

Ofcom Content Sanctions Committee

Consideration of sanction against	Granada Television Limited (“Granada” or the “Licensee”), in respect of its service the Regional Channel 3 service (“Channel 3”) transmitted across the ITV Network on ITV1.
For	<p>Breaches of the Ofcom Broadcasting Code (the “Code”) of:</p> <p>Rule 2.2: “Factual programmes or items or portrayals of factual matters must not materially mislead the audience.”</p> <p>Relating to the following conduct in relation to <i>Soapstar Superstar</i>:</p> <p>1) Early finalising of viewer vote on 5 January 2007</p> <p>2) Overriding of viewers’ song choice votes on an estimated eight occasions</p>
Between	5 and 13 January 2007 (inclusive)
Decision	To impose a financial penalty (payable to HM Paymaster General) of £1,200,000 and, in addition, to require Granada to broadcast a statement of Ofcom’s findings on its service ITV1 in a form to be determined by Ofcom on two specified occasions.

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 Granada in light of the serious nature of its failures to ensure compliance with the Ofcom Broadcasting Code (the "Code").
- 1.2 This adjudication under the Code relates to the broadcast of *Soapstar Superstar* on ITV1 between 5 and 13 January 2007 (inclusive).
- 1.3 Channel 3 (ITV1) is the third national public service channel. It is a free-to-air, commercially funded, national television broadcast channel. There are fifteen regional Channel 3 licensees, including Granada, which is the relevant licensee in this case.
- 1.5 *Soapstar Superstar* was a 'live' series broadcast on ITV1 on nine consecutive evenings in January 2007 (5 to 13 January 2007 inclusive). The programme featured eleven soap opera celebrities performing different songs each night for celebrity judges and competing to win viewers' votes. There was a viewer vote during the live broadcast of each programme, in which viewers voted for the soap opera celebrity they would most like to be included in the programme on the following night and which of two songs they would like that celebrity to sing. The two soap stars with the fewest votes were then included in an overnight eviction vote. This was varied for the first programme (broadcast on 5 January 2007), in which the individual with the lowest vote was eliminated immediately and a further two soap stars were put forward for the overnight eviction vote. Viewers were solicited to vote by the programme's presenter, Zöe Ball, the soap opera celebrities and by on-screen graphics, which set out the numbers to call for each celebrity.
- 1.6 On 5 March 2007, following a number of articles in the press concerning broadcast PRS competitions, ITV plc ("ITV"), Granada's parent company, launched an investigation into the use of PRS in its programming in general. On 18 October 2007, ITV announced that its investigations had identified serious editorial issues in three ITV programmes, including the January 2007 series of *Soapstar Superstar*. The issues identified in relation to *Soapstar Superstar* were: (1) the early finalising of the 'live' programme vote on 5 January 2007 and (2) the overriding of viewers' song choice votes on an estimated eight occasions throughout the series.

Early finalising of the vote

- 1.7 On 5 January 2007, when the first episode of *Soapstar Superstar* was broadcast, the most senior members of the production team decided to finalise the results of the vote approximately two minutes before voting lines were closed. At the same time, the programme's presenter, Zöe Ball, made a verbal 'call to action' to viewers, stating "*Lines close in two minutes, so keep calling for your favourite*".
- 1.8 When the results of the vote were announced, the contestant with the lowest number of votes (i.e., in 11th place) was eliminated from the programme. The two contestants with the next lowest numbers of votes (i.e., in 9th and 10th place) should have been put forward for the overnight eviction vote. However,

the contestants who were in 7th and 8th place were put forward for the overnight eviction vote. Therefore, viewers' votes as to which contestants should be put forward for the overnight eviction vote were disregarded. Viewers were then invited to vote overnight for the eviction of contestants who they should not have been invited to vote for and, as a result of this vote, one of the contestants in 7th and 8th place was voted out at the beginning of the second episode of *Soapstar Superstar*, broadcast on 6 January 2007.

Overriding of song choice votes

- 1.9 On a number of occasions (estimated by ITV to be 8 out of 44), the *Soapstar Superstar* production team overrode the song choices voted for by viewers. ITV stated that their decisions appeared to have been based on sustaining a suitably wide musical balance within episodes, protecting the voices and/or health of the soap opera celebrities participating in the programme later in the series or giving the soap opera celebrities songs they could sing best.

Summary of Committee's Findings

- 1.10 The breaches of the Code by Granada in relation to *Soapstar Superstar* involved the audience being seriously and repeatedly misled as to the conduct and results of PRS viewer interactive voting. They are a grave breach of the trust between a long-standing public service broadcaster and its audience and are amongst the most serious breaches of the Code that have been considered by Ofcom to date. Financial detriment was caused to the substantial numbers of viewers who voted during the 5 January 2007 episode and throughout the January 2007 series.
- 1.11 The trust that the audience places in a broadcaster is fundamental to their relationship. This is particularly important in the case of a long-standing public service broadcaster like Granada, with a relationship of trust with its audience going back several decades and whose service is available to such a wide audience on ITV1. This relationship becomes even more important when it involves a popular programme like *Soapstar Superstar* with a very large audience, broadcast at peak time on consecutive evenings. An average of 5.5 million viewers watched each episode of the January 2007 series.
- 1.12 On 5 January 2007, the Executive and Series Producers of the January 2007 *Soapstar Superstar* series had deliberately and knowingly finalised the viewer vote early and appeared to have overridden viewers' votes, despite the fact that concerns had been raised by more junior members of the production team. These junior members of the production team had been, as ITV admitted, "firmly sat upon" by the programme's Producers. The Producers had flouted the voting guidelines for their own purposes: either for reasons of expediency (to ensure that the vote was concluded in sufficient time) or to put forward particular contestants for the overnight eviction vote for their own reasons. The fundamental nature of the programme was that viewers' votes, not the Producers, would determine which contestants remained in the competition. The Producers' actions on 5 January 2007 evidenced a complete disregard for the programme's audience overall and, in particular, those viewers who had paid to vote. This was totally unacceptable and inexcusable.
- 1.13 In relation to the estimated eight occasions on which viewers' song choice votes had been overridden, Ofcom considered that it was clear that the Producers had deliberately and knowingly overridden viewers' votes on these

occasions for their own purposes. It was abundantly clear from the 'calls to action' made in the programmes that viewers' votes, not the Producers, would determine what songs the soap opera celebrities would sing if they remained in the competition. This was also totally unacceptable.

