

Office of the Commissioner for Standards in Public Life
11, St Paul Street, Valletta VLT 1210, Malta

www.standardscommissioner.com
office@standardscommissioner.com
+356 27 269 593

Draft Guidelines on Government Advertising and Promotional Material

1 Introduction

Purpose of these guidelines

- 1.1 These draft guidelines have been drawn up by the Commissioner for Standards in Public Life (“the Commissioner”) for the guidance of ministers with a view to avoiding situations which may lead to the inappropriate use of public funds in the production and publication of advertising and promotional material by or for the government.
- 1.2 These guidelines have been issued in draft form by the Commissioner for consultation purposes. Reactions are invited by not later than Friday 23 July 2021. It is the Commissioner’s intention to adopt the guidelines after this date, at which point the guidelines will be reissued with any amendments that are considered necessary in the light of any feedback he may receive. Official guidelines will then be published on the Commissioner’s website.
- 1.3 Feedback on these guidelines is welcome and may be sent by email to office@standardscommissioner.com or by post to the Commissioner for Standards in Public Life, 11, St Paul Street, Valletta VLT 1210, up to 23 July 2021.

Relationship between these guidelines and the ministerial code of ethics

- 1.4 These guidelines do not set out new rules. They indicate how the Commissioner will interpret the Code of Ethics for Ministers and Parliamentary Secretaries, which constitutes the second schedule of the Standards in Public Life Act (“the Act”), in connection with government advertising and promotional material. The guidelines are intended to establish predictability in this area especially since there are no precedents to follow, given that the Code was not meaningfully enforced prior to October 2018 when the Act was brought into force.
- 1.5 Specifically, these guidelines concern the application of articles 4.9, 4.10, 5.3, 5.6, 5.7 and 7.4 of the Code to government advertising and promotional material. The articles in question state as follows:

4.9 Ministers shall keep their roles as Ministers and as Representatives separate, as well as their role as a member of a political party.

4.10 Ministers shall respect the principle of political impartiality of the public service.

5.3 Diligence – once Ministers administer public property, on behalf of the public in general, they shall exercise the highest level of diligence including in the expenditure of public funds, and they shall also work diligently and hard in the performance of their duties.

5.6 Transparency – Ministers shall as much as possible perform their duties in an open and transparent manner, and therefore give reasons for their decisions and actions.

5.7 Honesty – Ministers shall avoid entering into conflicts of interest between the public interest and their private interest and shall provide complete and correct information to Parliament, to the Cabinet and the public in general.

7.4 Ministers shall respect the impartiality of the public service and shall ensure that their influence on the public service is not abused. [...]

- 1.6 These guidelines do not cover all situations that might possibly arise, and the absence of guidelines on any matter does not exonerate ministers from their obligation to observe the Code in all circumstances. The Commissioner will continue to consider alleged breaches of ethics that are not covered by these guidelines with direct reference to the Code and the Standards in Public Life Act.

Interpretation of the term “minister”

- 1.7 In these guidelines, the term “minister” includes the Prime Minister, ministers and parliamentary secretaries.

General principles

- 1.8 It is acknowledged that the government has a wide discretion in the use of public funds to fulfil its duty to communicate with the public, in order to serve purposes such as the following:

- to provide information about matters of public interest;
- to encourage take-up of a particular public service;
- to contribute to public safety or encourage responsible behaviour;
- to promote the awareness of rights or entitlements; and
- to contribute to economic growth, for instance by promoting investment or tourism.

- 1.9 Government advertising and promotional material should legitimately only be used to serve public purposes such as these.

- 1.10 In addition, government advertising may be used to indirectly support the media in a fair and transparent manner, in recognition of its vital role in a democratic society.
- 1.11 Whilst it should not be the purpose of government advertising, it is also acknowledged that the party in government in general and ministers in particular may derive an indirect benefit from government advertisements and promotional material that also serve legitimate public purposes. However, there is a line that should not be crossed. These guidelines seek to define that line, that is to say, the principle that government advertisements and promotional material should not be produced to serve private or partisan political purposes.

2 Communications to which these guidelines apply

Government advertising

- 2.1 In these guidelines, “government advertising” means the publication of communications –
- (a) against direct or indirect payment by a ministry or a government department, agency, entity or other body for which a minister is responsible; and
 - (b) in any medium including printed matter, broadcasting by means of wireless telegraphy or wire or both, and electronic media.
- 2.2 *Inter alia*, government advertising may include:
- (a) inserts and supplements in publications in print and online;
 - (b) billboards;
 - (c) boosted or sponsored posts on social media;
 - (d) advertorials, that is to say articles or opinion pieces that include more content than a normal advertisement but are still placed against payment; and
 - (e) sponsored interviews, features, and TV/radio/podcast spots and broadcast programmes in which the sponsor determines the interview questions or programme content.
- 2.3 Communications that are normally published against payment, but which are not on any particular occasion, are still covered by these guidelines. These may include opinion pieces, features or video clips that are ostensibly carried without charge by media houses but are in fact part of a paid package.

