

Ofcom Content Sanctions Committee

Consideration of sanctions against	The British Broadcasting Corporation (“the BBC”) in respect of its service BBC 1 (Scotland)
For	Breaches of the Ofcom Broadcasting Code (“the Code”) of: Rule 2.11: <i>“Competitions should be conducted fairly, prizes should be described accurately and rules should be clear and appropriately made known.”</i> Relating to the following conduct: Faking the winner of a viewer competition, in the live transmission of <i>Children in Need 2005</i>
On	18 November 2005 between 19:20 and 20:00
Decision	To impose a financial penalty (payable to HM Paymaster General) of £35,000 .

Summary

- 1.1 For the reasons set out in full in the Decision, under powers delegated from the Ofcom Board to Ofcom's Content Sanctions Committee ("the Committee"), the Committee decided to impose statutory sanctions on the BBC in light of the serious nature of its failure to ensure compliance with the Ofcom Broadcasting Code ("the Code").
- 1.2 This adjudication under the Code relates to the broadcast of *Children in Need* on BBC1 (Scotland) on 18 November 2005 between 19:20 and 20:00.
- 1.3 *Children in Need* is a live 'telethon' programme broadcast every year on BBC1 to raise funds for the charity, BBC Children in Need. The 2005 programme included three 'opt-outs' from the national network broadcast from London. During these opt-outs, viewers in Scotland received coverage of local *Children in Need* programming from BBC Scotland in Glasgow. During the first regional opt-out on 18 November 2005, between 19:20 and 20:00, viewers were told that they would have a chance of winning a visit to the set of the CBBC children's programme *Raven – The Island* if they called the telephone number on screen and pledged money to the BBC Children In Need charity.
- 1.4 The process for this competition had been agreed at a meeting approximately two weeks prior to broadcast. Calls were routed through the BT system to various local third party call centres. All third party call centres used by *Children in Need* operate under guidelines and a written agreement devised and managed centrally by the Children in Need charity in London. The usual role of a call centre in this context is to process the high volume of calls to *Children in Need* and to maximise donations and pledges to the charity via credit and debit cards. When a person in Scotland called the Children in Need number between 19:20 and 20:00 on 18 November 2005 there was a random possibility that their call could go to the relevant call centre in Scotland to give them a chance to win the *Raven* prize.
- 1.5 One of the two call centres operating in Scotland was to select ten random callers, and provide this list to a BBC volunteer. The volunteer would then call each of these numbers in turn and ask them if they would be interested in winning the *Raven* prize. The first caller to say "yes" would be the winner. However, this arrangement had not been communicated to the call centre staff and consequently on the night of broadcast, no names of potential winners were made available.
- 1.6 In the absence of a genuine winner, the Producer took the decision to announce a fictitious name on air as the winner of the competition. A caption, stating that Gary Knight aged ten from Girvan was the "winner", was placed on screen.
- 1.7 The item did not use a premium rate services¹ ("PRS") telephone number. There was no cost of entry beyond the cost of the call and the calls provided no revenue for the BBC. However, callers had to make donations to *Children in Need* to qualify for entry into the competition. The 0845 number was

¹ Premium rate services are services that offer some form of information or entertainment and which are charged to consumers' telephone bills. Premium rate calls cost between 10p and £1.50 per call, or per minute, from a BT landline (charges from other networks may vary).

operated by BT. The BBC has stated that there is some local rate charge on 0845 numbers but BT donates a sum equivalent to, or slightly greater than, the total costs incurred.

- 1.8 Reacting to press interest in the mishandling of the use of PRS in competitions and voting by a number of broadcasters, including the BBC, the BBC carried out two separate “trawls” of its output. The first was launched on 7 March 2007 and looked into the BBC’s use of PRS. The second, launched on 12 July 2007, was much wider in scope, to include any audience deception.
- 1.9 The BBC issued a statement on 18 July 2007 admitting serious breaches of the BBC’s editorial standards in a number of its programmes, including *Children In Need*, and Ofcom launched its own investigation into the matter.

Summary of the Committee’s Findings

- 1.10 The BBC exists to serve the public interest. As a consequence, the breach of the Code involved a significant breach in the trust between a public service broadcaster and its audience
- 1.11 Whilst the BBC did not receive any money from the interaction with viewers, entry to the competition (where the prize was a visit to the set of a CBBC children’s programme) still required some expenditure on their part in the form of a compulsory donation and any charges incurred by making a telephone call. Ofcom was of the view that many of these callers, some of whom would no doubt have been children, would have been prompted or ‘incentivised’ into making a donation in order to be considered eligible to participate in the competition. The reality however, was that poor planning and a lack of acceptable compliance training meant that the competition could not be, and was not, conducted fairly.
- 1.12 Moreover, Ofcom was concerned that the BBC assigned a key role in facilitating the effective conclusion of a competition aimed at children to an unskilled volunteer with no previous relevant experience. Ofcom considered this to have been entirely inappropriate. Moreover, when it was discovered that no genuine winner had been found, the Producer had pressured the programme’s Floor Assistant Producer to provide ‘a name’. Once that name was received, the fiction grew to include an on-screen caption giving the name, age and location of the ‘winner’. The decision was then taken not to refer the matter upwards at the time for the sake of protecting donations to the charity. The evidence therefore clearly identified to Ofcom that it was considered acceptable to fake a competition winner as an appropriate means of concluding a competition that had not been adequately planned for or managed. This was considered an unacceptable deception by Ofcom.
- 1.13 The BBC’s most senior production staff, who knew what had occurred, made a decision not to report the matter upwards. Whilst the BBC considered this to have been a case of ‘poor judgement’ on the part of the programme’s Executive Producer, Ofcom was of the view that this clearly demonstrated that the BBC did not have sufficient oversight of *Children in Need*. Moreover the faking of a competition winner pointed to an inherent conflict of values where those responsible and/or aware of what had occurred, sought to protect the charity and donations rather than preserve the integrity of viewers’ trust in the BBC.

- 1.14 In Ofcom's view the reputation of such a flagship charity programme and the corresponding trust in it by the audience meant that the BBC should have taken the utmost care that appropriately trained staff were in place and that it was in control of the event from planning to transmission. The BBC accepted that it had had inadequate management and oversight of *Children in Need* because there was an absence of effective compliance training amongst staff and, in particular, volunteers. In addition, the BBC, by its own admission, had not done enough to make sure that all those involved with the competition knew how to avoid the risks and what to do when those risks turned into a reality. Ofcom therefore concluded that the steps which led to the unfair conduct demonstrated an unacceptable absence of appropriate and effective compliance procedures.
- 1.15 Ofcom welcomed the steps taken by the BBC to investigate, seek to address the breach and prevent recurrence of the same of similar failures, which included:
- Suspending all phone-in competitions and voting on 18 July 2007, while it implemented a comprehensive review of the relevant Editorial Guidelines and processes;
 - Carrying out wide-ranging investigations into PRS and instances involving "audience deception" in its programmes;
 - Enhancing training programmes on editorial compliance across the BBC and implementing a mandatory training programme for staff called "Safeguarding Trust" (which all BBC production staff and 2,000 freelancers had completed);
 - Issuing new guidance and creating a new Code of Conduct in relation to competitions;
 - Setting up a new "Interactive Advice and Compliance Unit";
 - Re-writing staff contracts and contracts with external suppliers;
 - Changing the BBC structure to include a senior manager on every divisional board with specific responsibility for editorial compliance and co-ordination; and
 - Taking significant and wide-ranging disciplinary action against a number of staff;
- 1.16 However, notwithstanding the steps taken by the BBC, Ofcom considered that the breach constituted a very serious breakdown in the fundamental relationship of trust between the most long-standing public service broadcaster and its viewers. The nature of the programme meant that the audience had extremely high expectations of trust, which were ultimately misplaced. In addition, the competition was aimed at children and the BBC should therefore have taken the utmost care to ensure that it was conducted fairly and with integrity.
- 1.17 While recognising that any fine would be taken from monies paid by the public (the licence fee payer), the Committee noted that Parliament had decided that

it was appropriate in certain circumstances for Ofcom to impose a financial penalty on the BBC (though at a lower threshold to other Public Service Broadcasters, i.e. set at a maximum of £250,000 on any occasion).

