

# **Ofcom Broadcast Bulletin**

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## Introduction

Ofcom's Broadcasting Code ("the Code") took effect on 25 July 2005 (with the exception of Rule 10.17 which came into effect on 1 July 2005). This Code is used to assess the compliance of all programmes broadcast on or after 25 July 2005. The Broadcasting Code can be found at <http://www.ofcom.org.uk/tv/ifi/codes/bcode/>

The Rules on the Amount and Distribution of Advertising (RADA) apply to advertising issues within Ofcom's remit from 25 July 2005. The Rules can be found at <http://www.ofcom.org.uk/tv/ifi/codes/advertising/#content>

From time to time adjudications relating to advertising content may appear in the Bulletin in relation to areas of advertising regulation which remain with Ofcom (including the application of statutory sanctions by Ofcom).

It is Ofcom policy to state the full language used on air by broadcasters who are the subject of a complaint. Some of the language used in Ofcom Broadcast Bulletins may therefore cause offence.

## Standards cases

### In Breach

#### **Dangerous Sex Games**

*Bravo, 25 August 2007, 23:00*

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#### **Introduction**

Bravo is a channel in the entertainment sections of the Sky and Virgin Media electronic programme guide ('EPG') which broadcasts content aimed at men aged between 18 and 44 years of age.

Ofcom received a complaint about explicit sex and full female nudity in *Dangerous Sex Games*, a film broadcast on the channel.

Ofcom reviewed the content of the film and asked Virgin Media TV, which owns Bravo, to comment in relation to the following Code rules:

- Rule 1.24 - which limits 'adult-sex material' to subscription channels that have appropriate protection measures in place to ensure viewers are over 18;
- Rule 2.1 - generally accepted standards; and
- Rule 2.3 - offensive material must be justified by the context.

#### **Response**

The broadcaster did not believe the content was equivalent to 'adult-sex' material. While Virgin Media TV acknowledged *Dangerous Sex Games* contained scenes of a sexual nature, it argued these were in the context of a plot and such scenes were not continuous throughout the film's hour and a half duration.

It said the material was an "erotic thriller" centred on a couple who had been invited to spend the weekend at a friend's house, where the host set up an erotic game called 'The Case of the Bloody Knife'. As the game unfolded, the friends found themselves attracted to other players and "erotic alliances" evolved. Virgin Media TV believed the sex scenes did not mean the programme should have been encrypted as it judged these scenes were not explicit or sustained.

Virgin Media TV said the film had been viewed prior to transmission by an experienced compliance executive who felt that no cuts or blurring were necessary to make the content suitable for broadcast. It said that while there was "little ambiguity" as to the adult nature of the sex scenes, the footage employed specific camera angles to avoid gratuitously explicit sexual interplay between the actors. The broadcaster therefore considered the film was not 'hardcore' but rather 'erotica', a genre it felt UK audiences were familiar with.

The broadcaster said the channel had become sufficiently well-established for viewers to be generally aware of the adult nature of its late-evening schedule. It noted that in the past year it broadcast two series of *Porn Week*, a reality show following the adult film industry, and *Laid Bare* and *Sexarama*, both of which it said were magazine programmes looking at sexual activities abroad. It added that the 23:00 slot had been used to broadcast a Playboy erotic film each Sunday from 8 July

2007, and this timeslot had been previously occupied by *Porn Week*. Given these facts, and that Virgin Media TV said that a warning was given prior to the film which stated it contained strong scenes of a sexual nature from the start, the broadcaster believed there was sufficient context to justify showing the film.

## Decision

Under the Code, content classified as 'adult-sex' material can be broadcast only under encryption (Rule 1.24) with appropriate protection mechanisms in place. Ofcom's guidance on this Rule states that in deciding whether content is 'adult-sex' material Ofcom is guided by the definitions used by the British Board of Film Classification ("BBFC") and its reference to 'sex works'. The BBFC defines a 'sex-work' as "works...whose primary purpose is sexual arousal or stimulation".

Taking all the relevant factors into account, Ofcom has concluded that the material complained of was 'adult-sex' material as defined under the Code. We noted that the total duration of *Dangerous Sex Games* was approximately 90 minutes, of which around 30 minutes Ofcom assessed to consist of 'narrative' material linked to the plot. About 60 minutes of the material was dedicated to scenes of a sexual nature. While these scenes included some dialogue, their focus was predominantly the depiction of sexual activity.

The sexual scenes themselves showed naked actors – although genitalia were not seen – engaged in what appeared to be various sexual activities including oral sex, vaginal penetration and masturbation. The focus of the camera was on the actors' bodies throughout. Taking into account all the circumstances (including the style and focus of the camerawork on the actors' bodies, the considerable duration of the sex scenes, and the clear predominance of sex scenes compared to narrative scenes), the primary purpose of the film appeared to be the sexual arousal/stimulation of the audience. The content overall amounted in Ofcom's view to a series of strong and prolonged sex scenes joined together by limited narrative. Material of this nature should only be broadcast under encryption.

On 26 March 2007, Ofcom recorded a breach of Rule 1.24 (see Broadcast Bulletin 81) relating to *The Extreme Truth*, broadcast on Men & Motors). In this published finding, Ofcom made clear that broadcasters must differentiate between programmes that contain explicit sexual material which is exceptionally justified by the context of the programme and material whose primary purpose appears to be sexual arousal. In this case, we judged that *Dangerous Sex Games* was 'adult-sex' material and its broadcast on Bravo was therefore in breach of Rule 1.24 of the Code.

We also concluded that the inclusion of such material on a channel situated in the general entertainment section of the EPG went beyond the generally accepted standards required by Rules 2.1 and 2.3 to be applied to the contents of such a channel. We recognise that Bravo is aimed at an adult male audience - and broadcasts programmes to attract that audience. Ofcom also acknowledges the film was broadcast late in the evening and preceded by an announcement which indicated the sexual content of the broadcast. However, this material was so strong as to be 'adult-sex' material. As a result it cannot be justified by the context – for example by means of information about content provided to viewers. 'Adult-sex' material should not be broadcast unless all the required protection mechanisms have been put in place. As Bravo is an unencrypted channel, this material should not have been broadcast at *any* time on the channel.

Due to the serious nature of this breach, Ofcom considered whether the matter should be referred to the Content Sanctions Committee for consideration of a statutory sanction. However, taking into account all the circumstances including the fact that this is the first time Bravo has breached the Code for the transmission of adult content, Ofcom decided not to take further regulatory action on this occasion.

**Breach of Rules 1.24, 2.1, 2.3**

## The Great Big Quiz

*iPlay TV/Play to Win TV Ltd and simulcast on FTN, Living 2, Bravo 2 (Virgin Media TV), 8 April 2007, late night*

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### Introduction

*The Great Big Quiz*, transmitted between 2 April and 3 May 2007, was a Call TV quiz programme produced by Play to Win TV Ltd (which has since ceased trading) and broadcast on iPlay TV, a dedicated Call TV quiz channel which broadcast on the Sky Digital platform (EPG 840). It was also transmitted simultaneously on FTN, Living 2 and Bravo 2 (channels owned and operated by Virgin Media TV).

The programme's content consisted of quizzes and puzzles and viewers were invited to call in with their answers by the presenter(s). The cost of the telephone calls, which were charged at premium rate, was displayed on-screen.

On 10 April 2007, Play to Win TV Ltd contacted Ofcom and informed it that it had broadcast an incorrect puzzle on Sunday 8 April 2007. It said that on the evening of Friday 6 April 2007 a number puzzle which had the answer "444" was transmitted correctly. However it said that due to an internal systems error on Sunday 8 April 2007, the same puzzle was mistakenly repeated which meant it corresponded in the computer system with an entirely different (and therefore incorrect) answer. This meant that the correct answer in the system for that particular puzzle was not recognised. As a consequence, four callers gave the right answer to the puzzle on screen, but were wrongly informed by the programme's presenter that their answer was incorrect.

### Response

#### iPlay TV/Play to Win TV

iPlay TV/Play to Win TV said that it became aware of the problem on 10 April 2007 and immediately set about rectifying the matter. It said that it identified the four callers who gave the correct answer and contacted them to award them the full amount they should have won (£750, £1,000, £1,000 and £1,500 respectively). It also responded to all emails from concerned viewers with an apology and information about what it had done to resolve the error including posting information on its website and transmitting an on-screen apology to its viewers on Tuesday 10 April 2007 between 22:00 and 02:00, and again a week later. It also said that it was taking appropriate action internally to ensure that it did not occur again.

