

Ofcom Content Sanctions Committee

Consideration of sanction against	The British Broadcasting Corporation (“the BBC”) in respect of its services BBC1 and CBBC.
For	<p>Breaches of Ofcom’s Broadcasting Code (“the Code”) of:</p> <p>Rule 2.11 – “<i>Competitions should be conducted fairly, prizes should be described accurately, and rules should be clear and appropriately made known.</i>”; and</p> <p>Rule 1.26 – “<i>Due care must be taken over the physical and emotional welfare and the dignity of people under eighteen who take part or are otherwise involved in programmes. This is irrespective of any consent given by the participant or by a parent, guardian or other person over the age of eighteen in loco parentis.</i>”</p> <p>in the ‘live’ transmission of <i>Blue Peter</i> on BBC1;</p> <p>and</p> <p>Rule 2.11 – “<i>Competitions should be conducted fairly, prizes should be described accurately, and rules should be clear and appropriately made known.</i>”</p> <p>in the repeated edition of <i>Blue Peter</i> on CBBC.</p>
On	27 November 2006 at 17:00 and 18:30 respectively.
Decision	To impose a financial penalty (payable to HM Paymaster General) of £45,000 on the occasion of the broadcast of <i>Blue Peter</i> on BBC1 and £5,000 on the occasion of the repeat of <i>Blue Peter</i> broadcast on CBBC.

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 has decided to impose a statutory sanction on the BBC in light of the serious nature of its failure to ensure compliance with the Code.
- 1.2 This adjudication under the Code relates to the broadcast of the children's entertainment programme, *Blue Peter*, produced by the BBC and broadcast 'live' on BBC1 on 27 November 2006 at 17:00, then repeated on CBBC on the same date at 18:30.
- 1.3 An Ofcom investigation was launched after the BBC issued a statement on 14 March 2007 admitting the unfair conduct of a 'live' viewer telephone competition shown on the *Blue Peter* programme. A technical fault occurred in the programme which meant that no telephone callers could be connected to the studio. It transpired that a researcher invited a studio guest to pose as a competition entrant and the child was then revealed, on air, as the 'winner'.
- 1.4 This was in breach of Rule 2.11, which states that competitions must be conducted fairly, and Rule 1.26, which requires broadcasters to take due care over the physical and emotional welfare of people under eighteen.
- 1.5 The programme was then repeated in full, including the falsified competition, on a BBC children's channel, CBBC, at 18:30 the same day. Although a caption was displayed stating that competition lines were closed, more than 3,500 further calls were received, since the telephone number was still visible and the lines were still open. This was also in breach of Rule 2.11 of the Code.
- 1.6 The BBC accepted without reservation that there had been "*serious and regrettable errors of judgement*" made in relation to the programmes as broadcast. It recognised that this was "*a very serious matter*" and accepted that breaches had occurred on both BBC1 and CBBC.
- 1.7 Ofcom viewed the breaches of the Code in relation to the original broadcast on BBC1 as particularly serious. It was of great concern that, whatever the motivation, the decision to put to air a fake winner resulted in a child audience being misled. The breaches had occurred as a result of a decision that was planned in advance of the programme's broadcast - albeit only shortly before it. It was the Committee's view that the breaches had not therefore occurred by 'accident' or as a result of a misjudgement by a programme maker in an area which required fine editorial judgement or discretion. This was material which should not, in any circumstances, have been either produced or transmitted. Further, cases where the broadcaster has misled the audience are always considered by Ofcom (and its predecessor regulators) as to be amongst the most serious breaches of the Code. They go to the heart of the relationship of trust between the broadcaster and its audience - in this case, an audience which is primarily made up of children.
- 1.8 The deception also involved a child pretending to be a winner with the correct answer. As the Code recognises, the protection of the physical and emotional welfare of children is paramount and the decision to involve the child in the deception for the sake of expediency demonstrated a casual lack of regard for the welfare of that child.

- 1.9 In relation to CBBC, the Committee viewed the breach of the Code to be serious. The programme was repeated, despite the programme editor being aware of the problems with the original transmission of the programme. Further, after the competition had ended during the live transmission on BBC1, the broadcaster had failed adequately to inform viewers that the competition had been concluded, resulting in a further 3,574 viewers calling in response to the CBBC programme without any chance of winning. When a former live competition is re-run and it is no longer possible for the audience to participate by ringing the number given on air, this must be made absolutely clear to the audience. In this case the phone line was still open and the number displayed on the screen was still clearly legible.
- 1.10 The BBC submitted that there was no ill-motivated desire to deceive the audience or to conduct an unfair competition. In the BBC's view, the breaches stemmed from a "*misjudgement*" by a junior researcher in response to a technical failure during the high pressure environment of a live broadcast and was not conscious or deliberate. The broadcaster argued that "*the uncommunicated state of mind of a junior member of staff*" could not be ascribed as an action taken by the institution as a whole.
- 1.11 The BBC also stated that it believed no significant harm had resulted from the breaches as it had not profited from the competition and all proceeds had gone to the charity UNICEF.
- 1.12 While accepting that competition entrants had suffered a financial loss at the time of the competition, the broadcaster argued that it had since taken action to conclude the competition fairly, before Ofcom's investigation had begun, by finding a genuine winner and offering entrants a refund to address any financial harm in respect of both broadcasts. The BBC stated that as soon as senior editorial staff outside the *Blue Peter* team had become aware of the issue on 9 March 2007, the broadcaster had made "*every possible effort*" to remedy the situation by taking a number of steps, including:
- the commissioning of first an internal investigation and later a more detailed independent investigation;
 - issuing public apologies in the press and on air;
 - the use of a freephone number for entrants who wanted more information;
 - apologising to the father of the child involved;
 - promptly and fully informing Ofcom and ICSTIS of the breaches; and
 - implementing reviews of compliance procedures and staff training to ensure that mistakes are not repeated.
- 1.13 The Committee did not consider that the breaches occurred as a result of the actions of one researcher. In any event, the BBC must take full responsibility for the action of its staff. It was also apparent to the Committee that the breaches were set against a background of management and compliance failures before, during and after the broadcasts (which are referred to below in greater detail), in that:
- The researcher was not fully aware of the standard procedures in place in the event of a technical fault;
 - The BBC admitted that the *Blue Peter* team lacked the experience to run such competitions;
 - The researcher had communicated her concerns about possibilities of technical difficulties to other members of the *Blue Peter* team (including a producer);

