

Ofcom Content Sanctions Committee

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>Sport Relief 2006</i>
On	15 July 2006 between 19:10 and 19:30
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 *Sport Relief 2006* ("*Sport Relief*") on BBC1 on 15 July 2006 between 19:10 and 19:30¹.
- 1.3 *Sport Relief* was the third annual live 'telethon' appeal of its kind to raise funds for the Comic Relief charity. It was produced by the BBC in partnership with Comic Relief. The BBC said it was responsible for the broadcast aspects of the programme with Comic Relief handling the appeal lines. Prior to broadcast, a competition called "*A versus B*" was devised as a way of encouraging viewers to make a donation. The BBC later described this as an "incentive to give or pledge". The competition was created because the production team wanted to find new ways to encourage viewers to give money throughout the course of the programme and not just in "spikes", as the result of an appeal film, which had historically been the most effective prompt for donations. As a consequence, callers making donations during certain time periods were automatically entered into the competition.
- 1.4 The competition involved a series of segments titled *A versus B* in which two celebrities competed in an adapted version of *Mastermind* chaired by John Humphrys. Viewers were asked to call in and predict whether celebrity contestant "A" or "B" would win by making a donation of either an even amount ("A") or an odd amount ("B"). The prize winner would be chosen at random from those who predicted the outcome correctly. The prize was a visit to the set of *Eastenders* and *Coronation Street*.
- 1.5 During pre-production a contingency was devised to deal with a failure in the telephony systems. This contingency, which was approved by the programme's Executive Producer, was that a Production Co-ordinator would "stand in" as the winner in the event that there was no available shortlist of possible winners to participate in the competition live on air.
- 1.6 During live transmission the random nature of the call routing system (which had been put in place to divert some callers to a 'prize bleed line') did not work because call numbers were too low. This meant that no one was available to go on air when the competition was required to be conducted live. Reacting to the problem with limited time available the Production Co-ordinator, knowing there was a contingency in place for her to go on air in place of a genuine caller, took the decision to go on air and subsequently "won" the prize.
- 1.7 The BBC's investigation suggested by the end of the night there were around 10-15 people from both the BBC and Comic Relief who knew what had happened because they recognised the Production Co-ordinator's voice, or

¹ *Sport Relief 2006* is referred to throughout this adjudication in italics ("*Sport Relief*") to distinguish it from the Sport Relief, the fundraising initiative owned and organised by Comic Relief, a charity regulated by the Charity Commission.

they had been in the gallery at the time of the call, or because they heard the matter being discussed shortly after the event. The BBC stated that it was also widely known in the office after the event that the Production Co-ordinator had “stood in” for a genuine winner. However, the majority of staff working on *Sport Relief* were freelancers and left after the end of the programme. The incident was not referred to more senior editorial staff by the programme’s Executive Producer at the time or at any time thereafter.

- 1.8 In March 2007, following the public admission by the BBC that a competition winner had been faked in *Blue Peter*, enquiries were made by the BBC’s Director of Vision into all BBC programmes that had used premium rate telephony services² (“PRS”). The Commissioning Co-ordinator in Entertainment made enquiries into a number of programmes including *Sport Relief*. The BBC Sport Production Manager, who was aware of the incident, tried to get in touch with the Executive Producer (of *Sport Relief*) who by then had left the BBC. The BBC Sport Production Manager then contacted the Executive Producer at BBC Sport and they together, took the decision not to report the *Sport Relief* incident to the BBC’s internal inquiry on the basis that the BBC internal inquiry only related to PRS competitions.
- 1.9 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.
- 1.10 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 *Sport Relief*.
- 1.11 Senior BBC management only became aware of this incident on 10 July 2007, a year after transmission, following a press enquiry.