- 1.18 Having considered the relevant facts as outlined above and all the representations made by the BBC, the Committee decided to impose a financial penalty on the BBC of **£35,000** (payable to HM Paymaster General), which it considered to be a proportionate and appropriate penalty in all the circumstances.

Background

- 2.1 The issues in this case are set out at paragraphs 1.3 to 1.9 in the Summary above.
- 2.2 As set out at paragraph 1.8 above, the BBC carried out two “trawls” of its output in response to press interest in the mishandling of the use of PRS in competitions and voting by a number of broadcasters, including the BBC. On 18 July 2007, the BBC issued a statement admitting serious breaches of its editorial standards in a number of BBC programmes, including *Children in Need*, and an Ofcom investigation into the matter was subsequently launched.
- 2.3 Ofcom carried out an investigation into *Children in Need 2005*, as summarised in section 4 below. During that investigation, the BBC was given the opportunity to make written submissions on the case. In light of the evidence and the BBC’s responses, Ofcom concluded that the BBC’s conduct of the viewer competition in *Children in Need*, broadcast between 19:20 and 20:00 on 18 November 2005, was in breach of the Code.
- 2.3 In addition, Ofcom found the breach to be sufficiently serious to warrant the referral of the case for the consideration of the Content Sanctions Committee (“the Committee”). Throughout the consideration of the imposition of a statutory sanction, the BBC was given opportunities to make written and oral representations, which are summarised below.

Legal Framework

The Communications Act 2003

- 3.1 Ofcom has a duty under section 319 of the Communications Act 2003 (“the Act”) to set standards for the content of programmes in television and radio services as appears to it best calculated to secure the standards objectives.
- 3.2 The standards objectives are set out in section 319(2) of the Act. They include:
- That generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material (section 319(2)(f)).
- 3.3 In discharging its functions, Ofcom’s principal duties are to further the interests of citizens in relation to communications matters and the interests of consumers (section 3(1)) and to secure a number of other matters including:
- The application in the case of all television and radio services of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material in such services (section 3(2)(e)).
- 3.4 In performing these duties, Ofcom is also required to have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which

action is needed, and any other principles representing best regulatory practice (section 3(3)); and where relevant, a number of other considerations including:

- The need to secure that the application in the case of television and radio services of standards relating to harm and offence is in the manner that best guarantees an appropriate level of freedom of expression (section 3(4)(g)); and
- The vulnerability of children and of others whose circumstances appear to Ofcom to put them in need of special protection (section 3(4)(h)).

3.5 Under section 198 of the Act, Ofcom is required to regulate the BBC's services as well as other activities connected to the provision of the BBC service. Ofcom's duties and powers in relation to the BBC are conferred on it under statute and the BBC Charter and Agreement. Clause 46 of the BBC Agreement which accompanies the BBC Charter states that the BBC must observe certain standards set by Ofcom under section 319 of the Act, including those relating to the application of generally accepted standards so as to provide adequate protection for the public from harmful or offensive material (s.319(2)(f)). Therefore it is in light of this Clause that the BBC is required to comply with the above Rule 2.11 of the Code, which is relevant to this finding.

3.6 Section 198(3) of the Act requires the BBC to pay penalties to Ofcom in respect of any contraventions of the conditions contained in these provisions. The BBC is in a unique position in comparison to other Public Service Broadcasters ("PSBs") with respect to the maximum fine that can be imposed on it. Commercial PSBs can be fined up to a maximum of 5% of their qualifying revenue. The BBC's maximum limit of £250,000 is due to the BBC being funded by the licence fee. Section 198(5) states that:

- "the maximum penalty that may be imposed on the BBC on any occasion by Ofcom in exercise of a power conferred by virtue of the BBC Charter and Agreement is £250,000".

The BBC Agreement

3.7 Clauses 93 and 94 of the BBC Agreement set out the possible sanctions that Ofcom can impose against the BBC in relation to a breach of the Code. These are:

- a direction to broadcast a correction or statement of Ofcom's findings or both (Clause 93(1));
- a direction not to repeat a programme (Clause 93(5)); and
- the imposition of a financial penalty up to a maximum of £250,000 on any occasion (Clause 94).

The Ofcom Broadcasting Code

- 3.8 Standards set by Ofcom in accordance with section 319 of the Act are set out in the Code which came into force on 25 July 2005.²
- 3.9 Guidance Notes accompanying each section of the Code are published, and from time to time updated, on the Ofcom website.³ The Guidance Notes are non-binding but assist broadcasters to interpret and apply the Code.
- 3.10 By virtue of section 198 of the Act and section 46 of the BBC Agreement, the BBC must observe relevant programme Code standards which include, but are not limited to, those relating to harm and offence.
- 3.11 The relevant provision of the Code is Rule 2.11, which states that:
- “Competitions should be conducted fairly, prizes should be described accurately and rules should be clear and appropriately made known.”

The Human Rights Act 1998

- 3.12 Under section 6 of the Human Rights Act 1998, there is a duty on Ofcom (as a public authority) to ensure that it does not act in a way which is incompatible with the European Convention of Human Rights (“the Convention”).
- 3.13 Article 10 of the Convention provides for the right to freedom of expression. It encompasses the broadcaster’s right to “impart information and ideas” and also the audience’s “right to receive information and ideas without interference by public authority”. Such rights may only be restricted if the restrictions are “prescribed in law and necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health and morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary” (Article 10(2) of the Convention).
- 3.14 Ofcom must exercise its duty in light of these rights and not interfere with the exercise of these rights in broadcast services unless it is satisfied that the restrictions it seeks to apply are required by law and necessary to achieve a legitimate aim.

Investigation

- 4.1 In its investigation, Ofcom asked the BBC to address the following key points, among other issues, and to provide certain relevant material. This included details of:
- The nature of the item involving (or purporting to involve) participation by viewers or listeners e.g. a phone in competition;
 - What efforts were made to anticipate before broadcast any problems that might arise with the competition;

² The Code can be found at <http://www.ofcom.org.uk/tv/ifi/codes/bcode/>

³ Guidance Notes can be found at <http://www.ofcom.org.uk/tv/ifi/guidance/bguidance/>

- What compliance processes, standard or otherwise, were in place regarding the management and running of interactive viewer competitions; and
- At what point were decisions made that effectively involved deception of the audience (e.g., a decision to “fake” winners).

The BBC’s response to Ofcom’s investigation

- 4.2 The BBC responded by way of a general statement, which applied to this case and a number of other cases, and a specific statement in relation to *Children in Need*.

General statement

- 4.3 It stated that the conduct was “entirely unacceptable” and there was “no excuse for it”. It said that whilst there might be different factors in each of the cases that rendered the decisions made understandable and more or less serious, it did not seek to suggest that any of those decisions were acceptable. It took the view that each of the incidents, in varying degrees, involved production staff falling seriously short of the high standards of conduct it expected, and of misleading the audience and thereby breaching the Code.
- 4.4 The BBC said that the problems had not stemmed from an absence of clear BBC standards and guidelines. It said that in addition to promoting its own Editorial Guidelines, it made “strenuous efforts to ensure that the highest ethical standards of programme-making are observed by all involved in content production”.
- 4.5 It stated that whilst each case involved misleading the audience, none was profit-led and that each of the systems and methods used were designed to maintain caller costs at the lowest practical levels for the programme in question; no profit was made by the BBC. It also added that in those cases where there were prizes, nobody on the programmes had benefited, with all of the prizes either being reused shortly afterwards or returned to the BBC.
- 4.6 The BBC said that its Director General, Mark Thompson and other senior BBC managers had discussed the breaches and apologised for them in public and on various BBC services.
- 4.7 It added that although the number of incidents was of particular concern, “it was necessary to maintain perspective”. The incidents were relatively infrequent, compared to the number of hours of programmes that were broadcast during the relevant period.
- 4.8 The BBC described in considerable detail the process by which the incidents had been identified, the investigations that had been undertaken and the steps that had been and/or were being taken to address these problems and prevent recurrence. It also stated that given the failures that had occurred, the BBC was urgently examining what steps might need to be taken to ensure that the relevant Guidelines were clearly understood by programme-makers and staff; and that key principles, such as not misleading audiences in any circumstances, were driven home. As a first step, the BBC had announced,

on 18 July, that all 16,500 programme and content staff would attend a new mandatory training programme called “Safeguarding Trust”.

