

Gavin Marshall Show

Type of case Broadcast Standards

Decision In Breach

Service DevonAir Gold

Date & time 6 January 2023, 10:00

Category Elections and Referendums

Summary A community radio station broadcast a programme presented by a candidate during the election period for a local authority by-election. In breach of Rule 6.6 of the Broadcasting Code.

Introduction

DevonAir Gold is a community radio station broadcasting in Exmouth, Devon. The licence for DevonAir Gold is held by East Devon Radio Ltd (“East Devon Radio” or “the Licensee”). The *Gavin Marshall Show*, a programme consisting mainly of music with links by the presenter Gavin Marshall, was broadcast daily for two hours from 10am. There was a news bulletin halfway through the programme, which was read by a different presenter.

Ofcom received a complaint from a listener who raised concerns that this radio station broadcast a programme presented by a candidate standing in a local authority by-election for Plymouth City Council in Devon, during the election period for that by-election.

The election period for this local authority by-election started when the Notice of Election was published on 2 December 2022, and ended when the Poll closed on 12 January 2023. Gavin Marshall was confirmed as a candidate standing nominated on 13 December 2022 when the statement as to persons nominated was published. As this programme was broadcast on 6 January 2023, it therefore fell within the election period.

We considered the programme raised a potential issue under the following rule of the Code:

Rule 6.6: “Candidates in UK elections, and representatives of permitted participants in UK referendums, must not act as news presenters,

interviewers or presenters of any type of programme during this election period”.

Response

East Devon Radio confirmed that the presenter of the programme ran as an independent candidate in the local authority by-election for Plymouth City Council on 12 January 2023.

The Licensee added that the local authority in question was located “on the Devon/Cornwall border, some significant distance from the DevonAir Gold broadcast area...over 40 miles away”. It emphasised that “nobody in the ward in Plymouth could hear the presenter on a licensed transmitted radio signal”.

It explained that the presenter and the programme controller had both been aware that a presenter standing as a candidate in an election within the broadcast area of the service would not be permitted to broadcast. However, East Devon Radio had not appreciated that a candidate “was unable to act as a presenter in any part of the UK while in an election period” under the Code.

According to the Licensee, this fact was brought to the attention of the station manager on 11 January 2023, who directed the programme controller to ensure that the presenter did not appear again during the remainder of the election period. Following the by-election on 12 January (in which he finished in third place), Gavin Marshall returned to air on 13 January.

East Devon Radio highlighted the presenter’s experience as a broadcaster and said that he had taken care not to refer to his candidacy in this by-election, or to elections more generally, while broadcasting during the election period. The Licensee also said that the presenter had avoided all discussion of political matters and had not referred to Plymouth in any way. It was therefore confident that no material which could have inappropriately influenced UK voters was broadcast.

East Devon Radio explained that it had only recently launched the service DevonAir Gold. Its programmes are recorded in advance and checked by the programme controller before broadcast to ensure compliance with the Code. Once it became aware of the “regrettable error” in this case, the Licensee acted to remove the presenter from air for the remainder of the election period. East Devon Radio further explained that it had since taken steps to avoid a recurrence of the issue, putting in place additional training and briefing the programme controller and all presenters about the rules on elections and referendums in the Code.

East Devon Radio subsequently argued the programme was compliant, because it was not broadcast in the area where the local authority by-election was taking place. Further, the Licensee argued that the rule was “ambiguous”, because it refers to “Candidates in UK elections...”. The Licensee said it was not sufficiently clear that this phrase covered local as well as national elections, and suggested the alternative formulation “Candidates in any elections held in the UK...”

Decision

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

Ofcom takes account of the audience's and the broadcaster's right to freedom of expression set out in Article 10 of the European Convention on Human Rights when considering a broadcaster's compliance with the Code.

Rule 6.6

This rule prohibits candidates in UK elections from presenting any type of programme during an election period.

Section Six of the Code defines a "candidate" as follows:

"Candidates has the meaning given to it in section 93 of the Representation of the People Act 1983¹ (as amended) and means a candidate standing nominated at the election or included in a list of candidates submitted in connection with it".

Ofcom therefore considers a "candidate standing nominated at the election" refers to someone who has made an administrative commitment to becoming a candidate. This involves submitting to the relevant returning officer, within the period for delivery of the nominations, the formal nomination paperwork (demonstrating that person's eligibility and consent to be nominated); and paying the necessary fee.

We took into account that Gavin Marshall was confirmed as a candidate standing nominated in the local authority by-election for Plymouth City Council on 13 December 2022 when the statement of persons standing nominated was published. We therefore considered that, for the purposes of the Code, the presenter was a candidate "standing nominated" in the forthcoming by-election that subsequently took place on 12 January 2023.

We also took into account that the *Gavin Marshall Show* is not a political programme and that no reference was made to the by-election, the presenter's candidacy or any other political issues in the programme broadcast on 6 January 2023. The programme consisted mainly of music. Gavin Marshall provided links between the songs where he spoke, for example, about the weather and local sports fixtures. There was also a news bulletin half-way during the programme, read by someone other than Gavin Marshall, which again did not include any reference to the by-election. However, Ofcom's Guidance to Section Six makes it clear that Rule 6.6 is concerned not just with preventing electoral issues from being reported in a partial manner. The rule is designed to help secure the integrity of the democratic process, and the public's trust in that integrity, by preventing any unfair electoral advantage being afforded to a particular candidate through their appearance on a licensed service². Rule 6.6 therefore applies to all genres of programme.

We took into account that the presenter was standing in a local authority by-election for Plymouth City Council, while the programme was broadcast in Exmouth. We considered that this fact may have mitigated the potential for harm to an extent, though it did not preclude the possibility of electors in the relevant ward hearing the programme. Further, Rule 6.6 applies to all candidates in UK elections,

¹ See Section 93 of the [Representation of the People Act 1983](#).

² See paragraph 1.32 of Ofcom's [Guidance to Section Six of the Code](#).

regardless of whether the constituency or electoral area in which they are standing is the same as the broadcast area for the service in question.

We considered the Licensee's argument that it is insufficiently clear that Rule 6.6 applies to local elections. Section Six of the Code includes the following definition of "election":

"For the purpose of this section elections include a parliamentary general election, parliamentary by-election, local authority election, mayoral election, Police and Crime Commissioner election, Scottish and Welsh Parliament elections, and Northern Ireland and London Assembly elections".

Ofcom has applied Rule 6.6 to local election candidates appearing as presenters in a number of previous decisions. See, for example, our decision in respect of *Country and Folk*, Rhondda Radio, 31 March 2022, 18:00,³ as well as the precedent cases set out at paragraph 1.33 in our Guidance. We consider that Section Six of the Code and associated Guidance are clear that Rule 6.6 applies to all UK elections, including local authority elections.

The Licensee referred to the recent launch of the service DevonAir Gold as a mitigating factor. Ofcom acknowledges the particular challenges faced by community radio stations in preparing themselves for the commencement of broadcasting under an Ofcom licence. However, it is a requirement of that licence that the broadcaster complies with the Code at all times, and it is the Licensee's responsibility to ensure that they have an adequate understanding of the Code.

Ofcom took into account East Devon Radio does have procedures in place which allow for the Programme Controller to check content before broadcast. We also acknowledged the action taken by the Licensee as soon as it became aware of the issue in this case, as well as the steps it has taken subsequently to ensure there is no recurrence.

Ofcom took into account the broadcaster's and the audience's right to freedom of expression. In particular, we considered that the programme was primarily focussed on playing music and did not include any content or discussion which could be considered directly relevant to Mr Marshall's candidacy in the election. However, as set out in our Guidance, the rationale for Rule 6.6 is to help secure the integrity of the democratic process, and the public's trust in that integrity, by preventing any unfair electoral advantage being afforded to a particular candidate through their appearance on a licensed service during an election. Therefore, and for the reasons outlined above, we considered that it is proportionate to find that there was a contravention of the election rules in this case.

Ofcom's Decision is therefore that the content was in breach of Rule 6.6.

Breach of Rule 6.6

³ [Ofcom Broadcast and On Demand Bulletin](#), Issue 455, 25 July 2022.
Issue 478 of Ofcom's Broadcast and On Demand Bulletin
17 July 2023