

# Broadcast and On Demand Bulletin

Issue 512, 16 December 2024



## Sky News

<b>Type of case</b>	Broadcast Standards
<b>Outcome</b>	In Breach
<b>Service</b>	Sky News
<b>Date &amp; time</b>	10 June 2024, 15:23
<b>Category</b>	Elections and Referendums
<b>Summary</b>	The programme included an interview with Douglas Ross MSP, then leader of the Scottish Conservatives, in which he made points about the constituency in which he was standing as a candidate in the 2024 UK General Election. In breach of Rule 6.11.

## Introduction

Sky News is a 24-hour news channel. The licence for Sky News is held by Sky UK Limited (“Sky” or “the Licensee”).

During an interview on Sky News on 10 June 2024, Douglas Ross MSP was questioned about his resignation as leader of the Scottish Conservative and Unionist Party, following controversy over his selection as a candidate for the parliamentary constituency of Aberdeenshire North and Moray East in the 2024 UK General Election<sup>1</sup>:

Reporter: *“You’ve left your party without a future leader in the middle of an election campaign. This is all a bit of a shambles, isn’t it? You’ve blown the entire Scottish Tory campaign”.*

Douglas Ross: *“Well, I’ve taken the decision, after being selected as the candidate for Aberdeenshire North and Moray East, that I want to say to local voters*

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<sup>1</sup> Mr Ross had been selected as the candidate in place of the incumbent Conservative MP David Duguid. Mr Duguid was recovering from an illness at the time but insisted that he was well enough to contest the election. See: <https://www.bbc.co.uk/news/articles/c3ggi3ql5r4o>.

*there, if they provide me with the amazing opportunity to be their Member of Parliament on the 4<sup>th</sup> of July in this election, in this key seat that's a straight choice between the Scottish Conservatives and the SNP [Scottish National Party], as many of the key seats up and down the country are, then they will be my number one priority and they will have my full focus. So this will be my final election as the leader campaigning for support across the country, but I'm giving a commitment to the people of Aberdeenshire North and Moray East that they will be my top priority should I be given that honour of being their MP".*

Reporter: *"Only last week, you've previously said in fact that you weren't going to stand as a Westminster MP to focus on your Holyrood constituents, until last week you saw that juicy seat coming up and thought you had a chance at winning it and now you've changed your plans. Is this all about whatever best serves your political ambition?"*

Douglas Ross: *"No, I don't think anyone looking at me announcing today that I'm standing down as leader would necessarily come to that conclusion. What I am doing today is taking a decision, reflecting on comments made by colleagues and others, to focus fully on the people of Aberdeenshire North and Moray East. It takes in part of my old constituency that I represented from 2017 until just a few weeks ago as Member of Parliament for Moray, and it also includes communities that I've represented either as a councillor, MSP or MP since 2007, so for 17 years I've represented part of this seat and it would be a huge honour and privilege to continue to be a representative for that area if I'm given the honour of being the MP for Aberdeenshire North and Moray East".*

Reporter: *"How much has guilt and perhaps shame played into this, given what happened with David Duguid's seat and him...being unwell but willing to stand?"*

Douglas Ross: *"Well, the situation with David Duguid, as I explained to you and others last Thursday, is a very difficult one. The party management board took the decision that he wouldn't be the candidate and a vacancy therefore had to be filled at very short notice. I travelled to the constituency last Thursday and I'm deeply honoured to have the support of the local association as their candidate for this election. And this is a key seat, like many key seats up and down the country, where it's a straight choice between the Scottish Conservatives or the SNP, so they can elect someone who will be focused on the local issues, the issues that really matter to people in these constituencies, by uniting behind the Scottish Conservatives, or they can have an SNP MP, who according to their own manifesto, will obsess about*

*independence and separating Scotland from the rest of the United Kingdom, because that will be page one, line one of their manifesto”.*

The interview was followed by further analysis from Sky News’s chief political correspondent, which focused initially on the political situation at a UK-level and then Prime Minister Rishi Sunak’s prospects in the forthcoming General Election; then on the controversy over Mr Ross’s selection as a candidate and his resignation as leader of the Scottish Conservatives.

Ofcom considered that the material raised potential issues warranting investigation under Rule 6.11 of the Code:

Rule 6.11: “Where a candidate is taking part in a programme on any matter, after the election has been called, s/he must not be given the opportunity to make constituency points, or electoral area points about the constituency or electoral area in which s/he is standing, when no other candidates will be given a similar opportunity”.

