

# Ofcom Content Sanctions Committee

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<b>Consideration of sanction against</b>	LWT (Holdings) Limited (“LWT” or the “Licensee”), in respect of its service the Regional Channel 3 service (“Channel 3”) transmitted across the ITV Network on ITV1.
<b>For</b>	<p>Breaches of the Ofcom Broadcasting Code (the “Code”) of:</p> <p><b>Rule 2.11:</b> “Competitions should be conducted fairly, prizes should be described accurately and rules should be clear and appropriately made known.”</p> <p>Relating to the following unfair conduct of a viewer competition, <i>Prize Mountain</i>, in <i>Ant &amp; Dec’s Gameshow Marathon</i> (“<i>Gameshow Marathon</i>”):</p> <ol style="list-style-type: none"><li><b>1) Selecting winners on the basis of their suitability to be on screen, which overrode requirements for random selection; and</b></li><li><b>2) A lack of clarity as to whether SMS entrants to the competition were taken into account.</b></li></ol>
<b>Between</b>	17 September to 29 October 2005 (inclusive)
<b>Decision</b>	To impose a financial penalty (payable to HM Paymaster General) of <b>£1,200,000</b> and, in addition, to require LWT to <b>broadcast a statement of Ofcom’s findings</b> 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 LWT 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 *Ant & Dec's Gameshow Marathon* ("*Gameshow Marathon*") on ITV1 between 17 September and 29 October 2005 (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 LWT, which is the relevant licensee in this case.
- 1.5 *Gameshow Marathon* was a 'live' series broadcast on ITV1 on seven consecutive Saturday evenings between 17 September and 29 October 2005. The series involved the re-creation of seven once-popular game shows using celebrity contestants.
- 1.6 The main interactive element of the 2005 series of *Gameshow Marathon* was a viewer competition, *Prize Mountain*, which viewers were invited to enter using premium rate services ("PRS"). The winner of each episode's competition would win the prizes that had been won by the celebrity contestants during the programme. The winner was then surprised by Les Dennis, who would deliver the winner's *Prize Mountain* to him or her in a large lorry. This surprise delivery was recorded and shown in the following week's episode. The terms and conditions of the competition stated that the winner of the competition would be the first correct entry drawn at random from all eligible entries. There was no *Prize Mountain* competition in the first episode of the series (i.e., the competition was run six times during the 2005 series).
- 1.7 On 5 March 2007, following a number of articles in the press concerning broadcast PRS competitions, ITV plc ("ITV"), LWT's parent company, launched an investigation into the use of PRS in ITV programming in general. On 18 October 2007, ITV announced that its investigations had identified serious editorial issues in three ITV programmes, including the 2005 series of *Gameshow Marathon*. The issues identified in relation to *Gameshow Marathon* were: (1) the use of editorial judgement, rather than random selection, to select the winners of the *Prize Mountain* competition and (2) a lack of clarity as to whether SMS entrants to the competition had been taken into account.

### **Editorial, rather than random selection of winners**

- 1.8 On the six occasions that the *Prize Mountain* competition was conducted during the 2005 series of *Gameshow Marathon*, the winners were selected on the basis of their suitability to be on screen. This breached the terms and conditions of the competition, which specified that the winner of the competition would be the first correct entry drawn at random from all eligible entries. The winners were selected by the production team, who first listened to the voice messages left by a randomly selected shortlist of competition

entrants in order to compile a further shortlist of competition entrants who sounded “lively” and whose geographical locations were relatively proximate, so that they could be visited at the same time. They then visited those on the shortlist, on a pretext, to judge their suitability to be on screen and the winners were selected based on the production team’s assessments.

### **SMS entrants**

- 1.9 Given the selection of a shortlist of potential winners from entrants’ voice messages, it was unclear (and ITV/ LWT had been unable to determine) how SMS entrants had been factored into the competition. However, on at least one occasion, an SMS entrant had won the competition.