- 1.14 Ofcom considered that the breaches were extremely serious and that they had resulted in consumer harm to a substantial audience. Large numbers of viewers had voted on 5 January 2007 and generally during the January 2007 series in the belief that the votes they paid to make would be properly and fairly taken into account. In fact, on 5 January 2007 and on an estimated eight further occasions during the relatively short, nine day series, viewers' votes were disregarded by the *Soapstar Superstar* Producers. The Producers had an arrogant disdain for the votes viewers had paid to make. Due to the management structures that were then in place, the Producers had been "omnipotent". They had been responsible for all editorial decisions made in relation to the series, for delivering audience ratings and for bringing the series in on budget. Effectively, they had wielded the power that was vested in them 'unfettered'.
- 1.15 Ofcom noted that the ultimate responsibility for the editorial compliance of *Soapstar Superstar* had rested with the experienced Executive Producers of the series, who were the most senior members of the production team. More junior members of the production team, who had raised concerns regarding the issues that occurred on 5 January 2007, had reported to them. All of the 'power' regarding the editorial decisions that would be made and any decision to refer a particular issue to ITV's compliance team rested with the Executive Producers. ITV's compliance team was reactive, rather than proactive, so unless the Executive Producers referred a matter to them or they received a viewer complaint, they had no awareness of any issues that had arisen. This was, Ofcom considered, an entirely unjustifiable approach that was totally unfit for purpose.
- 1.16 Furthermore, there had been no (or at the least) insufficient audit or scrutiny by ITV or Granada of the actions of the Producers of the January 2007 *Soapstar Superstar* series, despite the fact that the series had raised substantial amounts of revenue. The breaches that had occurred were, in Ofcom's view, the result of ITV's/ Granada's institutional failure to ensure compliance with the Code in the areas of PRS and interactive viewer voting. As ITV's Executive Chairman had acknowledged, there had been a "serious cultural failure within ITV".
- 1.17 Ofcom was strongly of the view that Granada's and/or ITV's senior management ought to have been aware of the breaches that occurred. In particular, ITV's Partnership Director & Controller of ITV Interactive had been told an "issue" had occurred in relation to the 5 January 2007 episode of *Soapstar Superstar*, but had not probed further and questioned what exactly had occurred.
- 1.18 Ofcom noted that ITV had voluntarily suspended the use of PRS across all ITV programming from 6 March 2007, after it had first become aware of allegations in relation to the use of PRS in ITV series. Furthermore, Ofcom noted that ITV had engaged Deloitte to carry out a comprehensive, independent review of PRS in ITV programming and that Deloitte had made wide-ranging enquiries. Ofcom also considered that the steps taken by ITV/

Granada to remedy the issues (including the consequences of the breaches in this case) had been wide-ranging and timely. These included:

- Implementing an extensive reimbursement scheme following completion of the Deloitte Review and promoting the reimbursement scheme through one press announcement (on 18 October 2007), on ITV's website and in a number of broadcast announcements;
- Donating a total of £7.8 million to the Charities Aid Foundation in respect of all PRS issues (approximately £414,700 of this sum related to the affected and notionally affected transactions from *Soapstar Superstar*); and
- Introducing a range of practical procedures and re-structuring to seek to avoid recurrence of the same or similar issues and to guard against systems or editorial failures.

1.19 The financial penalty would have been at a substantially increased level had ITV not taken such wide-ranging action, although the Committee noted that no significant disciplinary action had been taken against any ITV or Granada employee.

1.20 In summary, cases where a broadcaster has materially misled its audience, whether knowingly or not, have always been considered by Ofcom (and its legacy regulators) to be amongst the most serious breaches of the Code. Hundreds of thousands of viewers paid to vote during the January 2007 series of *Soapstar Superstar* and invested trust in Granada, which was misplaced. This case involved Granada repeatedly and deliberately overriding votes that viewers had paid to make and thereby disregarding basic requirements for ensuring that viewers were not misled. For the programme makers to knowingly ignore the audience's votes in favour of their own decisions was inexcusable. This showed their total contempt for ITV1's audience. Their actions were not only in breach of the Code and their own voting guidelines, but were also absolutely reprehensible.

1.21 Having considered the relevant facts as outlined above and all the representations made by Granada, the Committee decided to impose a financial penalty on Granada of **£1,200,000** (payable to HM Paymaster General) which it considered to be a proportionate and appropriate penalty in all the circumstances. In addition, the Committee directed Granada to broadcast a statement of its findings in relation to this case on its service in a form to be determined by Ofcom on two specified occasions.

Introduction

- 2.1 Channel 3 (ITV1) is the third national public service channel. It is a free-to-air, commercially funded, national television broadcast channel. There are fifteen regional Channel 3 licensees, including Granada. ITV Network Limited is a company limited by guarantee with a membership composed of the fifteen regional Channel 3 licensees. The ITV Network Centre is a part of ITV Network Limited and was created to run the Channel 3 network on behalf of all the licensees. It commissions the programmes that are broadcast on ITV1. However, the responsibility for each programme's compliance (and hence the liability for a potential financial penalty) is undertaken by one of the Channel 3 licensees. In this case, the relevant compliance licensee is Granada.
- 2.2 *Soapstar Superstar* was a 'live' series broadcast on ITV1 on nine consecutive evenings in January 2007 (5 to 13 January 2007 inclusive). The programme featured eleven soap opera celebrities performing different songs each night for celebrity judges and competing to win viewers' votes. There was a viewer vote during the live broadcast of each programme, in which viewers voted for the soap opera celebrity they would most like to be included in the programme on the following night and which of two songs they would like that celebrity to sing. The two soap stars with the fewest votes were then included in an overnight eviction vote. This was varied for the first programme (broadcast on 5 January 2007), in which the individual with the lowest vote was eliminated immediately and a further two soap stars were put forward for the overnight eviction vote. Viewers voted using PRS, either by telephone (at a cost of 50p) or by SMS (at a cost of 50p plus the cost of one SMS at viewers' standard network rates). Viewers were solicited to vote by the programme's presenter, Zöe Ball, the soap opera celebrities and by on-screen graphics, which set out the numbers to call for each celebrity.
- 2.3 On 5 March 2007, following a number of articles in the press concerning broadcast PRS competitions, ITV, Granada's parent company, launched a general investigation into the use of PRS in its programming. On 18 October 2007, ITV announced that its investigations had identified serious editorial issues in three ITV programmes, including the January 2007 series of *Soapstar Superstar*. The issues identified in relation to *Soapstar Superstar* were: (1) the early finalising of the 'live' programme vote on 5 January 2007 and (2) the overriding of viewers' song choice votes on an estimated eight occasions throughout the series.

Early finalising of the vote

- 2.4 On 5 January 2007, when the first episode of *Soapstar Superstar* was broadcast, the most senior members of the production team decided to finalise the results of the vote approximately two minutes before voting lines were closed. At the same time, the programme's presenter, Zöe Ball, made a verbal 'call to action' to viewers, stating "*Lines close in two minutes, so keep calling for your favourite*".
- 2.5 When the results of the vote were announced, the contestant with the lowest number of votes (i.e. in 11th place) was eliminated from the programme. The two contestants with the next lowest numbers of votes (i.e. in 9th and 10th place) should have been put forward for the overnight eviction vote. However, the contestants who were in 7th and 8th place were put forward for the

overnight eviction vote. Therefore, viewers' votes as to which contestants should be put forward for the overnight eviction vote were disregarded. Viewers were then invited to vote overnight for the eviction of contestants who they should not have been invited to vote for and, as a result of this vote, one of the contestants in 7th and 8th place was voted out at the beginning of the second episode of *Soapstar Superstar*, broadcast on 6 January 2007.

- 2.6 ITV stated that there was a fundamental conflict of evidence as to whether the contestants in 7th and 8th place were put forward for the overnight eviction as a result of the vote having been finalised early, or whether it occurred as a result of an unrelated editorial decision. However, it said that it was "beyond doubt" that the vote had not been properly conducted and that the audience's voting preferences had not been honoured. ITV admitted that the audience was misled and that those viewers who had voted had not got what they had paid for.

