

Ofcom Content Sanctions Committee

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| Consideration of sanctions against | The British Broadcasting Corporation (“the BBC”) in respect of its service BBC 1. |
| 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>Comic Relief 2007</i> |
| On | 17 March 2007 between 00:10 and 01:30. |
| Decision | To impose a financial penalty (payable to HM Paymaster General) of £45,000 . |

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 *Comic Relief 2007* ("*Comic Relief*") on BBC1 on 17 March 2007 between 00:10 and 01:30¹.
- 1.3 Comic Relief is a charity, regulated by the Charity Commission. In alternate years it holds "Red Nose Day", which includes a live 'telethon' programme shown on BBC1, also known as *Comic Relief*. *Comic Relief* was the eleventh programme in a series that began on BBC1 in 1988. The programme started at 19:00 on Friday 16 March 2007 and ended at 03:30 on Saturday 17 March. As with previous *Comic Relief* programmes it was produced by the BBC with a largely freelance workforce and in partnership with Comic Relief, its longstanding charity partner. The BBC said that it was responsible for the broadcast aspects of the programme, with Comic Relief handling the appeal lines.
- 1.4 The Producers of the *Comic Relief* programme devised a mechanism, described by the BBC as an "incentive to give", to boost the number of donations made by viewers in the normally slow post-midnight hours of the programme. This involved the automatic entry into a competition of all viewers calling to make donations during a particular time period (in this case 00:10 to 01:30). The donations line did not use premium rate services² ("PRS"); it used a local call rate tariff, typically charged at 10p – 12p per call. The competition involved the random selection of five callers from all those who had donated during this period. They, along with the audience, would then watch a short pre-recorded "*Through the Keyhole*"- style clip revealing the interior of a celebrity couple's house. The first of the five to identify the celebrities in question would win the prize.
- 1.5 The prize was described by the presenters as including flights to Los Angeles and a number of souvenirs from the home of a mystery celebrity couple whom competition finalists had to name to win. Viewers were told that if they called the *Comic Relief* telephone number and pledged money to the charity, they would automatically be entered into the competition for the chance to guess the identity of the celebrities live on air. Although it was intended that a shortlist of five callers would compete for the prize. Only two of the five callers selected were willing and able to participate live on air and neither answered the question correctly. With no other callers in place, the programme's Associate Producer arranged to be telephoned, went on air by telephone giving the fictitious name "*John from Essex*" and answered the question correctly. He was referred to on air (at approximately 01:30) as the winner of the prize.

¹ *Comic Relief 2007* ("*Comic Relief*") the programme is distinguished from Comic Relief the charity by the use of italics throughout this adjudication.

² 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).

- 1.6 The BBC said that, after the incident occurred, the Associate Producer had admitted what happened to an Assistant Producer, who had recognised his voice. In addition, a Sound Assistant, who knew what had happened, told his immediate superior, the Sound Supervisor. However, the BBC stated that no-one else at the BBC or at Comic Relief was aware of the fakery until 20 March 2007, when some members of the production team assembled for a “clear up” day. At that meeting, the Assistant Producer reported the incident to a Studio Producer, who immediately telephoned the programme’s other Studio Producer and the Senior Producer, all three of whom were freelancers. They met on 23 March 2007 and decided not to report the matter to Comic Relief or the BBC “for the time being”. They also decided not to award the prizes. One of them later explained that the decision to fake a competition winner was made to try to keep money coming in for Comic Relief, as donations had already started to level off by that time. They were concerned that, in light of revelations three days earlier of a fake “winner” on *Blue Peter* on BBC1 and CBBC, disclosing the issue would have damaged the continuing flow of donations.
- 1.7 However, whilst there was a great deal of press coverage regarding the *Blue Peter* incident, it was not specifically drawn to the attention of BBC staff by the normal mechanism, an email from the Director General.
- 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 (ten days before *Comic Relief* was broadcast) and looked into the BBC’s use of PRS. The BBC also published a statement confirming that a competition winner had been faked on *Blue Peter* on 14 March 2007 (three days before *Comic Relief* was broadcast). The second, launched on 12 July 2007, was much wider in scope, to include any audience deception.
- 1.9 An Ofcom investigation was launched after 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 *Comic Relief*.

