[GB] Talk Radio in breach of Ofcom’s rules on harm and offence

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On 25 February 2019, the Office of Communications (Ofcom) ruled that commercial radio station Talk Radio presenter James Whale had breached the Ofcom Broadcasting Code over an “insensitive” interview with a victim of sexual assault.

Earlier in July 2018, James Whale and his co-presenter Asher Gould interviewed a journalist and invited her to comment on remarks made by author Jilly Cooper that the #MeToo movement, which was launched following the multiple sexual misconduct accusations against film producer Harvey Weinstein, had changed the way in which people interact. In particular, Mr Whale asked what the journalist’s thoughts were on Cooper’s assertion that men had become “frightened to flirt with ladies since the #MeToo campaign.”

The interviewee dismissed this view and stated that #MeToo had made more people rethink the meaning of consent. During the broadcast, she unexpectedly spoke about her own experience as a victim of sexual assault. The subsequent exchanges prompted 38 listeners to complain that the interviewee had been treated “dismissively and insensitively” by the presenters, who had resorted to “victim blaming” her for the assault.

Talksport, the licensee for Talk Radio, acknowledged that there had been a few regrettable “heated flashpoints” during the interview. For instance, the presenter had frequently interrupted the woman and told her: “It doesn’t really matter what you are, you’re talking as a woman aren’t you?” and “I’m listening to you rant at me.” The presenters also appeared to question the interviewee when they described the assault she had suffered by imposing on her, as a victim, an obligation to act following the incident. They suggested that she should have taken more steps to report it and questioned whether she could have done more to prevent a further assault.

Section Two of the Broadcasting Code requires that “generally accepted standards” must be applied to the content of television and radio services, so as to adequately protect members of the public from the inclusion in such services of “harmful and/or offensive” material. Rule 2.3 of its Code requires, in particular, that material with the potential to cause offence may be broadcast so long as it is

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"justified by the context". Such context includes - but is not limited to: the editorial content of the programme; the service on which the content was broadcast; the degree of offence likely to be caused by such material; and the composition of the potential audience and its likely expectations. In this case, the interviewee's disclosure during the discussion about the impact of #MeToo set the context against which the ensuing debate needed to be considered.

Ofcom ruled that the presenters' comments had been "poorly judged, unsympathetic to [the interviewee's] own experience, liable to discourage other victims of sexual assault to talk publicly about their experiences, and likely to cause a high level of offence." In considering whether the material broadcast was justified by context, Ofcom acknowledged that listeners to a live speech-based service would have expected at the time of the broadcast of this topical discussion programme with a well-known and "opinionated" presenter that outspoken views would be included. Although the regulator accepted that Mr. Whale and his co-presenter did not query the veracity of the woman's account and had probably not anticipated the revelation of deeply personal information about the assault, their interventions had nevertheless demonstrated a "significant lack of sensitivity", and their adversarial presenting style had within that context been "highly inappropriate", thereby aggravating the potential offence caused. In Ofcom's view, the fact that the woman had responded confidently and articulately to the presenter's combative style did not justify treating her in this way. Their comments in this programme were thus likely to have exceeded audience expectations. For these reasons, Ofcom decided that the inclusion of this potentially highly offensive material had not been justified by the context and had breached Rule 2.3.

Lastly, the Ofcom Code requires, under the same rule, that appropriate information be broadcast where it may assist in avoiding or minimising offence. By way of compliance, the licensee took several steps, including: suspending Mr Whale, launching an internal investigation (whose findings were reported to the management), broadcasting a personal apology to the interviewed guest. However, given the licensee's recognition that Mr. Whale had given the interviewee "a hard time", more timely action ought to have been taken, in Ofcom's view, at the time of the live broadcast (or shortly thereafter) to minimise the significant offence given to listeners. While appropriate steps were taken in this case, these only came four days after the material had been first broadcast and the interviewee had authored an article in The Guardian accusing Mr. Whale of "humiliating" her for talking about her rape.

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