Overriding of song choice votes

- 2.7 On a number of occasions (estimated by ITV to be 8 out of 44), the *Soapstar Superstar* production team overrode the song choices voted for by viewers. ITV stated that their decisions appeared to have been based on sustaining a suitably wide musical balance within episodes, protecting the voices and/or health of the soap opera celebrities participating in the programme later in the series or giving the soap opera celebrities songs they could sing best.
- 2.8 ITV said that on an estimated eight occasions, viewers' song choice votes were not honoured. ITV admitted that the audience was misled on these occasions and that a proportion of those viewers who voted on these occasions had not got what they had paid for.

Effect of the unfair conduct

- 2.9 ITV has estimated that some 90,440 votes made by viewers in relation to the 5 January 2007 episode of *Soapstar Superstar* were affected. The gross revenue received by ITV from the telephony provider (Eckoh Technologies Limited ("Eckoh")) for these votes, before charity contributions, was £54,264 and ITV's revenue from these votes was £27,362. ITV has made a small number of reimbursements in respect of the affected votes, following viewers' claims, and has donated the balance of £53,600 to the Charities Aid Foundation.
- 2.10 ITV has estimated that 8 out of 44 of the live programme votes total approximately 605,267 votes. The telephony provider (Eckoh) has not retained voting data in relation to song choices and, therefore, ITV has stated that it has not been possible to attribute specific song choices to individual consumers. Therefore, it has donated £361,099 to charity (representing ITV's estimate of the amount actually spent by viewers) in respect of these votes. ITV's revenue from the estimated affected votes was £202,715.

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) of the Act).
- 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) of the Act) 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) of the Act).
- 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) of the Act); 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) of the Act).

The Human Rights Act 1998

- 3.5 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”).
- 3.6 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).

- 3.7 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.

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 2005¹.
- 3.9 Accompanying Guidance Notes² to each section of the Ofcom Code are published and, from time to time, updated on the Ofcom website. The Guidance Notes are non-binding but assist broadcasters to interpret and apply the Code.
- 3.10 The relevant provision of the Code is Rule 2.2, which states that:
- "Factual programmes or items or portrayals of factual matters must not materially mislead the audience".

Licence Condition

- 3.11 Under section 325 of the Act, every programme service licensed by a Broadcasting Act licence includes conditions for securing that the standards set by Ofcom under section 319 are observed. If Ofcom is satisfied that the holder of a licence has contravened a condition of the licence, it may impose one or more of a number of penalties.

Remedies

- 3.12 Section 40 of the Broadcasting Act 1990 (as amended) (the "1990 Act") provides that Ofcom has the power to direct a Channel 3 licensee to broadcast a correction or statement of findings or not to repeat a programme in respect of a contravention of a licence condition.
- 3.13 Section 41 of the 1990 Act provides Ofcom with the power to impose a financial penalty on a Channel 3 licence holder of a maximum of 5% of its qualifying revenue. This applies in relation to a failure to comply with a licence condition or direction on or after 29 December 2003.
- 3.14 Under Section 41 of the 1990 Act, Ofcom may also shorten the licence period of a Channel 3 licensee.
- 3.15 Section 42 of the 1990 Act provides Ofcom with the power to revoke a Channel 3 licence if, following due process, Ofcom is satisfied that revocation is necessary in the public interest.

Regulation of Premium Rate Services ("PRS")

- 3.16 Providers of PRS are separately regulated by PhonepayPlus, the industry-funded regulatory body for all premium rate charged telecommunications

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/>

services. It regulates in respect of the content, promotion and operation of PRS. In particular, PhonepayPlus' Code of Practice requires: clear and accurate pricing information and honest advertising and service content. PhonepayPlus has the power to impose sanctions for any breach of its Code by the person/body operating PRS.

Background

- 4.1 Ofcom carried out an investigation into the January 2007 series of *Soapstar Superstar* between 22 October 2007 and 20 February 2008, as summarised below. During that investigation, Granada was given the opportunity to make written submissions on the case. In light of the evidence and Granada's responses, Ofcom concluded that Granada's conduct of the January 2007 series of *Soapstar Superstar* was in breach of the Code, as outlined above and explained further below.
- 4.2 In addition, Ofcom found the breaches 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, Granada was given opportunities to make written and oral representations, which are summarised below.

ITV's initial submission on behalf of Granada

- 4.3 ITV said that the overwhelming, stark conclusion from its general investigations into PRS was that there had been a "serious cultural failure within ITV". It said that it had taken and would be taking a number of actions as a result of its investigations, including implementing a range of process improvements and increasing or enhancing checks, controls and procedures to guard against systems or editorial failures.

Early finalising of the vote

- 4.4 In relation to the episode of *Soapstar Superstar* broadcast on 5 January 2007, ITV said that the incident had occurred on the first night of a live series, involving a new presenter. ITV said the programme makers had been under the additional pressure of delivering three results, rather than the two results in each of the following episodes. The programme makers had become concerned that the timings of the running order were flawed and insufficient time had been left between the closure of the vote and the on-screen announcement of the result. The programme's Executive and Series Producers had decided to finalise the results of the vote approximately two minutes before closure of the voting lines.
- 4.5 ITV stated that, after the programme had come 'off-air', the Executive and Series Producers had become aware that the wrong contestants had been included in the overnight eviction vote, but had concluded at the time that the mistake would not impact on the final result of the competition (i.e. that the contestants involved would have been voted out of the contest later in the series, in any event).
- 4.6 ITV said that different accounts had been provided by individuals involved from the telephony provider and ITV's Interactive team, who believed that the producers had made an editorial decision to override the vote. The Producers strongly disputed that such a decision had been made and said that the vote,

as called two minutes early, followed the voting trends up to that point. ITV said that the telephony data contradicted the Producers' version of events and that it "would seem to support" the version of events put forward by the telephony provider and ITV's interactive team.

- 4.7 ITV admitted that it was "beyond doubt" that the vote for the 5 January 2007 *Soapstar Superstar* programme had not been conducted properly and that the audience's voting preferences had not been honoured. ITV admitted that this episode of the programme was in breach of Rule 2.2 of the Code: the vote had been finalised early, the wrong contestants had been put forward for the overnight eviction vote, the wrong contestant had been evicted, the audience had been misled and consumers had not received what they had paid for.

Overriding of song choice votes

- 4.8 ITV stated that the *Soapstar Superstar* production team had disclosed that on a number of occasions they had selected a song placed in second rather than in first place by viewers' votes. The voting data in relation to song choices had been discarded by the telephony provider (Eckoh) and, therefore, it had not been possible to determine the precise choices affected. However, the programme makers believed it had occurred on 8 out of 44 occasions during the January 2007 series.
- 4.9 ITV said the programme makers' justification for overriding viewers' song choice votes varied: some viewer song choices had been seen as too demanding on an individual soap opera celebrity (on one occasion, a contestant suffering throat problems) and, on other occasions, following viewer choice would have produced a list of songs which lacked "creative balance" (for example, too many ballads). ITV said no song choices had been made by the production team in advance of voting.
- 4.10 ITV admitted that on an estimated eight occasions, the audience's voting preferences had not been honoured. ITV admitted that, on these occasions, breaches of Rule 2.2 of the Code had occurred: song choices had been overridden, a proportion of consumers had not received what they had paid for and the audience had been misled as to the outcome of part of the vote.