- Even though the editorial team of *Blue Peter* knew about the problem immediately after the live programme was broadcast, no action was taken to prevent the programme being repeated on CBBC an hour and a half later on the same day;
 - The editorial needs of the programme overrode the consideration of fairness to those participating in the competition and to the audience overall; and
 - Had no complaint actually been received from a member of the public some three months later, knowledge of what had happened would almost certainly not have been communicated beyond the *Blue Peter* team. Therefore, none of the extensive remedial action detailed by the BBC in its representations would have been put in effect.
- 1.14 However, the Committee recognised that the BBC had taken extensive remedial action and the BBC had also fully cooperated with Ofcom's investigation.
- 1.15 It was also clear to the Committee that, while an employee of the BBC (the researcher) had knowingly developed a contingency plan in the event that a technical failure occurred, these actions did not show that the broadcaster had done so deliberately in order to make financial gain or mislead the audience.
- 1.16 The Committee also took into account the good compliance record of the BBC in respect of its service BBC1 and the very good compliance record in respect of its service CBBC.
- 1.17 While recognising that any fine would be taken from monies paid by the public (the licence fee payer), the Committee noted that Parliament had decided that it was appropriate in certain circumstances for Ofcom to 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).
- 1.18 The BBC was negligent to a degree in failing to ensure that the researcher was fully trained in all the appropriate procedures in order that the programme would be fully compliant with the requirements of the Code, despite being aware of her concerns about the risks associated with the competition.
- 1.19 Having considered the relevant facts as outlined in full in the adjudication below and the representations made by the BBC, the Committee considered that a financial penalty of **£45,000** should be imposed in respect of the breaches on BBC1 and **£5,000** in respect of the subsequent breach on CBBC and that this was a proportionate and appropriate penalty in each case taking all the relevant circumstances into account. Both fines are payable to HM Paymaster General.

Background

- 2.1 *Blue Peter* is the long-running children's programme broadcast on BBC1 normally at 17:00 and repeated later on the BBC's dedicated children's channel, CBBC. It is a magazine style programme featuring factual, educational and entertainment items.
- 2.2 In 2006, *Blue Peter* was running its annual charity appeal in aid of UNICEF, including a series of ten phone-in competitions called "Whose Shoes?". The

competition involved a celebrity guest, live in the studio, who was to stand on a related clue with the camera focused only on their shoes. Viewers would then be given a choice of three possible celebrities to select their answer from and could then enter the competition by calling a premium rate number costing 10 pence a call, with 3.25 pence going to UNICEF and the remainder covering the cost of setting up the phone lines. No profit would be made by the BBC. During the programme, a winner would be selected and would subsequently receive a prize chosen from a list of children's toys.

- 2.3 The competition was launched on *Blue Peter* on BBC1 on Monday 27 November 2006. This was the first time *Blue Peter* had ever run a competition using a premium rate number, where the winner would be announced live in the same programme. There was a technical failure during the live programme which meant that information about the telephone calls could not be retrieved by studio staff. As a result, no caller could be selected to give their answer on air, as had been promised at the start of the programme. A member of the production team - a researcher - then asked a child who was visiting the studio (and therefore had seen the celebrity guest and so knew the answer) to phone in and answer the competition question. The child was announced as the winner and the prize was then awarded to the child.
- 2.4 This episode of *Blue Peter* was then repeated at 18:30 on the children's channel CBBC. A caption advised viewers that the phone lines had closed, but due to its insufficient size and location on the screen, more than 3,500 further calls were received, despite the fact that the prize had already been awarded to the fake 'winner'.
- 2.5 The BBC announced in a statement on 14 March 2007 that it had conducted a review of programmes in which premium rate telephone lines had been used. The review had been prompted by an e-mail, sent to the BBC on 9 March 2007 by a guest who was visiting the studio on the day of the competition, which raised questions about the competition. The complainant alleged that a child who was visiting the studio was asked to call the programme to take part in the competition. The BBC's internal review had confirmed these allegations.
- 2.6 An apology was broadcast on *Blue Peter* on 14 March 2007, and an alternative winner selected, off-air, at random from a selection of the original competition entrants. A freephone number was set up for viewers to obtain more information, and a review undertaken into the conduct of viewer competitions.
- 2.7 Following media coverage of the BBC statement, Ofcom received two complaints from viewers.