Summary of the Committee’s Findings

- 1.12 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. 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.
- 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. 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

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).

phone call and make a donation to Sport Relief to be eligible so entry into the competition was not 'free'. 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 Ofcom was concerned to note that the Comic Relief organisation had told the BBC that BT had expressed concerns that there was a tight turnaround for the competition but that no changes were made to address these concerns. As a consequence, instead of putting measures in place to guard against the lack of time available to find suitable participants, the most senior member of the production team, the Executive Producer, and members of his team put a contingency in place to fake a winner. This was in order to respond to a number of potential risks that had been identified, which included the possibility that the communication lines with BT might go down. Ofcom considered that the deliberate decision to plan in advance that a member of the production team might need to pretend to be the 'winner' of the competition, was entirely unacceptable and a significant deception.
- 1.15 The BBC accepted that it was responsible for ensuring that problems on the night were referred up but, due to an evident conflict of loyalties the BBC Sport Production Manager and Executive Producer at BBC Sport took the decision not to report the incident to the BBC internal inquiry (the 'trawls') because PRS was not used and they had not considered that the *A Versus B* item was a 'viewer competition'. It was therefore a matter of grave concern to Ofcom that the incident only came to light a year after it had occurred via a press enquiry and not via the direct and explicit appeals by the BBC to its staff asking them to reveal any instances of deception in its programmes.
- 1.16 As a consequence, the BBC accepted that it had had inadequate management and oversight of *Sport Relief 2006* due to a lack of clarity as to who was in charge and an absence of effective compliance training amongst staff and in particular freelancers, to prepare them to make the right decisions should problems occur. 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. In addition, the deliberate concealment of what had occurred pointed to an unacceptable 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. 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 confusion of loyalties in relation to the BBC and Sport Relief.
- 1.17 In Ofcom's view, the reputation and integrity of such a flagship charity programme and the correspondingly high trust in it by the audience meant that the BBC should have taken the utmost care that appropriately trained staff were in place. Ofcom noted the BBC's own admission that there was not a 'joined-up' approach between all those involved in creating this event and considered this to be an unacceptable failure by the BBC.
- 1.18 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.

1.19 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 extremely high expectations of trust, which were ultimately misplaced. 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 *Sport Relief*. This had led to a deliberate decision being taken at the most senior level within the production team to put in place a contingency plan to fake a winner.

1.20 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).

1.21 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 1.11 in the Summary above.
- 2.2 As set out at paragraph 1.9 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 *Sport 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 *Sport Relief*, broadcast between 19:10 and 19:30 on 15 July 2006, 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 *Sport 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 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 *Sport Relief*

- 4.9 The BBC said that following a press enquiry in July 2007, regarding a *Sport Relief* competition in 2006, the Director of Sport carried out an investigation into the programme. The initial findings were reported to the BBC Trust on 18 July 2007 and further investigations were undertaken by the Head of Radio News and the Head of Major Events BBC Sport. During the course of these investigations, relevant employees, ex-employees and freelance staff were interviewed and enquiries made of the charity.
- 4.10 The BBC said that its investigation found that the production team took decisions which meant that the audience was led to believe that a member of the public was involved in and won the competition open to the public, whereas the caller was in fact a member of the production team. It continued that this action in misleading the public was planned in advance in that it was a contingency plan that was discussed at a meeting in the previous week.
- 4.11 The BBC stated that problems arose in relation to the first use of a competition format which was designed to encourage the public to call in and donate. Part of the programme involved a series of five segments called *A versus B*. The section of relevance was the first of these, which was live. Two celebrities identified as “A” and “B” competed in an adapted version of *Mastermind*. Viewers were asked to call in and predict whether “A” or “B” would win by making a donation of an even number of pounds to choose “A”, or an odd number of pounds to choose “B”. The prize-winner would be chosen at random from among those who predicted the outcome correctly. The prize was a VIP visit to the *Eastenders* set with a lunch and memorabilia and a visit to the *Coronation Street* set.
- 4.12 The BBC said that the Executive Producer of *Sport Relief* had extensive experience working on previous *Comic Relief/Sport Relief* programmes in a similar role. However the majority of the programme team was freelance staff.
- 4.13 The BBC detailed how the competition was an “incentive to give” designed to increase the number and rate of charitable donations. The *A versus B* competition format was being used for the first time and had been introduced because the production team wished to find new ways to encourage viewers to give money throughout the course of the entertainment segments of the programme, not just as a result of appeal films, which had historically been the most effective prompt for donations.
- 4.14 The BBC continued that, in the months in advance of *Sport Relief*, there were regular planning meetings involving the production team and *Comic Relief* to discuss the content of the programme, and between *Comic Relief* and BT to discuss the telephony services which would be required for the implementation of those plans. Considerable effort was made to avoid “significant network problems” that had been experienced in previous similar live charity broadcasts.
- 4.15 In the week before transmission during an informal meeting the Executive Producer, one of the Producers, the Production Manager and the Production Co-ordinator identified a series of risks and considered possible contingency action if they materialised. One of the risks identified was that the communication lines with BT might go down. Another was that the individual randomly selected as the winner might be drunk, or in some other way