Specific statement regarding *Children in Need*

- 4.9 In its statement the BBC said that during the planning stages of the programme it had been decided to capitalise on the success of the CBBC series, *Raven*, by offering a chance to win a trip to the set of the programme as a way of encouraging viewers to call the pledge line. Viewers would be told that if they called within the last half an hour of the first BBC Scotland opt-out, they would have a chance of winning the trip to the *Raven* set.
- 4.10 The BBC explained that, approximately two weeks before transmission, there was a meeting between representatives from the two call centres in Scotland and the BBC team. This comprised the Producer, the Floor Assistant Producer and another volunteer member of BBC staff. The Executive Producer was not at this meeting although she was aware it was taking place.
- 4.11 The BBC continued that, at the meeting, the call centre representatives agreed to help with the two “incentives to pledge” which the Producer hoped to offer during the programme. It was agreed that one of the two call centres would manage the calls relating to the *Raven* prize. The Producer explained that he needed the call centre to provide a list of names and numbers, chosen at random, which would then be passed to the live gallery and the presenters on the night. The BBC volunteer staff member, who was not paid, would be the link person between the call centre and the BBC. The BBC volunteer did not work in programme-making and had no live programming experience. This was the first year she had performed this role.
- 4.12 It said that it was agreed that, near the end of the first ‘opt-out’, the call centre would call the BBC volunteer with the names and phone numbers of ten callers. The production team in the phone room would then work down the list of ten, calling each number in turn, and ask the caller if they would be interested in winning the *Raven* prize. The first person from the list to say “yes” would be offered the prize. The name of the winner would then be written on a card and passed to the Floor Assistant Producer, who would inform the presenters. Using CCTV the name and details of the winner would also be shown to the gallery. The time between the *Raven* item being announced on air and the winner’s name being read out was to be just over 30 minutes (the competition having been announced at 19:22:40 and the winner at 19:56:01).
- 4.13 During the meeting, the call centre representative said she would not be present in the call centre on the night of transmission, but she would ensure that another member of staff would provide the names to the BBC. In addition, the *Children in Need* team in London knew that prizes would be offered by the Scottish ‘opt-out’. Whilst they were not aware of the details of the execution of the competition, they believed the Scottish production team had made appropriate arrangements to execute the plans. No contingency plan was put in place.
- 4.14 The BBC said that on the day of transmission, the first ‘opt-out’ began at 19:20, and lasted 40 minutes. The *Raven* item was announced at 19:22:40 and the programme proceeded as planned. Towards the end of the ‘opt-out’, the BBC volunteer noticed that the call centre had not called through with the

list of ten names. When she contacted the call centre, she was told that the arrangements agreed at the meeting referred to above had not been communicated to any other staff there. The call centre accordingly could not provide any names.

- 4.15 A few moments earlier the Producer asked the Floor Assistant Producer via 'talkback' for the winner's name. The Floor Assistant Producer spoke to the volunteer and then told the Producer that the ten names had not come through from the call centre. The BBC submitted that at this point, the 'opt-out' was very near to the end of transmission and the presenters were in "urgent need" of the winning name. There was significant pressure for the situation to be resolved. The Producer told the Floor Assistant Producer that he needed a name. She said she did not have one to give him. The Producer said again he needed a name; he claimed that the Floor Assistant Producer knew what he was saying and she came up with a name. The winner's name was announced at 19:56:01 as "*Gary Knight*".
- 4.16 The BBC said that the Producer of *Children in Need* was very aware that in a 'telethon' programme the overriding aim was to encourage viewers to call to pledge money. Consequently, the Producer did not want to give the impression on air that there might be a problem with the phone lines in case it put people off calling and pledging money. The Producer had told the BBC Executive that, at the time, inventing a winner seemed like the cleanest solution and it was a spur of the moment decision.
- 4.17 The BBC said that Producer did not speak to anyone about the matter before the name was broadcast other than the Floor Assistant Producer. So, apart from these two individuals, no-one knew before the name was broadcast that a fictitious name was to be used. During the next 'opt-out', between 20:30 and 21:20, the second 'incentive to pledge' was announced. The BBC volunteer spoke to the second call centre and told them things had gone wrong with the other call centre. This time there were no problems and the prize was awarded according to plan.
- 4.18 The BBC advised Ofcom that the Producer was unsure whether he told the Executive Producer during or after the transmission about the incident. The Executive Producer, who was working in the gallery most of the evening, was away from the gallery as the feature was nearing its end. When she returned the winner was announced. Her recollection was that the Producer then told her that they had "made up" the name of the winner. Whilst the Executive Producer was "concerned", she believed the call centre was unable to provide names from which a genuine winner could be picked and concluded that no "worthwhile action" could be taken during the course of the broadcast.
- 4.19 The BBC stated that the Executive Producer did not inform her line manager, the Head of Children's Programmes at BBC Scotland, about the incident. She said that there had never been such an issue before and she regarded it as a one-off. Giving a fictitious name had not been pre-planned. She understood why the Producer had made that decision given that it was "received wisdom" that people are likely to stop calling to donate if the impression is given on air that there may be technical problems. She thought the Producer understood he had made a wrong decision, and, in the light of his unblemished record, wanted to support rather than report him. Having reconsidered the matter, the Executive Producer regretted her actions and had stated that she would be happy to apologise directly to the audience.

- 4.20 The BBC said that there was a de-brief meeting in the week following the show. It was attended by the Executive Producer, the Producer, the Director, the Production Manager, the Floor Manager, the Assistant Floor Manager and the Floor Production Assistant. Both the Producer and the Executive Producer recalled that they discussed the problem with the call centre and ways of ensuring the incident was not repeated. However, neither the Director nor the Floor Manager had any memory of the issue being discussed. The notes of the meeting written by the Floor Manager were written purely from a Floor Manager's technical point of view and make no mention of the incident or of any other programme content. The BBC advised that other notes which may have existed of this meeting had not been found and may, if they existed, have been erased in the normal course of business.
- 4.21 The BBC said that the incident had not come to light after the broadcaster's original investigation of its output, or first "trawl", in March 2007 as it was not conducted using PRS. It was however declared during the BBC's second "trawl" in July 2007. The Producer came forward voluntarily to provide the information, having first discussed the matter with the Executive Producer.
- 4.22 The BBC submitted that the incident was the result of poor judgement in a pressurised environment of a busy live programme. There was no predetermined decision to deceive the audience and no children were involved in the production of the programme.
- 4.23 It admitted that there was a lack of understanding of how call centres worked, and poor planning as there was no contingency plan. A lack of communication at the call centre was not picked up and the BBC's discussions with the call centre were not followed up.
- 4.24 The BBC explained that the individuals involved were determined to keep the programme moving and the last-minute decision not to state on air that there was a problem with the *Raven* feature was motivated by a strong desire not to let the Children in Need charity down. The Producer who made the mistake reported it up immediately but his superior did not appreciate the seriousness of what had occurred and had a "sympathetic understanding for his predicament".
- 4.25 The BBC also stressed that the incident did not involve PRS. It said that, whilst there is a local rate charge on 0845 telephone numbers, BT donated a sum equivalent to, or slightly greater than, the total costs incurred. According to the BBC, it was not possible to assess how many pledges were made in the relevant period (that is, during the first 'opt-out' to BBC Scotland) as a result of the possibility of winning the prize. In addition, the BBC argued that people may have simply called anyway to pledge money. The prize was a tour of a CBBC programme set; it was not taken up and no one benefited from the prize.
- 4.26 With regard to any form of reparation for what had occurred the BBC stated that *Children in Need* was a stand-alone 'telethon' programme which did not allow the BBC the opportunity to address the situation or apologise in the context of the programme.
- 4.27 It also stated that the risks around this form of interactivity and "incentives to pledge" had now been clearly recognised and would, in future, be managed effectively in advance of any broadcast. No contingency plan had been put in

place to rescue the programme in the event of something going wrong, nor had the risks been adequately assessed. In addition, all future *Children in Need* briefings for staff involved in programming would emphasise that third party call centres should not be used for any purpose other than to accept money and pledges from the audience on behalf of the BBC, and to provide running totals to BBC Centres.