### **Summary of Committee’s Findings**

- 1.10 The trust that viewers place in a broadcaster is fundamental to their relationship. This is particularly important in the case of a long-established public service broadcaster like LWT, with a relationship of trust going back several decades and whose service is available to such a wide audience on ITV1. In addition, the relationship is even more important when it involves a popular programme that is broadcast on Saturday nights at peak time, like *Gameshow Marathon*, with a very large audience of, on average, over 8 million viewers per episode, which includes a substantial number of children (an average of over 1 million children aged between 4 and 15 watched each episode).
- 1.11 The breaches of the Code by LWT involve repeated and systemic failures in the conduct of a viewer interactive competition, *Prize Mountain*. They represent a very serious and fundamental breach of the trust between a long-standing public service broadcaster and its audience.
- 1.12 Ofcom was extremely concerned by the scale of the harm caused by the breaches. The breaches involved significant consumer harm involving a very substantial audience, as evidenced by the fact that the *Prize Mountain* competition had received, in total, over 2 million entries in respect of only six programmes. Large numbers of viewers had entered the competition in the belief they would stand a fair and equal chance of winning, which was not, in fact, the case. The *Gameshow Marathon* production team had repeatedly deliberately disregarded or failed to consider the requirements of the Code and their own terms and conditions for the *Prize Mountain* competition on all occasions on which the competition was run during the 2005 series.
- 1.13 Ofcom was particularly concerned by the fact that ITV/ LWT had been unable to determine whether SMS entrants to the competition had been taken into account in the winner selection process. Nearly half the entries to the *Prize Mountain* competition had been SMS. In the context that SMS entrants had paid nearly £1.2 million in total to enter *Prize Mountain*, Ofcom considered that LWT’s inability to demonstrate whether and, if so, how SMS entrants had been taken into account represented a serious failure in its internal processes to scrutinise and manage its production teams.
- 1.14 Ofcom noted that the ultimate responsibility for the editorial compliance of *Gameshow Marathon* had rested with the Executive Producers of the series. They had been experienced and the most senior members of the production team. 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 had rested with the Executive Producers, with no management oversight or audit or scrutiny of his actions. ITV's compliance team had been reactive, rather than proactive, so unless the Executive Producers had 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, Ofcom considered, a totally inadequate approach that was not fit for purpose. How *Prize Mountain* had been conducted had been entirely within the control of the Executive Producers of *Gameshow Marathon*, who had been "omnipotent". They had also been responsible for all editorial decisions made in relation to the programme, for delivering audience ratings and for bringing the series in on budget. There had been no, or minimal, checks or balances on their absolute "editorial sovereignty".

- 1.15 There had been no assessment of any of the risks associated with the conduct of PRS viewer interactive competitions in 2005, despite the significant amounts of revenue that had been raised from them. Ofcom was strongly of the view that the breaches that had occurred were the result of ITV's/ LWT's institutionalised failure to ensure compliance with the Code in the area of PRS and viewer interactive competitions. As ITV's Executive Chairman had acknowledged, there had been a "serious cultural failure within ITV".
- 1.16 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 across all ITV programming and that Deloitte had made wide-ranging enquiries. Ofcom also considered that the steps taken by ITV 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 covering all 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 £2.4 million of this sum related to the affected transactions from *Gameshow Marathon*); 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.
- 1.17 The financial penalty would have been at a substantially increased level had ITV not taken such wide-ranging action.
- 1.18 In summary, cases where a broadcaster has materially misled its audience, whether knowingly or not, have always been considered to be amongst the most serious breaches of the Code by Ofcom (and its legacy regulators). Over two million viewers had entered *Prize Mountain* and invested trust in LWT, which, ultimately, was misplaced. This case involved LWT repeatedly

either deliberately or recklessly disregarding basic requirements to conduct competitions fairly.