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 persons under the age of eighteen are protected (section 319(2)(a)); and
- 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 availability throughout the UK of a wide range of television and radio services which (taken as a whole) are both of high quality and calculated to appeal to a variety of tastes and interests (section 3(2)(c));
- The maintenance of a sufficient plurality of providers of different television and radio services (section 3(2)(d)); and
- 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 desirability of promoting the fulfilment of the purposes of public service television broadcasting in the United Kingdom (section 3(4)(a));
- 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));
- The vulnerability of children and of others whose circumstances appear to Ofcom to put them in need of special protection (section 3(4)(h)); and
- The different interests of persons in different parts of the United Kingdom, of different ethnic communities within the United Kingdom (section 3(4)(l)).

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 protection of persons under the age of eighteen (s.319(2)(a)) and 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 Rules 1.26 and 2.11 of the Code that are 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. Other 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 finding 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 2003 Act are set out in Ofcom’s Broadcasting Code (“the Code”) which came into force on 25 July 2005.¹
- 3.9 Accompanying Guidance Notes to each section of the Code are published and from time to time updated, on the Ofcom website.² 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 includes, but is not limited to, those relating to protection of the under eighteen and harm and offence.

The Human Rights Act 1998

- 3.11 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”).
- 3.12 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

¹ The Code can be found at <http://www.ofcom.org.uk/tv/ifi/codes/bcode/>

² Guidance Notes can be found at <http://www.ofcom.org.uk/tv/ifi/guidance/bguidance/>

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).

- 3.13 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.

Issues & Response

- 4.1 In its investigation of the case, Ofcom asked the BBC to address the following key issues:
- how the 'live' broadcast of *Blue Peter* on 27 November 2006, in which a 'winner' had been faked, complied with Rule 2.11 of the Code (fair conduct of competitions);
 - how the same broadcast, in which a child visiting the studio audience was asked to pretend to be the 'winner', complied with Rule 1.26 of the Code (emotional welfare and dignity of participants aged under eighteen);
 - how the repeat broadcast of this edition of *Blue Peter* on CBBC at 18:30, in which it was not clearly indicated that the competition had closed, complied with Rule 2.11 of the Code; and
 - why it had taken the BBC so long to investigate the issue when the *Blue Peter* editor and production staff had been aware of the problems immediately after the 'live' programme's transmission.

The BBC's Response

- 4.2 The BBC said the conduct of the competition was a "grave breach of our editorial standards". It acknowledged the deception was a breach of Rule 2.11 of the Code (the conduct of competitions); and that the use of a child in the deception was a breach of Rule 1.26 (welfare and dignity of people under 18).

Blue Peter, BBC1 (Original transmission)

- 4.3 A researcher on the *Blue Peter* production team had been given the responsibility of overseeing the phone-in competition. On 22 November 2006, *Blue Peter* hosted a meeting attended by the researcher, the producer responsible for the competition as well as researchers and assistant producers from the team responsible for the competition. The meeting was also attended by representatives of the telecoms operator. The researcher expressed concerns at that meeting about the short time available during the 'live' transmission for capturing calls, telephoning a potential winner and getting them on air. She was reassured by the telephone service provider that although this was a tight turnaround, it was feasible. However, according to the BBC, given that this was the first time *Blue Peter* had used a premium

rate number for a competition where the entire competition including the result was to be completed in the course of one programme, the researcher was still anxious. She formulated her own contingency plan, in the afternoon the competition went to air, to be used in the event of technical difficulties.

- 4.4 While making this plan, the researcher told a *Blue Peter* assistant producer (who was supervising a group of children and their parents visiting the studio that day) that in “*the most extreme circumstances*” or if something went “*drastically wrong*” with the telephone lines, the researcher might ask the assistant producer to “*pick someone*” from one of the children she was supervising to be the winner of the phone-in competition. The BBC stated that the assistant producer did not refer this plan to the senior editorial team, assuming that it had already been cleared, which it had not.
- 4.5 In the course of the competition, the researcher encountered technical problems when attempting to retrieve any of the competition entrants’ calls. She therefore implemented her contingency plan, without the senior editorial team’s knowledge. A child was selected from the group visiting the studio and the researcher made sure the child knew the competition answer (which she already did because she had seen the celebrity in question in the studio). The child was then taken to a make-up room where a telephone was available, telephoned through to the programme and apparently ‘won’ the competition.
- 4.6 As soon as the programme had ended, the issue of the deception emerged amongst the production team. The researcher told the producer what had happened and the editor and deputy editor were then informed. A post-transmission production team meeting then continued until approximately 21:00 that evening, covering a number of issues of editorial concern about that day’s programme, including the issue of the faked competitor. The programme’s senior editorial staff later admitted that the issue of fakery was not given the urgent editorial attention it required.
- 4.7 The BBC accepted that “*the researcher should have known that there was in place a standard procedure when a live programme encountered technical difficulties*”. She should also have been aware of the need to refer such problems upwards. *Blue Peter*, according to the BBC, had a standard procedure - the producer tells the presenters, via their earpieces, to explain there are problems with the competitions and that the results would be announced on the next programme. The BBC stated the true management failings were to have left the researcher to conduct the competition without apparently being aware of the standard procedures for dealing with a technical failure and she therefore felt the need to devise her own contingency plan.