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 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, this principle of trust between the broadcaster and its audience becomes even more important when it involves a flagship programme raising funds for charity. In particular, senior staff working on the programme should have been in no doubt as to the very high expectations regarding the programme’s integrity.
- 1.12 During the time that this competition was conducted, between 00:10 and 01:30, more than 47,000 viewers called the Comic Relief telephone number. Ofcom was of the view that many of these callers may have been prompted to make a donation in order to be considered eligible to participate in the competition. The reality, however, was that poor planning had meant that the

competition was not conducted fairly. Moreover, Ofcom was even more concerned to note that the programme's senior production staff, aware that a competition winner had been faked in *Comic Relief*, chose to conceal what had happened 'until the dust had settled' and then chose to reveal what had occurred, in the first instance, to Comic Relief's senior management and not the BBC. This clearly demonstrated a confusion of loyalties brought about in part by the fact that the workforce was made up of a significant number of freelancers.

- 1.13 Whilst the BBC did not receive any money from the interaction with viewers, entry to the competition 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 would have been prompted or 'incentivised' into making a donation in order to be considered eligible to participate in the competition. However, poor planning and a lack of acceptable compliance training meant that there was a substantial risk that the competition would not be conducted fairly which turned out to be the case on this occasion.
- 1.14 In addition, Ofcom was extremely concerned that this conduct occurred three days after the BBC had publicly admitted the faking of a competition winner in *Blue Peter*.
- 1.15 The BBC accepted that it had inadequate management of and oversight of *Comic Relief* due to a lack of clarity as to the reporting structure on the night between Comic Relief and the BBC and an absence of effective compliance training amongst staff to prepare them to make the right decisions when and if problems occurred. In addition, the deliberate concealment of what had occurred pointed to an unacceptable confusion 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. The breach of the Code therefore occurred as a result of an absence of adequate and robust compliance procedures, an absence of training where freelancers given senior production roles had not been adequately trained and an overall conflict of loyalties in relation to the BBC and the charity Comic Relief.
- 1.16 Ofcom welcomed the steps taken by the BBC to investigate, seek to address the breach and prevent recurrence of the same or 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;
- Taking significant and wide-ranging disciplinary action against a number of staff; and
- Apologised on BBC 1 for its failures in respect of the breach.

1.17 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 brought with it a very high expectation of trust in the integrity of the programme, which was ultimately misplaced. Where viewers are being asked to donate money, oversight and management of compliance procedures are and should always be of paramount importance. In this case, the BBC failed to have adequate management oversight or proper regard for the necessity to operate effective compliance procedures for the conduct of a viewer competition in *Comic Relief*.

1.18 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 fine the BBC (though at a lower threshold to other Public Service Broadcasters, i.e. set at a maximum of £250,000 on any occasion).

1.19 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 **£45,000** (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 *Comic Relief*, and an Ofcom investigation into the matter was subsequently launched.
- 2.3 During Ofcom’s 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 *Comic Relief*, broadcast between 00:10 and 01:30 on 17 March 2007, was in breach of the Code.
- 2.4 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)).

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 2005.³

³ The Code can be found at <http://www.ofcom.org.uk/tv/ifi/codes/bcode/>

- 3.9 Guidance Notes accompanying each section of the Code are published, and from time to time updated, on the Ofcom website.⁴ 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;
 - What compliance processes, standard or otherwise, were in place regarding the management and running of interactive viewer competitions; and

⁴ Guidance Notes can be found at <http://www.ofcom.org.uk/tv/ifi/guidance/bguidance/>

- 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 *Comic Relief*.