unsuitable. In that event, it was agreed by those present that the Production Co-ordinator would act as a final backup; and might have to go on air herself instead of the caller if there was no time to find another competitor.

- 4.16 It continued that the means of finding a winner for the prizes was set up jointly in advance by the BBC, Comic Relief and BT. Comic Relief was responsible for delivering the technological aspects and has an on-going relationship with BT. The BBC production team was responsible for the content of the show. The system used was intended to balance calls across the network to protect all BT customers as well as Comic Relief from Network overload. BT Tower was one of approximately 60 call centres around the UK.
- 4.17 A smaller group of six or seven operators was set aside specifically for the *A versus B* competition in a room at BT Tower which was referred to as the 'prize bleed line'. Calls would be randomly connected to the prize bleed line operators who would take down the details of those donating and, depending on the amount of the donation and whether it was 'even' or 'odd', identify the callers as either "A" or "B" callers and have the opportunity to win the prize.
- 4.18 Each call required two to three minutes to take down the caller's donation and details and the prize time was quite short (only six minutes). The plan was that the 'prize bleed line' operators would each answer the first call which came through to them when the prize time started. Each operator would then answer a second call and the second set of callers would be kept on the line so that the BT Tower Producer could undertake a "sanity check", and ensure that those callers were aware of what would happen should they be selected to speak live on air to the presenter.
- 4.19 The plan was that once the *A versus B* competition had produced a celebrity winner on screen, the BBC Producer at the BT Tower would supply three phone numbers of checked callers who had voted for the winning "A" or "B" celebrity to the Production Co-ordinator. The Production Co-ordinator would then call the first number she received.
- 4.20 The Production Co-ordinator had the role of briefing the winner immediately before putting him or her on air. She anticipated having no more than 90 seconds for this briefing before the caller was handed to the studio, to speak to the programme's main presenter.
- 4.21 The BBC said that Comic Relief had stated that BT had expressed concerns that there was a tight turnaround for this competition; and that Comic Relief then passed these concerns on to the programme production team verbally. The Executive Producer maintained that he took those concerns on board but the timing for the item remained tight.
- 4.22 It added that programme-makers are expected to seek advice and discuss issues with the Editorial Policy department and the Executive Producer did so. As the competition did not involve PRS however there was no obligation for it to be referred to Programme Legal Advice. In addition, the Executive Producer felt that lines of reporting were confused, as he referred issues in the run-up to transmission to the Commissioning Editor, the charity Comic Relief, the Controller of Entertainment and the Controller of BBC1. He was also not clear who his main contact should be within BBC Sport.