Blue Peter, CBBC (Repeat transmission)

- 4.8 The competition was repeated in the 18:30 programme on CBBC. Although it was the BBC’s standard practice to obscure telephone numbers on repeat transmissions to avoid this problem, this was not possible on this occasion due to “*technical supply difficulties*”. Instead the producer responsible opted for an on-screen caption stating that the competition lines were closed (which in fact they were not despite a technical “close” message being placed on the line at 17:30), under the assumption that it would no longer be possible for callers to be charged for a call, and that the issue for the repeat was simply to avoid inconvenience to viewers. This resulted in an additional 3,574 viewers calling to enter the competition, despite no longer having a chance to enter

the draw. The BBC accepted that the size and position of the caption were not adequate.

Subsequent events

- 4.9 On the issue of why the situation had not been referred up to more senior management in the BBC Children's department, the broadcaster explained that on 30 November 2006, the *Blue Peter* team had held a production meeting. However, the seriousness of using a fake winner was not discussed. Instead the researcher was congratulated for her "*quick thinking in keeping the show on the road*" and this was seen as a good way of raising team morale. Despite cancelling the remaining nine competitions and asking for details of the technical problems and despite the fact that he had regular monthly meetings with the Controller of BBC's Children and BBC's Children's Head of News, Factual and Learning, the BBC said that *Blue Peter's* editor did not refer the matter to more senior members of the department for a review or a formal disciplinary procedure as he felt that the researcher "*had suffered enough from her mistake*". No-one outside the *Blue Peter* team was made aware of the issues until an e-mail was received from a viewer on 9 March 2007. The failure to draw the issues to the attention of senior editorial staff was "*a serious error of editorial judgement*", according to the BBC.
- 4.10 The BBC stated that it had taken, as a result of senior management outside of the programme team being made aware of the matter, a great deal of restorative action. The broadcaster had launched a senior level independent inquiry and an internal inquiry into the conduct of competitions was begun. Public apologies were issued in the press and on air, a freephone number was offered to entrants who wanted more information on the situation or wanted to complain with the offer of a refund and the competition was re-conducted so that a genuine winner could be selected off air from some of the original competition entrants.
- 4.11 BBC Children's staff had been reminded of their responsibilities not to mislead audiences in any way; a plan was being introduced for improved training on editorial policy; and staff had been reminded to refer important issues to senior management. In addition, a new editorial practice had been introduced in relation to repeats of programmes involving the use of premium rate phone lines. This includes a requirement that there must be an announcement informing viewers that the programme was a repeat and that phone lines are closed.

In Breach

- 5.1 Whilst taking into account the BBC's response to the complaints and its admission of the Code breaches outlined above, Ofcom considered that there were serious breaches in these broadcasts. There was also evidence of a serious failure in the broadcaster's compliance procedures.

Blue Peter, BBC1

- 5.2 The use of a studio visitor to pose as a genuine competition entrant was a breach of Rule 2.11 of the Code which states: "*Competitions should be conducted fairly...*". The conduct of the competition, at the time of transmission, was unfair. No genuine entrants to the competition in fact had the chance of winning the prize because the BBC had put to air a fake 'winner' as a result of a technical failure. Rather than announcing that a

problem had occurred and returning to the competition later, thereby avoiding a breach of the Code, the programme decided to award the prize to a fake 'winner'. This meant that no genuine participant who knew the correct answer to the quiz had a chance of winning the competition. The seriousness of the breach was compounded by the fact that the participants of the competition would have been children and *Blue Peter's* audience is composed primarily of children.

- 5.3 The involvement of a child in the deception was a breach Rule 1.26 of the Code which states: *"Due care must be taken over the physical and emotional welfare and the dignity of people under eighteen who take part in programmes. This is irrespective of any consent given by the participant or by a parent, guardian or other person over the age of eighteen in loco parentis"*. The broadcaster did not take due care of the physical and emotional welfare of a person under 18 participating in its programme. In Ofcom's view, it was totally unacceptable to put a child in the position of having to pretend that they had won a competition which they had in fact never entered.

Blue Peter, CBBC

- 5.4 Broadcasting the competition in this repeat edition of the programme without adequately informing viewers that the competition was closed was in breach of Rule 2.11 of the Code. The BBC failed to prevent a further 3,574 premium rate telephone entries being made by the audience, primarily composed of children. These callers entered on the basis that they believed that they had a fair chance to win, despite the fact that the competition had already been completed. Ofcom also considered that repeating the broadcast of a programme containing a faked 'winner' of a competition (when the wider editorial team knew about the deception) demonstrated a lack of appropriate compliance procedures.
- 5.5 The Guidance on Rule 2.11 states: *"If a former live competition is re-run so that it is no longer possible for the audience to participate by ringing the number given on air then we would expect this to be made clear to the audience. On television, text stating "pre-recorded" is likely to be insufficient unless the phone line is also dead or the number on screen is also illegible. Broadcasters may also need to be aware of ICSTIS' Code of Practice concerning this matter."*
- 5.6 Although the CBBC edition repeated the breach of Rule 1.26 of the Code by virtue of the fact that it was a repeat of the 'live' programme, Ofcom is not recording a second breach of Rule 1.26 in this respect since the harm caused by the breach occurred in the broadcast of the original programme and not in the repeat.