#### Virgin Media TV

Virgin Media TV confirmed that it ensured compliance with the Code for transmission of *The Great Big Quiz* on its channels by reviewing the programme's format and feeding comments back to the production company which implemented any compliance revisions they suggested. It also confirmed that *The Great Big Quiz* employed the services of an independent adjudicator which ensured that answers could not be changed during transmission, puzzles were fair, followed the correct methodology and complied with the regulatory requirements for information regarding call costs.

It continued that it did not receive any revenue from the premium rate phone lines used by viewers to contact the studio and that the parent company of *The Great Big Quiz*, Play to Win TV (which has now ceased trading) simulcast its programming on Virgin Media TV for a fixed fee that was not dependent on the amount of calls generated for the show.

## **Decision**

Rule 2.11 of the Code states that “competitions should be conducted fairly”. Ofcom noted iPlay/Play to Win TV’s immediate and full and frank admission of its mistake to Ofcom and the efforts it went to in ensuring that the four viewers who had given the correct answer (from all the calls received relating to this one puzzle) received the prize money originally denied to them.

Ofcom acknowledged that, in this case, the unfair conduct of the competition was unintentional and the adverse affects on viewers (and in particular financial harm) was remedied by the broadcaster. Nonetheless, the broadcaster did transmit an incorrect puzzle (thereby failing to conduct its competition fairly) in breach of Rule 2.11 of the Code.

Broadcasters must take particular care when using premium rate services in competitions and should take all reasonable steps to put in place adequate systems to ensure that competitions are conducted fairly. This requirement is particularly important when viewers are entering into a financial transaction with the broadcaster in order to participate.

Further, responsibility for compliance with the Code falls to every broadcaster to ensure, irrespective of whether it is transmitting programming made by a third party. Whilst Virgin Media TV reviewed the procedures of iPlay, it nonetheless transmitted an incorrect quiz for which it was responsible under its licence.

Ofcom acknowledges the remedies that have been put in place but expects all broadcasters to exercise particular caution in all aspects of the use of PRS in their programmes. In the absence of this, Ofcom will view breaches of Rule 2.11 very seriously.

## **Breach of Rule 2.11**



## **Rob Ellis**

*Galaxy 102FM, 8 September 2007, 14:30*

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### **Introduction**

As a result of a technical error in the recording process the *Rob Ellis* show included part of a conversation which was not intended for broadcast. The conversation heard included the following: “...I reckon every spacker in Manchester could go to Toys R Us...meanwhile I am having to walk fucking miles with me kids in the rain...” One listener complained that the language was offensive.

Ofcom asked Galaxy 102FM to respond with regard to Rule 1.14 (the most offensive language must not be broadcast when children are likely to be listening).

### **Response**

Galaxy 102FM accepted full responsibility for the technical error in the recording process which allowed the presenter to be heard making the offensive comments, albeit during a personal conversation, which was not intended for broadcast.

An apology was broadcast in the same show at the same time the following Saturday. Disciplinary action was also taken against the presenter and advanced training on the voice track system was given to the technical operators.

### **Decision**

Ofcom research on offensive language, conducted in 2005, identified that “fuck” or “fucking” was considered by viewers to be very offensive. The word “spacker” derives from the word spastic, a term which was also considered in the research to be very offensive to most people.

Given that the programme was broadcast at 14:30 on a Saturday and the RAJAR figures indicate that a considerable number of listeners to this programme were children (over 23%), it is clear that the most offensive language was broadcast at a time when children were likely to be listening.

Ofcom notes the broadcaster’s explanation that the offensive language was broadcast as a result of a technical error during recording and it was not intended for broadcast. Ofcom also acknowledges the action taken by the broadcaster to apologise on the same programme the following week and to reprimand staff.

In this case the broadcaster considered it was better to broadcast the apology a week after the offensive comments were originally made, because of the difficulties of interrupting (as here) a pre-recorded programme. Ofcom however expects licensees to monitor all output as broadcast and, if offensive material is broadcast, normally to apologise at the earliest opportunity, ideally by or at the end of the programme. Further, Ofcom also notes that in this case the apology broadcast was very brief and did not explain to listeners why it was being made.

Ofcom recently issued guidance to broadcasters (see Bulletin 89 [http://www.ofcom.org.uk/tv/obb/prog\\_cb/obb89](http://www.ofcom.org.uk/tv/obb/prog_cb/obb89)) to remind them that they are under a clear duty to ensure that robust procedures are in place, supported by a sufficient number of appropriately qualified and trained staff, to ensure full compliance with the

Code in respect to the broadcast of unsuitable material when children are likely to be listening.

This broadcast was therefore in breach of Rule 1.14.

**Breach of Rule 1.14**

## Casualty

*BBC1, 8 September 2007, 20:25*

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### Introduction

*Casualty* is a long-running hospital drama set in the fictional city of Holby. In this episode, a junior doctor is confronted by the effects of a bomb explosion at a coach station on his first day at work. The doctor gives medical attention to several badly injured people, including a man whose stomach has been ripped open exposing his intestines, and another requiring an arm amputation.

Four viewers complained about the graphic and repeated imagery of the injuries sustained by the victims in view of the programme's pre-watershed start. Three complainants noted there was no specific warning about this content in advance of the programme. Viewers were advised that a "*young junior doctor...finds himself thrown in at the deep end when a bomb devastates Holby and the hospital's emergency department struggles to cope*".

Ofcom asked the BBC to comment with reference to Rules 1.3 (appropriate scheduling) and 1.11 (violence must be appropriately limited in programmes before the watershed) of the Code.

### Response

The BBC responded that *Casualty* has been a staple of the BBC1 schedule for some time and has covered major incidents causing severe injuries in the past. It considered that the pre-transmission announcement and clear build up to the scenes would have sufficiently prepared viewers for such images. In particular, it pointed out that the process of the arm amputation was explained to the junior doctor before it began, so giving the audience an opportunity to look away if they wished.

The broadcaster argued that the storyline warranted showing these injuries, as they were repeated in a series of flashbacks illustrating how the self-belief of the junior doctor had nearly collapsed. It also claimed that the duration of the images of the severe injuries was brief in comparison to those showing the reactions of the junior doctor.

Although it acknowledged that *Casualty* is intended for a family audience, the BBC stated that this edition attracted a low proportion of younger viewers. It added that no viewers had complained directly to the BBC about any distress caused to children.

### Decision

Rule 1.3 requires that children must be protected by appropriate scheduling from material that is unsuitable for them.

Rule 1.11 states that "violence, its after-effects and descriptions of violence...must be appropriately limited in programmes before the watershed...and must also be justified by the context."

Ofcom was concerned by the graphic nature of the images broadcast of two particular injuries (the exposed intestines and arm amputation), given that children may have been watching at this time on a Saturday evening. We recognise that

*Casualty* is a well-established drama regularly shown before the watershed and that it often contains scenes of surgery. However, even taking into account these expectations of the audience, Ofcom considered this material to be unsuitable for children.

Having regard to *Casualty*'s general themes, it is not surprising that the audience was largely made up of adults. Nevertheless, children comprised a significant minority of the audience; indeed, two complainants specifically referred to the distress caused to their own children by these scenes. While appreciating the experiences of the junior doctor were integral to the storyline, Ofcom does not accept that the repeated images of injury were sufficiently brief and limited. Images were shown of the intestinal injuries of one victim in four separate shots all within one minute, with one shot depicting the injuries in close-up. In view of the duration and graphic nature of the injuries shown, the information provided before the programme was not, in Ofcom's opinion, adequate to warn viewers about the images of the after-effects of violence broadcast in the programme.

The 21:00 watershed acts as a guideline to all broadcasters and viewers about the nature of material likely to offend. Broadcasters must comply with the requirements of the Code that material must be appropriately scheduled and that images of the effects of violence must be appropriately limited and justified by context. Ofcom concluded, therefore, that this episode breached Rules 1.3 and 1.11.

