Twitter banned all political advertising on its platform, although it still allows so-called 'issue advertising', which are adverts intended to influence a user on a particular issue, such as climate change.[51] In addition, Google and Facebook clarified or updated their policies regarding fact-checking and microtargeting.

A summary of the platforms' policies can be found in table 1.

Table 1: Summary of Facebook, Twitter and Google's political advertising policy

	Facebook[52]	**Twitter**	**Google[53]**
Political adverts	Allows	Prohibited as of 22 November 2019[54]	Allows
Advert library	Facebook Ad Library	Ads Transparency Center[55]	Google Transparency Report
Targeting	Allows microtargeting of adverts	Issue adverts can be targeted but this is limited to "geo location, keyword and interest targeting"[56]	Adverts can be targeted based on age, gender or general location
Fact checking	Does not fact check candidates' or political parties' adverts Does fact check third-party advertising content	Does not fact check advertisements	Does not allow advertisers to "make a demonstrably false claim" or use "doctored or manipulated media"[57]
Imprints	Disclaimers show who paid for the advert	Marks advertisements as promoted[58]	Disclaimers show who paid for the advert

[50] HC *Hansard*, 22 January 2020, col 287.

[51] Jack Dorsey, 'Personal Twitter Account', 30 October 2019.

[52] Facebook, 'Ads About Social Issues, Elections or Politics', accessed 9 December 2019.

[53] Google, 'Election Ads', accessed 18 December 2019.

[54] Twitter, 'Political Content', accessed 9 December 2019.

[55] Twitter, 'Ads Transparency Center', accessed 9 December 2019.

[56] Twitter, 'Cause-based Advertising', accessed 9 December 2019.

[57] Scott Spencer, 'An Update on Our Political Ads Policy', Google, 20 November 2019.

[58] Twitter for Business, 'How Twitter Ads Work', accessed 18 December 2019.