

## **Freedom of Information: Right to know request**

Thank you for your request:

*"I am looking for copies of documents you might have regarding on a May 2008 fine on ITV PLC for 5.67 million pounds."*

- Please see the media release below, from Ofcom's website (copied below, for your convenience):  
<https://www.ofcom.org.uk/about-ofcom/latest/media/media-releases/2008/ofcom-fines-itv-plc-for-misconduct-in-viewer-competitions-and-voting>, copied below.
- The individual fines are also listed on our Financial Penalties page, here:  
[https://www.ofcom.org.uk/data/assets/pdf\\_file/0029/84449/995\\_financial\\_penalties\\_imposed\\_for\\_the\\_period\\_01-04-2008\\_to\\_31-03-2009.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0029/84449/995_financial_penalties_imposed_for_the_period_01-04-2008_to_31-03-2009.pdf)

Documents provided by ITV whilst under investigation cannot be disclosed, under S44 of the FOI Act. Under this section information which we hold on this subject is exempt from disclosure since it was obtained in exercise of a statutory power and disclosure is prohibited under section 393(1) of the Communications Act 2003. Section 44 is an absolute exemption under the Act and does not require a public interest test.

### **Media release**

#### **Ofcom fines ITV plc for misconduct in viewer competitions and voting - 8 May 2008**

Ofcom has informed ITV plc this morning that it is imposing a fine totalling £5,675,000 for some of the most serious breaches of Ofcom's Broadcasting Code concerning the abuse of premium rate services (PRS) in its programming<sup>(1)</sup>.

The fine, which is by far the highest imposed by Ofcom or any of the previous regulators, reflects not only the seriousness of ITV's failures but also their repeated nature. The previous highest fine imposed by Ofcom was £2 million on GMTV in September 2007.

Separately, ITV plc has pledged an additional £7.8 million for viewer compensation and to charity. This fact was taken into account by Ofcom in reaching its decision on the level of the fines.

Ofcom's investigation considered information voluntarily supplied by ITV plc from its review by auditors Deloitte and also material obtained by Ofcom during its own investigations.

### **Sanctions Cases**

#### *Ant & Dec's Saturday Night Takeaway:*

*Various dates between 14 January 2003 to 21 October 2006*

Ofcom has imposed a financial penalty on LWT Ltd of £3 million and has directed it to broadcast a summary of Ofcom's findings on two occasions on ITV1.

In summary, Ofcom's investigation found the following conduct in breach of its Codes in three competitions within this programme:

#### *Grab the Ads*

- Selecting competition finalists before the telephone lines were announced as closed;
- Staggering the selection of competition finalists which meant that viewers entering the competition did not have a fair and equal chance of winning;
- Selecting finalists on the basis of their suitability to be on television and where they lived - contrary to the broadcaster's own terms and conditions, which explicitly stated that entrants would be chosen randomly.

#### *Jiggy Bank*

- Selecting finalists for the competition based purely on where they lived - contrary to the broadcaster's own terms and conditions, which explicitly stated that entrants would be chosen randomly;
- Selecting winners on the basis of their suitability to be on screen, contrary to the broadcaster's own terms and conditions, which explicitly stated that entrants would be chosen randomly;
- On one occasion, an individual already known to the production team was placed on the shortlist of potential winners and went on to "win" the competition.

#### *Win the Ads*

- Selecting members of the studio audience from the competition entrants on the basis of their suitability to be on screen, contrary to the broadcaster's own terms and conditions, which explicitly stated that entrants would be chosen randomly.

### **Ant & Dec's Gameshow Marathon: 17 September - 29 October 2005**

Ofcom has imposed a financial penalty on LWT Ltd of £1.2 million and has directed it to broadcast a summary of Ofcom's findings on two occasions on ITV1 relating to the following conduct:

- On six occasions in the Prize Mountain competition, winners were selected based on their suitability to be on screen. This was contrary to the broadcaster's own terms and conditions, which explicitly stated that entrants would be chosen randomly;
- Additionally, the licensee was unable to account for almost half of the competition entries.

### **Soapstar Superstar: 5 - 13 January 2007**

Ofcom has imposed a financial penalty on Granada Television Ltd of £1.2 million and directed it to broadcast a summary of Ofcom's findings on two occasions on ITV1 relating to the following conduct:

- In one programme, the programme makers ignored the viewers' vote and finalised results before the lines had actually closed. This resulted in the wrong participants being put forward for eviction;
- On a number of occasions, the production team overrode the song choices voted for by viewers. On these occasions a proportion of viewers who voted had not got what they had paid for.

### **ITV2+1: 12 December 2006 - 24 October 2007**

Ofcom has imposed a financial penalty on ITV2 Ltd of £275,000 relating to the following conduct:

- On 28 separate occasions, when repeating programmes, the broadcaster failed to inform viewers that interactive competitions had concluded. This meant that all PRS entries in these competitions had no chance of winning but were still charged.
- On 3 separate occasions, when repeating an interactive dating programme (Playdate), the broadcaster failed to inform viewers that the broadcasts were not live and interactivity was no longer available. This meant that the PRS entry routes to participate in the programmes remained open and anyone who called was still charged.