- 4.23 On the night of transmission, during the six minute period before the presenter announced that the competition was closed, no donation calls were received by the 'prize bleed line' team in BT Tower (due to the number of people calling the *Sport Relief* telephone number at that stage of the evening being small in combination with the random nature of the call routing system), no callers were siphoned off to the 'prize bleed line'. This meant that there was no-one available to go on air.
- 4.24 The BBC said that the BBC Producer at the BT Tower and a member of Comic Relief tried other adjacent areas of the BT Tower call centre where the other telephone operators were located, this being the contingency plan in the event of the 'prize bleed line' yielding no appropriate callers. However, the plan depended on being able to find a call which was just ending, in order to be sure of having a caller both eligible and suitable to put on air within the short time then remaining. Again, because of the low call volume at that early stage of the evening they were unable to find a caller. The BT Tower Producer then contacted the Production Co-ordinator who was in the Production Office at BBC Television Centre and told her that there was nobody calling. This occurred two minutes before the winner was due on air. This was the first time that the Production Co-ordinator knew that there was a problem with the phone lines and that a winner was not available.
- 4.25 The Production Co-ordinator described that, on being told there were no callers, her overall reaction was one of despair. Her job was to get someone on air and she had a window of about 60 to 90 seconds to decide what to do before a caller needed to be on air. She said that she went "into autopilot" and decided to go on air herself. She called the sound gallery and then ran to it and made the call. In terms of referring up, the short window of 60 to 90 seconds meant there was no time for any conversation with anyone else. However she thought that others were aware of what she was doing as she was in a room behind the gallery with some people from Comic Relief who she believed must have been aware of what was going on. Comic Relief maintains that these staff were not aware of the incident at this point.
- 4.26 The BBC stated that this incident was not referred up either on the night or subsequently, despite around 10-15 people being aware of it. As a consequence it said that its seriousness as a breach of audience trust appears not to have been recognised. Furthermore a decision was taken at the time of the BBC's internal March audit that this incident should not be declared.
- 4.27 In March 2007, following the *Blue Peter* incident, enquiries were made by the Director of Vision into programmes which had used PRS. The programme was made by BBC Sport Entertainment but commissioned by BBC Entertainment. The Commissioning Co-ordinator in Entertainment made enquiries in relation to *Sport Relief*. The email was forwarded to a BBC Sport Production Manager who had been involved in the development of *Sport Relief* and was aware of the incident. He tried to get in touch without success with the Executive Producer, who by then had left the BBC. He then called the Executive Producer in BBC Sport who had been responsible for the main campaign for BBC Sport across the BBC although not the main *Sport Relief* programme. Both thought that the enquiry related to PRS and also that the incident involved an "incentive to give" and not an actual competition for viewers so the decision was taken not to report it.

- 4.28 In conclusion the BBC stated that there was an overall failure to fully appreciate how the telephony system would work in the event of a low volume of calls. Contingency planning had focussed on there being an overload of callers rather than a shortage and that the contingency plans that had been put in place were seriously flawed because they included a member of staff pretending to be a winner. It said that the following lessons had been learned:
- The BBC said that significantly greater ownership of these types of partner-events is needed and that it has started taking steps to ensure greater BBC ownership and clearer line management of such events alongside simplifying the BBC's relationships;
 - It confirmed that the relationship between the BBC and Comic Relief needed considering and that it needed to be emphasised that the transmission of all fundraising programming must ensure that BBC standards are placed ahead of fund-raising ambitions;
 - It continued that all those who work on such programmes need to be adequately equipped to ensure they make the right judgements when under pressure from the challenges of live broadcasting;
 - The BBC also confirmed that attention needs to be given to the processes for recruitment for event programmes like *Sport Relief* and particularly what it refers to as "the informality with which freelancers appear to be recruited". It stated that experience of working on similar fund-raising output has [in the past] been wrongly prioritised over understanding of BBC editorial policy or ethics;
 - In the future the BBC will have a senior executive not involved in the hands-on production and/or a compliance officer in the programme gallery throughout this kind of major live programme;
 - BBC Sport will be reducing the number of on-air competitions it runs which, whilst potentially having consequences for fund-raising for charities, it considered would increase levels of audience trust.
- 4.29 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 paragraph 6.2 to 6.18 below.
- 4.30 Ofcom queried whether the BBC had broadcast an apology regarding *Sport 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 *Sport 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; *Sport Relief*, *Comic 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 *Sport Relief 2006* at the time of *Sport Relief 2008*, to be broadcast at the end of March 2008.