- 4.28 Discussions were taking place with BT to see if the technical system used by the network to provide random numbers for prize draws could be extended to centres in the nations and regions to support them in addition to the network programme.
- 4.29 The BBC continued that the use of volunteers and their roles during *Children in Need* was being reviewed. In future, all volunteers would be given roles commensurate with their level of experience, and would receive a written brief setting out what would be expected of them. Care would be taken to ensure that individual volunteers were not overloaded with roles.
- 4.30 In addition, it stated that additional emphasis was needed – through training and other routes – on upward referral for issues of concern and on the absolute impermissibility of misleading the audience. All production staff would be taking part in the BBC’s new mandatory training programme “Safeguarding Trust”, to be delivered in the autumn by the College of Journalism. Staff at BBC Scotland, together with all staff across the BBC, had been warned of the seriousness of these issues and of the vital importance of maintaining trust with the audience. They were also aware that further instances of audience deception would not be tolerated.
- 4.31 The BBC submitted that it had taken and continued to take all reasonable steps to drive forward the process of ensuring that lessons were learned, and outlined a number of ways in which it had sought or was seeking to address the issues that had occurred in this and other cases. These were outlined more fully in the BBC’s later representations, summarised at paragraphs 6.2 to 6.18 below.
- 4.32 During Ofcom’s investigation, it queried whether the BBC had broadcast an apology regarding *Children in Need*. The BBC responded that it had not broadcast a specific apology for what had occurred but did detail the apology broadcast on various BBC services, given by the Director General, Mark Thompson who singled out *Children in Need* and two other charity programmes, stating: “I think it is very disappointing of course that some very big and trusted brands are some of our charities; *Sport Relief*, *Comic Relief* and *Children in Need* are part of that story.” and the numerous other occasions in which senior BBC managers had discussed the breaches in public. In those appearances, it continued, the BBC had consistently described the breaches as unacceptable and had left the public in no doubt that it deeply regretted what had happened and was determined to “put its house in order”. It requested that Ofcom give due weight to this point when considering whether the BBC had apologised sufficiently for what had occurred.

Ofcom's Finding on the breach

- 5.1 Ofcom took the BBC's submission into account when reaching its conclusions on the question of a Code breach. It noted that viewers had made donations to *Children in Need* and 'paid' to enter the *Raven* competition on the understanding that they had a fair and equal chance to win it. No contingency was put in place to take account of potential problems and failures with the competition which ultimately led to the deliberate faking of a competition winner (both on screen and verbally). The audience was therefore deceived as to the fair conclusion of the competition.
- 5.2 Ofcom concluded that a serious breach of Rule 2.11 of the Code had occurred in *Children in Need*, broadcast on 18 November 2005. Ofcom considered the breach to be sufficiently serious to warrant the consideration of the imposition of a statutory sanction.

The BBC's written representations on the imposition of a sanction

- 6.1 The BBC stated that it did not dispute the imposition of a financial penalty and accepted that, at least in principle, it would be appropriate for the BBC to broadcast a statement of Ofcom's findings.
- 6.2 The BBC said that from the outset it had recognised that the issue of breaches of editorial standards in its output were symptoms of a serious problem that needed to be urgently addressed. It continued that it had made the most strenuous efforts to identify and deal with the individual irregularities and had sought to be open and transparent throughout with Ofcom and the BBC Trust. The BBC said it had focused on the lessons learned and applied them across the BBC's output. The BBC said that in addressing the issues, it had taken numerous, costly and complex steps to examine its internal processes and revise them where necessary. This had involved:

Editorial compliance

- 6.3 The BBC said that a review of its editorial compliance systems had found that overall the systems and processes had been effective and fit for purpose, but that there had been insufficient awareness of them among content producers. The BBC said that it had identified failures by individual producers to submit compliance forms when they should have done so. Its review had recommended that training programmes should be enhanced and that a new editorial compliance forum should be created to co-ordinate and spread best practice around the entire organisation. In addition, efforts would be made to ensure that independent production companies understood the BBC's compliance procedures. The BBC said that it had undertaken to implement all the proposals of its compliance review.
- 6.4 The BBC said that it was making strenuous efforts to ensure that this commitment was followed up. It said there was now a senior manager responsible for editorial standards in compliance on each of the production division's boards. A new editorial compliance forum (chaired by the Director of Editorial Policy & Standards) met monthly, which, in turn, reported to the Editorial Standards Board.

- 6.5 The BBC said that the steps it had taken were designed to ensure that there was no repetition of similar breaches to those in the cases under consideration for the referral to the Committee for the imposition of a statutory sanction.

Review of competitions

- 6.6 The BBC said that it had suspended all phone-related and interactive competitions on 18 July 2007 and that it had instituted a comprehensive review of the relevant Editorial Guidelines and processes. It said that new guidance had been issued to content producers and a new Code of Conduct had been created. This had been published and was available on the BBC's website. Further, the BBC said that it had not begun the phased return of competitions until 21 January 2008, over six months after they had been suspended.

- 6.7 The BBC said that it would run far fewer competitions in future and that its internal procedures had been extensively revised, as follows:

- The decision whether to include a competition in a programme now had to be referred to a designated senior manager within the relevant production department. A senior editorial figure would then be made responsible for overseeing the running of the competition;
- Where telephony was involved, there was a separate approval procedure, requiring authorisation by a senior manager;
- All content production staff involved with competitions are now required to complete an on-line training module. There was a second, higher level training module for all those responsible for approving or managing any aspect of competitions;
- Clear rules on publishing the terms and conditions, stating the start and end of the competition period, ensuring all entrants have a fair chance of winning, contingency plans for failures, turnaround times for announcing winners and the selection of winners had been promulgated; and

- 6.8 The BBC said that it had undertaken a publicity campaign to ensure that its audience was aware of these changes. The changes were designed to embed in the BBC's culture the overriding principle that competitions had to be run fairly, and that, where there was a tension between fairness and any other consideration whatsoever, fairness had to prevail. It said that the changes would significantly change the character of large parts of BBC output, particularly in radio.

Telephony

- 6.9 The BBC said that it was clear that a key factor leading to the crisis around interactivity had been a lack of understanding between production teams and the technical teams involved in the design, implementation and delivery of telephony and text services. It continued that although the BBC Trust, not Ofcom, regulated the BBC's use of PRS, the Trust had requested that BBC management addressed Ofcom's requirements and identified where the BBC

intended to comply or diverge, to ensure that the controls implemented by the BBC were at least as effective as those proposed by Ofcom.

- 6.10 The BBC said that its telephony review had recommended the creation of an in-house centre of expertise (provisionally entitled the Interactive Advice and Compliance Unit). The BBC said that using the services of the Unit would be a mandatory part of the commissioning process for interactive services together with being an integral step in the new BBC approvals process for competitions. The BBC said that this was a large commitment: estimated set-up costs were over £1 million and it expected the annual running costs to be around £1.3 million.

Staff contracts

- 6.11 As the BBC had noted in its earlier submissions, all staff in a role which could have an effect on BBC output were required to sign a contract and an Editorial Policy compliance form confirming their agreement to comply with the BBC's editorial standards. In order to address previous shortcomings in this area, the BBC said that line managers were now required to ensure that contracts and, where relevant, the Editorial Policy compliance form, were signed and returned prior to any employee, freelancer or casual member of staff starting work at the BBC. To ensure compliance, no payments would be processed by the BBC for any individual until it had been confirmed that the relevant paperwork had been received. Any individual who refused to sign the contract and/or the Editorial Policy compliance form would be likely to have his/her employment terminated.
- 6.12 The BBC said that newly contracted staff in content areas would also have to complete an interactive online course as part of their induction. In addition, all current staff would be required to sign a new Editorial Policy compliance form stating they agreed to comply with the BBC's Editorial Guidelines. This exercise would be completed by Autumn 2008.

Disciplinary action

- 6.13 The BBC said that it had taken disciplinary action against a number of individuals over the breaches notified to Ofcom and that it had made plain to all its employees that any further breaches of editorial standards might be considered as disciplinary matters.⁴

'Safeguarding Trust'

- 6.14 In relation to its mandatory training programme, 'Safeguarding Trust', the BBC said that by the end of March 2008 the total number of its staff and freelancers who had completed the course was 19,350. It said that only a few dozen of its staff who had been required to complete the course had failed to do so. It continued that all future recruits to the content production areas of the BBC would be required to complete the course.
- 6.15 The BBC said that independent production companies would be required to certify that all of their staff working on BBC commissions had completed the web-based 'Safeguarding Trust' course, available on the BBC's website at

⁴ The BBC provided further information on the disciplinary action it had taken when it addressed the Committee at a hearing on 17 June 2008. See paragraph 8.13 below.

www.bbc.co.uk/safeguardingtrust. It said that contracts with such companies now contained clauses requiring them to represent and warrant that their staff had completed the course and detailing the sanctions the BBC might impose if they breached this requirement.

- 6.16 The BBC said that the exercise had been costly. It had already spent over £500,000 on creating the course and training its staff and there would be ongoing costs in operating and maintaining its internal and public websites.

External Efforts

- 6.17 The BBC said that it had undertaken a programme of inquiry into the nature of public trust in broadcasting and the Director General had summarised the findings in a speech delivered on 15 January 2008⁵. The BBC had also taken part in a joint Ofcom/ BBC Trust seminar on 26 November 2007, at which it had been represented by the Director General. Other BBC Executive Board members and senior managers had also been present.

The BBC Trust

- 6.18 The BBC submitted that it was also regulated by the BBC Trust, which had exercised its powers in respect of the breaches. The BBC Trust had requested a number of actions by the BBC Executive and had endorsed the approach taken in the Director General's Action Plan. Later, the BBC Trust had commissioned an independent evaluation of the Action Plan. The BBC said that the findings of this evaluation, which took account of the Trust's requests and the BBC's extensive actions, had been published on 9 May 2008⁶. It submitted that its conduct had been subject to the regulatory oversight and requirements of the BBC Trust and that the Trust's evaluation amounted to a regulator's approval of the BBC's response to the editorial breaches.

Sanctions

- 6.19 The BBC submitted that it had at all times co-operated with Ofcom's investigation.
- 6.20 The BBC reiterated that it had suspended all competitions across all networks on 18 July 2007, thereby ensuring that no further breaches of Rule 2.11 of the Code could take place.
- 6.21 The BBC said that it wished to make a number of general comments on the issue of compensation:
- The BBC reiterated that in all but one of the cases, PRS had not been used and it had not received any revenue from the affected competitions;
 - In the case of *Children in Need*, *Comic Relief* and *Sport Relief*, the BBC said that the telephone data was incomplete because some callers had been ex-directory and others had withheld their telephone numbers. It said examination of the call durations demonstrated that some calls could not have resulted in donations because the time the caller had been on

⁵ http://www.bbc.co.uk/pressoffice/pressreleases/stories/2008/01_january/15/trust.html

⁶ http://www.bbc.co.uk/bbctrust/research/editorial_standards.html

the line had been insufficient to complete the necessary steps. In some cases, exact figures for the number of calls made in the relevant time periods was unavailable and, in addition, the donation records were separate from the call records, so would have to be manually reconciled. The BBC said that the necessary analysis to facilitate compensation would be extremely time-consuming and costly and the results would be likely to contain significant gaps and inaccuracies. It said that any analysis would have to be funded by the licence fee as the BBC had not received any revenue and said that the cost of the analysis would, therefore, be a disproportionate burden on the licence fee;

- The BBC said that it could have offered general compensation to anyone who had approached the BBC, but that it would have had no way of verifying that these individuals had entered the affected competitions. It said that this would have potentially exposed the BBC and licence fee payers' money to claims which might not be warranted or might be fraudulent;
- The BBC noted from published sanctions decisions that where commercial broadcasters had had a similar lack of data or where they had received few responses to offers of compensation, they had made donations to charity. The BBC stated that any payment it made to charity would have to be funded from the licence fee and, under its Agreement with the Secretary of State for the Department of Culture, Media and Sport, it had no ability to make charitable donations. Furthermore, the BBC said that any donation to charity would not, in fact, be compensating those audience members who had been harmed financially. It said that the purpose of a charitable donation for commercial broadcasters had been to divest themselves of profits where restitution could not be made to the relevant viewers; and

6.22 In relation to *Children in Need*, the BBC said that whilst it had consistently accepted that the conduct was a serious editorial breach, it had originally sought to distinguish the competition in *Children in Need* from those competitions conducted using PRS with profit accruing to the broadcaster because no money accrued to the BBC and the money raised went to charity. Moreover, it continued that the purpose behind creating the competition was solely to encourage donations to the charity. However, it confirmed that it had since come to understand and accept that because viewers had to make a donation in order to be eligible for the competition that the donation was a requirement of entry and that, as a consequence, there was consumer harm.

6.23 The BBC confirmed that there were 602 calls to the relevant Scottish call centre in the period 19:00 to 20:00 and 1,027 to the other call centre that was not participating in the prize.

Referral to the Content Sanctions Committee

7.1 It was considered that, taking all the circumstances into account and, in particular, the severity of the breach and the resulting harm caused to the audience overall, the breach was sufficiently serious to warrant the consideration of the imposition of a statutory sanction.

- 7.2 Therefore, in accordance with Ofcom's outline procedures for consideration of statutory sanctions in content and content-related cases, the case was referred to the Committee.

Sanctions Hearing

- 8.1 Ofcom's Content Sanctions Committee ("the Committee") held a hearing on 17 June 2008, at which the BBC was given the opportunity to make oral representations before the Committee decided whether the breach warranted the imposition of a statutory sanction and, if so, of what type(s) and at what level(s).
- 8.2 The Committee was addressed by Mark Byford (BBC Deputy Director General) and James Eadie QC (Counsel), with evidence supplied by Ken MacQuarrie (Controller, BBC Scotland), David Jordan (Director of Editorial Policy and Standards), Philip Abrams (Complaints Director, Editorial Complaints Unit) and Alexis Hawkes (BBC Legal Advisor).

