[GB] Ofcom imposes GBP 75 000 fine against Talksport Ltd for breaches of impartiality rules

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Talk Radio, whose licence is held by Talksport Ltd (the Licensee) has been fined GBP 75 000 by Ofcom and directed to broadcast a statement of the regulator's findings, on dates and in words to be determined by Ofcom. The fine arises from three episodes of the George Galloway programme which breached Ofcom's Broadcasting Code rules 5.11 and 5.12 by failing to maintain due impartiality on matters of major political or industrial controversy and major matters relating to public policy. The breaches occurred on 16 March, 27 July and 6 August 2018. Talk Radio is a national digital speech radio show and the George Galloway programme was normally broadcast on Fridays between 7 p.m.and 10 p.m..

Ofcom's decisions about the breaches were published on 28 January and 25 March 2019 respectively in issues 371 and 375 of the Broadcast and On Demand Bulletin. The breaches related to episodes of the George Galloway programme which dealt with the poisoning of Yulia and Sergei Skripal in Salisbury on 4 March 2018 and allegations of anti-Semitism in the Labour Party.

Ofcom Rule 5.11 states that " due impartiality must be preserved on matters of major political and industrial controversy and major matters relating to current public policy by the person providing a service [...] in each programme or in clearly linked and timely programmes."

Ofcom Rule 5.12 states that "[i]n dealing with matters of major political and industrial controversy and major matters relating to current public policy an appropriately wide range of significant views must be included and given due weight in each programme or in clearly linked and timely programmes. View and facts must not be misrepresented."

Ofcom has powers to punish those who act unlawfully or in breach of the relevant regulatory requirements. Section 392 of the Communications Act 2003 (the Act) requires Ofcom to prepare and publish a statement containing the guidelines it proposes to follow in determining the amount of penalties imposed by Ofcom under the Act or any other enactment, apart from the Competition Act 1998. By virtue of section 392(6) of the Act, Ofcom must have regard to the statement for the time being in force when setting the amount of any penalty under the Act or any other enactment (apart from the Competition Act 1998). Ofcom relied upon

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its current Penalty Guidelines published on 14 September 2017 to determine the fine to impose upon Talk Radio.

The regulator took into account Article 10 of the European Convention on Human Rights concerning the right to freedom of expression. Moreover, Ofcom could not find evidence that further breaches had occurred since their original decisions. Additionally, there was no evidence that the conduct had been undertaken deliberately or recklessly.

As set out in Ofcom's Penalty Guidelines, the central objective of imposing a penalty is deterrence. Ofcom shall impose a penalty which is appropriate and proportionate in the circumstances, and which will act as a deterrent, taking into account the size and turnover of the Licensee. Revocation of a licence is the ultimate enforcement action available to Ofcom. A decision to revoke a licence may occur if Ofcom is satisfied that it is a proportionate response to the Licensee's failure to comply with its licence conditions. A relevant factor for Ofcom to consider is whether any sanction short of revocation could ensure that the Licensee would ensure future compliance with the Broadcasting Code.

Ofcom recognised that Talksport had taken a significant number of steps to prevent further breaches from reoccurring. No breaches of the due impartiality requirements (or the Code more generally) had been recorded against the Licensee since the breaches being considered for the imposition of a penalty.

The regulator's main objective was deterrence, and it considered matters taking into account the seriousness of the breaches, the Licensee's representations, the Licensee's size and financial position, and any relevant precedent cases. Ofcom had regard to its legal duties, including the need to ensure that any sanction imposed is proportionate, consistent and targeted only at cases where action is needed.

Ofcom considered that it was appropriate to impose a statutory sanction and that it would be proportionate to impose a financial penalty of GBP 75 000 and to direct Talksport to broadcast a statement regarding Ofcom's findings in a form and on date(s) to be determined by Ofcom.

In Ofcom's view, their sanction was appropriate and proportionate, and should send a clear message of deterrence, both to the Licensee and also to other broadcasters, against any future breaches of a similar nature.

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https://www.ofcom.org.uk/__data/assets/pdf_file/0016/192004/Broadcast-and-On-Demand-Bulletin-Talksport-Ltd-Notice-of-Sanction.pdf

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