

Ofcom Broadcast and On Demand Bulletin

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To The Point

Type of case Broadcast Standards

Outcome In Breach

Service GB News Radio

Date & time 2 March 2022, 10:42

Category Elections & referendums

Summary During a discussion about the Erdington by-election on *To The Point* on GB News Radio, a list of all candidates standing was not given. In breach of Rule 6.10 of the Broadcasting Code.

Introduction

GB News Radio is a radio service featuring a simulcast of the content broadcast on the television channel GB News. The licence for GB News Radio is held by GB News Limited (“GB News Ltd” or “the Licensee”).

To The Point is a current affairs discussion programme broadcast on GB News and simulcast on GB News Radio between 10:00 and 12:00 on weekdays.

Ofcom received a complaint that a discussion about the Erdington by-election broadcast on GB News Radio on 2 March 2022 was focused on one particular party and did not provide notification of all parties and candidates standing in the by-election, as required by Ofcom’s Broadcasting Code (“the Code”).

The Content

The presenters introduced an item in which a GB News reporter had visited Erdington to “*gauge the public mood ahead of polling day*”. The report included: a discussion about issues facing voters in Erdington; clips of Erdington constituents discussing which party they intended to vote for; and, an overview of the constituency’s election history. The report also included clips from Labour candidate Paulette Hamilton, Conservative candidate Robert Alden and Liberal Democrat candidate Lee Dargue discussing their campaigns.

After the report, a presenter said:

“...there are by-election laws here. It’s important. We need to show all of those candidates who are standing in this election, and I wonder if we can show that on our screens now. So, for those of you listening on the radio, the candidates include Robert Alden for the Conservative Party - oh no, it’s gone¹ - check out this on social media if you’re listening on the radio. There are lots of candidates. Actually, some really interesting candidates, lots of smaller parties standing as well. Of course, The Monster Raving Loony Party, Trade Unionist and Socialist Coalition, the Christian Peoples Alliance. All sorts”.

The rules in Section Six of the Code apply to programmes broadcast during the designated period (known as the “election period”) running up to the date of the elections in the UK. Section Six of the Code under the heading ‘Meaning of “election”’ makes clear that, for the purpose of this section, “elections include a...parliamentary by-election...”. *To The Point* was broadcast on 2 March 2022, which was during the election period for the Erdington by-election in 2022. The election period began with the issuing of a writ on 31 January 2022, following the death of the Labour MP Jack Dromey on 7 January 2022, and ended with the close of the poll on 3 March 2022.

Ofcom considered that this discussion on the Erdington by-election constituted a constituency report or discussion in relation to a parliamentary by-election and therefore engaged Rules 6.8 to 6.12 of the Code. In particular, we considered this content raised potential issues under the following rule of the Code:

Rule 6.10: “Any constituency or electoral area report or discussion after the close of nominations must include a list of all candidates standing, giving first names, surnames and the name of the party they represent or, if they are standing independently, the fact that they are an independent candidate. This must be conveyed in sound and/or vision. Where a constituency report on a radio service is repeated on several occasions in the same day, the full list need only be broadcast on one occasion. If, in subsequent repeats on that day, the constituency report does not give the full list of candidates, the audience should be directed to an appropriate website or other information source listing all candidates and giving the information set out above”.

Ofcom requested comments from the Licensee on how the programme complied with this rule.

Response

GB News Ltd said that it was aware of the requirement to provide the audience with the full list of candidates and had done so on its television service “on screen in graphic form”. It said that, in this instance on GB News Radio, the presenters “were in the process of reading out the names for radio

¹ In the broadcast of *To The Point* on the GB News television channel, the list of candidates standing in the by-election was displayed in a series of graphics. The presenter read out one candidate’s name before saying “it’s gone” in reference to the graphics displayed on the television channel being removed from view.

listeners but did not complete that process. However, our presenters did say to ‘check out the list on social media’”.

The Licensee said that other broadcasts on the same day about the by-election did not include a full read out of the names of candidates, but that listeners to the radio service were advised that the full list was available on social media.