We therefore sought comments from the Licensee as to how the material complied with this rule<sup>2</sup>.

## Response

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The Licensee initially provided background information on its compliance considerations for this programme. Noting that Mr Ross’s resignation as leader of the Scottish Conservatives had been announced on the day of the broadcast, Sky described the interview as a “quick turnaround comment” focussed on this announcement, which it did not consider it to be a constituency report. The interview was intended neither as a constituency report, nor as an opportunity for Mr Ross to make constituency points, according to the Licensee. It described Mr Ross’s comments during the interview as “generic points about the political landscape of Scotland and the choice between Conservatives and SNP”. It acknowledged that he referred to the constituency in which he was standing in the 2024 UK General Election during the interview, while maintaining that he did not go into specific detail about constituency issues.

In its formal comments, Sky reiterated that the interview with Mr Ross was a “quick turnaround response to breaking news during a busy election campaign”, explaining that the team working on it were fully focussed on national issues. It considered that the interview “focussed primarily on this significant national issue [Mr Ross’s resignation as leader of the Scottish Conservatives], making only passing generic reference to constituency issues”. According to the Licensee: “The interview did not provide a platform for Mr Ross to raise or respond to issues directly related to his constituency. Nor did it give him the opportunity to speak to issues that would have been likely to influence voters in his constituency beyond very general national talking points which went no further than the stated

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<sup>2</sup> We also initially requested comments from the Licensee in relation to Rules 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..”) and 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...”). Having considered the Licensee’s comments, Ofcom considered it appropriate to proceed with the investigation under Rule 6.11 only.

position of the respective parties”. Sky added that in its view audiences would have been unlikely to consider that the interview promoted or raised the profile of Mr Ross in relation to his constituency.

Following initial correspondence with Ofcom, Sky reviewed the material and said that it recognised “the potential for the appearance of a conflation of this event of significant national importance with local election area issues”. It therefore decided to broadcast a “formal constituency report”, so as to give all candidates standing in Aberdeenshire and Moray East a similar opportunity to make points about the constituency. This constituency report also included a full list of the candidates standing in the constituency and the political parties they represented. It was broadcast within the election period on 17 June 2024. Sky said it had hoped thereby to address concerns about any perceived imbalance in its coverage and to resolve the issue well in advance of polling day on 4 July 2024.

In addition, the Licensee said that it had reminded all editorial staff of “the importance of carefully assessing any political interviews during an election period, particularly where there is the possibility of confusion between wider party and constituency issues”. It added that it was conducting a planned review of the training and guidance it provides to staff in relation to election coverage to capture any lessons that can be learned with a view to providing additional training in advance of the next significant election period.

Finally, Sky noted it had “fully engaged and cooperated with Ofcom” under the expedited process in place during the election period. It said that it recognised the justification for that expedited process and was happy to adhere to it. It considered that in these circumstances Ofcom and responsible broadcasters should work together to address any issues as they arise. On this occasion, it believed it had addressed any concerns and there was no further action required on its part. As a consequence, Sky was concerned there was “an element of double jeopardy in [Ofcom] revisiting the issue”, suggesting that this “could be seen to undermine the incentive [for broadcasters] to provide a timely and pragmatic response during the election period”.

In response to Ofcom’s Preliminary View finding this programme in breach of Rule 6.11, the Licensee noted Ofcom’s acknowledgement of many of the points summarised above. It further noted that Mr Ross had ultimately been unsuccessful in his bid to represent the constituency of Aberdeenshire North and Moray East, as he was defeated by a rival candidate in the 2024 UK General Election<sup>3</sup>. On this basis, Sky concluded that “any ‘potential’ harm [arising from the broadcast] did not have a determinative effect on the result”. It argued that, given this, together with its cooperation with Ofcom, the mitigating action it took during the election period and the fact that no additional remedial steps were requested by the regulator, the appropriate outcome would be for this matter to be considered resolved. Noting that “Ofcom’s stated aim for the Election Committee is to reach a decision in a few days because of the importance of cases”, the Licensee considered that the role of the Election Committee and the expedited process was called into question if a such a case could not be resolved by good faith engagement on the part of the broadcaster.