Reimbursement/ reparation

- 4.11 ITV said that its total reimbursements/ reparations in respect of PRS issues in all ITV programming would be approximately £7.8 million. In respect of *Soapstar Superstar*, ITV said that it would offer reimbursements to those viewers who voted in relation to the 5 January 2007 episode (with any sums not claimed being donated to charity) and that a donation to charity would be included in its total donation of approximately £7.8 million in respect of 8 out of 44 of the total number of song choice votes.

Ofcom's Finding on the breaches

- 5.1 Ofcom took ITV's initial submissions on behalf of Granada into account when reaching its conclusions on the question of Code breaches. It noted ITV's admissions that the early finalising of the vote on 5 January 2007 and the overriding of viewers' song choice votes on an estimated eight occasions were misleading to viewers and caused harm. Ofcom also noted ITV's admission that Granada had breached of Rule 2.2 of the Code.

- 5.2 Ofcom concluded that there were serious breaches of Rule 2.2 of the Code in relation to the 5 January 2007 *Soapstar Superstar* programme and in relation to the estimated eight occasions during the 2007 series on which viewers' song choice votes were not honoured.
- 5.3 Ofcom requested further clarification from ITV on a number of issues relating to the case, including:
- what processes had been in place to ensure that voting was conducted fairly and whether an independent third party or individual with compliance responsibility had been present on the programme;
 - what consideration had been given to compliance with the Code;
 - the number of voters likely to have been excluded and the gross revenue raised from their votes;
 - what risk assessment had been undertaken by ITV to safeguard against editorial interference into the results, operation and conduct of voting in relation to *Soapstar Superstar*;
 - whether the repeated instances of editorial interference in the operation and conduct of PRS voting had gone unnoticed by senior management and, if so, why;
 - what compliance training had been in place for the *Soapstar Superstar* production team to ensure adherence to the relevant codes, including the then ICSTIS Code (now re-named as the PhonepayPlus Code);
 - how viewers had been urged to vote; and
 - how it had arrived at its estimate that viewers' song choices had been editorially overridden on eight occasions.

ITV's Response on behalf of Granada

- 6.1 ITV said that there had been no flaws with the voting process used for the 2007 series of *Soapstar Superstar*. The integrity of the telephony, vote aggregation, production and communication of results within the production team was tested, robust and had operated to proper process. However, ITV said there had been no protection against the production team finalising the vote early or overriding viewer choice, as both had been unprecedented, in ITV's experience. ITV said its processes had been radically changed since its investigations and that ITV Interactive's operations team now monitored each step in voting "with a particular emphasis on line closure and result calls".
- 6.2 ITV said that senior members of the *Soapstar Superstar* production team (the Executive and Series Producers) had taken the decision to finalise the result of the vote before the voting lines closed in the 5 January 2007 episode because of "the pressure of the first night" because it was the first episode in a new series and therefore the production team and presenter were nervous and a number of copies of the results had to be produced in a short time scale before the announcement of the results. One of the Executive

Producers had said that, once the decision had been taken to finalise the vote early, (s)he would not have listened to anyone informing him/ her that the decision was incorrect. More junior members of the production team said that they had told the Producers at the time that it was too early to finalise the vote, but they had been overruled. A junior member of the production team had reported the matter to a senior manager within ITV's interactive team who, in turn, informed the Partnership Director & Controller of ITV Interactive that an "issue" had arisen, but that it had been "dealt with". The fact that an "issue" had arisen had then been raised at an ITV consumer team meeting, but no further actions had been taken at the time.

- 6.3 The decisions to override viewers' song choices had been taken by or with the support of the Executive and Series Producers of the January 2007 *Soapstar Superstar* series. Other members of the production team had also been aware that viewers' song choices were overridden on a number of occasions, but did not report this to anyone.
- 6.4 ITV said that compliance with the Code was a requirement for all ITV production personnel. Executive and Series Producers within production teams for individual programmes were expected to implement the Code and vigilantly monitor compliance. Compliance oversight and support had been provided by ITV's compliance team and ITV's programme lawyers, their objectives had been to give programme makers the "information and tools needed to realise creative ambition with a programme or series [that was compliant]", and to "review and effect" any necessary changes pre-transmission in order to ensure its compliance with relevant codes. However, the actual decisions and responsibilities for auditing or supervising the various steps within production within each programme or series had been confined to the senior editorial executives in each production team. General or bespoke compliance training had been given to all production teams. ITV's compliance team had not overseen the operation of telephony, the physical handling of votes or the editorial decisions that followed. No compliance staff had been present in the production gallery during the production of live shows (to agreed scripts and running order).
- 6.5 ITV said that without the benefit of hindsight or any previous experience of similar failings, ITV's senior management and compliance team had not had any reason to suspect a production team would override or otherwise interfere with random selection or viewer choice. ITV's management structure and compliance systems had failed to identify the emerging problems associated with PRS.
- 6.6 ITV stated that it had arrived at its estimate that viewers' song choices were overridden on eight occasions because it had initiated its inquiries into PRS in March 2007, within seven weeks of completion of the *Soapstar Superstar* January 2007 series, when the production team's recollections would have been reasonable. ITV could not guarantee that viewers' song choices were overridden on precisely eight occasions because Eckoh had not been able to provide all of the underlying data. However, it believed the estimate to be reasonable because the production team had volunteered the information at a time when no allegation had been made and not knowing that the underlying data could not be obtained from Eckoh. ITV submitted that the purpose of the live, programme vote was to select the contestants who would appear in the following episode and that the song choice vote was "secondary and free". As

the song choice vote was “secondary and free”, ITV submitted that Eckoh had not been obliged to retain and had not retained evidence of them.

- 6.7 ITV said that there were 90,440 affected votes in respect of the 5 January 2007 episode of *Soapstar Superstar*. ITV’s gross revenue was £27,362 and it would make potential reimbursements of £53,680 (representing ITV’s estimate of the amount actually spent by viewers), with any sum not claimed being donated to charity.
- 6.8 ITV stated it had apportioned 8 out of 44 of the total number of live programme votes to calculate the notional gross revenue raised from the affected votes and gross revenues. The notional number of affected votes was 593,730. ITV’s gross revenue (received from telephony providers) was £207,690 before charity contributions. Following charity contributions, ITV’s gross revenue was £139,390. ITV was donating £347,085 (representing ITV’s estimate of the amount actually spent by viewers) to charity in respect of the affected votes.
- 6.9 ITV said it believed it shared the position of other major broadcasters, in that the development of PRS as an adjunct to some programming was never seen or presented as a new business/ consumer proposition and, therefore, it was not subjected to discrete risk assessment. At the relevant time, no-one in the senior management at ITV had held overall responsibility for ensuring the integrity of PRS. The mechanics of PRS (such as telephony and vote counting) were delivered to productions by ITV’s Interactive team or by interactive personnel within ITV Productions.

Referral to the Content Sanctions Committee

- 7.1 It was considered that, taking all the circumstances into account, and in particular: the severity and scale of the breaches and the resulting harm caused to significant numbers of viewers who voted during the January 2007 series of *Soapstar Superstar* and to the audience overall, the breaches were 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.