The BBC's general representations on the cases

- 8.3 The BBC restated that what had happened in these programmes was completely unacceptable and it recognised that the BBC had let down its audience, "got it wrong" and that trust with the audience had been broken. It continued that these cases went to the absolute fundamental values of the BBC, which were integrity, trust and being straight with the audience. It said that its audiences were entitled to be able to trust what they saw or heard and to receive programmes that were made with integrity and that did not deceive them. The BBC said that whenever the audience entered competitions even if it was as "a bit of fun for small prizes or as a chance of a bit of a bonus for giving money to a charity", the competition had to be run absolutely fairly. In addition it said that all the entries had to count, the winner(s) had to be picked fairly and the prize(s) had to go to a real viewer or listener. It acknowledged that in the programmes under consideration by the Committee this did not happen.
- 8.4 The BBC said that, to some extent, it had been caught out by the speed of change in the industry. Within BBC programmes, the use of competitions using phones, texts and emails had grown rapidly in recent years, as technology allowed the BBC to connect with its audiences in new ways. It said that interactivity and, especially, interactive competitions were an area of particular risk and that when a competition was conducted there were a number of serious and important editorial issues to be considered. In production terms, competitions could go wrong very quickly. Production staff who had not thought a competition through beforehand might have to deal with problems very quickly, in circumstances where problems needed to be addressed with clarity of thought and the right decisions taken straight away.
- 8.5 It said that in the programmes under consideration by the Committee, those involved had not understood or properly focused on either the true nature of the risks or the seriousness of the decisions that they were taking. The relevant individuals had thought that they were doing the right things or, at least, acceptable things, such as "keeping the show on the road" and providing entertainment. They had failed to understand that by putting production values first, they were actually breaching the audience's trust. The BBC said that although it now appreciated the editorial challenges in

competitions “in the round”, it had failed to do so and had not done enough to make sure that all those involved with competitions knew how to avoid the risks and what to do when those risks turned into reality.

- 8.6 The BBC re-emphasised that it was completely unacceptable “always and without exception” to solve a broadcasting problem by breaching the fundamental, unalterable principle of straight-dealing with the audience and telling them the truth. The BBC continued that it had had policies in place during the relevant period, and that it was not saying that the relevant Producers had not been aware of the rules, its Editorial Guidelines and the Code. However, given the scale of the problems that had been uncovered, it believed the key message, (that it was never acceptable to breach trust with the audience, whatever the circumstances) had not got through to all areas. With hindsight, it said that it had not done enough to train everyone in how to use interactivity properly and to apply the guidelines properly, which was why, as a first step, it had put 20,000 people (all its creative programming staff and freelancers) through its “Safeguarding Trust” course, because trust was absolutely crucial.
- 8.7 The BBC said that it did not believe that anyone working within the BBC had an appetite for deliberate deception. However, it accepted that the programme-makers in the cases before the Committee, who made wrong decisions, albeit sometimes under pressure, should have told their managers, and that those managers should have escalated the matter further.
- 8.8 The BBC did not wish to leave Ofcom in any doubt regarding the seriousness with which it had taken these matters and said that it believed the steps it had taken and the standards that it demanded from everyone at the BBC made that clear. The BBC reiterated that it accepted each of the cases in question were serious contraventions of the Code and its own Editorial Guidelines. It accepted the imposition of financial penalties in all eight cases before the Committee and that it should broadcast a statement of Ofcom’s findings in seven of the eight cases. It continued that the cases before the Committee were “a heavy hammer blow”, damaging to the reputation of the BBC as the most trusted public service broadcaster in the United Kingdom, which it said was a damning punishment in itself. The BBC said that it had spent a great deal of time, energy and effort over the past year reviewing, examining and reflecting on what to do about the breaches. It had put new mechanisms in place and believed that it had done a very substantial amount to minimise the risks of recurrence of similar breaches.
- 8.9 The BBC asked the Committee to bear in mind that none of the incidents was profit-led and that it had not made money from any of them. In addition, the programme-makers had not made any money for the BBC or for themselves from the affected competitions and had not taken home any prizes. Some of them had thought they were doing the right thing, such as making better programmes or helping charities. The BBC said that whilst these were not excuses, it made it harder to criticise the motives of someone who genuinely considered they were doing the best for a charity. Whilst this did not make what occurred right, the BBC considered that it deserved some understanding.
- 8.10 The BBC stated that its senior management had taken the issues it had identified extremely seriously. It accepted that the failures included serious management failures: (i) a failure to ensure that the fundamental principle of

straight dealing with the audience got through to all those involved in production with sufficient clarity; (ii) a failure to appreciate that interactive competitions, in particular, carried very significant risks of things going wrong; and (iii) a failure to have systems in place that would have ensured escalation of problems of the kind that had occurred to more senior levels of management. It said that it had realised it needed to take a “very careful look” at all its programming across all its services. As a consequence, the two trawls of its programming had been thorough and wide-ranging. Under the leadership of the BBC’s Editorial Standards Board, the BBC had gone over all its compliance procedures, created a new Competition Code of Conduct, developed detailed additional guidance on competitions and launched a new in-house centre of expertise for telephony. The BBC submitted that all and each of these actions demonstrated that it had known it was not dealing with a small failure; it was a big problem that needed major review and reform.

8.11 In summarising what had occurred as a consequence of the matters coming to light, the BBC stated that:

- senior managers had investigated the problem programmes;
- there had been disciplinary action against a number of staff;
- all phone and interactive competitions had been suspended while procedures were rethought, reconsidered and rewritten and staff were retrained;
- every member of staff and 2,000 freelancers who were working in the creative programming area were put through the “Safeguarding Trust” workshops (the biggest training programme ever undertaken by the BBC);
- staff contracts and contracts with external suppliers were rewritten; and
- the BBC structure had been changed so that there was a senior manager on every divisional board with specific responsibility for editorial compliance and co-ordination.

8.12 The BBC said that it had told every member of staff that the kind of lapses it had seen were absolutely unacceptable and that it would not tolerate them. It continued that everyone who was responsible for its output knew now, and better than they used to, that breaching trust with the audience would not be tolerated.

8.13 The BBC confirmed that it had taken disciplinary action in relation to every case before the Committee and that the matters had been taken seriously. It said that a range of disciplinary procedures had taken place within the BBC and that the “punishments” ranged from a verbal warning, a written warning, a final written warning and to what the BBC described as “left employment. However, for reasons of confidentiality it was unable to provide more specific details to the Committee.

8.14 In relation to a number of the cases before the Committee, the BBC submitted that the relevant programme-makers had not appreciated that they were running a competition. It said that there was now a definition of a “competition” within its guidelines and that alertness to competitions and the issues they raised had been heightened as a result of the steps it had taken.

8.15 Although it accepted, in principle, the imposition of a financial penalty in each of the cases before the Committee, the BBC submitted that the appropriate level of financial penalty was important. The reasons for imposing a financial

penalty were, in its submission, two-fold. First, to incentivise the person on whom the financial penalty was imposed to seek to ensure that the breach was not repeated and, secondly, to act as a deterrent for others. The BBC submitted that there was no suggestion that it was any part of Ofcom's function to punish. The BBC believed it had demonstrated in a concrete way to Ofcom that it needed no further incentive to "put its house in order." It submitted that acting as a deterrent for others "should be very much a lesser purpose". Furthermore, that it was hard to see how any fine imposed on the BBC would impact on any other organisations, given the BBC's particular circumstances. Finally, the BBC said that because it was funded by the licence fee and not by commercial motivation, it was driven (and those who worked within it were driven) by reputation. Therefore, whilst it had accepted, in principle, that directions to broadcast statements of Ofcom's findings were appropriate in seven of the eight cases before the Committee, such directions were the most serious punishments that could be imposed on the BBC.

- 8.16 The BBC stated that in relation to "Safeguarding Trust" and the workshops it had undertaken, all staff who worked on programmes such as *Children in Need* in the future would have to have attended a specific workshop, or section, dealing with competitions and with specific focus on the trust issues that might arise in relation to competitions and supervising competitions.
- 8.17 The BBC concluded its general representations to the Committee by stating that its senior managers (the Director General, the Deputy Director General (as Chair of the Editorial Standards Board), all the divisional directors and the channel controllers) had to continue to ask questions, be open to discussion, run proper compliance systems and review them regularly, think carefully about the implications of what their teams were doing and ensure their staff were properly trained and had the right principles. It said that every single person who made a BBC programme had to be absolutely sure that it was produced with "impeccable integrity" because otherwise its audiences, the licence-fee payers, understandably would not give the BBC their trust.