Government promotional material

- 2.4 In these guidelines, “government promotional material” means any material that:
- (a) is intended to promote a particular cause, initiative, entity, or brand; and
 - (b) is produced against direct or indirect payment by a ministry or a government department, agency, entity or other body for which a minister is responsible.
- 2.5 *Inter alia*, government promotional material may consist of the following:
- (a) leaflets, brochures, flyers, and other stand-alone publications that are intended for distribution by post at no cost to the recipient;
 - (b) calendars, diaries, stationery, and other items intended for distribution for promotional purposes;
 - (c) items intended to be given as gifts, such as food hampers, and accompanying material such as cards or compliment slips;
 - (d) greeting cards, e.g. Christmas, birthday and Mother’s Day cards;
 - (e) bulk emails and bulk text messaging;
 - (f) videos, graphics, documents and audio clips that are produced for circulation to the public by electronic means; and
 - (g) videos, graphics, posters and other material that is produced for presentation or display in particular venues.

Exclusions

- 2.6 The following are not considered to be government advertising or promotional material for the purpose of these guidelines:
- (a) posts on official social media sites, given that such posts are covered by separate guidelines¹ (however, the present guidelines still apply to sponsored or boosted social media posts and to videos, graphics, documents and audio clips that are circulated by means of social media posts); and
 - (b) press releases and official statements.
- 2.7 The exclusion of these items does not mean that they are not subject to ethical standards. Ministers overseeing the dissemination of content by these means are still required to adhere to the relevant provisions of the Code.

¹ <https://standardscommissioner.com/wp-content/uploads/Commissioner-for-Standards-case-report-K010.pdf>, p. 18.

3 Rules applying to government advertising and promotional material

Content should be respectful

- 3.1 Government advertisements and promotional material should not include statements that are disrespectful towards third parties or overly contentious.

Content should be factual

- 3.2 Government advertisements and promotional material should not include statements that are untrue.

Content should be non-partisan

- 3.3 Government advertisements and promotional material should not include any content that is of a partisan nature.
- 3.4 In particular, government advertisements and promotional material should not:
- (a) refer to a political party;
 - (b) include images or slogans used by a political party or individual politicians;
or
 - (c) make reference to the websites of politicians or political parties, or to partisan social media pages.

Restriction on the use of the names and photographs of ministers

- 3.5 Government advertisements, as distinct from promotional material, should not include the names or photographs of ministers.
- 3.6 Government promotional material should not include the names or photographs of ministers, except as indicated in paragraph 3.7 in the case of:
- (a) leaflets, brochures, flyers and other documents; and
 - (b) videos and audio clips.
- 3.7 A publication of the kind mentioned in paragraph 3.6(a) or 3.6(b) may include content referring to ministers, provided that –
- (a) such content is relevant to the publication and contributes to the achievement of its legitimate objectives;
 - (b) such content is limited in relation to the rest of the content in the same publication, so as to avoid giving reasonable grounds for belief that the true aim of the publication is to promote the minister; and

- (c) the publication is not circulated or broadcast against payment, or by means that would normally require payment, such that it would qualify as an advertisement for the purposes of these guidelines.

Proportionality

- 3.8 The use of government advertisements and promotional material should not be excessive or extravagant in relation to the intended objective.
- 3.9 The message communicated by a government advertisement should be of sufficient relevance to justify the public funds spent on it.

Transparency

- 3.10 Government advertisements and promotional material should carry official logos or otherwise make it clear that they have been produced by or for the government. This applies in particular to advertorials and sponsored interviews or programmes and any paid content. The public should be made aware that such articles have been paid for with public funds. Government-sponsored publications should carry a declaration to that effect.

Distribution of advertisements

- 3.11 Ministers should direct public funding to the media for advertising purposes on the basis of fair and objective criteria.

4 Negative clearance

- 4.1 Ministers may seek a decision by the Commissioner under article 13(1)(c) of the Standards in Public Life Act as to whether or not any advertisement or promotional material that is intended by them would be in keeping with these guidelines.
- 4.2 The Commissioner will be bound to respond within two working days from such a request. The Commissioner will follow up a negative decision with a statement of his reasons within ten working days from the date of the decision.