ITV’s written representations on behalf of Granada on the imposition of a sanction

- 8.1 ITV said that it/ Granada fully accepted and sincerely apologised for the breaches of the Code and stated that it had “always accepted” that they were serious. It accepted that there had been a serious breach of trust between Granada and its viewers. ITV/ Granada accepted referral to the Committee for the consideration of the imposition of a statutory sanction.
- 8.2 ITV said that as soon as allegations concerning PRS in ITV programmes had emerged in March 2007 and before any allegations had been substantiated, it had taken immediate action, in that it suspended all PRS activity across ITV channels and appointed Deloitte to carry out an independent review into the use of PRS in all ITV programming. ITV said that it had ensured that there

could be no continuation of any of the alleged contraventions in the programming on-air at that time and that all possible steps were taken to ensure that PRS would be run in accordance with the relevant codes.

8.3 ITV stated that it had announced the findings of the Deloitte Review on 18 October 2007. It believed that the Review “was and still is the most comprehensive review carried out into the use of PRS by any UK broadcaster”, which it submitted showed that:

- it had taken the allegations more seriously than any other UK broadcaster;
- the findings identified by ITV were likely to be more comprehensive than those identified by any other UK broadcaster; and
- the processes which ITV had put and was putting into place in reliance on its review and its experience to date would be industry leading among UK broadcasters.

8.4 ITV asked Ofcom to note that when it had announced the findings of the Deloitte Review, Michael Grade (ITV’s Executive Chairman) had stated:

“Let me say...on behalf of ITV, that we deeply regret what has happened and how sorry we are for breaking trust with our viewers.”

8.5 In addition, ITV stated that it had announced on 18 October 2007 that it was “instituting the most effective and generous reimbursement programme in the industry” in relation to various affected programmes/ series. While it accepted that some viewers who voted during the January 2007 series of *Soapstar Superstar* had suffered financial loss for a period of time, it asked Ofcom to note that it had taken comprehensive steps to remedy any harm, in that it had donated a total of approximately £7.8 million to the Charities Aid Foundation in respect of PRS issues in a number of programmes/ series. Approximately £415,000 of this sum related to (i) affected transactions from the 5 January 2007 episode of *Soapstar Superstar* and the notionally affected transactions from the estimated eight occasions on which viewers’ song choice votes had been overridden. ITV had also reimbursed approximately £81.00 to viewers who had voted on 5 January 2007 and claimed under ITV’s reimbursement scheme.

8.6 ITV also asked Ofcom to bear in mind that it/ Granada had acted with complete transparency in relation to the Deloitte Review and the announcement of the findings from the Deloitte Review, and the subsequent Ofcom investigation. It said that in effect, it had pleaded “guilty” publicly before Ofcom had initiated its investigation and that it had accepted full responsibility for any breaches of the Code.

8.7 ITV stated that it had not been the case that the *Soapstar Superstar* programme makers had intended to cause financial harm to viewers and nor had they been motivated to procure greater financial gain. ITV said that it, Deloitte and Eversheds were of the view that the programme makers had not deliberately deceived viewers. ITV reiterated the words of Michael Grade in ITV’s 18 October 2007 announcement, as follows:

“These failings were not venal. In all cases, individuals were motivated by their professional instinct to produce the best show, but they failed to understand that this could come at the expense of keeping faith with participating viewers.”

- 8.8 ITV said that its Group Legal Director had investigated the degree of awareness of the Partnership Director & Controller of ITV Interactive in relation to the events that had occurred on 5 January 2007. The Partnership Director & Controller of ITV Interactive had confirmed that she had not been told that the “wrong” two contestants had been subject to the overnight eviction vote on 5 January 2007. She had been told that an “issue” had arisen, but that it had been “dealt with”. ITV said that the Partnership Director & Controller of Interactive had not been aware of the details of the “issue”, but accepted, in any event, that the issue of the viewer vote override should have been reported to its senior management. ITV said that the actual decisions within *Soapstar Superstar* had been confined to the senior editorial executives within the production team. ITV’s/ Granada’s senior management had not had any knowledge of the issues and nor had they had any reason (at the relevant time) to question the integrity of PRS in the programme.
- 8.9 ITV said that the *Soapstar Superstar* production team’s motivation, albeit misguided, had been to produce the best show for viewers. It said the overriding of viewers’ song choices had been editorial misjudgement.
- 8.10 ITV stated that while it/ Granada did not deny that each breach of the Code was, itself serious, it/ Granada did not consider that repetition of the breaches exacerbated their seriousness. This was, ITV submitted, because the cause of the breaches had been the production team’s misguided attempts to produce a better programme and because the breaches had not been repeated since ITV had raised awareness that such unfair conduct was unacceptable.
- 8.11 ITV requested that Ofcom note that Granada was already fully incentivised to try to ensure future compliance. It submitted that Michael Grade had apologised personally for ITV’s past failings and that he had been the “leading voice in recent calls to place viewer trust at the centre of broadcasting.” It also said that ITV had paid out in reimbursements/ donations to charity nearly double the amount it had received from the affected programming and that it had spent approximately £2 million investigating the use of PRS within ITV programming in general and administering its reimbursement scheme (this sum did not include the significant management time involved in this exercise). ITV said that it had already effectively suffered a significant financial penalty amounting to a form of self-imposed fine. It said that ITV/ Granada was committed to compliance and that it had already taken steps to minimise the risk of future breaches.

Sanctions Hearing

- 9.1 Ofcom’s Content Sanctions Committee (the “Committee”) held a hearing on 21 April 2008 at which ITV was given the opportunity to make oral representations on Granada’s behalf before the Committee decided whether the breaches warranted the imposition of a statutory sanction and, if so, of what type and at what level.

- 9.2 The Committee was addressed by Michael Grade, ITV's Executive Chairman, with evidence supplied by John Cresswell, ITV's Chief Operating Officer and Finance Director, Ann Cook, ITV Consumer's Partnership Director and Controller of ITV Interactive, Andrew Garard, ITV's Group Legal Director and Andy Griffiths, ITV's Group Director of Legal & Regulatory Compliance.
- 9.3 ITV reiterated that Granada accepted and sincerely apologised for the breaches of Rule 2.2 of Code in relation to *Soapstar Superstar* and, furthermore, that it accepted that the breaches were serious. ITV emphasised that it/ Granada deeply regretted breaking trust with its viewers and that it/ Granada sincerely apologised for the breaches of the Code.
- 9.4 ITV stated that it had voluntarily undertaken the most comprehensive review into the use of PRS by any broadcaster and that this review had been implemented in March 2007, immediately after the first allegation in relation to the use of PRS in an ITV programme had surfaced. ITV submitted that its review, its subsequent action and its transparency had enabled Ofcom quickly to appreciate the scale and detail of the breaches of the relevant Codes. ITV believed that its viewers had been completely and comprehensively compensated to remedy any harm suffered. Furthermore, ITV said that significant process improvements had been planned and implemented to ensure that it/ Granada did not break trust with its viewers again. These included:
- bringing service provision for telephone competitions/ voting in-house to ITV;
 - increasing scrutiny of operations and presence of ITV Interactive staff in production galleries and voting rooms and empowering those individuals to overrule senior production team members to ensure the fair conduct of competitions and voting;
 - increased investment in customer care processes and resource and the introduction of a different and more robust data collection scheme for interactive data (to improve responsiveness to customer complaints and issues);
 - the introduction of a formalised review process for PRS involving ITV's internal audit team;
 - structural changes in ITV's compliance team;
 - increasing levels of training and certification across ITV (including the introduction of "trust" training across the whole of ITV and a PRS training module); and
 - suspending SMS and red button entry routes in time-critical competitions and votes until ITV could be sure they were reliable.
- 9.5 ITV reiterated that its/ Deloitte's exhaustive enquiries had shown that none of the PRS failures were venal, nor were designed to drive up revenue or aimed to deceive viewers. Instead, individuals had been motivated by their professional instincts, albeit misguided, to produce the best show for viewers.