The Licensee said that this was “clearly an oversight on our part” and that the requirement to “deliver the list of candidates verbally for the new radio audience, as well as in vision for TV viewers was overlooked at the moment of broadcast”. It said that this was “the first election of any sort that we had covered since beginning the audio simulcasting of GB News a few weeks earlier”.

GB News Ltd provided screenshots to demonstrate how it had provided the list of candidates on its social media feed and said that it had issued “further detailed guidance to staff about the importance of presenting the list of candidates verbally as well as visually”.

GB News Ltd said that, in light of the circumstances of this particular case, specifically that this was the first time the Licensee had covered an election since the simulcasting of GB News on radio began, it asked that Ofcom regard the case as “resolved” rather than “in breach” of the Code.

Ofcom prepared a Preliminary View finding GB News Ltd in breach of Rule 6.10 of the Code and provided it to the Licensee for its comments. In response, GB News Ltd reiterated its opinion that the outcome of the investigation should be “resolved” rather than “in breach”.

The Licensee stated that “resolved” outcomes appeared to be used “fairly regularly” in Ofcom investigations into “some less serious or marginal cases”. The Licensee said that Ofcom had not published criteria or guidance for “resolved” findings, nor is there reference to “resolved” outcomes in the Communications Act 2003 or Ofcom’s published [procedures for investigating breaches of content standards for television and radio](#).

The Licensee identified factors that it said seemed to apply in previous cases with “resolved” outcomes. It considered that the same factors applied in this case and therefore that the outcome of Ofcom’s investigation should be a “resolved” finding. It also considered that the circumstances of this investigation suggested “a stronger element of mitigation” than in some previous “resolved” cases because:

- there was no deliberate intent to breach the Code and, to the contrary, the presenters had been “doing their best to achieve compliance”;
- the possible breach was accidental and the result of a “technical/production slip”, without which the candidates’ names would have been read out on air;
- the harm to the audience was minimal and it would be “hard to argue that any harm was not purely theoretical and in practice non-existent”;
- the Licensee acknowledged the error and took “immediate steps” to ensure it would not happen again through the issuing of a “detailed advisory note” to staff about the matter (a copy of which was provided by the Licensee to Ofcom);

- the Licensee takes its compliance very seriously, with all staff receiving an hour-long training session on the Broadcasting Code in their first week of employment and additional specialist sessions on an ad-hoc basis as issues arise; and
- the Licensee has an unblemished compliance record.

The Licensee again reiterated that the programme was broadcast in the first few weeks after the simulcast of GB News Radio had begun.

The Licensee acknowledged that the decision between “resolved” and “in breach” “may be a fine one” but said that it believed it was clear that it was “fair and reasonable” for the outcome of this investigation to be “resolved”.

Decision

Reflecting our duties under the [Communications Act 2003](#) and the [Representation of the People Act 1983](#) (as amended) (“the RPA”), Section Six of the Code reflects the special requirements relating to broadcasters covering elections.

Specifically, under section 93 of the RPA, Ofcom is required to adopt a code of practice with respect to the participation of candidates at a parliamentary or local government election in broadcast items about the constituency or electoral area in question. Therefore, Ofcom is required to put in place rules which broadcasters must comply with when they broadcast items featuring candidates, for example, discussing or raising issues about the constituencies or electoral areas they are contesting. Ofcom’s code of practice is set out in Rules 6.8 to 6.12 of the Code.

Ofcom’s [Guidance on Section Six of the Code \(“Guidance”\)](#) states that there is no obligation on broadcasters to provide any election coverage. However, if broadcasters choose to cover election campaigns, they must comply with the rules in Section Six of the Code. The constituency and electoral area reporting requirements in Rules 6.8 to 6.12 apply specifically to the broadcast of a particular constituency and electoral area report or discussion during an election period.

Ofcom’s Guidance also makes clear that “if a broadcaster transmits a report or discussion featuring candidates standing in a constituency or electoral area, this may qualify as a ‘constituency report or discussion’”, and that a constituency report or discussion may take the form of a “segment; report; or interview, which raises or covers issues about a candidate’s electoral area, or raises the profile of the candidate in connection with his/her electoral area”.