**Breach of Rules 1.3 and 1.11**

## Resolved

### **Ricky Hatton Live Press Conference**

*Sky Sports News, 20 September 2007, 11:00*

### **Goals on Sunday**

*Sky Sports 1, 23 September 2007, 11:30*

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#### **Introduction**

During the course of Sky Sports News' live coverage of the boxer Ricky Hatton's press conference, broadcast on 20 September 2007, Hatton's opponent Floyd Mayweather started dancing. Hatton was heard to say: "...if he dances like that...he's got fucking no chance...". Shortly afterwards he said: "...stop touching my dick, you poof".

Ofcom received one complaint from a viewer who said that the broadcast of this language was not acceptable before the watershed.

We also received three complaints about an interview with the Derby County goalkeeper, Stephen Bywater. During the course of the conversation with the presenters, and discussing a former mentor, Bywater said: "...he would have said 'don't be a c-u-n-t to yourself'..."

The complainants did not think that this language was appropriate for that time of day and in such a programme.

Ofcom contacted BSkyB ("Sky") on these matters, and asked them to respond in relation to Rule 1.14 (the most offensive language must not be broadcast before the watershed), and Rule 2.3 (generally accepted standards) of the Code.

#### **Response**

##### *Ricky Hatton's Live Press Conference*

Sky told us that this was a press conference broadcast 'live' on Sky Sports News on 20 September 2007, being given by Ricky Hatton and Floyd Mayweather in Manchester (Hatton's home town). During the event, Ricky Hatton used offensive language on several occasions before Sky abandoned its coverage of the event. This press conference was part of a world tour promoting the welterweight title fight between the two boxers on 8 December 2007.

Previous press conferences had already taken place in Los Angeles, Grand Rapids (Mayweather's home town), New York and London. The broadcaster said that all the previous events on the tour had been broadcast by Sky Sports News without Ricky Hatton using offensive language. In addition, prior to this tour, the boxer had conducted approximately 20 'live' interviews and press conferences with Sky Sports News without similar incident.

Notwithstanding the above, before the press conference, Sky said that its publicity team, who were helping to co-ordinate the event, had explained to the event organisers that the press conference would be broadcast 'live' on Sky Sports News. Given Sky Sports News' experience from previous press conferences involving the

boxers, the broadcaster believed that its production team reasonably expected those involved to avoid the use of any offensive language.

Sky pointed out that after Ricky Hatton had used offensive language for the first time, the Sky Sports News presenter had given several apologies to viewers and the sound from the press conference had been temporarily cut. At the press conference, Sky Sports News production and publicity staff had then passed notes to the boxers reminding them not to use offensive language. However, Hatton had again used offensive language. Following this further incident, the production team immediately pulled the coverage and the presenter again apologised to viewers for the offensive language.

After the press conference, following an intervention by the Sky Sports producer, Ricky Hatton apologised for his language during a 'live' one-to-one interview just after 13:00 on the same day (20 September).

Sky believed that its production team had taken all reasonable steps prior to and during the broadcast to prevent and minimise any offence to viewers. The additional apology by the boxer after the press conference, they said, had made it clear to viewers that such language was unacceptable, and that Sky Sports took such matters extremely seriously.

#### *Goals on Sunday*

On 23 September 2007, Stephen Bywater, the goalkeeper for Derby County, was a guest on this programme. During a discussion about his relationship with his goalkeeping mentor, the late Les Sealey, the player had tried to describe how his mentor influenced his game and attitude now. After some hesitation, Stephen Bywater said "*He [Les Sealey] would have said "Don't be a ... Don't be a ... c-u-n-t to yourself"...*".

Sky said that the series had been transmitting for 15 years with no previous compliance problems. The programme consisted of studio-based presenters reviewing recent football matches and football-related discussions with studio guests. In Sky's view, it was evident from the context and the player's lack of reaction to his statement that Stephen Bywater believed that by spelling out the offensive language, he had avoided causing any offence. It went on to say that, normally, it would have expected the presenter to immediately intervene and apologise on air for the guest's language, or if the presenter failed to take action or if it were not possible to do so immediately, for an apology to be broadcast after the next advertising break. However, neither of these events took place and no apology was broadcast during the programme.

The broadcaster told us that the day after the broadcast, it had launched an investigation into the failure to issue an apology during the programme. As a result the programme producer, with 25 years of previous experience at ITV and Sky, had been subject to disciplinary proceedings, which had resulted in him being demoted and taken off the programme for an indefinite period. It said that all Sky Sports staff had been reminded of the need to be vigilant in monitoring language during 'live' broadcasts and of the need for appropriate action where necessary.

Sky said that it had broadcast an apology to viewers at the beginning of *Goals on Sunday* the following week. It apologised unreservedly for the use of offensive language by a guest on the programme, and for the failure to apologise to viewers during the programme.

## **Decision**

### *Ricky Hatton Press Conference*

Ofcom's audience research shows that the word "fuck" is considered to be very offensive, and therefore this language should not be broadcast before the watershed. It is also clear that, in the case of the Ricky Hatton Press Conference, the broadcast of the word "poof" in this context was clearly intended to be derogatory and offensive and was therefore not justified.

However, Ofcom recognises that the transmission of 'live' sports programming brings with it particular difficulties and compliance challenges. In the circumstances, we considered that the broadcaster did its best to limit offence and comply with the Code in the case of the Ricky Hatton Press conference. For example, it cut away from the event as soon as it became clear that Ricky Hatton's behaviour was unacceptable, apologised immediately, and brought the boxer's personal apology to viewers as soon as possible afterwards. Further, there was nothing from Ricky Hatton's previous conduct at press conferences to suggest to Sky that the boxer would behave in this way.

### *Goals on Sunday*

In the case of the interview with Stephen Bywater, to spell out the word complained of was offensive, although not in Ofcom's view to quite the same extent as using it. It was not appropriate to broadcast this language, particularly before the watershed. In this case, Sky's compliance procedures clearly did not function as effectively as with the Ricky Hatton press conference. The presenters did not, for example, give an on-air apology either and nor was one given immediately afterwards in voice-over.

However, in reaching its decision, Ofcom bore in mind all the relevant circumstances including the facts that:

- audience figures show that the number of children viewers at the time was very low;
- the word complained of was spelled out, rather than said, and so its broadcast in context was *less* offensive;
- Sky took disciplinary action against the producer concerned and other measures to improve compliance in future; and
- a full apology was made to viewers in the same programme a week later.

On balance, therefore, we consider both matters resolved.

## **Resolved**

## Not Upheld

### **Complaint by Mr John Fenty on behalf of Grimsby Town Football Club**

*Various sports programmes, BBC Radio Humberside, 5, 12 and 26 August and 9 September 2006*

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**Summary:** Ofcom has not upheld this complaint of unfair treatment.

During the course of sports programmes broadcast on 5, 12 and 26 August and 9 September 2006, BBC Radio Humberside (“the station”) included references to a dispute between Grimsby Town Football Club (“the Club”) and the station. This dispute related to the failure of the two parties to agree a season-long buy-out contract for the station’s broadcast coverage of the Club’s matches. The Club and the station were unable to agree on a package that would include live coverage of the Club’s matches, advertising and interviews with people from the Club. More limited coverage of the Club’s matches was provided by the station. The programmes complained of included references to the Club either by presenters, reporters or callers to the programmes.

Mr John Fenty, Chairman of the Club, complained to Ofcom on behalf of the Club that it was treated unfairly in the broadcasts.

Ofcom found as follows:

Ofcom found that the BBC made repeated references to the dispute. However, the positions taken by the two parties were made clear and it was also clear that the dispute was still going on between the parties. In these circumstances, listeners would have been able to form their own opinion as to the merits of the dispute. Furthermore, remarks made about the Club’s players and performance were in keeping with the normal cut and thrust of sports coverage.

Ofcom found that, as the Club had informed the BBC that open and direct access to the Club’s chairman, manager and selected players would not be given to the station, it was not unfair for the station to report that the Club had not allowed such access. A press conference attended by the station did not amount to an interview in this context.