The Chairman of Ofcom's Content Sanctions Committee, Philip Graf, said: "ITV programme makers totally disregarded their own published terms and conditions and Ofcom Codes. Further there was a completely inadequate compliance system in place. The result was that millions of paying entrants were misled into believing they could fairly interact with some of ITV's most popular programmes."

Commenting on today's decision to sanction ITV, Ofcom Chief Executive Ed Richards said: "This was a thorough set of investigations which uncovered institutionalised failure within ITV that enabled the broadcaster to make money from misconduct on mass audience programmes. The industry can be in no doubt how seriously Ofcom takes the issue of audience trust. Our new licence conditions requiring broadcasters, who operate in this area, to conduct third party audits will ensure that consumers are protected."

### **Additional ITV PRS Issues**

ITV's review of PRS by Deloitte covered key findings on networked ITV programmes. However, no reference was made to ITV's regional programming where PRS was also used. Ofcom therefore requested further information and details on potential issues relating to regional programming.

Due to its inadequate systems, ITV was unable to provide Ofcom with sufficient data and evidence to enable Ofcom to carry out fully an investigation into these cases. Ofcom considers that this lack of information appears to indicate an absence of robust systems in place in the operation of PRS in regional programming. ITV plc appeared to have introduced the use of PRS in ITV regional programming with little or no assessment of the associated risks and with poor levels of supervision.

#### Other cases in breach of Ofcom's Broadcasting Code

In addition to the above, the following were found to be in breach of the Code but no sanction was imposed:

**ITV1: I'm A Celebrity Get Me Out of Here! (LWT Limited): 30 November 2006**

**ITV1: People's Court: 17 March 2008**

**ITV Play: ITV Playalong (16 November 2006), The Mint (7 December 2006), Glitterball (6 March 2007)**

#### Cases not in breach of Ofcom's Broadcasting Code

Ofcom also investigated allegations made about the 2005, 2006 and 2007 series of The X Factor. Ofcom found that these programmes did not breach the Code.

In particular, a detailed minute by minute analysis of the call data established that in the 2007 finals Leon Jackson was correctly announced as the winner (over Rhydian Roberts); that ITV did not mislead its audience in claiming that the finalists were "neck and neck"; and the difficulties some viewers found in calling the programme did not result in unfairness.

The full Adjudications are available on the Ofcom website at:

[http://www.ofcom.org.uk/tv/obb/ocsc\\_adjud/](http://www.ofcom.org.uk/tv/obb/ocsc_adjud/)

All other findings can be found within Ofcom's Broadcast Bulletin Issue no.108 on the Ofcom website at:

[http://www.ofcom.org.uk/tv/obb/prog\\_cb/obb108/](http://www.ofcom.org.uk/tv/obb/prog_cb/obb108/)

#### Other on-going investigations

There are a number of other on-going investigations which Ofcom is conducting. These include the British Comedy Awards (2004 and 2005) broadcast on ITV1, the Secret Sound competition broadcast on a number of GCap radio stations, and a number of programmes on BBC radio and television, some of which are PRS cases.

These investigations are well-advanced, with Ofcom obtaining the reports and information we have requested from broadcasters and the relevant licensee. The results of these investigations will be published in the coming weeks.

#### *NOTES TO EDITORS*

1. In the case of programmes shown across the ITV network, the responsibility for compliance (and the liability for a potential financial penalty) falls to the licensee chosen to comply the programme on behalf of the ITV network. In these cases, the compliance licensee for Ant & Dec's Saturday Night Takeaway and Ant & Dec's Gameshow Marathon was LWT Ltd. In the case of Soapstar Superstar the compliance licensee was Granada Television Ltd. Following the merger in 2004 between Carlton Communications plc and Granada plc, these companies are now part of ITV plc.

2. The following Broadcasting Rules were relevant to these investigations:

- Rule 2.2: "Factual programmes or items or portrayals of factual matters must not materially mislead the audience.";
- Rule 2.11: "Competitions should be conducted fairly, prizes should be described accurately and rules should be clear and appropriately made known";
- Rule 8.2(b) of the ITC (Independent Television Commission) Programme Code 2002 "Use of Premium Rate Telephone Services in Programmes: The licensee must retain control of and responsibility for the service arrangements....". [This section of the ITC Code was in force until July 2005]

3. The procedures for investigating content and content-related cases are available at [http://www.ofcom.org.uk/radio/ifi/ifi\\_guidance/sanctions/](http://www.ofcom.org.uk/radio/ifi/ifi_guidance/sanctions/). These procedures set out the way Ofcom investigates cases and considers the imposition of statutory sanctions, including fines. The broadcaster is not aware of the level of any sanction imposed until just before it is published by Ofcom.

#### Timing

If you wish to exercise your right to an internal review you should contact us within two months of the date of this letter. There is no statutory deadline for undertaking internal reviews and it will depend upon the complexity of the case. However, we aim to conclude all such reviews within 20 working days, and up to 40 working days in exceptional cases. We will keep you informed of the progress of any such review. If you wish to request an internal review, you should contact:

Steve Gettings  
The Secretary to the Corporation  
Ofcom  
Riverside House  
2a Southwark Bridge Road  
London SE1 9HA

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF