

Broadcast and On Demand Bulletin

Issue 506, 23 September 2024



Tom Swarbrick

Type of case	Broadcast Standards
Outcome	In Breach
Service	LBC 97.3 FM
Date & time	18 April 2024, 17:30; 22 April 2024, 17:30; and 23 April 2024, 16:00
Category	Elections and Referendums
Summary	During the election period for the London Mayoral Election, a list of all candidates standing was not read out during two candidate interviews and a candidate debate. In breach of Rule 6.10 of the Broadcasting Code.

Introduction

LBC 97.3 FM is a talk radio station, owned and operated by Global Radio Limited. The licence for the service is held by LBC Radio Limited (“LBC Radio” or the “Licensee”).

Tom Swarbrick is a current affairs phone-in programme and broadcasts daily, from 16:00 to 18:00 Monday to Thursday, and 16:00 to 19:00 on Friday.

Ofcom received four complaints about the programme broadcast on 23 April 2024, which featured a debate between the four highest polling candidates in the lead up to the London Mayoral election on 2 May 2024: Sadiq Khan (Labour Party); Susan Hall (Conservative Party); Rob Blackie (Liberal Democrat Party); and Zoë Garbett (Green Party). The complaints raised concerns that the remaining nine candidates contesting the London Mayoral election were not included.

At the start of the two-hour programme, at 16:03, presenter Tom Swarbrick said:

“Just eight days to go until the biggest festival of democracy before the General Election; the race to be Mayor of London reaches its crescendo on this

programme. In an hour, we'll be joined by the four leading candidates who will go head-to-head and take your calls".

Later, at 16:18, in a call to action for listeners' questions, Tom Swarbrick listed the four candidates by name. He said:

"Tom Swarbrick here on LBC coming to you live from Westminster where after five, we will be hosting the last major chance for the mayoral candidates in London to try and win over your votes. Sadiq Khan, Susan Hall, Rob Blackie and Zoë Garbett of the Greens will be here to take your calls after five".

During the remaining first hour of the programme there were a further four mentions of the upcoming debate ("the 23 April Debate") between the four candidates. The second hour of the programme was dedicated wholly to the 23 April Debate. At 17:02 Tom Swarbrick said:

"In just eight days, voters across the country will turn out for the biggest festival of democracy ahead of the big one later this year. And in London, voters are turning out to decide, amongst other things, who will be their next Mayor. The latest YouGov poll currently has the incumbent – Labour's Sadiq Khan – seeking an historic third term, 19 points ahead of his nearest rival, the Conservative candidate Susan Hall. Behind her is the Green candidate Zoë Garbett and the Lib Dem candidate Rob Blackie. You've heard from the Reform UK candidate and an independent candidate on LBC already. This hour then, is the chance for the current front-runners to go head-to-head in what is perhaps the final major opportunity for those candidates to make their case to you. This hour, Labour's Sadiq Khan, the Conservative Susan Hall, the Green Party's Zoë Garbett, and the Lib Dem candidate Rob Blackie are live for an hour to take your questions".

Over the next hour, the programme posed a series of listeners' questions to which the four candidates responded in a debate format.

At 17:59 Tom Swarbrick ended the programme and said:

"Thank you all very much indeed. Rob Blackie the Lib Dem candidate, Susan Hall from the Conservatives, Sadiq Khan of Labour, and to Zoë Garbett, the Green Party candidate as well".

He went on to say the polls opened on 2 May 2024, and reminded listeners they would need their ID to vote. He then signed off, saying:

"Thank you very much indeed for your time. We are back tomorrow at four".

As Tom Swarbrick had referred to previous interviews that had been carried out with two other candidates, we also assessed those interviews.

The first was broadcast during an episode of *Tom Swarbrick* on 18 April 2024 and was an interview with Howard Cox (the Reform UK candidate). At 17:39 Tom Swarbrick started the interview by saying:

"On May the second, Sadiq Khan, the Labour candidate for and current Mayor of London, launched his manifesto; his plan for any third term he hopes to secure. He's talked about his big achievements; he says, including ULEZ. Clearly, though,

not everyone is a fan, including the Reform candidate Howard Cox who says if he's elected, he will scrap it. Howard Cox joins me live now. Thank you very much indeed for coming on".

A discussion followed in which Howard Cox answered questions about his manifesto. At 17:45 Tom Swarbrick ended the interview, saying:

"Howard Cox, Reform UK Candidate for Mayor of London. You can get a full list of candidates, I'll say it again, a full list of candidates by going to [LBC.co.uk/candidates](https://www.lbc.co.uk/candidates), [LBC.co.uk/candidates](https://www.lbc.co.uk/candidates). We will have our live hustings event on Tuesday¹".

The second interview was broadcast on *Tom Swarbrick* on 22 April 2024 and was a discussion with Natalie Campbell (an independent candidate). At 17:34, Tom Swarbrick introduced the interview and said:

"We are, as you know, just 10 days away now from the biggest democratic moment in this country, probably until the general election, including selecting the next person to be the Mayor of London. Tomorrow at five we're hosting the four front runners in this race. The Lib Dems Rob Blackie, the Greens Zoë Garbett, Conservative candidate Susan Hall, and the incumbent – Labour's Sadiq Khan, will all be here live at five tomorrow². Joining me live now is an independent candidate, Natalie Campbell, who is also the CEO of the drinks company Belu Water. Thank you very much indeed for coming on the programme. It's good to see you".

During the following interview Natalie Campbell answered questions about her plans for London. At 17:45, Tom Swarbrick ended the interview and said:

"Natalie Campbell, independent candidate for Mayor of London. Thank you very much indeed for coming in the studio. You can get your questions in for the hustings tomorrow by the way, [LBC.co.uk/questions](https://www.lbc.co.uk/questions). You can also go on the LBC website for a full list of candidates as well".

The rules in Section Six of the [Ofcom Broadcasting Code](#) ("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. Ofcom considered that the election period for the London Mayoral elections on 2 May 2024 started on 19 March 2024 as stated in our published [Note to Broadcasters on Election Programming](#). The Debate programme was broadcast on 23 April 2024, and was linked to the additional interviews broadcast on 18 April 2024 and 22 April 2024, all of which were during the election period for the London Mayoral election.

¹ i.e. the 23 April Debate.

² Ibid.

We considered that including only the four leading candidates in the 23 April Debate was a legitimate editorial decision, taking into account their significant past and current electoral support³, as per the data published in Ofcom’s [Evidence of past electoral support and evidence of current support ahead of the various elections taking place on 2 May 2024 \(the “Election Digest”\)](#). Similarly, we considered that interviewing Howard Cox and Natalie Campbell as part of a linked series was also a legitimate editorial decision, taking into account: the former’s party’s significant current electoral support; and Natalie Campbell’s considerable profile and media coverage in the run up to and during the election period. Therefore, these editorial decisions did not raise issues warranting investigation under the Code.

However, in assessing the 23 April Debate and the candidate interviews that took place on 18 and 22 April 2024 (“the 18 and 22 April interviews”), Ofcom also considered that these three pieces of content did not provide a full list of all candidates standing in the London Mayoral election, and 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”.

We therefore asked the Licensee for its comments on how the 23 April Debate and the 18 and 22 April Interviews complied with this rule.

Response

LBC Radio said it included the four leading candidates – from the Labour Party, the Conservative Party, the Liberal Democrat Party, and the Green Party – in the 23 April Debate “in line with the voting data issued in Ofcom’s Election Digest”. It explained that in addition to including the leading candidates in the Debate episode, it had also interviewed Howard Cox (the Reform UK candidate) on the *Tom Swarbrick* programme on 18 April 2024, and Natalie Campbell (an independent candidate) in the same time slot on 22 April 2024, and said “at the end of each of these interviews, the presenter directed listeners online to LBC’s website for the full list of mayoral candidates as well as directing listeners to listen to the linked programme – the Debate show on Tuesday 23 April”.

³ See Rule 6.9: “If a candidate takes part in an item about his/her particular constituency, or electoral area, then broadcasters must offer the opportunity to take part in such items to all candidates within the constituency or electoral area representing parties with previous significant electoral support or where there is evidence of significant current support. This also applies to independent candidates. However, if a candidate refuses or is unable to participate, the item may nevertheless go ahead”.