Referral

- 6.1 It was considered that the nature of the breaches on both BBC1 and CBBC was serious, especially as they occurred in a children's programme involving a child audience. Therefore, in accordance with Ofcom's published procedures (Outline procedure for the consideration of statutory sanctions in content cases), the case was referred to Ofcom's Content Sanctions Committee ("the Committee").

Broadcaster's representations on sanctions

- 7.1 Whilst the BBC acknowledged that it had seriously breached Rules 1.26 and 2.11 during the first transmission and Rule 2.11 in relation to the second transmission, it did not believe that the imposition of a statutory sanction by Ofcom was the appropriate course of action in this case.
- 7.2 Specifically, the BBC submitted that there was no ill-motivated desire to deceive the audience or to conduct an unfair competition. In the BBC's view, the breaches stemmed from a "*misjudgement*" by a junior researcher in response to a technical failure during the high pressure environment of a live broadcast and was not conscious or deliberate. The broadcaster argued that "*the uncommunicated state of mind of a junior member of staff*" could not be ascribed as an action taken by the institution as a whole. Nevertheless, it was of the view that the delegation of the responsibility for the competition to the researcher was appropriate and had not been indicative of "*a fundamentally flawed or cavalier approach*". The serious management failure, in its view, was that the researcher should have known that there were in place standard procedures when a live programme encountered technical difficulties.
- 7.3 Further, while acknowledging that the non-referral of the situation by the *Blue Peter* editorial team to senior BBC management outside the programme was a serious editorial failure, the BBC argued that the editor's congratulation of the researcher for "*keeping the show on the road*" should be seen in the context of recent editorial and staffing problems on *Blue Peter*, and an awareness of the need to restore team morale. The BBC also pointed to the fact that the editor had cancelled the remaining nine competitions in the series the following day as a mitigating factor. This demonstrated how seriously *Blue Peter* took the incident.
- 7.4 The BBC also stated that it believed no significant harm had resulted from the breaches as it had not profited from the competition and all proceeds had gone to the charity UNICEF.
- 7.5 While accepting that competition entrants had suffered a financial loss at the time of the competition, the broadcaster argued that it had since taken action to conclude the competition fairly, before Ofcom's investigation had begun, by finding a 'genuine' winner and offering entrants a refund to address any financial harm in respect of both broadcasts. As soon as senior editorial staff outside the *Blue Peter* team had become aware of the issue on 9 March 2007, the broadcaster had made "*every possible effort*" to remedy the situation by taking a number of steps, including:
- the commissioning of an internal investigation to establish the facts of what happened, followed by a more detailed independent investigation and a report by the Director General;
 - ensuring transparency in relation to the public, by issuing public apologies in the press and on air, the use of a freephone number for entrants who wanted more information on the situation or wanted to complain with the offer of a refund;
 - apologising to the father of the child involved;
 - promptly and fully informing Ofcom and ICSTIS of the breaches; and

- several reviews of compliance procedures and staff training to ensure that mistakes are not repeated.
- 7.6 The broadcaster also submitted that the low number of complaints received demonstrated the level of harm and offence caused in this case and should therefore be taken into account in the sanction decision. In particular, it pointed to the fact that no complaint had been made by the child who had been asked to be the 'fake' winner and that her father had assured the BBC that he did not believe his daughter had been harmed in any way as a result of the incident.
- 7.7 The BBC proposed that Ofcom should publish a finding of the Code breaches as this would represent "*serious reputational damage*" which would be a serious form of punishment that, in the BBC's view, was a sufficient sanction in this case, particularly because it felt it needed no further encouragement to take all the steps required to ensure that lessons are learnt. Nevertheless it went on to acknowledge that a broadcast summary of Ofcom's adjudication would demonstrate that breaches of specific rules to which the BBC is subject in the Code have occurred and would reinforce in the audience's mind their seriousness, given that the apology and statement issued by the BBC focused on the failings of the BBC's own Editorial Guidelines identified at that time.
- 7.8 With reference to the CBBC repeat, it pointed out that the production team did not have a direct involvement with the CBBC repeat as its transmission was "*essentially automated, coming from a central server*".
- 7.9 The BBC pointed out that although Ofcom has the power to impose such a penalty, given that the BBC is a public body, the burden on any fine would in effect fall on licence fee payers.
- 7.10 The broadcaster noted that this was the first time the BBC has been referred to the Committee for a statutory sanction. It also referred to other Ofcom decisions whether either no or a small financial penalty were imposed.