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<sup>3</sup> The seat was won by the SNP candidate, Seamus Logan. See: <https://www.bbc.co.uk/news/election/2024/uk/constituencies/S14000062>.

## Decision

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Reflecting our duties under the Communications Act 2003, Section Six of the Code requires that special impartiality requirements and other legislation must be applied at the time of elections and referendums.

Ofcom must perform its duties in accordance with the right to freedom of expression set out in Article 10 of the European Convention on Human Rights. Freedom of expression is one of the essential foundations of a democratic society. As is well established, it encompasses the broadcaster's right to freedom of expression as well as the audience's right to receive information and ideas without interference<sup>4</sup>. It applies not only to the content of information but also to the means of transmission or reception<sup>5</sup>. Any interference must be prescribed by law, pursue a legitimate aim, and be necessary in a democratic society (i.e. proportionate to the legitimate aim pursued and corresponding to a pressing social need). Decisions at both a domestic level and before the European Court of Human Rights make clear the scope for restrictions on freedom of expression is likely to be especially limited in two overlapping fields, namely political speech and on matters of public interest. Accordingly, a high level of protection of freedom of expression will normally be accorded, with the authorities having a particularly narrow margin of appreciation.

Each and every time Ofcom applies the Code to broadcast content, Ofcom gives careful consideration to the broadcaster's and the audience's Article 10 rights. In order to reach a Decision on this programme's compliance with the Code, Ofcom has had careful regard to the Article 10 rights and all relevant contextual factors.

### Rule 6.11

Under section 93 of the Representation of the People Act 1983 (as amended) ("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")<sup>6</sup> 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 coverage requirements in Rules 6.8 to 6.12 apply specifically to the broadcast of a particular constituency or electoral area report or discussion (or a programme on any matter in which a candidate is taking part) during an election period. In determining whether an item is a constituency or electoral area report or discussion, the Guidance states: "A useful test for

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<sup>4</sup> *Lingens v Austria* (1986) 8 EHRR 407.

<sup>5</sup> *Autronic v Switzerland* (1990) 12 EHRR 485.

<sup>6</sup> <https://www.ofcom.org.uk/siteassets/resources/documents/tv-radio-and-on-demand/broadcast-codes/code---march/april-2017/broadcast-code-guidance-section-6-march-2017.pdf?v=335876>

broadcasters is to ask whether a report or discussion could be seen as promotional for a candidate within his/her electoral area”<sup>7</sup>.

Rule 6.11 stipulates that where a candidate is taking part in a programme on any matter, after the election has been called, s/he must not be given an opportunity to make constituency points, or electoral area points about the constituency or electoral area in which s/he is standing, when no other candidates will be given a similar opportunity.

Ofcom’s Guidance to Rule 6.11 explains that “a broadcaster can include comments from a candidate about wider political or policy matters (not directly connected with his/her electoral area)”, with the proviso that the report or discussion “should not touch on matters relating to particular constituencies/electoral areas (for example, local schools or hospitals) unless other candidates in the same constituency or electoral area, as appropriate, are offered the opportunity to take part in the programme”<sup>8</sup>. The Guidance also states:

“There is, in principle, no problem in interviewing candidates in the round about policy issues – provided Rule 6.11 is complied with (i.e. such candidates must not be permitted to make points so as to promote their candidacy in respect of his/her constituency/electoral area). For example, a report which examined health policy around the country, and included candidates standing in different constituencies/electoral areas, could be acceptable, as long as there was no promotion of any candidate in any constituency/electoral area”.

In this case, Ofcom acknowledged that the interview with Mr Ross was not intended as a constituency report. The questions posed by the interviewer focussed primarily on the national issue of Mr Ross’s resignation as leader of the Scottish Conservatives.

However, we considered that Mr Ross made a number of statements that were clearly promotional of his candidacy in the Westminster Parliamentary seat he was contesting, Aberdeenshire North and Moray East:

- responding to an initial question (*“You’ve left your party without a future leader in the middle of an election campaign. This is all a bit of a shambles, isn’t it?”*), Mr Ross immediately mentioned the constituency of Aberdeenshire North and Moray East. He addressed *“local voters there”*, saying that they would be his *“number one priority”* and have his *“full focus”* if he were to be elected;
- *“I’m giving a commitment to the people of Aberdeenshire North and Moray East that they will be my top priority should I be given that honour of being their MP”;*
- *“What I am doing today is taking a decision, reflecting on comments made by colleagues and others, to focus fully on the people of Aberdeenshire North and Moray East. It takes in part of my old constituency that I represented from 2017 until just a few weeks ago as Member of Parliament for Moray, and it also includes communities that I’ve represented either as a councillor, MSP or MP since 2007, so for 17 years I’ve represented part of this seat and it would be a huge honour and privilege to continue to be a representative for*

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<sup>7</sup> Ibid, paragraph 1.37.