#### **Introduction**

During the course of sports programmes broadcast on 5, 12 and 26 August and 9 September 2006, BBC Radio Humberside (“the station”) included references to a dispute between Grimsby Town Football Club (“the Club”) and the station. This dispute related to the failure of the two parties to agree a season-long buy-out contract for the station’s broadcast coverage of the Club’s matches. The Club and the station were unable to agree on a package that would include live coverage of the Club’s matches, advertising and interviews with people from the Club. More limited coverage of the Club’s matches was provided by the station. The programmes complained of included references to the Club either by presenters, reporters or callers to the programmes.

Mr John Fenty, Chairman of the Club, complained to Ofcom on behalf of the Club that it was treated unfairly in the broadcasts.



## **The Complaint**

### **Mr Fenty's case**

In summary, Mr Fenty complained that the Club was treated unfairly in that:

a) The Club had refused, as it was entitled to do, the station's offer of an agreement in relation to broadcast coverage. The Club had then been unfairly subjected to a sustained bullying process by the station, in that:

It had been repeatedly stated on air that the station could not afford to record and broadcast any live commentaries because the Club was asking for too much money and the station had unfairly implied that the Club was being greedy and reported that the Club wanted a deal that would make it the highest paid in its division; and

The station had attempted to pressurise the Club into accepting the station's terms for broadcast of matches by mounting a campaign of divisive, misleading, inaccurate and derogatory remarks about the Club. In particular, there were references by presenters to the Club operating in the "flea market", which was an attack on players. There was a suggestion that players only went to the Club "because other clubs don't want them". The players were also referred to as "Dad's Army".

During the broadcast on 5 August 2006 the station untruthfully reported that the Club's manager was not available for interview, when in fact he had given an interview.

### **The BBC's case**

In response to the complaint of unfair treatment, the BBC said in summary:

In response to the complaint that the coverage relating to the Club amounted to a campaign of bullying and intimidation, the BBC said that when the impasse over the deal between the Club and the station was dealt with on air, the tone was measured and considered.

(i) In response to the complaint that the Club was portrayed as being greedy, the BBC said that the station covered three local football teams, namely Grimsby Town, Hull City and Scunthorpe United. All three teams, at various times, would have games covered live by the station. On 5 August 2006, the opening day of the season, the Club was at home to Boston. The BBC argued that, given the impasse that existed, it was perfectly proper for the presenter to tell listeners that they would not be hearing live commentary from Grimsby games and why that was the case. It was all the more important to report the impasse because the Club had recently told the station that "open and direct access to club officials and players" was no longer available. This meant that the normal packages concerning the Club, its plans and prospects, which listeners would expect throughout the afternoon, would not be available. This had to be explained and was dealt with by the reporter and the Managing Director of the station on 5 August 2006. On this occasion and henceforth, the station's objective was to maintain a high level of fair and reasonable coverage of the Club's fortunes, despite trying to do this without match commentaries or access to officials and players. The tone of this coverage was sober and the terms in which the dispute was reported was not bullying.

The BBC said that the same applied to the manner in which the dispute was reported, with further clarification, on 12 August 2006.

The BBC said that the coverage reflected the BBC's position that it was seeking to achieve a contract with the Club which would secure rights to commentate on matches over the course of the season. The alternative put forward by the Club, in line with the central agreement between the Football League and the BBC, would have seen the available budget stretched extremely thin and would have represented poor value for license fee payers. A more detailed discussion of this option would have added nothing to the public's understanding of the central issue dividing the parties, which was the value of a season-long buy-out deal, which was the norm elsewhere and had been at Grimsby until this season.

The Club was not represented in the coverage as being greedy: the coverage reflected that the Club's assessment of the value of the rights to coverage and exceeded the BBC's ability to pay, based on an assessment of what would represent value for money for license fee payers. The BBC said its position that the contract proposed by the Club would have represented a 60 to 65% increase on the previous contract was fully justified. This would have made Grimsby, along with Walsall, the highest paid League Two club in England for such a contract.

(ii) In response to the complaint that the station mounted a campaign to pressurise the Club into accepting the terms suggested by the station, the BBC said that the station's coverage of the footballing fortunes of the Club could not reasonably be regarded in this way.

A remark during the broadcast on 9 September 2006 that the club operated in a "flea market" came from a match summariser for the station, who had been manager of the Club from 1979 until 1982 and led the Club to the Third Division Championship in 1980. At the time the remarks were made, the Club had played seven games and won only one. Four games had been lost and two drawn. It was not surprising therefore that the possible reasons for this malaise were being explored. The match summariser's remarks were a colourful and robust, yet affectionate, observation about the difficulties faced by the Club's manager in having to operate in the transfer market on limited resources. The context of the remarks made it clear that that was his point and that he was not seeking to heap abuse on anybody. He was entitled and qualified to make those remarks. His remark was picked up and used to introduce a discussion between a presenter and a reporter. The remark was not used in any malicious way but to prompt consideration of the Club's financial and other constraints when it came to operating in the transfer market.

The BBC said that the remark about other clubs not wanting players who went to the Club was arguably "a bit sweeping". However the BBC said that it was the presenter's genuinely held, reasoned view about the difficulties that the Club faced for both financial and geographical reasons. There was no evidence or indication that the remark was malicious or part of a campaign to bully the club into accepting the deal offered by the BBC. In fact it was clear that the presenter had great affection for the Club and wanted it to succeed.

The BBC said that the remark about "Dad's Army" followed on from a lengthy feature about a player who had just been signed by the Club at the age of 40. At the time there were also several players in their 30s. What was said was considerably less sweeping than represented by Mr Fenty. The remark only referred to "parts" of the squad and was not a derogatory comment, but a pithy observation about the likelihood of strain and injury given the age of some of the players.

The BBC next responded to the complaint that on 5 August 2006 the station reported incorrectly that the Club's manager was not available for interview. The BBC said that in an email to the station on 2 August 2006, the Club's commercial manager had informed the station that its proposed commentary deal was not acceptable to the Club. The email also said that the arrangement that would be in place while the dispute remained unresolved did not extend to "open and direct access to the Chairman, Manager and selected players".

The BBC argued that this email repudiated the previous commentary deals with the Club, which had included a one-to-one interview with club managers after each game in addition to attendance at press conferences. The restriction of access was also confirmed verbally by the Club's press officer on two occasions to representatives of the station. Under an arrangement with the Football League, the Club could not exclude the station from post-match press conferences, so the station attended the press conference after the match on 5 August 2006. However, having been told on three occasions by the club that interviews would not be granted, the reporter did not attempt to conduct a one-to-one interview with the manager after the press conference as he would normally have done. He did record proceedings at the press conference itself, including the manager's comments. The BBC considered that this was what Mr Fenty had in mind when he said that the manager had given an interview. However this was not an interview on any normal understanding of the word, nor was it the kind of interview that listeners would have expected. In the circumstances the comment on air that the Club "*was not talking to us*" was fair and accurate. In the event, time constraints did not allow the press conference recording to be fed back to the studio, so the presenter asked the reporter to summarise, on air, what the manager had said.

### **Mr Fenty's response**

Mr Fenty said in response to the BBC's statement, in summary:

- a) With reference to the comment on 12 August 2006 that "*Town want a deal that would basically make them the highest paid club in league two*", the station had ignored the fact that Wrexham was in fact the highest paid club in league two and would have remained so under the terms of the deal being proposed by the Club.
- b) The extract from the broadcast on 5 August 2006 included in the BBC's statement was not correctly transcribed and, when associated with comments throughout the broadcast would have misled listeners to think the Club had not allowed a post-match interview.

### **The BBC's response**

The BBC said in response to Mr Fenty's statement, in summary:

- a) It was correct that Wrexham were paid more than the Club would have been under the BBC's offer, but Wrexham, being a Welsh team, was not included in the contractual arrangements between the Football League, its English Clubs and the BBC's English regions. Wrexham's broadcasting contract was with BBC Wales, a national rather than a local broadcaster, which made its own contractual arrangements as it saw fit. It was appropriate to compare the Club with other English League Two clubs.

b) The BBC argued that the transcript of the discussion on 5 August 2006 was correct. It remained the case that the press conference referred to was not a press conference of the sort that had taken place in previous seasons, given that one-to-one interviews with the manager, players and principals had been placed out of bounds by the club. If there was an inference that this was not a press conference in the normal accepted sense, that was not misleading.