- 1.19 Having considered the relevant facts as outlined above and all the representations made by LWT, the Committee decided to impose a financial penalty on LWT 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 LWT to broadcast a statement of its findings in relation to this case and another case (*Ant & Dec's Saturday Night Takeaway*) on its service in a form 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 LWT. 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 LWT.
- 2.2 *Gameshow Marathon* was a 'live' series broadcast on ITV1 on seven consecutive Saturday evenings between 17 September and 29 October 2005. The series involved the re-creation of seven once-popular game shows using celebrity contestants.
- 2.3 The main interactive element of the 2005 series of *Gameshow Marathon* was a viewer competition, *Prize Mountain*, which viewers were invited to enter using premium rate services ("PRS"). The cost of entry was £1.00 per telephone entry and £1.00 plus the cost of three standard text messages for text message ("SMS") entry. The winner of each episode's *Prize Mountain* competition would win the prizes that had been won by the celebrity contestants during the programme. The winner was then surprised by Les Dennis, who would deliver the winner's *Prize Mountain* to him or her in a large lorry. This surprise delivery was recorded and shown in the following week's episode. The terms and conditions of the competition stated that the winner of the competition would be the first correct entry drawn at random from all eligible entries. There was no *Prize Mountain* competition in the first episode of the series (i.e., the competition was run in six out of the seven episodes of the series).
- 2.4 On 5 March 2007, following a number of articles in the press concerning broadcast PRS competitions, ITV plc ("ITV"), LWT'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 2005 series of *Gameshow Marathon*. The issues identified in relation to *Gameshow Marathon* were: (1) the use of editorial judgement, rather than random selection, to select the winners of the *Prize Mountain* competition and (2) a lack of clarity as to whether SMS entrants to the competition had been taken into account.

### **Editorial, rather than random selection of winners**

- 2.5 On the six occasions that the *Prize Mountain* competition was conducted during the 2005 series of *Gameshow Marathon*, the winners were selected on the basis of their suitability to be on screen. This breached the terms and conditions of the competition, which specified that the winner of the competition would be the first correct entry drawn at random from all eligible entries. The winners were selected by the production team, who first listened to the voice messages left by a randomly selected shortlist of competition entrants in order to compile a further shortlist of competition entrants who

sounded “lively” and whose geographical locations were relatively proximate, so that they could be visited at the same time. They then visited those on the shortlist, on a pretext, to judge their suitability to be on screen and the winners were selected based on the production team’s assessments.

### **SMS entrants**

- 2.6 Given the selection of a shortlist of potential winners from entrants’ voice messages, it was unclear (and ITV/ LWT had been unable to determine) how SMS entrants had been factored into the competition. However, on at least one occasion, an SMS entrant had won the competition.

### **Effect of the unfair conduct**

- 2.7 ITV has classified all 2,033,421 entries to the *Prize Mountain* competition from the 2005 series of *Gameshow Marathon* as affected. ITV’s gross revenue (before prize and production costs) from these entries was £1,501,985. ITV has made reimbursements/ reparation totalling £2,434,416 in respect of the affected entries.

## **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 2005<sup>1</sup>.
- 3.9 Accompanying Guidance Notes<sup>2</sup> 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 2.11, which states that:  
 “Competitions should be conducted fairly, prizes should be described accurately and rules should be clear and appropriately made known”.

### **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.

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

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

## 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 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 2005 series of *Gameshow Marathon*, as summarised below. During that investigation, LWT was given the opportunity to make written submissions on the case. In light of the evidence and LWT’s responses, Ofcom concluded that LWT’s conduct of the *Prize Mountain* competition in the 2005 series of *Gameshow Marathon* 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, LWT was given opportunities to make written and oral representations, which are summarised below.

## ITV’s initial submission on behalf of LWT

- 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.

- 4.4 In relation to *Gameshow Marathon*, ITV said that a number of the key individuals involved in the day-to-day running of and decision-making in relation to the 2005 series were no longer employed by ITV or LWT and it had not been possible to make detailed enquiries of them. For this reason, ITV said it remained unclear who had been responsible for determining and approving the winner selection process.

#### **Editorial, rather than random selection of winners**

- 4.5 ITV stated that it had originally been suggested that there had been a geographic pre-determination of the locations the *Prize Mountain* lorry would visit, but “exhaustive inquiries” and examination of telephony data had disproved this allegation.
- 4.6 However, ITV said that the production team had employed “editorial judgement” to select the winners of the *Prize Mountain* competition and an element of geographical consideration had then entered, effectively for the production team’s convenience. Although there had been no pre-determination of locations, the final shortlists had been derived geographically from the location of the entrant deemed most likely to win following telephone contact. ITV admitted that both aspects of winner selection conflicted with the competition’s terms and conditions.