Ofcom considered that this report featured in *To The Point* met the definition of a constituency report and discussion, as it was specifically focused on the upcoming Erdington by-election and featured clips of three of the candidates standing discussing their candidacy and issues affecting the constituency. As such, these candidates were given the opportunity to appeal to voters and promote their campaign by emphasising their position on certain issues.

Rule 6.10 requires that, when a constituency or electoral area report or discussion is broadcast after the close of nominations, a list of all candidates standing must also be included within the broadcast, giving first names, surnames and the name of the party they represent or, if they are standing independently, the fact that they are an independent candidate. In this case, the close of nominations was 8 February 2022, and therefore in order to comply with Rule 6.10 of the Code it was necessary for

To The Point broadcast on 2 March 2022 to include a list of all candidates standing in the Erdington by-election taking place on 3 March 2022.

We took into account the Licensee's representation that the list of candidates was broadcast visually on the simulcast of this content on the GB News television channel. However, we did not consider that the broadcast of the necessary information on the GB News television service mitigated the fact that the information was not provided to the audience of GB News Radio, given that listeners to the GB News Radio service were unlikely to have been watching the GB News television service at the same time. We also took into account the Licensee's representation that the presenters told listeners to "*check out the list on social media*". However, while this indicated that there were other candidates standing, we did not consider that the publication of a list of candidates on social media was sufficient to meet the requirements of Rule 6.10.

Rule 6.10 states that, for constituency reports repeated throughout the same day on radio services, the full list of candidates need only be broadcast once, and subsequent repeats may instead direct audiences to an appropriate website or other information source rather than listing all candidates. We therefore considered whether the constituency report had been broadcast earlier on the same day with the full list of candidates standing. In the Licensee's representations, it said that other broadcasts on the same day about the by-election did not include a full read out of the names of candidates, but that listeners to the radio service were advised that this was available on social media. Therefore, Ofcom considered the report was not a repeat of an earlier broadcast that had included a full list of candidates standing.

Therefore, in Ofcom's view, this was a breach of the special requirements relating to election rules set out in Section Six of the Code.

We acknowledged the Licensee's representations that it was the first election it had covered since GB News Radio had started broadcasting as a simulcast of GB News. We took into account the steps the Licensee said it had taken following this incident, specifically the issuing of guidance to its staff about the importance of presenting lists of candidates verbally as well as visually. We also had regard to the Licensee's representations on Ofcom's Preliminary View, including a note that it said it had issued to its staff about compliance during candidate reports in simulcast content.

Ofcom acknowledged GB News Ltd's representations that criteria for "resolved" findings do not feature in the Communications Act 2003 or in Ofcom's published procedures for investigating breaches of content standards for television and radio. Ofcom took into account the Licensee's analysis of previous cases in which we had reached "resolved" findings and its view that Ofcom should find this case to be "resolved".

Ofcom's decision that a breach of the Code is resolved depends on the specific circumstances of a case – there is not an exhaustive list of criteria which determine that outcome. In this particular case, Ofcom took into account that, while the Licensee had taken steps to prevent this issue recurring in the future, these steps did not alter the potential impact of the content broadcast in terms of audience awareness of candidates standing in the Erdington by-election taking place the following day and therefore did not contribute towards the mitigation of any potential due impartiality issues raised by the broadcast.

Section Six of the Code sets out the special impartiality requirements applying to broadcasts covering elections during election periods, and Ofcom considers any breach arising from election-related programming to be significant. Rule 6.10 is a requirement in the interests of fairness to all relevant candidates to ensure that audiences, including any potential voters, are made fully aware of all candidates standing in a particular constituency. In its consideration of the Licensee’s representations, Ofcom acknowledged that GB News Ltd said it believed that “minimal harm” was caused to its audience, but did not consider that this was relevant to this case and the Licensee’s compliance with special impartiality requirements in constituency reports during an election period. In all the circumstances, Ofcom did not consider it appropriate to record the breach of Rule 6.10 in this case as resolved.

Breach of Rule 6.10