## Decision

Ofcom's statutory duties include the application, in the case of all television and radio services, of standards which provide adequate protection to members of the public and all other persons from unfair treatment in programmes included in such services.

In carrying out its duties, Ofcom has regard to the need to secure that the application of these standards is in the manner that best guarantees an appropriate level of freedom of expression. Ofcom is also obliged to have regard in all cases, to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed.

Mr Fenty's complaint was considered by Ofcom's Executive Fairness Group. Ofcom considered the complaint and the broadcaster's response and comments from each party, together with recordings and transcripts of the programmes as broadcast and a recording of a meeting between the parties that was recorded by the Club.

Ofcom found as follows:

Ofcom first considered Mr Fenty's complaint that the club had been unfairly subjected to a sustained bullying process by the station.

In considering this head of complaint, Ofcom took into account Practice 7.9 of the Code. Practice 7.9 states that broadcasters must take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

Ofcom first considered the two sub-complaints before returning to the main head.

(i) As regards the complaint that the Club was portrayed as being greedy, Ofcom noted that the subject of the dispute between the parties was raised during the broadcast on 5 August 2006, when it was discussed by a reporter and the Managing Director of the station:

Reporter:

*"By the way, I should tell you, with some regret, BBC Radio Humberside will not be providing its established football commentary coverage of Grimsby Town this season, the announcement was made yesterday by BBC Radio Humberside's Managing Editor Simon Pattern. He confirmed that the club had been seeking commentary fee that would have been over 60% more expensive than the costs in the previous deal".*

Managing Director:

*"It's a simple as we can't afford to pay the amount of money that the club are looking for a broadcast deal. The current climate on these deals is that they are either static or in some cases are going down. The club have asked for a significant increase in the money that they want us to pay for a contract. We simply can't afford that - I don't think it represents value for the licence payer".*

Reporter:

*“Well, we hope at some time we might manage to resolve that situation, but as the situation stands at the moment, we will not be able to provide commentary on Grimsby Town this season, and we will not be able to provide commentary for Town’s website either”.*

The subject of the dispute was discussed again at some length on 12 August 2006, in a conversation between two reporters:

Reporter 1:

*“We would like to be doing commentary on the Mariners this afternoon. As people are well aware, we’ve not been able to reach a broadcast agreement with Grimsby Town at this stage of the season. We have had negotiations; those negotiations at the moment have stopped. Technically we are still able to do commentary on them but just to clear up a little bit of misinformation and to state some facts as to how the broadcast deal works, just to clarify it John, I feel we need some clarification don’t you? I think some of the fans need clarification. The deal works in that there is agreement between the football league and the BBC local radio stations. Normally, all radio stations have a deal with their local clubs. They’ll pay them a lump sum to enable them to do their commentaries during the season. But in addition to that, we also have to make substantial payments to every club they play.... We haven’t been able to agree a deal between Town, which is unfortunate on both our parts. I think we both need each other, and we would hope that maybe we can agree a deal at some stage. But at the way it stands at the moment we feel that we are offering, we’ve been talking about a fair price for this division. Town want a deal that would basically make them the highest paid club in League Two in terms of the contract and in a declining market, we don’t feel that that’s good value for money for the license-payer. So I just wanted to clarify that a little bit. John have you anything to add or anything to ask? I know there is some confusion”.*

Reporter 2:

*“Well obviously I’m a bit disappointed that I’m not doing it. I love doing the commentaries. I don’t know if anyone likes listening to them. I hope they do. I’m missing my little mate George who’s such great company both at the games and on the way to and from them. But I mean, from a deeper angle, I’m surprised really, that the club can afford to turn down a large amount of money for what is, basically, a service that advertises their product. You know, the squad this year looks quite thin. You wouldn’t think there’s a lot of money about and yet here’s some money that is available to them. Now, it might not be the amount they want. But, I haven’t seen any other radio station... there hasn’t been any radio station jumping in to take over. So I’m, I’m surprised and I’m disappointed and at the end of the day, it’s always the fans who suffer isn’t it?”*

Reporter 1:

*“Yeah”.*

Reporter 2:

*“And we do want to provide the service but basically we can’t afford it. The way the deal, Town’s proposed deal was structured, we’d run out of money before Christmas. And there you go. Hopefully it will be resolved. Hopefully negotiations will re-continue. I know you’ve got to dash off...”*

These were two examples of coverage of the dispute in the programmes over a period of around five weeks. Ofcom noted that the dispute was referred to frequently

and at great length, with repeated references to the BBC being unable to afford what the Club was asking. Station representatives said on air, for example:

*"It's a simple as we can't afford to pay the amount of money that the club are looking for a broadcast deal".*

*"And we do want to provide the service but basically we can't afford it".*

Ofcom takes the view that it is essential that broadcasters are fully aware of the capacity their reporting has to appear to be unbalanced, particularly when reporting on a story that involves them directly. In making repeated references to the dispute to which it was a party and covering it in a sustained manner over a lengthy period, the BBC was clearly using its position as a broadcaster to lend weight to its view of a dispute to which it was a party.

However, in its overall coverage, Ofcom considered that the BBC did in fact explain clearly the nature of the dispute, the background to it and the positions taken by the two parties to it. It was also made clear that the dispute was still going on between the parties. Listeners would therefore have been able to form their own opinion as to the merits of each side to the dispute and the coverage did not result in unfairness to the Club in the broadcast programmes.

(ii) As regards the complaint that the station mounted a campaign of misleading, inaccurate and derogatory remarks about the Club, Ofcom noted the particular extracts of the programmes about which Mr Fenty complained. On 9 September 2006, a match summariser said:

*"Those people that are really committed to the Club and that are there day in day out, they want to see a bit more put into the Club. They want to see a better class of player. That's difficult in today's financial circumstance. Talking about the manager, we are talking about his job at this particular time. When he's operating as everybody knows in the flea market and everyone knows you're...gonna eventually get some fleas... you've got to get involved and we really mean business. We have got to find some cash from somewhere to buy a player that has got a pedigree that people can believe in..."*

The remark about the "flea market" was followed up in a discussion between two reporters, when one of them said:

*"Everyone who comes here is basically because other clubs don't want them and it's very rare that you get someone like a Mildenhall or a Rob Jones. They're absolute nuggets that you can get and it's a shame Town didn't hang on to them. So far this season there hasn't been anyone like that. Usually you get a couple a season but it just hasn't happened for them so far."*

Mr Fenty also complained about a remark by a presenter, who said:

*"I'm not sure about the Mariners this season. It's a small squad. Dave Moore the physio will have his work cut out. It's more Dads' Army than Lad's Army the Town squad – or parts of it. But we will wait and see what happens."*

Ofcom noted that Mr Fenty was likely to be sensitive to such remarks, given the dispute that was taking place between the Club and the station. It also noted the BBC's view, expressed in its statement in response to Mr Fenty's complaint, that the remark about players going to the Club because other clubs did not want them was

“somewhat sweeping”. However, Ofcom considered that the references by a former manager of the Club to a “flea market” and the references to other clubs and to “Dad’s Army” were entirely in keeping with the normal cut and thrust of sports coverage. Even in the context of the dispute, it was not unfair for presenters and reporters to engage in light hearted banter of this sort. In these circumstances, Ofcom did not consider that these remarks were unfair to the Club.

In view of the decisions at (i) and (ii) above, Ofcom found that the programme was not unfair to the Club in this respect.

Ofcom next considered the complaint that, on 5 August 2006, the station untruthfully reported that the Club’s manager was not available for interview.

In considering this head of complaint, Ofcom took into account Practice 7.9 of the Code, as set out under decision head a) above.

Ofcom noted an email sent by the commercial manager of the Club to the Managing Director of the station on 2 August 2006, in which he referred to the arrangements between the Club and the station, in view of the fact that the parties had not reached an agreement:

“The basis of this arrangement does not extend to open and direct access to the Chairman, Manager and selected players”.

Ofcom also noted the following conversation between a presenter and a reporter during the broadcast on 5 August 2006.