#### **SMS entrants**

- 4.7 ITV stated that it had not been possible to establish how SMS entries to the *Prize Mountain* competition had been handled, given the “editorial judgement” used to define the winner selection process. However, it said there was no evidence to demonstrate that SMS entries were omitted on specific occasions and there had been at least one occasion on which an SMS entrant had won the competition.

#### **Reimbursement/ reparation**

- 4.8 ITV said that its total reimbursements/ reparations in respect of PRS issues across all ITV programming would be approximately £7.8 million. In respect of the 2005 series of *Gameshow Marathon*, ITV said that it would offer reimbursements to all those viewers who entered the *Prize Mountain* competition (with any sums not claimed being donated to charity).

### **Ofcom’s Finding on the breaches**

- 5.1 Ofcom took ITV’s initial submission on behalf of LWT into account when reaching its conclusions on the question of Code breaches. It noted ITV’s admissions that the *Prize Mountain* competition had not been conducted fairly and that its execution had been “fundamentally flawed”. Ofcom also noted ITV’s admission that LWT had breached of Rule 2.11 of the Code.
- 5.2 Ofcom concluded that there were serious breaches of Rule 2.11 of the Code in relation to the 2005 series of *Gameshow Marathon*.
- 5.3 Ofcom requested further clarification from ITV on a number of issues relating to the case, including:

- who had permitted editorial selection to override random selection of the winners of the *Prize Mountain* competition;
- who had been responsible for overseeing the day-to-day compliance of PRS competitions within *Gameshow Marathon*;
- what consideration had been given to compliance with the Code;
- the number of affected entries and the gross revenue raised from these entries;
- what risk assessment had been undertaken by ITV to safeguard against editorial interference into the results, operation and conduct of PRS competition lines in relation to *Gameshow Marathon*;
- whether the repeated instances of editorial interference in the operation and conduct of PRS competition lines had gone unnoticed by senior management and, if so, why;
- what compliance training had been in place for the *Gameshow Marathon* 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 enter the *Prize Mountain* competition; and
- why it was not clear how SMS entrants were factored into the *Prize Mountain* competition and to provide any additional relevant information on the matter.

### **ITV's Response on behalf of LWT**

- 6.1 ITV said that it understood that the *Gameshow Marathon* Series and Executive Producers would have permitted or approved the use of editorial judgement to select the winners of the *Prize Mountain* competition, but that they had left ITV/ LWT, so it had not been possible to verify this.
- 6.2 ITV stated that a researcher on the production team for the 2005 series had been responsible for selecting the winner of the *Prize Mountain* competition on one occasion. (S)He had stated that (s)he had not received a formal briefing on how the winner selection process was to work and had listened to all the shortlisted entries and selected one or more based on how lively they sounded. (S)He had then visited these individuals and engaged them in conversation, using a pretext and selected as the "winner" the individual with the best likely on-screen response. (S)He was unable to recall how (s)he had vetted SMS entrants if, indeed (s)he had vetted them at all.
- 6.3 ITV stated that it was unable to provide any further explanation as to why it was not clear how SMS entrants were factored into the *Prize Mountain* competition. An SMS entrant had won on at least one of the six occasions on which the competition was run. A shortlist of SMS entrants was provided to the production team on each occasion the competition was run but ITV had not been able to ascertain how SMS entrants had been considered, given the editorial considerations taken into account in the winner selection process.

- 6.4 ITV confirmed that there had been 2,033,421 entries to the *Prize Mountain* competition over the 2005 series. Gross revenue (before prize/ production costs) was £1,501,985 and ITV would make potential reimbursements of £2,434,416, which represented ITV's estimate of the amounts actually spent by viewers (with any amount not claimed being donated to charity).
- 6.5 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, whose 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).
- 6.6 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. ITV's management structure and compliance system had failed to identify the emerging problems associated with PRS.
- 6.7 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 (eg: telephony, construction of interactive elements in programmes) 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, scale and repeated nature of the breaches and the resulting harm caused to the very significant numbers of viewers who entered the *Prize Mountain* competition 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 LWT on the imposition of a sanction