The BBC's specific representations regarding *Children in Need*

- 8.18 The BBC said that it was plainly wrong for the Producer to have insisted upon the Floor Assistant Producer giving a name and wrong to have used a false name in any event. It said however that it was evident from the facts surrounding the case that there was no pre-meditation involved and that what occurred was the result of panic during the course of a live broadcast.
- 8.19 The BBC continued that it was concerned that Ofcom had stated that the seriousness of the incident was aggravated because the BBC did not wait until a genuine winner was found. It requested a note of caution with regard to this conclusion as it said that that may not have been quite so easy to do. It explained that when the incident occurred, the programme was coming to the end of an opt-out and, whilst there was another opt-out coming up, no record had been kept on the various donations forms of those viewers who had indicated that they wanted to be considered to visit the set of *Raven* and neither was any record kept at the time as to whether or not those who rang up and donated within the relevant time period had children who might be interested in the prize. Whilst the BBC conceded that in theory it could have stated that there were technical problems that needed to be resolved it stressed that simply waiting until the next opt-out to solve the problem might not have been as easy as might at first been thought by Ofcom.

- 8.20 The BBC said that there had been no incident of any kind similar to this on BBC Scotland and that a series of actions had been put in place that applied specifically to BBC Scotland to try to make as sure as possible that this sort of incident does not occur in the future. For example, competitions can now only go ahead if a rigorous process has been followed: if someone wants to run a competition a proposal would need to be developed, it would then be discussed in considerable detail up to the level of Executive Producer, it would then be tested, worked through and then submitted and could not go ahead unless it had worked its way up this chain as a considered proposal with all the contingencies thought through properly. It would then need to be signed off by the Executive Producer, Head of Department, Head of Programming and ultimately the Controller of the division for sign off. In addition, the BBC continued that this was an interrogative and detailed evaluation process up the chain to Controller level and where, in addition, each division now has a report at board level who is a senior editorial manager who exists to have oversight over this process. It said that these important safeguards have been put in place to ensure that a rigorous process is followed before any competition of this kind ever makes it to the screen again.
- 8.21 The BBC also said that BBC Scotland's Executive Producers were going through face to face training so that they are in a position to oversee competitions and over 1,300 of its staff have undertaken the BBC's safeguarding trust training which includes freelancers who work for BBC Scotland. In addition, no competition can be conducted on air without the sign-off from the Controller of BBC Scotland.
- 8.22 When questioned by the Committee as to why a volunteer with no programme experience was chosen to be the key person to manage the competition, the BBC responded that there had always been an enthusiastic culture of volunteerism from those who wished to support *Children in Need*. The volunteer in question on this occasion had been a volunteer on previous programmes but not in a role such as this. It said that it now recognised that whilst the person involved in this key role was a responsible individual they did not have the required editorial background required to undertake it and, in any event, such an important role should not have been the responsibility of a volunteer.
- 8.23 When asked by the Committee who took the decision to caption the name, age and location of the fake winner on screen, the BBC confirmed that it was the Producer's decision who, on balance, viewed it as a risk that the donations to the charity would cease if there was seen to be a problem and who consequently took the wrong option by panicking and unacceptably inventing a name. It continued that the Executive Producer took the view at the time that because the system had failed there was no indication that it would be robust enough to be able to deliver in the second opt-out. The Producer, having panicked, immediately regretted it thereafter and had reported it to the Executive Producer at the time. The Producer also came forward during the BBC's second "Trawl" to indicate that two years earlier there had been a breach of trust with the audience.
- 8.24 When asked by the Committee as to whether the Executive Producer did anything with the knowledge at the time, the BBC confirmed that the Executive producer had regarded it as a one-off incident and had never come across anything of this nature before and felt that the remedy was to put in

place a situation where it would never happen again. The BBC confirmed that it was the wrong decision which it was not seeking to defend. It said that it accepted that in this case these were experienced producers who made the wrong decision but that its staff now absolutely understood that integrity and truth override any technical difficulties when dealing with the loyalty between the BBC and its audience.

- 8.25 The Committee also questioned whether the creation of an on-screen caption with the faked winner's name, age and location was in fact a double deceit with regard to the children viewing in the audience. The BBC responded that the caption would have been automatically generated and agreed that when the volunteer gave the name the whole fiction surrounding the faked winner, which included the fabricated details on screen, was created. The BBC continued that the decision that should have been made should have been as the result of a contingency in place to tell the audience the truth and be direct with them about what had occurred.

Sanctions Decision

- 9.1 In reaching its decision, the Committee considered carefully all the written and oral submissions made by the BBC. The Committee decided, for the reasons set out below, to impose a financial penalty. In deciding on an appropriate and proportionate level of financial penalty in this case, the Committee had regard to Ofcom's Penalty Guidelines⁷.

The seriousness of the breach

- 9.2 Having considered all the evidence and the BBC's representations, the Committee found that the breach in this case was serious and deliberate, as set out at paragraphs 9.3 to 9.7 below:
- 9.3 The Code breach involved the faking of a competition winner in a live charity fundraising programme on BBC1 (Scotland). The BBC exists to serve the public interest⁸ and consequently the breach of the Code, involving a deception, was a breach in trust between a public service broadcaster and its audience. Breaches of the Code that result in viewers being deceived or materially misled have always been considered by Ofcom (and Ofcom's predecessor regulators) to be amongst the most serious breaches that can be committed by a broadcaster. The trust that the audience places in a broadcaster is fundamental to their relationship and is particularly pertinent in the case of the most long standing broadcaster, the BBC, with a relationship of trust with its audience going back more than 80 years. In addition, the breach of trust between the broadcaster and its audience becomes even more significant when it involves a flagship programme raising funds for charity and staff working on the programme should have been in no doubt as to the very high expectations regarding the programme's integrity. By its own

⁷ Ofcom's Penalty Guidelines are available at <http://www.ofcom.org.uk/about/account/pg/>. Section 392 of the Act requires Ofcom to prepare and publish a statement containing guidelines it proposes to follow in determining the amount of any penalties imposed by Ofcom, which Ofcom must have regard to in setting any penalty.

⁸ Clause 3(1) of the Royal Charter. The Royal Charter, together with the Agreement between the BBC and the Secretary of State for Culture, Media & Sport, provides the constitutional basis for the BBC.

admission, the BBC breached its fundamental principle of straight dealing with its audience and admitted that it had let its audience down.

- 9.4 The Committee noted that the BBC assigned a key role in facilitating the effective conclusion of the competition to an unskilled volunteer with no previous relevant experience. When it was discovered that no genuine winner had been found, the Producer pressured the Floor Assistant Producer to provide 'a name'. Once that name was received, the fiction grew to include an on-screen caption giving the 'winner's' age and location. Whilst the Producer admitted what had occurred to the Programme's Executive Producer, the decision was taken not to refer the matter upwards at the time for the sake of protecting donations to the charity.
- 9.5 Unlike other broadcasters, the BBC is funded directly by the public through the licence fee and it is not a commercial organisation. Whilst the BBC did not receive any money from the interaction with viewers, entry to the competition still required some expenditure on their part. The BBC has stated that the competition was created to incentivise viewers to call and make a donation. Viewers therefore had to pay the cost of a local rate telephone call and make a donation to Children in Need to be eligible so entry into the competition was not 'free'. As a consequence, when the competition was conducted unfairly, it was to the potential detriment of all those viewers who had made a telephone call and pledged a donation to the charity.
- 9.6 The Committee noted that the BBC accepted that it had inadequate management of and oversight of *Children in Need* because there was an absence of effective compliance training amongst staff and, in particular, volunteers. In addition, there was a confusion of values and conflict of loyalties amongst those staff responsible between the BBC and the charity Children in Need. The BBC therefore, by its own admission, had not done enough to make sure that all those involved with the competition knew how to avoid the risks and what to do when those risks turned into a reality.
- 9.7 The Committee considered that the contravention was very serious because it involved a breakdown in trust between the UK's most long-standing and trusted broadcaster and its audience by faking the winner of a viewer competition in a peak-time flagship programme raising funds for charity.
- 9.8 The Committee considered that the evidence identified that it was considered acceptable to fake a competition winner as an acceptable means of concluding a competition that had not been adequately planned for or appropriately managed.
- 9.9 In addition, the Committee was of the view that it was entirely inappropriate for a key role in the conduct of the competition to have been given to a volunteer with no relevant experience.
- 9.10 The Committee was of the view that due to the serious and deliberate nature of the breach and compliance failures and the resulting harm caused to those viewers who entered the competition in *Children in Need* and the audience overall, this was a very serious case, involving a fundamental breach of the audience's trust. Therefore, the Committee considered that the imposition of a significant financial penalty was warranted.