Hearing

- 7.11 Ofcom held an oral hearing on 21 June 2007 to give the broadcaster a full opportunity to make representations before deciding whether the breaches by the BBC warranted the imposition of a statutory sanction, and if so, at what level.
- 7.12 Ofcom was addressed by David Pannick QC. The BBC Director-General Mark Thompson and the Controller of Children's BBC Richard Deverell, amongst others, also gave evidence.
- 7.13 The BBC wished to underline that it accepted that serious errors of judgement had been made, both in the broadcast of the material and the failures to report these incidents adequately. The BBC believed that there was simply no dispute that it had fallen short of the high standards which the *Blue Peter* viewers rightly expect as well as viewers of the BBC in general. However, the broadcaster maintained that a financial penalty was not appropriate.
- 7.14 The BBC stated that this was not a deliberate act, in that it did not set out to fake a competition - for example for financial gain. Its intention was always to run a genuine competition. In the running of that competition there were technical problems which led to highly regrettable and serious errors of

judgement which resulted in viewers being misled. The BBC stated that it does and must take responsibility for the serious misjudgement of the researcher, even though she did not report her concerns to anyone with editorial responsibility. Further the BBC accepted that senior staff at *Blue Peter* should have reported the matter to BBC management. Their misjudgement was in not understanding the gravity of what had occurred. The fact that the BBC was responsible for an employee did not mean that it had deliberately decided to mislead viewers.

- 7.15 When more senior BBC management had been informed of the incidents, they swiftly took appropriate action (see paragraphs 4.11 and 7.5 above). The BBC stated that it was clear from this that it had recognised the seriousness of the issue and it deserved credit for this. It was difficult to see how it could have taken this issue more seriously. Therefore a fine would not be necessary to encourage the BBC to take any further steps.
- 7.16 The BBC wanted to inform the Committee that it had “*an exemplary record*” in terms of compliance and Ofcom has not had to consider whether to impose a sanction on it before. There have been no other cases of a serious breach of standards on BBC1 or CBBC. In the BBC’s view, it was essential for the Committee to consider this factor when deciding whether to impose a fine on the BBC. Given the BBC’s record, it should only be “*an unprecedented lapse*” from its high standards that should lead the Committee to consider fining it. These breaches were therefore entirely out of character and a fine should not normally be imposed for a first offence and particularly where the broadcaster has taken appropriate steps once the breaches were reported to senior management.
- 7.17 The BBC submitted that a publication of Ofcom’s finding of serious breaches of the Code would in itself substantially damage the BBC’s reputation and that a fine was not necessary to establish that a broadcaster had made serious mistakes. A published finding against a programme like *Blue Peter*, which has built up a relationship of trust with its audience over almost 50 years, would be particularly damaging. Such adverse publicity would be a very real deterrent (if it was needed) from further breaches.
- 7.18 Finally the BBC wished the Committee, when it considered whether to impose a fine, to bear in mind that the BBC was funded by the licence fee. The BBC was not suggesting that it was “*immune*” from a fine, but the fact that a fine would come from the licence fee was a relevant factor. It was therefore only in “*a truly exceptional case*” that the BBC should be fined, for example where there are repeated breaches or where it has refused to take action to remedy a breach. The BBC believed that this case was very far from such a situation.

Sanctions Decision

- 8.1 The Committee considered carefully all the oral and written submissions provided by the BBC regarding the circumstances of the breaches and, in particular, the reasons why the broadcaster did not consider it would be either appropriate or proportionate to impose a financial penalty in this case.

The seriousness of the breaches

- 8.2 The Committee first considered the seriousness of the breaches themselves.

- 8.3 The Committee noted that in addressing this issue the BBC accepted without reservation that there had been *“serious and regrettable errors of judgement”* made in relation to the programmes as broadcast. The BBC recognised that this was *“a very serious matter”* and accepted that breaches had occurred on both BBC1 and CBBC.
- 8.4 Ofcom considered the breaches on BBC1 and the additional breach on CBBC separately as these constituted two separate incidents on two separate services.
- 8.5 In relation to BBC1, the Committee viewed the breaches of the Code as particularly serious. It was of great concern to the Committee that, whatever the motivation, the decision to put to air a fake winner resulted in a child audience being misled. The breaches had occurred as a result of a decision that was planned in advance of the programme’s broadcast (albeit only shortly before it). The breaches had not therefore occurred by ‘accident’ or as a result of a misjudgement by a programme maker in an area which required fine editorial judgement or discretion. This was material which should not, in any circumstances, have been either produced or transmitted. Further, cases where the broadcaster has misled the audience are always considered by Ofcom (and its predecessor regulators) to be amongst the most serious breaches of the Code. They go to the heart of the relationship of trust between the broadcaster and its audience - in this case, an audience which is primarily made up of children.
- 8.6 The deception also involved a child pretending to be a winner with the correct answer. As the Code recognises the protection of the physical and emotional welfare of children is paramount and therefore the decision to involve the child in the deception for the sake of expediency demonstrated a casual lack of regard for the welfare of that child.
- 8.7 In relation to CBBC, the Committee viewed the breach of the Code to be serious. The programme was repeated despite the programme editor being aware of the problems with the original transmission of the programme. Further, after the competition had ended during the live transmission on BBC1, the broadcaster had failed adequately to inform viewers that the competition had been concluded, resulting in a further 3,574 viewers calling in response to the CBBC programme without any chance of winning.
- 8.8 It is important, when a former live competition is re-run and it is no longer possible for the audience to participate by ringing the number given on air, that this is made absolutely clear to the audience. In this case the phone line was still open and the number displayed on the screen was still clearly legible. The caption indicating (inaccurately) that the phone lines were closed was insufficient (as evidenced by the number of viewers calling in), especially for a child audience. Failing to take sufficient steps to ensure that viewers would not call and seek to participate (through a premium rate entry point) demonstrated an absence of proper regard for the potential for significant financial detriment to the viewers who participated and again undermined the trust between a broadcaster and its audience.
- 8.9 The Committee noted the BBC’s argument that in its view, and in the circumstances of this case, a serious sanction in itself would be for Ofcom to publish its adjudication. Nonetheless, the Committee considered that the breaches were serious enough to consider the imposition of a financial penalty.