- 8.1 ITV said that it/ LWT fully accepted the breaches of the Code and stated that it had “always accepted” that they were serious. ITV/ LWT accepted that there had been a serious breach of trust between LWT and its viewers. It 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 entered *Prize Mountain* had suffered financial loss for a period of time, it asked Ofcom to note that every entrant had stood a chance of being randomly selected for the shortlist “upon which editorial discretion would be exercised.” At that stage, it submitted, “a handful of entrants” who were not located near to any other entrants on the shortlist were excluded as they would not be visited for an “editorial assessment of how they would react on screen.” ITV 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 £2.4 million of this sum related to affected transactions from *Gameshow Marathon*. ITV had also reimbursed approximately £2,800 to viewers who had entered the affected

*Prize Mountain* competitions and claimed under ITV's reimbursement scheme.

8.6 ITV also asked Ofcom to bear in mind that it/ LWT 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 *Gameshow Marathon* 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 as the *Gameshow Marathon* production team had not realised that the winner selection methods they were using were unfair, there had been no reports to ITV's or LWT's senior management, ITV's compliance team or its programme lawyers in relation to the *Prize Mountain* competition. Its/ LWT's senior management had become aware of the breaches that had occurred by conducting an "industry-leading review". As soon as the breaches were substantiated by Deloitte, ITV had reported them to Ofcom. Furthermore, ITV stated that while it/ LWT did not deny that each breach of the Code was, itself serious, it/ LWT 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 teams' 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.

8.9 ITV asked Ofcom to note that Deloitte had not concluded that SMS entrants to the *Prize Mountain* had not been taken into account. Instead, Deloitte had concluded that they had been "unable to ascertain whether there were specific occasions on which SMS entrants were omitted from the winner selection process." Therefore, ITV submitted, the issue was not whether or not SMS entrants had been included, but the fact that, as a matter of audit trail, LWT was unable to prove that SMS entrants had been included.

8.10 ITV wished to clarify that the breach of the Code that LWT accepted was the selection of winners of the *Prize Mountain* competition for editorial reasons, which had not been in accordance with the competition's terms and conditions, which required random selection. ITV said that there had been no separate geographical consideration, nor any pre-determination of any kind carried out with reference to geography, in the selection of winners.

8.11 ITV stressed that it/ LWT was and had been committed to programme compliance. ITV said that at the relevant time (2005) there had been monthly compliance seminars covering basic broadcasting code issues, which

included training on commercial references, undue prominence, competitions, PRS and sponsorship.

- 8.12 ITV requested that Ofcom note that LWT 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/ LWT 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 LWT'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 LWT fully accepted that its conduct of the *Prize Mountain* competition had breached the Code and, furthermore, that it had always accepted that the breaches of the Code in relation to the 2005 series of *Gameshow Marathon* were serious. ITV emphasised that it/ LWT deeply regretted breaking trust with its viewers and that it/ LWT 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/ LWT 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 revenue or deceive the public. Instead, individuals had been motivated by their professional instincts, albeit misguided, to produce the best show.

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. The 2005 series of *Gameshow Marathon* had been co-produced by ITV Productions and Fremantle.

9.7 In terms of the responsibility for compliance, ITV said that the Executive Producers of *Gameshow Marathon* had been responsible for its editorial compliance. They had reported to the Head of the Entertainment Department within LWT. The LWT 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 *Gameshow Marathon* 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" 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.

- 9.11 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 ITV Operations personnel were present in the production gallery to make sure that winner selection for competitions was conducted in accordance with the terms and conditions of the competitions.
- 9.12 ITV said that when a programme or series was commissioned that contained a viewer interactive competition, 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.
- 9.13 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 allegations in relation to the use of PRS in ITV programming first emerged in March 2007. It had now introduced mandatory compliance training, including a module on PRS.
- 9.14 ITV said that independent production teams were responsible for ensuring that their staff were trained on compliance and warranted the same in their contract with ITV. ITV said that independent production companies were selected on the basis of their ability to be responsible, to deliver a programme or series editorially and financially on budget, as well as ensuring that the programme or series was compliant with all relevant codes. ITV explained that within the ITV networking arrangements, independent production companies could choose the compliance agent they wished to use. Often, the compliance agent selected was a subsidiary of ITV, such as LWT, but it could also be Scottish Media Group plc or Channel Television Limited.

