

Ofcom Content Sanctions Committee

Imposition of Sanction on Galaxy Radio Manchester Limited in respect of Galaxy 102

For

Breaching sections 1.1, 1.2, 1.3 and 3.5 of Ofcom's Standards Code (formerly the Radio Authority's Programme Code)

On

16 October 2003

Decision to Fine

£2,500

Summary of Findings

1 The Content Sanctions Committee found Galaxy Radio Manchester Limited ("Galaxy") in breach of Ofcom's Code (formerly the Radio Authority's Programme Code) in respect of an item broadcast on Galaxy 102 which was recorded from the previous day's live show and repeated at breakfast time (8.15am).

2 The pre-recorded item was a phone call to the station in which a male caller advocated physical harm to women. The presenters, whilst not condoning this themselves, spoke (albeit not seriously) of wishing to inflict violence on the caller and both the presenters and the caller used offensive language. A 12 year old girl was then allowed on air live to comment on what she had heard and herself used offensive language.

3 Galaxy describes itself as an "edgy" station with an established local target audience of 15 to 34 year olds but also with a significant number of children (4 – 14 year olds) listening to the station overall.

4 Galaxy was found to have breached the following sections of the Code in failing to: maintain the general requirement for taste and decency (contrary to section 1.1), protect younger listeners at breakfast time (contrary to section 1.2), avoid offensive language being transmitted when a significant number of children were likely to be listening (contrary to section 1.3); and seeking to elicit views on air from a child on matters likely to be beyond her judgement (contrary to section 3.5).

5 Galaxy admitted it had breached the code and apologised for the failures in its editorial control which had led to the situation, but vigorously defended its distinctive position within its (local) market dealing with a wide range of hard and soft issues. However, the Committee noted that other

discussion topics which the station claimed to cover were not as inherently “dark” or difficult as the topic of domestic violence, arising in this case.

6 Whilst therefore acknowledging Galaxy’s views about the particular nature of its station, Ofcom considered that Galaxy’s decision to repeat the item early in the morning, when children were very likely to be listening, demonstrated a serious failure in its compliance procedures and a lack of editorial judgment.

7 The Committee considered that the station, in viewing itself in the way it did, had paid insufficient attention to its 4 to 14 year old audience. It had taken a deliberate decision to broadcast a recording of the material at an inappropriate time in the morning when it should have been aware it was likely that a significant number of children would be listening.

8 The broadcasting of controversial and emotive subjects carried with it responsibilities. Galaxy had broadcast this material without having the necessary safeguards in place which would be expected around such a broadcast and without building into its compliance procedures and editorial judgements, due recognition of its child audience.

9 In light of the above, Ofcom decided that Galaxy was in breach of the Code and imposed a financial penalty of £2500 (all fines are payable to HMPG and forwarded to the Treasury).

Background

10 Galaxy 102 is a commercial radio service based in Manchester and part of the Chrysalis Radio Group. The station’s format describes the service as a rhythmic music-led service for 15 – 34 year olds, supplemented with news, information and entertainment. The service is designed to be of particular appeal to listeners in their twenties.

11 A listener’s complaint was received by the Broadcasting Standards Commission on 16 October 2003 and in line with agreed procedures was forwarded to the Radio Authority on 24 October prior to the commencement of Ofcom.

12 Under the terms of the Communications Act 2003 (“the Act”), all outstanding complaints became the responsibility of Ofcom on 29 December 2003.

13 The listener complained that an item, broadcast last year at breakfast time, contained offensive language and references to physical harm.

14 Accordingly, the matter was dealt with under Ofcom’s Interim Guidelines for the Imposition of Statutory Sanctions. These required the Content Sanctions Committee to consider both whether there has been a breach of the Code, if so, whether it is sanctionable and if it is, what sanction should be imposed.

15 From 29 December 2003 the Radio Authority's Programme Code continues (until replaced) to have effect as if it were an Ofcom Standards Code promulgated under the Communications Act 2003, section 319(1): this is the effect of the transitional provisions in section 406(6) and Schedule 18, paragraph 43(1).

16 Section 1.1 of the Code is a general requirement for taste and decency;
Section 1.2 requires that younger listeners are protected, in particular at breakfast time;
Section 1.3 requires that broadcasters avoid offensive language being transmitted when a significant number of children were likely to be listening;
and
Section 3.5 requires that views are not elicited on air from a child on matters likely to be beyond his/her judgement.