Factors affecting the level of the financial penalty

- 8.10 The Committee went on to consider the amount of the penalty to be imposed for each occasion (i.e. for the two breaches on BBC1 and for the separate breach on CBBC) having regard, in particular, to the criteria set out in Ofcom's Penalty Guidelines.
- 8.11 It is apparent that the breaches were set against a background of management and compliance failures before, during and after the broadcasts (which are referred to below in greater detail). The Committee considered the breaches on BBC1 to be considerably more serious than the breach that occurred on CBBC.
- 8.12 The BBC must take full responsibility for the action of its staff. The Committee did not consider the breaches occurred as a result of the actions of one researcher. Rather, the breaches were a direct result of management and compliance failures both in the preparation for the programme and during the programme itself. In addition the BBC has admitted that the *Blue Peter* team lacked the expertise to conduct such competitions at that time.
- 8.13 The BBC informed Ofcom that there are standard procedures for when technical failures occur. In its written submissions, the BBC acknowledged that there were "*serious management failings*" and the researcher was left to conduct the competition without apparently being aware of the standard procedures for dealing with a technical failure. However, in its oral representations the BBC was, in the Committee's view, unclear about the nature of these standard procedures and was not absolutely clear whether the researcher had been informed of these or whether she had forgotten them. When questioned on how the standard procedures would have been disseminated within the BBC, the BBC said that the procedures would have been communicated in meetings and conversations with the editorial team. Although it was now confident that the researcher would have been told about the procedure, which was "standard" and "well established", there was in fact no direct evidence of the fact that she had been told about them or given any training on this point. The Committee found this particularly surprising, given the novelty of the competition. Further, it was clear from the evidence that the researcher had raised a number of concerns about the possibility of other technical failures occurring and how she might have to deal with them during the live programme with the producer responsible, prior to the transmission of the programme at a planning meeting attended by a representatives of the telecoms operator. In the Committee's view, this compounded the seriousness of the compliance failures that had occurred.
- 8.14 The Committee rejected the BBC's view that the researcher had an "*uncommunicated state of mind*". While the Committee accepted that the researcher did not inform senior management about her contingency plan to put a guest on air, she herself had expressed, on a number of occasions prior to the transmission of the programme, her concerns about technical failures that might occur and her lack of confidence about how to deal with them. She had also made her concerns known about the tight turnaround of the competition in a meeting before the programme was broadcast. This meeting was attended by a BBC producer as well as assistant producers and researchers.
- 8.15 The Committee then turned to events after the broadcast of the programme on BBC1. The Committee rejected the argument that the BBC dealt with these issues appropriately and effectively as soon as "senior management"

became aware of them. In the Committee's view, the editor of *Blue Peter* ought to be considered as a member of senior management, yet the issue did not surface for some three months.

- 8.16 Ofcom considered it a serious compliance failure that even though the editorial team of *Blue Peter* knew about the problem immediately after the live programme was broadcast, no action was taken to prevent the programme being repeated on CBBC an hour and a half later on the same day. Of equal concern was the decision by the editorial team (including senior members) of *Blue Peter* not to refer the issue to any senior management outside the team.
- 8.17 Further, despite the fact that the programme's editor chose to cancel this new competition after only its first transmission (of an intended series of ten), no-one sought to question why. The BBC stated that competitions can be cancelled for any number of reasons and therefore the cancellation of this competition would not necessarily have caused the problems with the live programme to have been raised at any point. The Committee's considered this to be surprising given the novelty of this particular competition in *Blue Peter* and its prominence in the programme.
- 8.18 Moreover, it did not serve to allay the Committee's concerns about the seriousness of the case, when it became apparent at the oral hearing, that had no complaint actually been received from a member of the public some three months later, knowledge of what had happened would almost certainly not have been communicated beyond the *Blue Peter* team. Therefore, none of the extensive remedial action detailed by the BBC in its representations would have been put in effect. In the Committee's view, this was the direct result of *Blue Peter's* editorial team failing to manage the issue appropriately at the time it occurred by referring it upwards to senior management. This was, in its view, a very significant failing within the BBC.
- 8.19 The Committee did not accept the BBC's submission that since any financial harm that had been caused had now been remedied, the relevant factor for Ofcom when deciding whether to impose a fine was whether there remained a continuing harm. Ofcom has a duty to ensure that the public is adequately protected from harmful material included in broadcast services. It considered that there had been serious harm caused, not just financial, but more widely to the fundamental relationship of trust between the BBC and its audience - in this case a child audience, of a flagship programme of 50 years standing.
- 8.20 Allowing the programme to be repeated on CBBC later the same day was further evidence of the fact that fairness to those participating in the competitions and to the audience overall was not the primary consideration of the programme makers. The editorial needs of the programme overrode the consideration of fairness.
- 8.21 It was clear to the Committee that the BBC's senior management outside the *Blue Peter* team was not aware of the breaches at the time they occurred. However, it is nonetheless ultimately the responsibility of the BBC's senior management to ensure that the compliance processes in place are adequate to prevent such an event from going undetected, and for such a long time.