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 re-used 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 *Comic Relief*

- 4.9 The BBC said that a trustee of the charity, Comic Relief, had worked as the BBC's Executive Producer on *Comic Relief* since its inception. Other senior figures from both the charity and the BBC contributed ideas to the production in the run up to *Comic Relief* night. Day-to-day supervision of the production rested with a freelance Senior Producer who had worked on four previous *Comic Relief* programmes. The Senior Producer was supported by two freelance Producers (the "Studio Producers"), who had extensive entertainment and comedy experience, some of which had been gained on previous *Comic Relief* and *Sport Relief* programmes, as well as other junior staff. According to the BBC, the make-up of the production team was not unusual for many entertainment programmes, on which around 80% of production staff could be freelancers.
- 4.10 It stated that there were regular planning meetings involving the Senior Producer, other members of the production team and Comic Relief, and one of the concerns that emerged was how the show could keep donations coming in during the traditionally quiet post-midnight period. The plan for the competition emerged during these meetings and the details were finalised about a week before transmission.
- 4.11 The BBC said that, about a week before transmission, the two Studio Producers realised they would need an extra member of the production team to manage the selection and briefing of the short-listed five callers who would be put through to the studio. They approached an individual they had worked with on *Sport Relief* in 2006, who had volunteered his services to *Comic Relief*. The individual was a television professional with experience of handling telephony on another BBC programme. He was given the title of Associate Producer.
- 4.12 It said that although there was a run-through of the competition the day before transmission, no problems were identified and no contingency plans were put in place, other than to move on to the next part of the programme.
- 4.13 During the live transmission of *Comic Relief*, at 00:10 on 17 March 2007, a presenter said: "*If you call and donate some money in the next fifty minutes or so, you could win some amazing prizes*". During the subsequent hour, there were at least thirteen more appeals for donations, two of which included a reference to the competition. Sixty-one minutes after the competition was announced, a presenter said: "*The moment is getting very near where we will find out which one of you lucky donors will be playing for Alan and Justin's prize booty. So you can no longer be picked to play for the prizes.*"
- 4.14 A separate, 11 minute feature was then broadcast. It took longer than expected to complete all the donation calls that had started before the presenter declared the competition period closed and to randomly select five finalists and then pass their names to the Associate Producer. He realised there was insufficient time (approximately four minutes) to contact the five callers, get their agreement to take part and brief them on what was going to happen. He started making the calls nonetheless. The first two calls were not answered. The third call was successful, but the individual who answered was reluctant to go on air. The fourth and fifth numbers produced two individuals who were willing to participate.

- 4.15 The two callers were put through to the sound desk, for connection to the presenter at the appropriate point. The presenter asked both of them, in turn, to identify the celebrity whose home had been shown. The first failed to do so. At around this time, the Associate Producer gave his mobile phone number to one of the sound team, telling him to call it if the second contestant also failed to come up with the correct answer, so that he could act as a “winner”. The second contestant failed to give the correct answer. Following the Associate Producer’s earlier instructions, the sound team called him on his mobile phone and put him through to the presenter live on air. The Associate Producer used a fictitious name, identifying himself as “*John from Essex*”, and then correctly “guessed” the celebrity owners of the house. The presenter confirmed that he had won at 01:27.
- 4.16 The BBC stated that the Producers retained the prizes “for the time being”. One Producer recalled that the plan was to wait six months and then refer the matter to Comic Relief; another said they discussed a plan to wait for some time and then put the goods on to the Comic Relief website for auction. In principle, they decided they would hold on to the items until an unspecified time in the future when “the dust had settled”. The prizes were later returned to the BBC.
- 4.17 The BBC asked that Ofcom take the following points into consideration:
- This was a spur of the moment decision, taken by the Associate Producer at a point where, in his judgement, the programme was less than “a minute from disaster”.
 - There was no specific contingency plan created for what to do in the precise circumstances that occurred, but the Senior Producer and the Studio Producer most closely involved were clear that if there was any kind of problem with the competition, the presenter would have been instructed to simply move on without announcing a winner and some other way would have been found to bring the celebrity couple on stage. In the course of the BBC’s own investigation, the Senior Producer claimed that she did in fact instruct the presenter to move on, and one of the Studio Producers recalled hearing the instruction over ‘talkback’. However, by then, the fake “winner” had been put to air.
 - The fact that there were two rather than five “bona fide finalists” was beyond the control of the programme. In the circumstances, no legitimate finalist was deprived of the chance to compete for the prize.
 - The prizes themselves were not used.
 - All those concerned recognised the gravity of the editorial breach, but emphasised that they thought they were acting to maximise donations to the charity.
- 4.18 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.