Presenter:

*“...the club have denied us access to the manager and players – which is a great shame. Because there is a wrangle over the commentary deal, and we would love to talk to Graham Roger and young Peter Bore who scored two dear goals on his debut. He deserves a platform to come on and tell the fans how he saw it and tell us a little bit about himself. But the club are stopping us talking to the players and managers...Mike White’s been at the sort of post-match press conference...”*

Ofcom considered that in view of the email from the Club to the station, it was not unreasonable for the BBC to report that the Club was not allowing interviews. Ofcom took the view that, in this context, a press conference was not the same as an interview. It was therefore not unfair for the station to report that the Club had not allowed an interview with the manager and players, even though they were present at the press conference.

Ofcom found no unfairness to the Club in this respect.

Accordingly the Ofcom has not upheld the complaint of unfair treatment in the broadcast of the programmes.

## **Complaint by Mr John Fenty on his own behalf and on behalf of Grimsby Town Football Club**

*Sports programme, BBC Radio Humberside, 28 April 2007*

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**Summary:** Ofcom has not upheld this complaint of unfair treatment.

During a sports programme broadcast on 28 April 2007, the presenter said that a reporter from BBC Radio Humberside (“the station”) was not allowed to attend a press conference being held by Grimsby Town Football Club (“the Club”). The presenter said that Mr John Fenty, the Chairman of the Club, had stopped the station from attending the press conference and had called him a “*plonker*”. The reporter clarified during the programme that he had, in fact, attended the press conference. An apology was then issued two days later by the presenter, who said that the station had been allowed to attend the press conference but not permitted by Mr Fenty to interview a player who was retiring from the Club that day. He also apologised for “*other remarks*” which were made.

At the time of the broadcast, there was a dispute between the Club and the station, relating to the failure of the two parties to agree a season-long buy-out contract for the station’s broadcast coverage of the Club’s matches.

Mr Fenty complained to Ofcom on his own behalf and on behalf of the Club that they were treated unfairly in the broadcast.

Ofcom found that an offensive term was used about Mr Fenty and an inaccurate reference made suggesting that the station had not been allowed to attend a Club press conference. The broadcast was unfair in both these respects. However, the issues were in Ofcom’s view resolved by the broadcast, twice, of an apology by the station and therefore, taking into account all the coverage, including the subsequent broadcasts, no unfair treatment resulted to Mr Fenty. A reference to Mr Fenty not allowing an interview with a player who was retiring was not unfair.

### **Introduction**

During a sports programme broadcast on 28 April 2007, the presenter said that a reporter from BBC Radio Humberside (“the station”) was not allowed to attend a press conference being held by Grimsby Town Football Club (“the Club”). The presenter said that Mr John Fenty, the Chairman of the Club, had stopped the station from attending the press conference and had called him a “*plonker*”. The reporter clarified during the programme that he had, in fact, attended the press conference. An apology was then issued two days later by the presenter, who said that the station had been allowed to attend the press conference but not permitted by Mr Fenty to interview a player who was retiring from the Club that day. He also apologised for “*other remarks*” which were made.

At the time of the broadcast, there was a dispute between the Club and the station, relating to the failure of the two parties to agree a season-long buy-out contract for the station’s broadcast coverage of the Club’s matches.

Mr Fenty complained to Ofcom on his own behalf and on behalf of the Club that they were treated unfairly in the broadcast.



## **The Complaint**

### **Mr Fenty's case**

In summary, Mr Fenty complained that he and the Club were treated unfairly in the programme in that:

Mr Fenty was referred to by the presenter as a "*plonker*" and this was followed by laughter.

The presenter said, incorrectly, that the station had not been allowed to attend a press conference at the Club.

The presenter did not explain the reasons the station was not permitted an interview with John McDermott, the player who was retiring. This was because such an interview would not have been in accordance with the terms of a Memorandum Broadcast Agreement between the Club and the BBC. He also suggested incorrectly that Mr Fenty was responsible for the decision not to allow an interview. With reference to an interview that had taken place with another player, Danny North, the previous week, Mr Fenty said that he knew nothing about that and, therefore, had not expressed a view about it.

### **The BBC's case**

In response to the complaint of unfair treatment, the BBC said in summary:

The BBC had acknowledged immediately that the comment made about Mr Fenty was offensive and inappropriate. The station took swift steps to agree with Mr Fenty a suitable apology for broadcast at the first available and most appropriate opportunity. Mr Fenty emailed the station about the remark the day after the broadcast. His email was received by the station editor the following morning. An apology was agreed and broadcast for the first time at the beginning of the *Sport Talk* programme on that Monday.

The BBC said that the apology also covered the second issue raised by Mr Fenty, namely that it had been stated, wrongly, in the programme that Mr Fenty had prevented the station from attending the post-match press conference.

The BBC said that the original error concerning the press conference had been the result of an innocent but unfortunate misunderstanding between the sports editor and the reporter who had been covering the Club's match. It was clear from the recordings that the match reporter had clarified later in the programme that the station had not been prevented from attending the press conference but had been prevented from conducting a one-to-one interview with a retiring player, John McDermott.

The apology was broadcast at the beginning of the programme and, following discussion with Mr Fenty, it was agreed that the apology should be broadcast again the following Saturday during the half time interval of a rugby league match, when the football scores would be rounded up and the apology would have appropriate prominence. In the BBC's view, the incident, which was a cause for regret and apology by the BBC, had been dealt with satisfactorily on terms agreed with Mr Fenty.

The BBC said that it was not the case that the interview requested by the BBC would not have been in accordance with the terms of a Memorandum of Agreement between the Club and the BBC. The agreement allowed for access to players with the permission of the Club, which could be given by any one of three specified individuals. The agreement was not prohibitive and would not have been breached if an interview had been agreed by the Club. It was the Club's refusal to sanction it that prevented the interview taking place. The agreement was, therefore, irrelevant when it came to explaining to the audience why the interview would not take place.

The BBC noted Mr Fenty's complaint that the programme was unfair because, contrary to the impression given in the programme, he had nothing to do with the decision on the day to deny the station access to John McDermott for a one-to-one interview. The BBC also noted Mr Fenty's statement that he knew nothing about an interview that had taken place the week before with another player, Danny North.

The BBC took issue with the recollection of the Club's press officer as set out in a statement submitted with Mr Fenty's complaint. The BBC said it was the match reporter's recollection that, in a conversation he had with the press officer, the press officer had referred to the interview with Danny North and made specific reference to the Chairman's displeasure at the interview having taken place. Furthermore, the BBC noted that in the Club's statement to Ofcom, the press officer said that he told the reporter that "...the Chairman would have my 'guts for garters' if I was to allow him to talk to the player". This admission placed responsibility for the denial of an interview firmly with Mr Fenty, even if he had no direct conversation with the press officer about it.

## **Decision**

Ofcom's statutory duties include the application, in the case of all television and radio services, of standards which provide adequate protection to members of the public and all other persons from unfair treatment in programmes included in such services.

In carrying out its duties, Ofcom has regard to the need to secure that the application of these standards is in the manner that best guarantees an appropriate level of freedom of expression. Ofcom is also obliged to have regard in all cases, to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed.

Mr Fenty's complaint was considered by Ofcom's Executive Fairness Group. Ofcom considered the complaint and the broadcaster's response and comments from each party, together with recordings and transcripts of the programmes as broadcast.

Ofcom found as follows:

In considering Mr Fenty's complaint that he and the Club were treated unfairly, Ofcom took into account Practice 7.9 of the Code. Practice 7.9 states that broadcasters must take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

Ofcom noted that the term used with reference to Mr Fenty and was derogatory and offensive. This was unfair to him. However Ofcom noted that the BBC had accepted immediately that the remark was offensive and inappropriate. The BBC had broadcast an apology, the terms of which were discussed and agreed with Mr Fenty. The presenter of the programme said:

*“As we start tonight’s programme it’s important for me to take a few moments to clarify a mistake that was made during our Saturday Sport programme this past weekend. During the programme I told listeners that Grimsby Town’s Chairman, John Fenty, had refused us access to the after-match conference at Blundell Park. I want to make it clear now that that was not in fact the case. Although we did clarify this mistake within a few minutes on Saturday afternoon, we felt that it important to do so again this evening. I, and everyone at BBC Radio Humberside, is sorry for this mistake and we also apologise for any offence that was caused by further remarks made on air”.*

The apology was first broadcast on the Monday following the original Saturday broadcast. It was broadcast again the following Saturday. In these circumstances, Ofcom considered that the complaint had, in effect, been resolved by the BBC, and therefore found in the context of the subsequent broadcasts no unfairness resulted to Mr Fenty.