Mitigating factors

- 8.22 The Committee then went on to consider those factors which might limit the amount of any financial penalty to be imposed including those matters raised

by the BBC or otherwise accepted by the Committee in mitigation. The Committee believed that it was particularly important to take into account the extensive remedial action taken by the broadcaster. The BBC had also cooperated fully with Ofcom at all times.

- 8.23 The Committee accepted the BBC's submission that although serious, this was a long way from the type of case where a broadcaster had intended to deceive its audience by conducting a fake competition (for financial gain or otherwise). It was always intended to be a genuine competition despite what the BBC described as "*highly regrettable and serious errors of judgement*" resulting in viewers being misled.
- 8.24 The Committee considered that it was evident from the broadcaster's representations and its subsequent actions (e.g. a detailed internal inquiry, an on-air apology, review of compliance procedures and staff training and providing a separate apology to the father of the child concerned) that once senior management outside the *Blue Peter* programme had become aware of the issue, it was taken extremely seriously.
- 8.25 The Committee acknowledged that the broadcaster had also made significant attempts to 'resolve' the faked competition (by offering refunds to competition entrants). The Committee was therefore persuaded by the evidence before it that it did not need to impose a financial penalty as an incentive to ensure adequate compliance in the future.
- 8.26 It was also clear to the Committee, that while an employee of the BBC (the researcher) had knowingly developed a contingency plan in the event that a technical failure occurred, these actions did not show that the broadcaster had done so deliberately in order to make financial gain or mislead the audience.
- 8.27 The Committee acknowledged this appeared to be a 'one off' event and such practices did not appear to be common place within the BBC.
- 8.28 The Committee also took into account the good compliance record of the BBC in respect of its service BBC1 and the very good compliance record in respect of its service CBBC.
- 8.29 The Committee was conscious that the broadcaster has had no previous breaches of the Code recorded which were serious enough to have been considered for statutory sanctions. This is therefore the first occasion that Ofcom has considered sanctions against the BBC.
- 8.30 The Committee was conscious in considering whether to impose a financial penalty, and if so at what level, that any such penalty would have to be taken from monies paid by the public (the licence fee payer). The Committee noted that under the Communications Act 2003, section 198(5), a financial penalty in the case of the BBC may not exceed £250,000 for each occasion.

Conclusion

- 8.31 The Committee was conscious that the imposition of a financial penalty on the BBC was unprecedented. However, in all the circumstances, and weighing all these matters carefully, the Committee considered that these were serious breaches of the Code by a public service broadcaster, resulting, as they did, in the deception of the audience including child participants who paid to enter the competition. The breaches involved a pre-planned decision to fake a winner in the interests of ensuring the smooth running of a programme and in doing so made a child complicit in events leading to the deception. There was also a series of serious and avoidable management and compliance failures before, during and after the breaches occurred.
- 8.32 The BBC was negligent to a degree in failing to ensure that the researcher was fully trained in all the appropriate procedures in order that the programme would be fully compliant with the requirements of the Code despite being aware of her concerns about the risks associated with the competition.
- 8.33 The breaches occurred in full knowledge that members of the public had paid money to participate in the competition believing that a genuine winner would be awarded the prize. In fact as it transpired, there was no genuine winner.
- 8.34 The seriousness of the breaches was compounded by the fact that even though the editorial team of *Blue Peter* knew about the problem immediately after the live programme was broadcast, no action was taken to prevent the programme being repeated on CBBC an hour and a half later on the same day.
- 8.35 A further serious failure occurred when the editor of *Blue Peter* (himself a senior member of BBC staff) chose not to refer the issue to any senior management outside the team.
- 8.36 Separately, the BBC repeated the programme without adequately informing viewers that the competition was closed resulting in a further 3,574 premium rate telephone entries being made by the audience, primarily composed of children. Ofcom also considered that repeating the broadcast of a programme containing a faked 'winner' of a competition (when the wider editorial team knew about the deception) demonstrated a lack of appropriate compliance procedures.
- 8.37 Irrespective of any remedial action taken after the event by a broadcaster, practices which mislead the audience are not acceptable. The trust that the audience places in a broadcaster is fundamental to their relationship. This is particularly pertinent in the case of a public service broadcaster whose service is available to the widest of audiences (and who holds a unique position in the broadcasting environment and is funded by public money).
- 8.38 Having considered the relevant facts as outlined above and the representations made by the BBC and taking account of the factors referred to above, the Committee considered that a financial penalty of **£45,000** should be imposed in respect of the breaches on BBC1 and **£5,000** in respect of the subsequent breach on CBBC and that this was a proportionate and appropriate penalty in each case taking all the relevant circumstances into account. Both fines are payable to HM Paymaster General.

Content Sanctions Committee

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9 July 2007