- 9.6 ITV said that programmes were commissioned by ITV Network Centre both from ITV Productions and from independent production companies. ITV said that at the time a programme or series was commissioned, it would be agreed whether the programme or series would include any viewer interactivity, in the form of competitions or voting. The responsibility for the editorial integration of competitions or voting lay with the editorial production team.
- 9.7 In terms of the responsibility for compliance, ITV said that the Executive Producers of *Soapstar Superstar* had been responsible for its editorial compliance. They had reported to the Head of the Entertainment Department within Granada. The Granada Head of Entertainment reported to the Director of Production for ITV Productions, who, in turn, reported to ITV's Chief Operating Officer.
- 9.8 In terms of the hierarchy within the *Soapstar Superstar* production team, ITV said that most of the production team would have reported to the Series Producer, who, in turn, would have reported to the Executive Producers.
- 9.9 ITV said that at the relevant time, editorial "sovereignty" in relation to a particular programme or series had rested with the Executive Producer of that programme or series. The culture of broadcasting had always been to make the best show possible while maintaining editorial integrity. ITV submitted that what the broadcasting industry as a whole, and ITV in particular, had failed to understand and appreciate was that in inviting viewers to participate in the outcome of programmes, editorial sovereignty in certain aspects of the programme had been ceded to the public. However, the "omnipotence of the Executive Producer" had remained unchanged. The lines of responsibility had not been fit for purpose, in that they had not provided for individuals to overrule the historic editorial supremacy of executive producers.
- 9.10 In relation to the role of ITV's compliance team, ITV said that its compliance team would have been involved with the initial development of a viewer interactive competition and that its compliance team would have reviewed the terms and conditions of each competition. ITV stated that regrettably, ITV's compliance team had not been involved in making sure that production teams adhered to the terms and conditions of viewer interactive competitions. Changes had now been made to ensure that compliance personnel were present in the production gallery to make sure that voting was conducted properly and in accordance with the expectations of the audience.
- 9.11 ITV said that when a programme or series was commissioned that contained viewer voting, a Commissioner, ITV Productions and the Producers would agree the component parts and running order of a programme with a view to maximising ratings. The running order would contain details of any votes or competitions being run and the number of calls to action for those votes/competitions. Using the programme specification and running order, a combination of the Commissioner and ITV Productions would prepare an assessment of the level of revenue likely to be delivered by the programme. This assessment would take into account the level of ratings which it was estimated the programme would deliver and the level of PRS revenue which it was estimated that the programme would deliver, the latter being calculated by taking into account the nature of the vote/ competition in the programme and the number of calls to action detailed in the running order. The Producers were then charged with delivering the programme in accordance with the programme specification and in line with the running order.

- 9.12 ITV said that for production teams within ITV Productions, there was regular, consistent compliance training for individuals within teams and compliance updates, which were sent out and run by ITV's compliance team. However, ITV admitted that it was clear that its compliance systems in relation to PRS had not been robust and that they had been "fairly inadequate" prior to March 2007. It said that PRS interactivity had been a new business that had grown faster than anybody had anticipated and that its compliance and risk management procedures had not kept up with this rapid growth until allegations in relation to the use of PRS in ITV programming had first emerged in March 2007. It had now introduced mandatory compliance training, including a module on PRS.
- 9.13 ITV said that it would be taking a "zero tolerance" approach going forwards in relation to the unfair conduct of viewer interactive competitions and voting. It said that it did not think anyone within ITV/ Granada or anyone who worked for ITV/ Granada would be under any misunderstanding that it would be career threatening to make this kind of mistake in the area of viewer interactive competitions or voting. ITV said that it had taken disciplinary action against various people within ITV/ Granada in relation to the issues identified by the Deloitte Review.
- 9.14 ITV reiterated that it/ Granada accepted and sincerely apologised for the breaches of the Code, which it agreed were serious. It reiterated that none of the breaches or the actions of those perpetrating them had been aimed at deceiving viewers or trying to drive up revenue. ITV said that the motivation, which had been regrettable and misguided, had been to produce the best show for viewers. ITV reiterated that it believed that it had taken more comprehensive steps than any other broadcaster to remedy any harm to viewers. ITV said that it had donated £414,698 to the Charities Aid Foundation in respect of *Soapstar Superstar*. ITV's actual revenue before any deductions had been £230,077.
- 9.15 ITV explained that on the first and last night of the January 2007 series of *Soapstar Superstar* a representative of the telephony supplier, Eckoh, had been present in the production gallery. ITV confirmed that the Eckoh representative had been informed by one of the Executive Producers that the issues that occurred on 5 January 2007 "would not happen again".
- 9.16 In relation to the explanation provided by one of the Executive Producers that the vote had been finalised early because of the pressure of the first night, ITV clarified that this was principally because the Executive Producers had not wanted "things to go wrong" because it was the first night of a new series. ITV said that the pressure of live broadcasting was "phenomenal" and a live programme with technology and viewers' votes was "always the hairiest moment", no matter how experienced the production team.
- 9.17 In relation to a comment made by one of the Executive Producers that (s)he would not have listened on 5 January 2007 to anyone informing her that the Producers' decision to finalise the vote early was incorrect, ITV said that it was of the view that the Executive Producer should have listened to other people and that the view (s)he had expressed had been too dogmatic.
- 9.18 ITV explained that at the relevant time (January 2007), ITV's Interactive team had a dedicated role in ensuring that viewer interactive votes and

competitions were run effectively. The January 2007 series of *Soapstar Superstar* was the first time that ITV Interactive's operations team had placed one of their team in the production gallery for a live programme; previously, this function had been outsourced to a third party. In relation to the extent of awareness of the ITV Partnership Director & Controller of ITV Interactive regarding the issues that occurred on 5 January 2007, ITV explained that the ITV Interactive Operations Manager (who had been present in the production gallery during the live broadcast on 5 January 2007) had reported the issue to the Head of Production within ITV Interactive. Although the Head of Production within ITV Interactive then went on to mention to the ITV Partnership Director & Controller of ITV Interactive that an issue had arisen and that it was being dealt with, the ITV Partnership Director & Controller of ITV Interactive had not actually been told what the issue was or, indeed, its magnitude or seriousness. ITV accepted that the actual incident should have been reported to senior management, but that it had not been. ITV said that at the time, the line manager for ITV Productions' Interactive Producers had "spoken very sternly" to the *Soapstar Superstar* production team and said "This must never happen again". However, ITV admitted that because of the "editorial sovereignty" of the Executive Producers, no notice was taken of him/her. ITV admitted that at the time, it appeared that the production team had not been concerned with compliance with the Code.