In relation to the complaint that the presenter had said that the station had not been allowed to attend a press conference at the Club, Ofcom noted that the station was able to attend a press conference, but the reporter had not been permitted a one-to-one interview with the player who was retiring from the Club. This error was corrected during the broadcast programme and was also referred to in the apology (as set out under Decision head a) above). In considering whether the comment was unfair to the Club, Ofcom noted that there was a dispute taking place at the time between the Club and the station about coverage of the Club’s matches. In these circumstances, the suggestion that the station was not allowed to attend a press conference was a significant allegation. The allegation was unfounded and this was unfair. However, as set out under Decision head a) above, Ofcom considered that the apology, broadcast twice, resolved this issue. Ofcom therefore found that in the context of the subsequent broadcasts no unfairness resulted to Mr Fenty.

Finally Ofcom considered Mr Fenty’s complaint that the presenter did not explain the reasons why the station was not permitted an interview with a player who was retiring. Ofcom noted that the presenter said that:

*“...what is the disappointing thing for me is that we’ve not been allowed to talk to John McDermott [the retiring player] today...I know John McDermott wanted to come and talk to us but I’m afraid Mr Fenty has stopped us from doing so.”*

Ofcom also noted the contents of a statement made by the Club’s press officer and provided to Ofcom by Mr Fenty. The press officer said:

*“We have not permitted Radio Humberside to conduct one-on-one interviews since the early part of the season, and denying them access to John McDermott was in keeping with a memorandum which we received earlier in the season... After pressing me further, I told John that the Chairman would “have my guts for garters” if I was to allow him to talk to the player.”*

Ofcom noted that there was a dispute between the parties as to whether Mr Fenty was aware of an interview that had taken place the week before with another player. Ofcom’s is not a fact-finding tribunal and as such is not required to resolve conflicts of evidence as to the nature or accuracy of particular accounts of events where it feels it is unable to do so. However, it appeared to Ofcom on the basis of the material provided that there was a general denial of access to the BBC for one-to-one interviews with players was in place, for which Mr Fenty, as Chairman of the Club,

was responsible. While he may not have specifically forbidden an interview with John McDermott, it was not unfair, in the circumstances, for the presenter to say that Mr Fenty had prevented the station from interviewing the retiring player.

Ofcom found no unfairness to the Club in these respects.

Accordingly the Executive Fairness Group has not upheld the complaint of unfair treatment of Mr Fenty and the Club in the programme.

## Other Programmes Not in Breach/Out of Remit

29 November to 11 December 2007

Programme	Trans Date	Channel	Category	No of complaints
30 Rock	15/11/2007	Five	Generally Accepted Standards	1
A Question of Sport	26/10/2007	Dave	Scheduling	1
Adil Ray Show	31/10/2007	BBC Asian Network	Generally Accepted Standards	1
All Star Family Fortunes	17/11/2007	ITV1	Generally Accepted Standards	1
Autopsy: Emergency Room	06/11/2007	Channel 4	Generally Accepted Standards	4
Autopsy: Emergency Room	20/11/2007	Channel 4	Generally Accepted Standards	1
Autopsy: Emergency Room	13/11/2007	Channel 4	Generally Accepted Standards	1
Autumn Interlude	-	CBeebies	Substance Abuse	1
BBC News	24/10/2007	BBC1	Generally Accepted Standards	1
BBC News	23/11/2007	BBC1	Generally Accepted Standards	1
BBC Radio WM	14/10/2007	BBC Radio WM	Generally Accepted Standards	1
Babeworld TV	29/08/2007	Babeworld TV	Commercial References	1
Blue Peter	31/10/2007	BBC1	Dangerous Behaviour	3
Bones (trailer)	15/11/2007	Sky One	Violence	1
Breakfast	04/12/2007	BBC1	Undue Prominence	1
Breakfast	20/11/2007	BBC1	Due Impartiality/Bias	1
Bremner, Bird and Fortune	04/11/2007	Channel 4	Offensive Language	3
Channel 4 News	08/11/2007	Channel 4	Generally Accepted Standards	1
Channel 4 News	16/10/2007	Channel 4	Generally Accepted Standards	1
Children in Need	16/11/2007	BBC1	Generally Accepted Standards	2
Chris Moyles Show	20/11/2007	BBC Radio 1	Substance Abuse	1
Chris Moyles Show	20/11/2007	BBC Radio 1	Generally Accepted Standards	1
Coronation Street	19/11/2007	ITV1	Generally Accepted Standards	1
Coronation Street	09/11/2007	ITV1	Generally Accepted Standards	3
Coronation Street	18/11/2007	ITV1	Religious Offence	1
Cranford	25/11/2007	BBC1	Generally Accepted Standards	1
Criminal Minds	14/11/2007	Virgin 1	Generally Accepted Standards	1
Deepa Rai	20/11/2007	Sunrise Radio	Generally Accepted Standards	1
Diddy Dick and Dom	14/09/2007	CBBC	Violence	1
Dispatches (trailer)	08/11/2007	Channel 4	Dangerous Behaviour	1
Doc Martin	06/11/2007	ITV1	Generally Accepted Standards	1

Don't tell the Bride	15/11/2007	BBC3	Crime (incite/encourage)	1
Dragon's Den	26/11/2007	BBC2	Commercial References	1
Drivetime	29/11/2007	BBC Radio 2	Commercial References	1
Drugs: The Low Down on Getting High	30/11/2007	Channel 4	Substance Abuse	2
Dubplate Drama	26/10/2007	Channel 4	Crime (incite/encourage)	1
Eastenders	15/11/2007	BBC1	Generally Accepted Standards	1
Eastenders	18/11/2007	BBC1	Violence	1
Eastenders	13/11/2007	BBC1	Generally Accepted Standards	1
Eastenders	06/11/2007	BBC1	Inaccuracy/Misleading	1
Election Crisis in Pakistan	-	DM Digital	Use of Premium Rate Numbers	2
Embarrassing Illnesses	21/06/2007	Channel 4	Sex/Nudity	1
Family Sins	19/11/2007	Five	Violence	1
Fanny Hill	03/11/2007	BBC4	Sex/Nudity	1
Fanny Hill (trailer)	14/10/2007	BBC1	Sex/Nudity	5
Fighting Talk	17/11/2007	BBC Radio 5 Live	Generally Accepted Standards	1
Five News	20/11/2007	Five	Generally Accepted Standards	3
Five News	02/11/2007	Five	Crime (incite/encourage)	3
Five News	27/10/2007	Five	Due Impartiality/Bias	1
Friends	24/11/2007	E4	Generally Accepted Standards	1
GMTV	19/11/2007	ITV1	Generally Accepted Standards	1
GMTV	23/11/2007	ITV1	Generally Accepted Standards	1
George Galloway	25/11/2007	talkSPORT	Generally Accepted Standards	1
George Galloway	10/11/2007	talkSPORT	Due Impartiality/Bias	1
George Galloway	25/11/2007	talkSPORT	Generally Accepted Standards	1
Have I Got News For You	23/11/2007	BBC1	Generally Accepted Standards	1
Have I Got News For You	19/11/2007	BBC2	Generally Accepted Standards	1
Have I Got News for You	09/11/2007	BBC1	Generally Accepted Standards	2
Holby City	11/09/2007	BBC1	Substance Abuse	3
Hollow Men	15/11/2007	BBC Radio 4	Generally Accepted Standards	1
Hollyoaks	14/11/2007	Channel 4	Generally Accepted Standards	5
How to Look Good Naked	14/11/2007	Channel 4	Sex/Nudity	4
I'm a Celebrity...Get Me Out of Here!	26/11/2007	ITV1	Generally Accepted Standards	1
I'm a Celebrity...Get Me Out of Here!	17/11/2007	ITV1	Generally Accepted Standards	1
I'm a Celebrity...Get Me Out of Here!	16/11/2007	ITV1	Generally Accepted Standards	4