- 4.19 Ofcom queried whether the BBC had broadcast an apology regarding *Comic Relief*. The BBC responded that it had not yet broadcast a specific apology for what it described as “irregularities” in the programme. However, it stated that the BBC Director General had been interviewed in July 2007, when the BBC published details of the first of the incidents. As well as apologising for all of the incidents, he singled out *Comic Relief* 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; *Comic Relief*, *Sport Relief* and *Children in Need* are part of that story.” The BBC said that it planned to broadcast a further statement on what had occurred in *Comic Relief* at the time of *Sport Relief 2008*, to be broadcast at the end of March 2008. The BBC said that because *Comic Relief* would not be returning to the BBC until 2009 it considered this to be the most effective way of reaching the relevant audience.
- 4.20 The following apology in relation to *Comic Relief 2007* and *Sport Relief 2006* was subsequently transmitted during the “*Sport Relief Weekend*” on BBC1 at 17:35 on Sunday 16 March 2008:

“Sport Relief 2006 and Comic Relief 2007. A Statement:

The BBC would like to apologise for errors of judgement made during the transmission of Sport Relief 2006 and Comic Relief 2007. In Sport Relief 2006, during the live Saturday night broadcast, viewers were led to believe a member of the public had won a telephone competition, when in reality the caller was one of the programme makers. And in Comic Relief 2007, in a live programme, a member of the production team posed as a viewer who was calling into a competition.

In both these cases the decisions were made to overcome production problems and not for personal gain, but they were clearly unacceptable errors. These incidents were made public in the summer of last year, and now the BBC would like to take this opportunity to apologise unreservedly for both editorial mistakes. If you would like further information about the issues raised in this statement please go to the BBC website www.bbc.co.uk/complaints.”

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 *Comic Relief* and ‘paid’ to enter the *Through the Keyhole* competition on the understanding that they had a fair and equal chance to win it. In fact, no contingency had been planned to take account of potential problems and failures with its conduct. The audience was then deceived as to the fair conclusion of the competition by the Associate Producer acting as a fake “winner”.
- 5.2 Ofcom concluded that a serious breach of Rule 2.11 of the Code had occurred in *Comic Relief*, broadcast on 17 March 2007. 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 were 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; and
- 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.

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 matters⁵.

'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 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 2008⁶. The BBC had also taken part in a joint Ofcom/ BBC Trust seminar on 26 November 2007, at which it

⁵ 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

⁶ http://www.bbc.co.uk/pressoffice/pressreleases/stories/2008/01_january/15/trust.html

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 2008⁷. 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 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

⁷ http://www.bbc.co.uk/bbctrust/research/editorial_standards.html

payers' money to claims which might not be warranted or might be fraudulent; and

- 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.

6.22 In relation to *Comic Relief*, 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 *Comic Relief* 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.

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 Jana Bennett (Director, BBC Vision), Roger Mosey (Director, BBC Sport), 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 re-stated 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 kept any of the 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 *Comic Relief* in the future would have to have attended a specific workshop, or section,

dealing with competitions and specifically focused on the trust issues that might arise in relation to competitions and supervising competitions.

- 8.17 In relation to programmes such as *Comic Relief* the BBC confirmed that control of such programmes now lay squarely in the hands of an Entertainment Executive Producer, within BBC Vision Productions, meaning that editorial and compliance control now resided in the place which was most natural for it; the division within the BBC which had the most experience of handling these sorts of programmes. The BBC considers this was an important step to providing clarity, control and grip over such programmes. It also said there was now complete clarity within the organisation as to who reported to whom.
- 8.18 The BBC had also introduced the role of a Partnership Manager, who provided continuity and a point of contact between the BBC and Comic Relief. It continued that it very much hoped that the Partnership Manager was going to be an important part of ensuring that these sorts of issues were dealt with and thought about properly in future, which would include the Partnership Manager being actively involved in the night of transmission. In addition, there was now in place a clear formalised process requiring a formal debrief after the programme had been broadcast.
- 8.19 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 *Comic Relief*