- 9.15 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/ LWT or anyone who worked for ITV/ LWT 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/ LWT in relation to the issues identified by the Deloitte Review.
- 9.16 ITV reiterated that it/ LWT regretted and sincerely apologised for the breaches of the Code which it agreed were very serious. It reiterated that none of the breaches or the actions of those perpetrating them had been aimed at deceiving viewers or increasing revenues. ITV said that regrettably that had been the effect, but it had not been the programme-makers intention; they had aimed to make the best show for viewers. ITV reiterated that it believed that it had taken more comprehensive steps than any other broadcaster to redress the harm that had been caused, in terms of the exhaustive review it had conducted, the reimbursements and donation to charity it had made and the new processes that it had and would be putting in place. ITV reiterated that it had donated approximately £2.4 million to the Charities Aid Foundation in respect of *Gameshow Marathon*. In the context of ITV’s revenue of £1.5 million (before production costs and expenses), ITV submitted that it had already, in effect, penalised itself by just over £900,000 in respect of the issues in *Gameshow Marathon*.
- 9.17 In relation to SMS entrants to the competition, ITV explained that it had only been able to speak to one individual who had worked on the 2005 *Gameshow Marathon* production team who had been involved with the winner selection process. (S)He had been unable to recollect how SMS entrants had been taken into account. ITV said that although it assumed that SMS entrants had been taken into account, both it and Deloitte were unable to explain how they had been taken into account. On one occasion during the 2005 series, an SMS entrant had won the *Prize Mountain* competition. ITV accepted that viewers’ expectation, from the “calls to action” made in the programmes, would have been that SMS was part of the competition. It also accepted that there was a substantial number of SMS entries to the *Prize Mountain* competition. ITV agreed that that the “younger demographic” of its audience, who were more likely to enter the competition by SMS, would have been disadvantaged if SMS entrants had not been taken into account in the winner selection process.
- 9.18 ITV said that there had been two Executive Producers on the production team for *Gameshow Marathon*: one from Fremantle and one from ITV Productions. However, ITV said that the editorial compliance responsibility for the series “pretty much” lay with ITV and ITV Productions. Fremantle had a co-production credit because they had owned the format for the *Gameshow Marathon* series. There had also been a degree of crossover between the production team for *Gameshow Marathon* and the production team for *Ant & Dec’s Saturday Night Takeaway*, in relation to which Deloitte had also identified serious editorial issues. ITV accepted that it was likely that the senior members of the *Gameshow Marathon* production team had known about the winner selection methods, but said that this had not been factually proven as these senior members had left ITV before the Deloitte Review and, therefore, had not been interviewed as part of the Deloitte Review.

- 9.19 Finally, ITV asked Ofcom to take into account LWT's good compliance record. It said that since the ITC imposed a financial penalty on LWT in 2001, there had been no further financial penalties imposed in respect of thousands of hours of compliant LWT 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 LWT. The Committee decided, for the reasons set out below, to impose a financial penalty on LWT and to issue a direction requiring LWT to broadcast a statement of Ofcom's findings in relation to both this case and another (*Ant & Dec's Saturday Night Takeaway*) in a form to be determined by Ofcom on two occasions to be determined by Ofcom. In deciding on an appropriate and proportionate level of financial penalty in this case, the Committee had regard to Ofcom's Penalty Guidelines<sup>3</sup>.