I'm a Celebrity...Get Me Out of Here!	-	ITV	Animal Welfare	1
I'm a Celebrity...Get Me Out of Here!	13/11/2007	ITV1	Religious Offence	1
I'm a Celebrity...Get Me Out of Here!	15/11/2007	ITV1	Use of Premium Rate Numbers	1
I'm a Celebrity...Get Me Out of Here!	30/11/2007	ITV1	Generally Accepted Standards	2
I'm a Celebrity...Get Me Out of Here!	29/11/2007	ITV1	Generally Accepted Standards	2
ITV Evening News	16/11/2007	ITV1	Generally Accepted Standards	1
ITV News	27/10/2007	ITV1	Due Impartiality/Bias	1
ITV News	24/11/2007	ITV1	Inaccuracy/Misleading	1
Identity Crisis: Tonight	23/11/2007	ITV1	Inaccuracy/Misleading	1
Inside Out	14/11/2007	BBC1	U18s in Programmes	1
Interview With A Cannibal	05/11/2007	Five	Generally Accepted Standards	1
James Whale	14/11/2007	talkSPORT	Other	1
Jon Gaunt	09/11/2007	talkSPORT	Generally Accepted Standards	1
Jonestown Cult Suicides: the True Story	13/11/2007	Five	Violence	1
Katy Brand's Big Ass Show	16/11/2007	ITV2	Generally Accepted Standards	1
Katy Brand's Big Ass Show	25/11/2007	ITV2	Religious Offence	2
Lakshya	18/10/2007	B4U Movies	Generally Accepted Standards	1
Legend	17/11/2007	BBC2	Generally Accepted Standards	1
Live at the Apollo	19/11/2007	BBC1	Generally Accepted Standards	1
Long Way Down	18/11/2007	BBC2	Animal Welfare	1
Lucky Number Slevin	20/06/2007	Sky Anytime	Other	1
Make Me A Muslim	16/12/2007	Channel 4	Generally Accepted Standards	1
Make Your Play	27/11/2007	ITV1	Competitions	1
Make Your Play	-	ITV1	Competitions	1
McCanns - The Witch Hunt: Tonight	05/11/2007	ITV1	Due Impartiality/Bias	4
Mr Maker	13/11/2007	CBeebies	Generally Accepted Standards	1
My Boy Jack	11/11/2007	ITV	Offensive Language	3
My Parents Are Aliens	03/11/2007	ITV1	Religious Offence	1
News	22/10/2007	ITV1	Generally Accepted Standards	1
Newsnight	04/12/2007	BBC2	Inaccuracy/Misleading	1
Nick Ferrari	19/11/2007	LBC	Inaccuracy/Misleading	1
Parkinson	10/11/2007	ITV1	Generally Accepted Standards	1
Playboy One	29/11/2007	Playboy	Sex/Nudity	1
Ramsay's Kitchen Nightmares	04/12/2007	Channel 4	Generally Accepted Standards	2
Ramsay's Kitchen Nightmares	30/10/2007	Channel 4	Generally Accepted Standards	2
Ramsay's Kitchen Nightmares	04/12/2007	Channel 4	Offensive Language	2

Ramsay's Kitchen Nightmares (Trailer)	29/11/2007	Channel 4	Crime (incite/encourage)	2
Ramzan FM	17/09/2007	Ramzan FM	Religious Offence	2
Road Wars	10/12/2007	Sky One	Generally Accepted Standards	2
Rugby World Cup Live	14/10/2007	ITV1	Generally Accepted Standards	12
Shilpa Shetty Interview	04/11/2007	DM Digital	Generally Accepted Standards	2
Sky News	20/11/2007	Sky News	Generally Accepted Standards	2
Sky News	09/10/2007	Sky News	Inaccuracy/Misleading	2
Soccer AM	24/11/2007	Sky One	Generally Accepted Standards	2
Sold	15/11/2007	ITV1	Generally Accepted Standards	3
Sports Personality of the Year 2007	09/12/2007	BBC1	Commercial References	2
Strictly Come Dancing	10/11/2007	BBC1	Generally Accepted Standards	2
Super Bears	13/10/2007	Five	Generally Accepted Standards	2
Tarrant on TV	14/10/2007	ITV1	Generally Accepted Standards	2
Teen Taboos	19/11/2007	Channel 4	Sex/Nudity	3
The 800 Million Pound Railway Station	13/11/2007	BBC2	Offensive Language	2
The Armstrong & Miller Show	02/11/2007	BBC1	Generally Accepted Standards	2
The Gunpowder Plot: Exploding the Legend	05/11/2007	ITV4	Generally Accepted Standards	2
The Hits	-	The Hits	Sex/Nudity	2
The Hits Non-stop	29/11/2007	The Hits	Sex/Nudity	2
The Hoolie with Lachie Mor	12/11/2007	Nevis Radio	Generally Accepted Standards	2
The Jeremy Kyle Show	23/07/2007	ITV1	Generally Accepted Standards	2
The Jeremy Kyle Show	23/11/2007	ITV1	Generally Accepted Standards	2
The Jeremy Vine Show	16/02/2004	BBC Radio 2	Other	2
The Kylie Show	10/11/2007	ITV1	Sex/Nudity	3
The Kylie Show	11/11/2007	ITV2	Sex/Nudity	2
The Legends	28/08/2007	Century FM	Generally Accepted Standards	9
The Mummy Diaries	08/11/2007	Channel 4	Generally Accepted Standards	1
The National Lottery Draw	10/11/2007	BBC1	Inaccuracy/Misleading	4
The News Quiz	16/11/2007	BBC Radio 4	Offensive Language	3
The ONE Show	08/11/2007	BBC1	Generally Accepted Standards	1
The Paul O' Grady Show	10/10/2007	Channel 4	Generally Accepted Standards	1
The Politics Show	02/12/2007	BBC1	Inaccuracy/Misleading	2
The Queen's Wedding	29/11/2007	Channel 4	Other	1
The Street	22/11/2007	BBC1	Generally Accepted Standards	1



The Street (trailer)	21/11/2007	BBC1	Sex/Nudity	3
The Street (trailer)	18/11/2007	BBC1	Sex/Nudity	1
The Ultimate Fighter	-	Bravo	Violence	1
The Vicar of Dibley	25/10/2007	UKTV Gold	Offensive Language	1
The Whistleblowers	11/10/2007	ITV1	Generally Accepted Standards	3
The World at One	04/12/2007	BBC Radio 4	Inaccuracy/Misleading	1
The Wright Stuff	25/10/2007	Five	Generally Accepted Standards	1
The Wright Stuff	07/11/2007	Five	Generally Accepted Standards	1
The X Factor	17/11/2007	ITV1	Inaccuracy/Misleading	1
The X Factor	07/10/2007	ITV1	U18s in Programmes	1
The Xtra Factor	01/12/2007	ITV2	Generally Accepted Standards	3
This Morning	19/11/2007	ITV1	Religious Offence	1
Titanic's Final Moments: The True Story	27/11/2007	Five	Other	1
Toolan in the Morning	10/09/2007	Key 103	Competitions	1
Top Gear	07/11/2007	BBC2	Generally Accepted Standards	1
Trailer	06/12/2007	talkSPORT	Dangerous Behaviour	1
Trapped	07/12/2007	BBC1	Crime (incite/encourage)	1
Trinny and Susannah Undress the Nation	07/11/2007	ITV1	Sex/Nudity	1
Trinny and Susannah Undress the Nation	13/11/2007	ITV1	Offensive Language	4
Trinny and Susannah Undress the Nation	13/11/2007	ITV1	Crime (incite/encourage)	1
Trinny and Susannah Undress the Nation	07/11/2007	ITV1	Sex/Nudity	3
Trinny and Susannah Undress the Nation	13/11/2007	ITV1	Generally Accepted Standards	1
Trisha Goddard	14/11/2007	Five	Sex/Nudity	1
Vauxhaul Sponsorship	-	Dave	Dangerous Behaviour	1
Victoria Derbyshire	16/11/2007	BBC Radio 5 Live	Offensive Language	1
Wave FM	-	Wave FM	Competitions	1
Who Gets The Dog	02/12/2007	ITV1	Offensive Language	1
Wife Swap	11/11/2007	Channel 4	Generally Accepted Standards	3
Wife Swap	11/11/2007	Channel 4	Sex/Nudity	3
Zoe and Gillies Breakfast Show	19/11/2007	Power FM	Generally Accepted Standards	1