- 8.20 The BBC stated that Comic Relief was an independent charity that worked in partnership with the BBC. Until 2008, *Comic Relief* was co-produced by BBC Comedy and Comic Relief, with a contract negotiated every other year laying out the nature of the programme. The contract explicitly stated that the artistic and editorial control of the programme, on the night of transmission, resided with the BBC and the BBC accepted that it was responsible for the programme’s editorial compliance. The contract also contained a specific schedule referring to telephony issues. The BBC was concerned that a clear division should remain between the programme-makers and the Comic Relief charity, as it did not want any unnecessary or unjustified damage done to the charity.
- 8.21 The BBC reiterated that the co-production contract placed the editorial control for *Comic Relief 2007* firmly with the BBC, and that had been clear to Comic Relief. On the night of transmission the BBC had in place two Executive Producers; one of which was a BBC member of staff whilst the other was contracted on a freelance basis to provide the creative aspects of the programme. In addition, in the production gallery (the point of most control), there was a freelance Senior Producer working for the BBC who reported to the BBC Executive Producer and BBC Comedy.

- 8.22 The BBC continued that staff in the gallery would not have been aware of what had occurred at the time and neither would the Executive Producer because it had happened at a lower, more compartmentalised level during the production. In addition, the BBC stated that on the night, the Senior Producer had attempted to do what would have been the right thing, which was to move the programme on and drop the competition, because it had failed. However, the problem was that at a lower level a prior instruction was being enacted, outside the Senior Producer's control. Whilst it did not mitigate the secrecy and failure to report the matter up, the relevant individuals had attempted to do the right thing.
- 8.23 It said that, in a sense, the failings in relation to this programme resulted from the aftermath of not using the BBC's editorial structure properly and to make good the breach of trust with the audience. It continued that it had taken to heart the lessons it had drawn from the breach; in particular, the need for further clarity, especially when the BBC is in a partnership with strong characters, very important partners and many different people involved on the night. It said that there had been a failure in this case to understand the importance of the BBC's responsibility to its audience in wanting to protect the interests of the charity. This had mistakenly led to silence, when the BBC would have wanted a discussion.
- 8.24 With regard to who had overall responsibility for the programme's compliance, the BBC stated that it was the BBC Executive Producer but, on the night, s(he) might not have regarded himself/ herself as having compliance responsibility above the programme's freelance Executive Producer who was responsible for the creative aspects of the programme.
- 8.25 The BBC confirmed that there were lessons to be learnt from what had occurred and that it had done a great deal to change the nature of the editorial structure so that people in future were very clear about referral issues in circumstances where previously there might have been confusion regarding whose interests they should be seeking to support. It was clear that, on the night of *Comic Relief 2007*, the interests of the BBC were confused by certain members of the production team; protecting the charity over and above both the interests of the programme and the high level of trust associated with it.
- 8.26 The BBC continued that the idea of conflicting loyalties certainly seemed to have existed, along with a desire to protect the interests of the charity, which was very important in the minds of individuals working on projects such as this and supporting a night like *Comic Relief* for very good causes. It said that it considered that it was possible that the freelance status [of staff] had "hurt" their clarity of thought when it came to appreciating how serious these issues were, hence the apparent confusion. However, it said that the fact that they had realised it was important did come through in terms of the events (e.g., they had realised these were serious issues, which is partly why they had discussed them, but they had come to some "very wrong conclusions"). The Committee understood this to mean that the production team appreciated that the issues were serious but failed to appreciate their significance or why they were serious. The production team's attention had not been directed to reinforcing audience trust and telling the BBC about the problem/issue first (as opposed to *Comic Relief*) which is what they should have done. This was indicative of there having been confusion within the BBC as to what to do.