The Licensee said that a full list of candidates was available on LBC’s website, and that a list of candidates “was referenced across LBC’s schedule at regular intervals throughout the Election Period in news bulletins and in programming”. It added that “the presenter at the start of the [23 April] Debate programme reminded the audience that they had already heard from the Reform Party and an Independent candidate and that now it was time to hear from the four ‘front-runners’ as a result of this, arguably, listeners would have been aware that not all candidates were taking part in the [23 April] Debate, only the four main parties listed”.

LBC Radio acknowledged that it did not at any point during the 23 April Debate include a full list of all candidates standing in the London Mayoral election, in line with Rule 6.10. It said the production team “had planned to include it at the end of the programme” and that this “was omitted due to human error and the pressure of a heated debate within a live broadcast environment”. The Licensee also acknowledged that during the broadcast of the 18 and 22 April Interviews a list of candidates standing was not read out in full. LBC Radio went on to say it “takes its broadcasting compliance requirements extremely seriously” and that following the announcement of the General Election that was to take place on 4 July 2024, it had “already provided bespoke ‘Section 5 & 6’ training to all relevant programming and news teams as well as producing internal updated election guidelines”.

Ofcom prepared a Preliminary View that each of the three programmes was in breach of Rule 6.10 and provided it to LBC Radio for its comments. In response, the Licensee confirmed that it had no further representations to make on the Preliminary View.

Decision

Reflecting our duties under the Communications Act 2003, Section Six of the Code sets out that the special impartiality requirements and other legislation must be applied at the time of 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 6.10

Under Rule 6.10, broadcasters must ensure that 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.

First, we considered whether the 23 April Debate programme and the 18 and 22 April Interviews featured on *Tom Swarbrick* could be considered to be constituency or electoral area reports or discussions.

Ofcom’s [Guidance on Section Six of the Code](#) (“Guidance”) states “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's Guidance also makes clear that 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.

Given the above, in Ofcom's view, the 23 April Debate programme and 18 and 22 April Interviews met the definition of an "electoral area report or discussion", as: they specifically focused on the upcoming London Mayoral election, an electoral contest where the candidates were contesting an electoral vacancy for a specific electoral area; and the featured candidates were given the opportunity to appeal to voters and promote their campaign by emphasising their position on multiple local issues. Additionally, all three pieces of content were broadcast during the election period, as detailed in the Introduction.

Ofcom then considered whether the actions taken by the Licensee to provide a full list of all candidates standing were sufficient to meet the requirements of Rule 6.10.

We took into account LBC Radio's explanation that at the end of the 18 and 22 April Interviews with the candidates Howard Cox and Natalie Campbell, listeners had been directed to a full list of candidates online and also directed to the editorially linked 23 April Debate. Ofcom's Guidance states that "broadcasters may structure a constituency/electoral area report or discussion over a series of broadcasts, for example in the form of a series of candidate interviews in different programmes. However, in line with Rule 5.6⁴, the broadcaster should ensure that the fact that a constituency/electoral area report or discussion is being split over several programmes is clearly signalled to the audience, and that Rule 6.10 is complied with (i.e. a list of all candidates is included) in each separate programme as required". Taking this into account, although the 18 and 22 April Interviews were editorially linked with the 23 April Debate, we did not consider the presenter directing listeners to the LBC website during the 18 and 22 April Interviews to be sufficient so as to meet the requirements of Rule 6.10 for those two interviews. We also considered that neither the 23 April Debate programme nor the 18 and 22 April Interviews featured a full list of candidates read out in full, as required under Rule 6.10.

Ofcom acknowledged the Licensee's explanation of the circumstances that led to the error in omitting the full list of candidates from the 23 April Debate, and the updated training it said it had put in place for staff ahead of the General Election that was to take place on 4 July 2024. However, considering all the above, Ofcom found that LBC Radio failed to provide a full list of candidates to the audience in the 23 April Debate programme and also in the 18 and 22 April Interviews.

Ofcom's Decision is that the content in each of the three programmes was therefore in breach of Rule 6.10.

Decision: Breaches of Rule 6.10

⁴ Rule 5.6 states that: "The broadcast of editorially linked programmes dealing with the same subject matter (as part of a series in which the broadcaster aims to achieve due impartiality) should normally be made clear to the audience on air".