[GB] Broadcast's Failure to Comply with Generally Accepted Standards not a Disproportionate Interference with Freedom of Expression

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The High Court has upheld a finding of the communications regulator, Ofcom, that the offensive language and manner of a radio talkshow presenter failed to comply with generally accepted standards; the finding was not a disproportionate interference with freedom of expression. Under the Broadcasting Act 1990 broadcasters must comply with the requirement that nothing in their programmes "offends against good taste or decency or is … offensive to public feeling" and this is implemented by Ofcom's Broadcasting Code covering television and radio. The Code requires that generally accepted standards must be applied to provide adequate protection for the public from harmful and/or offensive material.

Jon Gaunt, a controversial radio presenter for Talksport, interviewed a local authority member on a proposal not to place foster children with families who smoked. The presenter, who had himself spent his childhood in local authority care, referred to the councillor as a "Nazi", then as a "health Nazi'" The interview deteriorated into a shouting match, with the presenter calling the interviewee "you ignorant pig", a "health fascist" and an "ignorant idiot". The presenter was immediately suspended by the broadcaster and his contract was ended shortly afterwards.

Ofcom received 53 complaints from listeners. It expressed concern that Talksport's compliance procedures did not appear robust enough to deal with problematic material being broadcast live. It considered that the offensive and "what would be considered to be a persistently bullying and hectoring approach" by the presenter exceeded the expectation of the audience even in the context of a robust level of debate. It thus found a breach of the Broadcasting Code, but did not impose any penalty on the presenter or broadcaster. The finding was then challenged by the presenter as a disproportionate interference with his right to freedom of expression under Art. 10 of the European Convention on Human Rights.

The High Court accepted that it was for the Court itself to assess whether there was such interference. No attempt had been made to challenge the provisions of the Act itself or of the Code and it was accepted that the decision was prescribed by law and was capable of meeting a pressing social need. As the subject of the interview was one of political controversy and involved questions of value,

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freedom of expression should be accorded a high degree of protection and could extend to offensive expression. However, it did not extend to gratuitous offensive insult or abuse or to repeated abusive shouting. On this basis the reference to the councillor as a “Nazi”, whilst capable of being highly insulting, had some contextual content and justification. However the tone of the interview then degenerated; the term “ignorant pig” had no contextual justification and constituted gratuitous offensive abuse and the latter part of the interview became abusive shouting with no real content at all. On this basis the Ofcom finding was justified and constituted no material interference with freedom of expression, as “an inhibition from broadcasting shouted abuse which expresses no content does not inhibit, and should not deter, heated and even offensive dialogue which retains a degree of relevant content”. Ofcom’s decision to impose no penalty also affected the proportionality of its decision.

Gaunt v Ofcom [2010] EWHC 1756 (QBD), 13 July 2010

http://www.bailii.org/ew/cases/EWHC/QB/2010/1756.html

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