- 8.27 The BBC stated that the mistakes and errors had occurred in part because people had thought that they were keeping the production of the programme together and had not understood the seriousness of the situation. In the aftermath of it having occurred, they had been concerned about donations continuing quite a long way beyond the night of the programme and there might well have been confusion about whose interests they were serving. The BBC stated that the cover-up that had occurred as a consequence was unacceptable.
- 8.28 In response to a question from the Committee as to how much training staff required to understand what is meant by ‘competitions should be conducted fairly’, the BBC stated that those involved had not spoken to the programme’s Executive Producer about the matter because they had not seen it as an issue for referral upwards. They had seen the item more as an “incentive to pledge”, rather than understanding it, at the time, to be a competition. Whilst there had been publicity about *Blue Peter* in March 2007, there had not been a full report of the inquiry into *Blue Peter* and the press coverage had focused more on PRS than debates about competitions. However, when reminded that the press coverage regarding *Blue Peter* related to the BBC faking a competition winner in a children’s programme, the BBC stressed that what had occurred was unacceptable and it accepted there was some confusion around PRS and whether anybody had realised that this conduct was wrong.
- 8.29 In addition, the BBC confirmed that the *Blue Peter* issue, brought to the attention of the public by the media three days before transmission of *Comic Relief*, was not specifically drawn to the attention of BBC staff by the normal mechanism of an email from the Director General. It was unable to explain why the Director General had not emailed BBC staff in this instance, but confirmed that if a similar incident were to occur in the future, there would be more than just one email from the Director General.
- 8.30 The Committee questioned why the combined apology for *Comic Relief* (and *Sport Relief*), which was transmitted between the *Sport Relief Mile* programme and *Songs of Praise* on Sunday 16 March 2008, was not transmitted during transmission of the main *Sport Relief* programme on Friday 14 March 2008. The BBC responded that *Sport Relief* had many manifestations and was not just a night; it was a campaign that went on for a long time. It said that the *Sport Relief Mile* was an important mass participation flagship and that the apology was broadcast directly after that programme had finished. In addition, it considered that the audience for *Songs of Praise* was very much at the heartland of what the BBC was saying about the need to restore trust effectively.

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 Guidelines⁸.

⁸ 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.

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 BBC exists to serve the public interest⁹ and consequently the breach of the Code involved a significant 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, this principle of trust between the broadcaster and its audience becomes even more important when it involves a flagship programme raising funds for charity. In particular, senior 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 admission, the BBC breached its fundamental principle of straight dealing with its audience and admitted that it had let its audience down.
- 9.4 During the time that the competition was conducted, between 00:10 and 01:30, more than 47,000 viewers called the Comic Relief telephone number. The Committee was of the view that many of these callers would have been prompted or 'incentivised' to make a donation in order to be considered eligible to participate in the competition. However, poor planning and a lack of acceptable compliance training meant that there was a substantial risk that the competition would not be conducted fairly which turned out to be the case on this occasion. The Committee was extremely concerned that this conduct occurred a matter of only three days after the BBC had admitted and publicly apologised for the faking of a competition winner in *Blue Peter*. The Committee was even more concerned to note that the programme's senior production staff, aware that a competition winner had been faked in *Comic Relief*, chose to conceal what had happened 'until the dust had settled' and then chose to reveal what had occurred, in the first instance, to Comic Relief's senior management and not the BBC. This clearly demonstrated a confusion of loyalties brought about, in part, by the fact that the workforce was made up of a significant number of freelancers.
- 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 Comic Relief to be eligible so entry into the competition was not 'free'. As a consequence, when the competition was conducted unfairly, it

⁹ 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.

was to the potential detriment of all those viewers who had made a telephone call and pledged a donation.

- 9.6 The Committee noted that the BBC accepted that it had had inadequate management of and oversight of *Comic Relief* due to a lack of clarity as to the reporting structure on the night between Comic Relief and the BBC and an absence of effective compliance training amongst staff to prepare them to make the right decisions when problems occurred. Whilst the Committee accepted that the programme was a co-production between Comic Relief and the BBC, its senior management, senior production team and the staff from Comic Relief should have been in no doubt that the obligation for compliance with the Code rested squarely with the broadcaster. 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 reality. This was a significant failure and particularly serious given the high expectations of the audience for the integrity of such a flagship programme as *Comic Relief*.
- 9.7 In conclusion the Committee considered that the contravention was 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 programme designed to raise funds for charity. The Committee was of the view therefore that due to the serious and deliberate nature of the breach, and the compliance failures and resulting harm caused to those viewers who entered the competition in *Comic Relief* 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