<sup>8</sup> Ibid, paragraph 1.54.

*that area if I'm given the honour of being the MP for Aberdeenshire North and Moray East"; and*

- *"I travelled to the constituency last Thursday and I'm deeply honoured to have the support of the local association as their candidate for this election".*

During the interview, Mr Ross twice described Aberdeenshire North and Moray East as a "key seat", which he said was similar to many other "key seats up and down the country", where voters were faced with a "straight choice" between the Scottish Conservatives and the Scottish National Party ("SNP"). He added that, in such cases, voters:

*"can elect someone who will be focused on the local issues, the issues that really matter to people in these constituencies, by uniting behind the Scottish Conservatives, or they can have an SNP MP, who according to their own manifesto, will obsess about independence and separating Scotland from the rest of the United Kingdom, because that will be page one, line one of their manifesto".*

Sky called his comments "generic points about the political landscape of Scotland and the choice between Conservatives and SNP", stating that they constituted "very general national talking points which went no further than the stated position of the respective parties". Ofcom acknowledged that Mr Ross was in part making a general point about the national contest between the Scottish Conservatives and the SNP. However, we considered that he put this in the specific context of the choice facing voters in Aberdeenshire North and Moray East. In Ofcom's view, Mr Ross's comments focussed on the constituency in which he was standing, first by establishing his commitment to the area, and second by characterising the nature of the contest there. Although the interviewer concentrated primarily on national issues, Mr Ross repeatedly took the opportunity to make points about Aberdeenshire North and Moray East by promoting his candidacy in that constituency. No other candidates in the constituency were given a similar opportunity during the broadcast on 10 June 2024.

Ofcom noted that the news about Mr Ross's resignation as leader of the Scottish Conservatives had been announced on the same day. We acknowledge that news programmes are produced at pace in high-pressure environments. Nevertheless, broadcasters have a responsibility to ensure compliance with the Code. This is especially important in relation to the special impartiality requirements and other legislation applied at the time of elections and referendums and reflected in the rules in Section Six of the Code.

As set out above, subsequent to this programme, the Licensee broadcast a constituency report about Aberdeenshire North and Moray East on 17 June 2024. Ofcom reviewed this report and noted that it was broadcast during the election period, providing all candidates standing in the constituency with an opportunity to make points about the constituency. It also included a full list of candidates and the political parties they represented. Ofcom considered that this mitigating action taken by the Licensee went some way to addressing the potential harm arising from the original broadcast of the interview with Mr Ross.

We further noted that the Licensee told us that it had spoken to all editorial staff about the importance of ensuring compliance with these rules, paying particular attention to interviews "where there is the possibility of confusion between wider party and constituency issues". In addition, Sky said it will be carrying out a review of the training and guidance it provides to staff in

relation to election coverage, which it hoped would help to prevent a recurrence of this issue in the future. Ofcom welcomed these steps taken by the Licensee, as well as its prompt response to the concerns we raised in our consideration of this case.

However, Ofcom has consistently stressed the importance of ensuring compliance with Section Six of the Code during elections and referendums. We have made this clear in a number of Notes to Broadcasters<sup>9</sup> ahead of election periods. Against this backdrop, Ofcom does not consider that it would be appropriate to find this matter resolved.

The interview with Mr Ross, broadcast on Sky News on 10 June 2024 (i.e. during the election period), gave a candidate in the 2024 UK General Election an opportunity to make constituency points about the constituency in which he was standing, when no other candidates were given a similar opportunity. As set out above, we acknowledged the steps taken by Sky as a result of this broadcast, but the material was in breach of Rule 6.11.

### **Breach of Rule 6.11**

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<sup>9</sup> For example, ahead of the UK General Election taking place on 4 July 2024, we published a [Note to Broadcasters](#) on 23 May 2024.