- 9.19 In relation to an earlier submission made by ITV on behalf of Granada that the song choice vote was secondary (to choosing which contestant to keep in the contest) and free, ITV agreed that it was very clear from statements made by the programme's presenter and the "calls to action" made that it was part of the programme to choose the contestant and then select what they were going to sing. ITV said that the reason it had been unable to determine precisely how many times viewers' song choice votes had been overridden was because the voice messages left by telephone voters (which contained their song choices) had not been retained by Eckoh.
- 9.20 ITV accepted that the Deloitte Review suggested that the decisions made by the programme's Producers had ignored the voting trend and that the programme's Producers had been warned about this, and about finalising the vote early, by a number of more junior members of the production team. ITV accepted that these more junior members were "firmly sat upon" and that the "editorial imperative" had led to their concerns being ignored.
- 9.21 In relation to the Producers' explanation that viewers' song choice votes had been overridden on occasions to provide "creative balance", ITV said that it thought the Executive Producers would have thought that the song choices offered to viewers overall for a particular programme would have been sufficient to give them the variety of tempos and styles that they had wanted, but that sometimes viewers had not voted as expected, so the Producers had "nudged" the vote.
- 9.22 Finally, ITV asked Ofcom to take into account Granada's good compliance record. It said that since the ITC imposed a financial penalty on Granada in 1994, there had been no further financial penalties imposed in respect of tens of thousands of hours of compliant Granada programming.

Sanctions Decision

10.1 In reaching its decision, the Committee considered carefully all the written and oral submissions made by ITV on behalf of Granada. The Committee decided, for the reasons set out below, to impose a financial penalty on Granada and to issue a direction requiring Granada to broadcast a statement of Ofcom's findings in relation to this case in a form to be determined by Ofcom on two specified occasions. In deciding on an appropriate and proportionate level of financial penalty in this case, the Committee had regard to Ofcom's Penalty Guidelines³.

The seriousness of the breaches

10.2 Having considered all the evidence and ITV's representations on behalf of Granada, the Committee found that the breaches in this case were very serious and, in respect of the overriding of viewers' song choice votes, repeated, for the reasons set out at paragraphs 10.3 to 10.10 below.

10.3 The Committee considered that the breaches of Rule 2.2 of the Code were extremely serious. They represented a very significant breakdown in the trust between a public service broadcaster and its audience and are amongst the most serious breaches of the Code that have been considered by the Committee to date. Financial detriment was caused to the substantial numbers of viewers who voted on 5 January 2007 and throughout the January 2007 series of *Soapstar Superstar*. Breaches of the Code that result in financial detriment to viewers and viewers being materially misled have always been considered by Ofcom (and Ofcom's legacy regulators) to be amongst the most serious breaches that can be committed by a broadcaster. The trust that the audience places in a broadcaster is fundamental to their relationship. This is particularly pertinent in the case of a long-established public service broadcaster like Granada, with a relationship of trust with its audience going back several decades and whose service is available to such a wide audience on ITV1. This relationship becomes even more important when it involves a series with a very large audience, broadcast at peak time and where audience expectations are high, like *Soapstar Superstar*. On average, 5.5 million viewers had watched each episode of the January 2007 series. Viewers are entitled to believe when being invited to enter into a relationship of trust with a broadcaster that their trust is not misplaced.

10.4 In relation to the 5 January 2007 episode of *Soapstar Superstar*, the Committee considered that it was clear that the Producers had deliberately and knowingly finalised the viewer vote early and that they appeared to have overridden viewers' votes, despite the fact that concerns had been raised (both contemporaneously and shortly afterwards) by more junior members of the production team. These junior members of the production team had been, as ITV admitted, "firmly sat upon". The Producers had flouted the voting guidelines for *Soapstar Superstar* for their own reasons: either for expediency (to ensure that the vote was concluded in sufficient time) or to put forward particular contestants for the overnight eviction vote for their own purposes. The fundamental nature of the programme was that viewers' votes, not the

³ 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.

Producers, would determine which contestants remained in the competition. The Producers' actions on 5 January 2007 evidenced, in the Committee's view, a complete disregard for the programme's audience overall and, in particular, those viewers who had paid to vote. This was totally unacceptable and inexcusable.

- 10.5 In relation to the estimated eight occasions on which viewers' song choice votes were overridden, again, the Committee considered that it was clear that the Producers had deliberately and knowingly overridden viewers' votes on these occasions for their own purposes. It was, in the Committee's view, abundantly clear from the "calls to action" made in the programme that viewers' votes, not the Producers, would determine what songs the soap opera celebrities would sing if they remained in the competition. The actions taken by the Producers resulted in the audience being repeatedly materially misled on an estimated eight occasions. This was also totally unacceptable.
- 10.6 The Committee was very concerned by ITV's admission that, although a junior member of ITV Interactive's Operations team had sought to report his/her concerns regarding the issues that occurred during the 5 January 2007 episode to his/her line manager, the matter was not addressed appropriately. The Committee was strongly of the view that ITV's/ Granada's reporting lines had been wholly inadequate in January 2007.
- 10.7 The Committee was concerned by the consumer harm involving a substantial audience that resulted from the breaches of the Code. It was clear to the Committee that large numbers of viewers had voted on 5 January 2007 and generally during the January 2007 series in the belief that the votes they paid to make would be properly and fairly taken into account. In fact, on 5 January 2007 and on an estimated eight further occasions, viewers' votes were disregarded.
- 10.8 The Committee noted that the decisions that had resulted in breaches of the Code had been made by the Executive Producers, who were experienced and the most senior members of the *Soapstar Superstar* production team (the Series Producer was also aware of the decisions). The Committee further noted that the ultimate responsibility for editorial compliance had rested with the Executive Producers and that more junior members of the production team (who had raised concerns regarding the issues that occurred on 5 January 2007) had reported to them. The Executive Producers had been "omnipotent"; they had been responsible for all editorial decisions made in relation to the series, for delivering audience ratings, for bringing the series in on budget and for any decision to refer a particular issue to ITV's compliance team. ITV's compliance team was reactive, rather than proactive, so unless the Executive Producers referred a matter to them or they received a viewer complaint, they had no awareness of any of the issues that had arisen. This was, in the Committee's view, a wholly inadequate approach that was not fit for purpose. Effectively, it had been impossible for the issues that occurred to be raised with ITV's/ LWT's senior management and/or ITV's compliance team, because of the reporting lines and structure that had then been in place.
- 10.9 The Committee was very concerned by the fact that there had been no (or, at the least, insufficient) scrutiny or audit by ITV or Granada of the actions of the Producers of the January 2007 series of *Soapstar Superstar*, despite the fact that the series had raised a substantial amount of revenue. The Producers

had, effectively, wielded the power that was vested in them 'unfettered'. The Committee considered that the breaches that had occurred were the result of Granada's/ ITV's institutionalised failure to ensure compliance with the Code.

- 10.10 It was the view of the Committee that due to the severity, scale and repeated nature of the breaches of the Code and the resulting financial harm caused to large numbers of viewers who voted on 5 January 2007 and on an estimated eight further occasions and the harm caused to Granada's audience overall, this was a very serious case, involving a grave and fundamental breach of the audience's trust. Therefore, the Committee considered that the imposition of a significant financial penalty was warranted.

Precedent

- 10.11 In considering the appropriate level of financial penalty, the Committee took account of its previous decisions in two cases in which the audience were materially misled by the fakery of viewer interactive competitions. This case was the first case to be considered by the Committee involving breaches of Rule 2.2 of the Code. The Committee also took account of the specific representations made by Granada. 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 severity and scale of the breaches and, in the case of the overriding of viewers' song choice votes, the repeated nature of the breaches in the circumstances of this case.

