

# Don't let them lie: how we can start holding political advertising to account

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*Politicians have always lied, writes **Alex Parsons**, and claims we have entered an era of 'post-truth politics' are themselves misleading. Nonetheless, efforts to hold political advertising to account in Britain have failed because of the lack of party consensus on the issue. While commercial advertising can be banned by the Advertising Standards Authority, it has avoided ruling on political advertisements since the controversy surrounding the Tony Blair 'Demon Eyes' poster in the 1990s. But with growing disquiet over some of the claims made during the referendum campaign, the South Australia Electoral Commission offers a possible model for regulating political advertising.*



Claims that we have entered a new era of “post-truth” politics are themselves misleading. It’s six years since Phil Woolas became the first MP in a century to be barred from Parliament [for lying to the electorate](#). It’s [illegal](#) to make false statements about a “candidate’s personal character” and – while courts have adopted a restricted interpretation of what “personal character” is – this means lying in elections can sometimes have quite severe consequences.

That we have this law at all (with its rather Victorian concern about character and honour) is a reminder that political misinformation is far from new. When the Representation of the People Act was first debated in 1895, MPs took the chance to list the libels that had been told about them in elections. [This included](#) underpaying labourers, being an atheist, murder, advocating horse-racing, and being “a pirate who had sunk English ships and marooned their crews”. So while it’s tempting to view the last year as a collapse of a previous civilised norm, we’ve had “post-truth politics” as long as we’ve had politics.

This is not to say we can do nothing about it. On the contrary: since there are obvious incentives to lie and dissemble in elections, we should create structures that constrain those instincts. Commercial advertising is a lot better than it might otherwise be because we take the view that consumers need protection and there are some standards of truth we enforce. We create organisations like the ASA and Ofcom to make judgements on what is and isn’t acceptable, and remove the least-defendable claims from the marketplace. But when we turn to political advertising we have none of that. While British democracy increasingly treats citizens as consumers, we do not give

those citizens proper consumer protection in elections. The ASA did once police the same “personal character” line as the courts, but [after being hit by a series of demands](#) to judge political campaigns in the 1990s they got out of the game altogether until there could be a consensus on how political claims should be judged.

This consensus never arrived. When the Electoral Commission held a consultation on what should be done next, the Labour party didn't reply and the Conservatives bluntly said that any system of self-regulation wouldn't be viable without their participation – and hence the idea was “[not workable](#)”. This was stated on the page before the Commission's own conclusion. It was effectively the end of the matter.

In effect, the parties are colluding to hide their claims from the same scrutiny that applies to every other industry. This shouldn't be accepted.

We can look abroad for models of how to fix this. In South Australia the Electoral Commission (ECSA) is [legally empowered](#) to handle complaints about misleading political advertising. (It's worth mentioning that the ECSA hates doing this and constantly complains that it might be seen to undermine their neutral role.)

New Zealand takes a different approach. Here the local ASA can and does judge political adverts and remove them from circulation. Political advertising is treated differently from commercial advertising. Complaints are interpreted through [advocacy principles](#) that give greater leeway to reflect that freedom of expression is vital in elections – but also that facts are facts and there are lines to be drawn.

This seems a more viable model for the UK, as it makes more sense to expand the purview of an existing claim-checking organisation than to add it to another organisation. The Committee on Advertising Practice noted in their submission to the Electoral Commission that “[all advertising involves subjectivity and \[...\] political advertising is not a special case in this regard](#)”, and the ASA does occasionally judge advertisements about political petitions. Existing expertise and commercial acceptance of the system should smooth over questions of legitimacy.

As a result of the ASA's work in commercial advertising, the public have a learned understanding of the ways more dubious facts are presented. A claim that would have to be marked with an asterisk and suspicious small-print by an airline can currently be stated without any caveats by a political advertiser.

As an example, one Vote Leave poster stated: “Let's give our NHS the £350 million the EU takes every week”.

This is a wilful distortion of fact. It would have been shut down as a commercial claim.

On the other hand, “We should spend more on the NHS” is a perfectly defensible piece of political opinion. The New Zealand experience has demonstrated that parties [can quickly get the hang of “technically correct” claims](#). There's no magic bullet to create an environment of truth – but we can excise clearly misleading information and push political advertising towards the kind of regulator-compliant misinformation that consumers learn how to read.

The NZ ASA shows that regulation without legislation is possible if the culture supports it and no one complains about it. This seems unlikely in the UK, and a similar regime operating in Australia stopped when it became clear that there was no political consensus its role should continue.

While the UK High Court has backed legally restricting speech to ensure free elections (quote: “[Article 10 does not protect a right to publish statements which the publisher knows to be false](#)”), this seems unlikely to extend beyond legal restrictions. As the ASA's decisions are subject to judicial review, it is not possible for the ASA to simply decide to make judgements against false statements unrelated to personal character. Legislation would be required.

This legislation could be comparatively weak compared to existing rules on personal character or South Australia's rules (both of which can invalidate election results). Simply extending the power to grant injunctions for misleading political advertisements while deferring to “established means” of enforcement should be sufficient to empower the ASA without creating new avenues for legal disruption of elections.

This route is also sadly more achievable than a code of conduct between parties. Self-regulation would need everyone to be on board; legislation only needs 50%.

One problem is that this approach works far better for elections than referendums – where campaigns are deliberately short-term and have no long-term interests to defend. Here we need to experiment with carrots rather than sticks. Designated campaigns in UK referendums receive a number of generous gifts from the taxpayer in terms of funding and airtime. These gifts could be made [conditional on prompt compliance with rulings by the ASA](#). We shouldn't be giving people money without guarantees they won't turn round and use it to lie to us.

None of this would be revolutionary enough to ensure “truth” in politics. But it would be better, and “slightly better politics” is always a worthwhile (and usually achievable) goal.

*This post represents the views of the author and not those of Democratic Audit.*

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