### The seriousness of the breaches

- 10.2 Having considered all the evidence and ITV's representations on behalf of LWT, the Committee found that the breaches in this case were very serious and repeated, for the reasons set out at paragraphs 10.3 to 10.8 below.
- 10.3 The breaches of the Code involved systemic and repeated failures in the conduct of the *Prize Mountain* competition. They constituted a 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 Ofcom to date. Breaches of the Codes that result in 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. Viewers are entitled to believe when entering into a relationship of trust with a broadcaster that their trust is not misplaced. This is particularly pertinent in the case of a long-standing public service broadcaster like LWT, 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 very popular programme or series, broadcast at peak time, like *Gameshow Marathon*. An average of 8 million viewers watched each episode of the 2005 series of *Gameshow Marathon* and, on average, 1 million of the viewers each week were children aged between 4 and 15.
- 10.4 The Committee was extremely concerned by the significant consumer harm involving a substantial audience that resulted from the breaches of the Code. The Committee noted that the *Prize Mountain* competition had received, in total, over 2 million entries in respect of only six programmes. It was clear to the Committee that very large numbers of viewers had entered *Prize Mountain* in the belief that they would stand a fair and equal chance of winning, which was not, in fact, the case. The *Gameshow Marathon*

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<sup>3</sup> 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.

production team had repeatedly and deliberately disregarded or failed to consider the requirements of the Code and their own terms and conditions of the *Prize Mountain* competition on all occasions on which the competition was run during the 2005 series.

- 10.5 The Committee noted that ITV accepted that it was likely that senior and experienced members of the *Gameshow Marathon* production team had permitted or approved the winner selection process for the *Prize Mountain* competition, but that they had since left ITV, so ITV had not been able to confirm this. The Committee noted that the ultimate responsibility for editorial compliance had rested with the Executive Producers of *Gameshow Marathon*. The Committee also noted that ITV had admitted that, at the relevant time, 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 would have rested with the Executive Producers of *Gameshow Marathon*, with no management oversight. ITV's compliance team had been 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.
- 10.6 The Committee was particularly concerned by ITV's admission that there had been no scrutiny or audit by it or by LWT of the actions of the *Gameshow Marathon* production team, despite the very significant revenue raised by the *Prize Mountain* competition. It noted ITV's admission that there had been no assessment of any of the risks associated with the conduct of PRS viewer interactive competitions in 2005. The Committee was strongly of the view that the breaches of the relevant Codes that had occurred were the result of LWT's/ ITV's institutionalised failure to ensure compliance with the relevant Codes in the areas of PRS and interactive viewer competitions.
- 10.7 The Committee was also very concerned by the fact that ITV/ LWT had been unable to determine whether SMS entrants in general had been taken into account in the winner selection process. It was apparent that nearly half of the entries to the *Prize Mountain* competition across the 2005 series had been SMS entries. This was particularly concerning given that SMS entrants had paid nearly £1.2 million in total to enter *Prize Mountain* during the 2005 series. The Committee considered that ITV's/ LWT's inability to demonstrate whether and, if so, how SMS entrants had been taken into account represented, again, a serious failure in its internal processes to scrutinise and manage its production teams.
- 10.8 It was the view of the Committee that due to the severity, scale and the repeated nature of the breaches of the Code and the resulting significant financial harm caused to the substantial numbers of viewers who entered the *Prize Mountain* competition and to LWT's audience overall, this was a very serious case, involving a fundamental breach of the audience's trust. Therefore, the Committee considered that the imposition of a significant financial penalty was warranted.

## **Precedent**

- 10.9 In considering the appropriate level of financial penalty, the Committee took account of its previous decisions in cases relating to the conduct of viewer interactive competitions, as well as the specific representations made by

LWT. 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, scale and repeated nature of the breaches in the circumstances of this case.

### **Incentive**

10.10 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/ reparation in relation to *Gameshow Marathon*) 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 to third parties from committing future breaches. In this case, the Committee considered that a significant financial penalty would represent an appropriate incentive to ensure compliance in the future.

### **Other specific criteria**

10.11 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:

10.12 The Committee noted that ITV/ LWT had received £1,501,985 (before prize/ production costs) from the affected competitions. In this context, the Committee took into account the extensive programme of reimbursement and reparation implemented by ITV.

10.13 The Committee also noted that the Executive Producers within the *Gameshow Marathon* 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.

10.14 The Committee further considered that the harm to viewers and consumers caused by the breaches of the Code was extensive. Viewers were materially misled by LWT's repeated and deliberate unfair conduct of the *Prize Mountain* competition, which, in the Committee's view, represented a serious breach of the audience's trust by a long-established public service broadcaster.