Incentive

- 10.12 The Committee took into account in setting the level of financial penalty the fact that ITV had taken extensive steps to seek to remedy the breaches (in particular, in the context of this case, its programme of reimbursement and reparation in relation to *Soapstar Superstar*) and improve its compliance, management and risk management procedures. However, the Committee also noted that the purpose of the imposition of a financial penalty was to deter both the party involved and third parties from 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

- 10.13 The Committee considered that the following specific criteria, as set out in Ofcom's Penalty Guidelines, were relevant to adjust the starting figure of any financial penalty:
- 10.14 The Committee noted that ITV/ Granada had received £230,077 (before charity contributions) from the occasions on which viewers' votes were overridden. In this context, the Committee took into account the extensive programme of reimbursement and reparation implemented by ITV.
- 10.15 The Committee also noted that the Executive Producers within the *Soapstar Superstar* production team had been responsible for delivering the programme in accordance with the agreed programme specification and running order with the aim of achieving ratings assessments and for bringing the series in on budget.

- 10.16 The Committee considered that the harm to viewers and consumers caused by the breaches of the Code was extensive. Viewers were seriously and materially misled on 5 January 2007. Viewers were then repeatedly materially misled on a further estimated eight occasions, on which viewers' song choice votes were overridden. These breaches constituted a very serious breach of trust by a long-standing public service broadcaster.
- 10.17 The Committee noted that Granada is a company with a substantial qualifying revenue and significant resource available to it.
- 10.18 The Committee noted that the breaches of the Code were not caused by any third party or any circumstances beyond the control of Granada. In fact, a representative of a third party (Eckoh) had raised concerns about the decisions taken by the Producers on 5 January 2007, but these were, effectively, ignored. The Committee also noted that no penalty in respect of the same conduct had been imposed already by Ofcom or another body.
- 10.19 The Committee considered that because of the scheduling of *Soapstar Superstar* in a peak time slot across the ITV network, audience expectations in relation to it would have been high. Furthermore, that statements made by the programme's presenter made it very clear that viewers' votes alone should have determined which contestants remained in the contest and what songs they would sing. The Committee noted that the average audience for each episode of the January 2007 series was 5.5 million viewers.

Level of Penalty

- 10.19 Taking all these factors into account (and in light of the severity, scale and, in the case of the overriding of viewers' song choice votes, the repeated nature of the breaches), the Committee considered that the 'starting figure' for any financial penalty should be significant.

Factors tending to increase the level of penalty

- 10.20 The Committee then considered whether any of the factors set out in the Penalty Guidelines (or any other relevant factors) aggravated or tended to increase the level of any financial penalty it might impose.
- 10.21 The Committee noted that viewers' song choice votes were repeatedly disregarded, on an estimated eight occasions during the relatively short, nine-day period over which the January 2007 series of *Soapstar Superstar* was broadcast. This, in combination with the very serious breach that occurred on 5 January 2007, evidenced, in the Committee's view, an arrogant disdain for the votes viewers had paid to make.
- 10.22 In particular, the Committee was strongly of the view that ITV's/ Granada's senior management ought to have been aware of the breaches that had occurred. The fact that the ITV Partnership Director & Controller of Interactive had been told an "issue" had occurred in relation to the 5 January 2007 episode of *Soapstar Superstar*, but had not probed further and questioned what exactly had occurred, was of significant concern to the Committee. The Committee considered that in January 2007, Granada's management, risk management, reporting lines and compliance procedures had been wholly insufficient to ensure the proper conduct of a viewer interactive vote. Effectively, how viewer interactive votes were conducted was entirely within

the control of the Executive Producers within the *Soapstar Superstar* production team, who were “omnipotent” and there were no, or minimal, checks or balances on their “editorial sovereignty”.

Factors tending to decrease the level of penalty

- 10.23 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.
- 10.24 The Committee noted that ITV had voluntarily suspended the use of PRS across all ITV programming from 6 March 2007, after it first became aware of allegations in relation to the use of PRS in an ITV series. Furthermore, that ITV had engaged Deloitte to carry out a comprehensive, independent review of PRS across all ITV programming and that Deloitte had made wide-ranging inquiries.
- 10.25 The Committee considered that the steps ITV had taken to remedy issues (including the consequences of the breaches in this case) were wide-ranging and timely. These included:
- Implementing an extensive reimbursement scheme in relation to all substantiated PRS issues following completion of the Deloitte Review and promoting the reimbursement scheme through one press announcement (on 18 October 2007), on ITV’s website and in a number of broadcast announcements;
 - Donating a total of £7.8 million to the Charities Aid Foundation in respect of all PRS issues (approximately £414,700 of this sum related to the affected transactions from *Soapstar Superstar*); and
 - Introducing a range of practical procedures and re-structuring to seek to avoid recurrence of the same or similar issues and to guard against systems or editorial failures.
- 10.26 The Committee noted that ITV/ Granada had dealt transparently with viewers in relation to the Deloitte Review and, furthermore, that ITV/ Granada had, in general, cooperated with Ofcom’s investigation.

Conclusion

- 10.27 Cases where a broadcaster materially misleads or deceives its audience, whether knowingly or not, have always been considered to be amongst the most serious breaches of the Code by Ofcom (and its predecessor regulators).
- 10.28 The Committee was of the view that the breaches of Rule 2.2 of the Code were a very significant breakdown in the fundamental relationship of trust between a long-established public service broadcaster and its viewers. Those viewers who watched the January 2007 series of *Soapstar Superstar* and, in particular, those viewers who paid to vote, had invested trust in Granada, which, ultimately, was misplaced. This case involved the Licensee seriously and repeatedly materially misleading its audience as a result of deliberate actions taken by the most senior and experienced members of the *Soapstar Superstar* production team. This not only breached the Code, but also

Granada's own voting guidelines for the programme. The Committee noted that ITV had accepted that the effect of the breaches was that viewers had been deceived, albeit that this had not been the programme-makers' intention; they had aimed to make better shows.

- 10.29 Granada and ITV failed to have any proper regard for the necessity to operate effective compliance, reporting, risk management and management procedures to ensure that viewers' votes were taken properly and fairly into account and that they were not materially misled. This was despite the fact that *Soapstar Superstar* was broadcast at peak time on ITV1, with high audience figures and expectations and despite the fact that substantial amounts of revenue were raised from viewers' votes.
- 10.30 As set out above, the Committee had regard to the extensive steps taken by Granada/ ITV to seek to remedy the financial harm to viewers (in terms of ITV's reimbursement programme and donation to charity) and ITV's public apology, as well as the steps taken by ITV/ Granada to seek to prevent recurrence. However, the Committee noted that no significant disciplinary action had been taken against any ITV/ Granada employee.
- 10.31 In summary, for the programme makers to knowingly ignore the audience's votes in favour of their own decisions was inexcusable. This showed their total contempt for ITV1's audience. Their actions were not only in breach of the Code and their own voting guidelines, but were also absolutely reprehensible.
- 10.32 Having considered the relevant facts as outlined above and all the representations made by Granada, the Committee decided to impose a financial penalty on Granada of **£1,200,000** (payable to HM Paymaster General) which it considered to be a proportionate and appropriate penalty in all the circumstances. In addition, the Committee directed Granada to broadcast a statement of its findings in relation to this case on ITV1 in a form to be determined by Ofcom on two specified occasions.

Content Sanctions Committee

Philip Graf
Millie Banerjee
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8 May 2008