17 On 16 October 2003, Galaxy broadcast a discussion entitled "treat them mean to keep them keen". The Broadcaster replayed from the previous day a caller, who identified himself as "Irish Frank" and said repeatedly that he slapped his wife at least once a week and recommended "a regular slap" to keep women in line.

18 The call had been broadcast live the previous day after 9.00am but was recorded and repeated the following day at 8.15am. A deliberate editorial decision had therefore been made to repeat the item at this time.

19 The female presenter of the show suggested that "Irish Wank" was a better term for him.

20 A young 12 year old caller rang up and was invited to give her views on Irish Frank's comments. She then described "Irish Frank" as a "fucking wanker" and was cut off.

21 Galaxy said that it was an "edgy" station and the topic was one of the many they discussed on air that week. They sought to explore emotive human themes which would arouse responses from its audience but conceded that the territory which the caller had introduced was "in retrospect perhaps not well advised". Its management had taken the matter extremely seriously and had taken a number of steps to improve compliance arrangements. In particular, it had adopted a new policy of excluding any young callers around adult topics.

22 On the recommendation of Ofcom's Executive, the matter was referred to the Content Sanctions Committee who considered that a statutory sanction should be considered and accordingly, following the Interim Guidelines, invited Galaxy to a hearing to give oral representations.

23 In its defence, Galaxy pointed to the extensive research it had carried out amongst its target audience as to its expectations of the station as well as

the considerable steps it had taken since the breaches had occurred, to improve its internal compliance procedures. It also referred to its (and the overall group's) good track record in compliance.

Decision

24 In its representations, the Broadcaster, Galaxy had described itself as an edgy radio station and its target audience as being 15 to 34 year olds; however, it had also advised the Committee that 161,000 4 to 14 year olds listened to the station overall (across the whole week). The Broadcaster had made much of the research it had conducted amongst its target audience; however, the Committee was particularly concerned that, viewing itself as an edgy station, the Broadcaster had paid insufficient attention to its 4 to 14 year old audience, an audience that it was well aware existed. The original phone-in the day before concerned a lighter topic – the responsibility for housework – but it was the Broadcaster's decision to pursue a darker side when a caller moved the subject to domestic violence; the Broadcaster then took the decision to repeat this part of the earlier broadcast, repeating it during breakfast time when the 4 to 14 year old audience was likely to be listening, and to further pursue the darker aspects of the subject. In the view of the Committee, the Broadcaster had taken the decision to repeat the relevant part of the earlier broadcast and to pursue the discussion without the safeguards which would be expected around such a broadcast of an adult nature and without building in a recognition of its 4 to 14 year old audience.

25 In the view of the Committee, the Broadcaster should have been actively discouraging children from listening to the Broadcast yet, when a 12 year old rang in, it put her through live on the air. The Committee also had difficulty in understanding the decision to put the 12 year old on air at 8.15 in the morning, in view of the emphasis placed by the Broadcaster in its representations on its target audience of 15 to 34 year olds. The Committee noted that there was no evidence of the Broadcaster having in place any rule or procedure to tell the 12 year old that the broadcast in question was not for her.

26 The Committee felt strongly that, if a broadcaster wanted to be edgy, there were responsibilities that accompanied this; these related to the audience, the emotive nature of the material and a preparedness to deal with the unexpected. The Broadcaster's production team did not appear to be used to handling such situations; it appeared to have been ill-prepared for what happened during the Broadcast and unaware of the editorial framework of the programme. If a broadcaster wanted to be edgy, it was all the more important to have in place appropriate procedures. The Committee concluded that the Broadcaster did not, at the time, have in place sufficiently robust editorial procedures to handle this type of broadcast, and that the Broadcaster's editorial processes were therefore not adequate.

27 The Committee accepted that the Broadcaster had made a genuine attempt to put in place appropriate processes subsequent to the complaint about the Broadcast and took account of the fact that a considerable amount

of money had been spent on improving its procedures which had already had a significant financial impact on it. In addition, the Broadcaster had admitted its error and had apologised for it. The Broadcaster's group as a whole had a good compliance record; the Code breaches in question were considered by the Committee to be an oversight and not part of a pattern.

28 The Committee concluded that the Code breaches were sufficiently serious as to be sanctionable and concluded that a financial penalty would be appropriate, but that this should be at the lower end of the scale. The Committee decided to impose a fine of £2,500.

Conclusion

29 On 16 October 2003, Galaxy breached sections 1.1, 1.2, 1.3 and 3.5 of Ofcom's Code (formerly the Radio Authority's Programme Code). The Broadcaster was fined £2500.