10.15 The Committee noted that LWT is a company with a substantial qualifying revenue and significant resource available to it.

10.16 The Committee noted that the breaches of the Code were not caused by any third party or any circumstances beyond the control of LWT. The Committee also noted that no penalty in respect of the same conduct had been imposed already by Ofcom or another body.

10.17 The Committee considered that because of the nature of *Gameshow Marathon*, which was a family entertainment programme, and its scheduling in a peak time slot across the ITV network, audience expectations in relation to the programme would have been very high. The Committee noted that the average audience for each episode had been over 8 million and that, on

average, over 1 million children aged between four and 15 had watched each episode.

### **Level of Penalty**

- 10.18 Taking all these factors into account (and in light of the severity, scale and 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**

- 10.19 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.
- 10.20 The Committee considered that the contraventions were repeated. The unfair conduct of the *Prize Mountain* competition had been repeated on six occasions over a six-week period, on every occasion the competition was run during the 2005 series of *Gameshow Marathon*.
- 10.21 The Committee was strongly of the view that the breaches of the Code that had occurred were the result of institutionalised failure. The Committee considered that LWT's/ ITV's senior management ought to have been aware that the breaches of the Code were occurring or would occur. However, at the relevant time, LWT's management, risk management, reporting lines and compliance processes and procedures were, the Committee considered, entirely inadequate to ensure the fair conduct of viewer interactive competitions and compliance with the Code. Effectively, how the viewer interactive competitions were conducted was entirely within the control of the Executive Producers within the *Gameshow Marathon* production team, who were "omnipotent". They were responsible for all editorial decisions made in relation to the programme, for achieving ratings targets and for bringing the series in on budget (including achieving targets for PRS revenue from the viewer interactive competitions). They also decided whether or not to refer any particular issue to ITV's compliance team. There were no, or minimal, checks or balances on their "editorial sovereignty". This was unacceptable.
- 10.22 Furthermore, in this case, the Committee was also very concerned by ITV's/ LWT's admission that it was unable to determine whether and, if so, how SMS entrants to the *Prize Mountain* competition had been taken into account.

### **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 the consequences of the breaches 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 £2.4 million of this sum related to the affected transactions from *Gameshow Marathon*); 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/ LWT had dealt transparently with viewers in relation to the Deloitte Review and, furthermore, that ITV/ LWT had, in general, cooperated with Ofcom's investigation.

## Conclusion

- 10.27 Cases where a broadcaster materially misleads its audience, whether knowingly or not, have always been considered to be amongst the most serious breaches of the Code by Ofcom (and its predecessor regulators).
- 10.28 The Committee took the view that the breaches constituted a very serious breakdown in the fundamental relationship of trust between a long-established public service broadcaster and its viewers. There had been over 2 million entries to the *Prize Mountain* competition during the 2005 series of *Gameshow Marathon*. Large numbers of viewers had entered the *Prize Mountain* competition and invested trust in LWT, which, ultimately, was misplaced. This case involved the Licensee either deliberately or recklessly disregarding basic requirements to conduct competitions fairly. This not only breached the Code, but also LWT's own published terms and conditions for the competition. As a result, the Licensee repeatedly materially misled its audience as to the conduct of a viewer interactive competition on all occasions on which the competition was conducted over a six-week period. 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 *Gameshow Marathon* was broadcast at peak time on Saturday evenings, with high audience figures and expectations. However, despite this, ITV and LWT failed to have any proper regard for the necessity to operate effective compliance, reporting, risk management and management procedures to ensure the fair conduct of the *Prize Mountain* competition.
- 10.30 As set out above, the Committee had regard to the extensive steps taken by LWT/ 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/ LWT to seek to prevent recurrence.

10.31 Having considered the relevant facts as outlined above and all the representations made by LWT, the Committee decided to impose a financial penalty on LWT 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 LWT to broadcast a statement of its findings in relation to this case and in relation to another case (*Ant & Dec's Saturday Night Takeaway*) on ITV1 in a form to be determined by Ofcom on two specified occasions.

**Content Sanctions Committee**

Philip Graf  
Millie Banerjee  
Joyce Taylor  
Kath Worrall

8 May 2008