Precedent

- 9.11 In considering the appropriate level of financial penalty, the Committee took account of its previous decisions in cases relating to the unfair conduct of viewer interactive competitions, as well as the specific representations made by the BBC. The Committee was satisfied that its decision as to the appropriate and proportionate level of financial penalty to be imposed in this case was consistent with previous cases, and reflected the particular circumstances of this case.

Incentive

- 9.12 The Committee took into account in setting the level of financial penalty the fact that the BBC had taken wide-ranging steps to investigate the breaches and learned lessons from what had occurred. In particular the BBC had implemented various processes to clarify reporting lines and improve its oversight of partner and charity events such as *Children in Need* in the future. However, the Committee also noted that one of the purposes of the imposition of a financial penalty was to deter both the party involved and third parties from committing future breaches. In this case, the Committee considered that a significant financial penalty would represent an appropriate incentive to ensure compliance in the future.

Other specific criteria

- 9.13 The Committee considered that the following specific criteria, as set out in Ofcom's Penalty Guidelines, were relevant to adjust the starting figure of any financial penalty:
- 9.14 The Committee noted that the BBC did not receive any revenue or profit from the conduct of the competition. Similarly, no member of staff profited.
- 9.15 The Committee noted that the BBC is not a commercial broadcaster but is nonetheless a substantial organisation with significant resources available to it.
- 9.16 The Committee noted that the breach of the Code was not caused by any third party or any circumstances beyond the control of the BBC. The Committee also noted that no penalty in respect of the same conduct had been imposed already by Ofcom or another body.
- 9.17 The Committee considered that the harm to those viewers who entered the competition and the audience of *Children in Need* overall was significant. The audience was deceived and materially misled by the BBC's deliberate and unfair conduct of the *Raven* competition. This was a substantial breach of the audience's trust made even more serious because the prize was aimed at children.
- 9.18 The Committee considered that because *Children in Need* was transmitted during peak viewing time on BBC1 and was and is a flagship respected charity programme, that audience expectations in relation to the programme would have been extremely high. In addition, the BBC did and does have compliance systems in place which should have been at the forefront of any decisions regarding the conduct of viewer competitions. Moreover, whilst the Committee noted that what had occurred appeared to be a 'one-off' in the

context of *Children in Need*, it was mindful of the fact that similar breaches of the Code had also occurred in two other BBC flagship charity fundraising programmes.

Level of penalty

9.19 Taking all these factors into account (and in light of the severity and deliberate nature of the breach), the Committee considered that the ‘starting figure’ for any financial penalty should be significant. In considering the level of penalty, the Committee took into account that the maximum financial penalty that could be imposed on the BBC on any occasion was £250,000.

Factors tending to increase the level of penalty

9.20 The Committee then considered whether any of the factors set out in the Penalty Guidelines (or any other relevant factors) aggravated or tended to increase the level of any financial penalty it might impose.

9.21 The Committee considered that, even though this breach was a one-off, the BBC’s senior management should have been aware that the breach of the Code could have occurred and systems in place to prevent it. Furthermore, there should have been sufficient oversight and training in place to ensure that staff were aware of what to do in the event of a problem. The Committee considered this to be an unacceptable failure by the BBC.

9.22 In addition, the programme’s most senior production staff who knew what had occurred made a decision not to report it upwards. Whilst the BBC considered this to have been a case of ‘poor judgement’ on the part of the programme’s Executive Producer, the Committee was of the view that this demonstrated quite clearly that the BBC did not have sufficient oversight of *Children in Need* and that protecting donations to the charity overrode any consideration for compliance and trust with the audience.

9.23 In the Committee’s view the reputation of such a flagship charity programme and the corresponding trust in it by the audience meant that the BBC should have taken the utmost care that appropriately trained staff were in place and that it was in control of the event from planning to transmission. The Committee therefore concluded that the steps which led to the unfair conduct demonstrated an absence of appropriate and effective compliance procedures.

Factors tending to decrease the level of penalty

9.24 The Committee then considered whether any of the factors set out in the Penalty Guidelines (or any other relevant factors) in its view might limit or decrease the level of any financial penalty it might impose.

9.25 The Committee considered that the steps the BBC had taken to remedy the consequences of the breach were wide-ranging and timely. It had put in place compliance training for its entire staff, created a new Competition Code of Conduct, developed detailed additional guidance on competitions and launched a new in-house centre of expertise for telephony. The range and nature of the BBC’s reaction to the breach included:

- Instigating a full corporation-wide investigation into PRS and instances involving 'audience deception' in its programmes';
- Significant and wide-ranging disciplinary action against a number of staff including penalising those freelancers involved in the range of breaches who are unable to work for the BBC for a period of two years;
- all phone and interactive competitions had been suspended while procedures were rethought, reconsidered and rewritten and staff were retrained;
- every member of staff and 2,000 freelancers who were working in the creative programming area were put through the "Safeguarding Trust" workshops (the biggest training programme ever undertaken by the BBC);
- staff contracts and contracts with external suppliers were rewritten; and
- the BBC structure had been changed so that there was a senior manager on every divisional board with specific responsibility for editorial compliance and co-ordination.

9.26 In addition the Committee noted that the BBC had made itself publicly accountable for the breach by publicising the results of its own internal audits (the two trawls) and apologising on BBC1 and BBC1 Scotland for its failures in respect of the breach.

9.27 The Committee acknowledged that the BBC had co-operated in a full and frank manner with Ofcom's investigation.

Conclusion

9.28 Cases where a broadcaster deliberately deceives or materially misleads its audience have always been considered to be amongst the most serious breaches of the Code by Ofcom (and its predecessor regulators).

9.29 The Committee took the view that the breach constituted a very serious breakdown in the fundamental relationship of trust between the most long-standing public service broadcaster and its viewers. The nature of the programme brought with it an extremely high expectation of trust which was ultimately misplaced. In addition, the competition was aimed at children and the BBC should therefore have taken the utmost care to ensure that it was conducted fairly and with integrity.

9.30 The BBC failed to have any adequate management oversight or proper regard for the necessity to operate effective compliance and training procedures for the conduct of a viewer competition in *Children in Need*.

9.31 In addition, by not reporting the matter to Senior BBC management for two years, those involved demonstrated that the BBC was not sufficiently in control or abreast of compliance and content issues relating to *Children in Need* on the night of transmission or any time thereafter.

9.32 As set out above, the Committee had regard to the extensive and wide-ranging steps taken by the BBC to seek to prevent a recurrence and the

BBC's public apology. The financial penalty could have been higher had the BBC not taken such wide-ranging action.

- 9.33 While recognising that any fine would be taken from monies paid by the public (the licence fee payer), the Committee noted that Parliament had decided that it was appropriate in certain circumstances for Ofcom to impose a financial penalty on the BBC (though at a lower threshold to other Public Service Broadcasters, i.e. set at a maximum of £250,000 on any occasion).
- 9.34 Having considered the relevant facts as outlined above and all the representations made by the BBC, the Committee decided to impose a financial penalty on the BBC of **£35,000** (payable to HM Paymaster General) which it considered to be a proportionate and appropriate penalty in all the circumstances.

Content Sanctions Committee

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30 July 2008