- 4.31 Subsequently, the following apology in relation to *Sport Relief 2006* was 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 *Sport Relief* and ‘paid’ to enter the *A Versus B* competition on the understanding that they had a fair and equal chance to win it. A contingency, put in place to take account of potential problems and failures with the competition’s conduct, meant that a member of the production staff would go on air pretending to be a winner. When no callers were available to participate in the competition and the contingency was acted upon, the audience was consequently 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 *Sport Relief*, broadcast on 15 July 2006. 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 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.

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

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

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 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 *Sport 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 *Sport 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 audiences, "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 *Sport 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 *Sport 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 the Comic Relief charity. It continued that it very much hoped that 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 *Sport Relief*

- 8.20 When asked by the Committee as to why the contingency was put in place, the BBC stated that *Sport Relief* is a complex, multi-party event in respect of the compliance needed on a range of matters ranging from health and safety through to charitable donations. With regard to the contingency in question, the BBC said that an informal production meeting was held a couple of days before where a number of areas of potential problems were discussed. At that meeting somebody said ‘*what happens if a caller is too drunk to go on air or isn’t right to go on air?*’ The response was ‘*Oh, if that happens [name of Production Coordinator] will look after it.*’ The BBC continued that therefore, in one sense, they came up with some sort of plan if something went wrong. Unfortunately, it said, it was a bad idea and unacceptable.
- 8.21 The Committee questioned whether the programme’s production team had sought any advice from the Editorial Policy Unit in relation to compliance of this programme, including how to conduct the competition. The BBC responded that looking back at the paper trail there was no doubt the Executive Producer had consulted Editorial Policy and senior colleagues on a number of issues. However, it considered that in retrospect they did not give enough weight to the competition element. They saw the competition as a device that ran alongside the fundraising. The fundraising was the key part of the event and the competition was simply a device to get people to donate because they had to donate in order to take part in the competition.
- 8.22 The BBC continued that the production team was consulting with Editorial Policy on a range of critical programme items relating to the *Sport Relief* programme and confirmed to the Committee that the competition was not given the priority it should have had although it pointed out that this was not an indication that people did not take their compliance duties seriously overall.
- 8.23 The BBC was asked to explain the relationship between BT, the Comic Relief charity and the BBC and why no one appeared to have realised that there were not enough calls in the system and lead times were not long enough. The BBC said that compliance for the competition rested with the BBC. It reiterated that this was a complex multi-party event with hundreds of people all over the country taking part in the telephony aspect of the programme. It said that whilst BT provided the telephony infrastructure at the BT Tower this aspect was not as joined-up and enmeshed as it should have been. With

regard to the contingencies in place, the production team thought that the contingency they would be dealing with would be that call lines were swamped. Therefore, when on the night of transmission no calls went through to the prize bleed line, it was a completely unexpected eventuality and in the context of a charity fundraising programme the worst situation they could think of. Faced with the possibility of stating on air that ‘nobody’s called in’ they took the decision to fake the winner, which the BBC admitted was wrong.

- 8.24 The BBC continued that this was the first time a competition element had been introduced to this programme and that, ironically, the competition element may have deterred calls rather than encouraged them. Callers may have thought that calling to make a donation to *Sport Relief* was separate to trying to win a trip to *Coronation Street* and *Eastenders* or they may have been put off calling because they did not want to win the prize or enter the competition.
- 8.25 The Committee questioned why the combined apology for *Sport Relief 2006* (and *Comic Relief 2007*), 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 a flagship event (it was the biggest mass participation mile there was) and that the apology was broadcast right after that programme. In addition, it considered that *Songs of Praise* had a “heartlands” audience in the context of the BBC’s message 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.