- 9.8 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

- 9.9 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-events' such as *Comic Relief* 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

- 9.10 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:
- 9.11 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 and the prizes were not used.
- 9.12 The Committee noted that the BBC is not a commercial broadcaster but is nonetheless a substantial organisation with significant resources available to it.
- 9.13 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.
- 9.14 The Committee considered that the harm to those viewers who entered the competition and the audience of *Comic Relief* overall was significant. The audience was deceived and materially misled in a live charity programme by the BBC's deliberate unfair conduct of the *Through the Keyhole* competition. This was a substantial breach of the audience's trust.
- 9.15 The Committee considered that because *Comic Relief* was transmitted on BBC1 and was and is a flagship respected charity programme, that audience expectations in relation to the integrity of 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 *Comic Relief*, 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

- 9.16 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

- 9.17 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.
- 9.18 The Committee was strongly of the view that the breach of the Code that occurred was the result of an absence of effective and robust compliance procedures. The Committee considered that the BBC's senior management should have been aware that the breach of the Code could have, and did, occur and had sufficient oversight and training in place to ensure that staff were aware of what to do in the event of a problem. The BBC was

responsible for ensuring that problems on the night were referred up but, due to an evident conflict of loyalties where staff chose to protect the charity and the continuing flow of donations over the relationship of trust with its audience, the matter was not referred to the BBC until those responsible chose to reveal what had occurred.

- 9.19 The Committee noted that freelancers working on *Comic Relief* in senior production roles had not been adequately trained. 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 their training and compliance procedures were robust and effective. This it had signally failed to do.
- 9.20 The Committee was concerned that whilst the media was reporting the faking of a competition winner in *Blue Peter*, BBC staff were not properly alerted to the significance of what had occurred. The BBC accepted that an email should have been sent by the Director General to all BBC staff highlighting the matter but said this did not happen on this occasion. Nonetheless, the senior production team of *Comic Relief* admitted that in the light of press revelations regarding *Blue Peter* they chose to conceal what had occurred until the "dust had settled" and therefore did not refer the matter up. This demonstrated to the Committee that communication with, control of and oversight over the production team was inadequate on the part of the BBC.

Factors tending to decrease the level of penalty

- 9.21 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.
- 9.22 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.
- 9.23 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 for its failures in respect of the breach.
- 9.24 The Committee acknowledged that the BBC had co-operated in a full and frank manner with Ofcom's investigation.

Conclusion

- 9.25 Cases where a broadcaster deceives or materially misleads its audience, whether knowingly or not, have always been considered to be amongst the most serious breaches of the Code by Ofcom (and its predecessor regulators). In this case, the potential damage caused by the faking of a competition winner in *Comic Relief* went beyond any actual financial loss caused to competition entrants; having the additional and very real potential to harm viewer confidence in the integrity of all future charity fundraising events.
- 9.26 The Committee took the view therefore 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 a very high expectation of trust in the integrity of the programme; which was ultimately misplaced.
- 9.27 Where viewers are being asked to donate money, oversight and management of compliance procedures are and should always be of paramount importance. In this case, the BBC failed to have any management oversight or proper regard for the necessity to operate effective compliance procedures for the conduct of a viewer competition in *Comic Relief*. In addition, the staff it employed to produce the programme knew about what had occurred and placed the needs of raising money for the Comic Relief charity before the audience's trust and the integrity of the programme. The senior production staff who concealed the matter from the BBC's senior management therefore demonstrated that the BBC was not sufficiently in control or abreast of compliance and content issues relating to *Comic Relief* on the night of transmission or any time thereafter.
- 9.28 As set out above, in setting the level of fine, 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.
- 9.29 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 fine the BBC (though at a lower threshold to other Public Service Broadcasters, i.e. set at a maximum of £250,000 on any occasion).
- 9.30 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 **£45,000** (payable to HM Paymaster General) which it considered to be a proportionate and appropriate penalty in all the circumstances.

Content Sanctions Committee

Philip Graf
Millie Banerjee
Joyce Taylor
Kath Worrall

30 July 2008