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

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.

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.

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 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 was concerned to note that the Comic Relief organisation had told the BBC that BT had expressed concerns that there was a tight turnaround for the competition but that no changes were made to address these concerns. As a consequence, instead of putting measures in place to guard against the lack of time available to find suitable participants, the most senior member of the production team, the Executive Producer, and members of his team concentrated their concerns only on whether those callers who were put through were suitable to be put to air. They put a contingency in place to fake a winner in order to respond to a number of potential risks that had been identified, which included the possibility that the communication lines with BT might go down. The deliberate decision to plan in advance that a member of the production team might need to pretend to be the 'winner' of the competition was deemed by the Committee to be entirely unacceptable and a significant deception.
- 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 phone call and make a donation to Sport Relief 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 and oversight of *Sport Relief 2006* because there was a lack of clarity as to who was in charge coupled with an absence of effective compliance training amongst staff, in particular freelancers, to prepare them to make the right decisions should problems occur. In addition, staff working on *Sport 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.
- 9.7 The Committee was therefore 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 *Sport Relief* and the audience overall, this was a very serious case, involving a fundamental breach of the audience's trust. The contravention was considered very serious because it involved a breakdown in trust between the UK's most long-standing and trusted broadcaster and its audience and

compromised the integrity of a long-standing, peak-time flagship charity programme raising funds for charity. 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 In setting the level of financial penalty 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 *Sport 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 awarded.
- 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 *Sport Relief* overall was significant. The audience was deceived in a live peak-time family programme and materially misled by the BBC's deliberate and unfair conduct of the *A Versus B* competition. This was a substantial breach of the audience's trust.
- 9.15 The Committee considered that because of the nature of *Sport Relief*, which was transmitted during peak family viewing time on BBC1 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 *Sport 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 deliberate breach of the Code that occurred was the result of an absence of effective and robust compliance procedures where a contingency to fake a winner had been put in place. The Committee considered that the BBC's senior management should have been aware that the breach of the Code could have occurred and had systems in place to prevent it. Furthermore, once it did occur it should have had sufficient oversight and training in place to ensure that staff were aware of what to do in the event of a problem. The Committee noted the BBC's own admission that there was not a 'joined-up' approach between all those involved in creating this event. The Committee considered this to be an unacceptable failure by the BBC.
- 9.19 The Committee also noted that the BBC was responsible for ensuring that problems on the night were referred up but, due to an evident conflict of loyalties the BBC Sport Production Manager and Executive Producer at BBC Sport took the decision not to report the incident to the BBC internal inquiry (the 'trawls') because PRS was not used and they had not considered that the *A Versus B* item constituted a 'viewer competition'. It was therefore a matter of grave concern to the Committee that the incident only came to light a year after it had occurred via a press enquiry and not via the direct and explicit appeals by the BBC to its staff asking them to reveal any instances of deception in its programmes.
- 9.20 The Committee noted that freelancers working on *Sport Relief* in senior production roles were not and 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 appropriately trained staff were in place.

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 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). In this case, the potential damage caused by the faking of a competition winner in *Sport 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 extremely high expectations of trust which were ultimately misplaced.

- 9.27 The BBC failed to have any adequate management oversight or proper regard for the necessity to operate effective compliance procedures for the conduct of a viewer competition in *Sport Relief*. This had led to a deliberate decision being taken at the most senior level within the production team to put in place a contingency plan to fake a winner. In addition, whilst between 10 and 15 staff knew what had occurred they evidently put concealing the deception before maintaining and/or preserving the trust of the audience. By concealing the matter for more than a year and by not coming forward when specifically requested to do so by the BBC, those involved demonstrated that the BBC was not sufficiently in control or abreast of compliance and content issues relating to *Sport Relief* on the night of transmission or any time thereafter.
- 9.28 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.
- 9.29 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
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30 July 2008