

# **Ofcom Broadcast Bulletin**

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Please note there are no Fairness and Privacy adjudications, or details of any other cases Not in Breach/Resolved, in this issue of the Bulletin.

## Introduction

The Broadcast Bulletin reports on the outcome of investigations into alleged breaches of those Ofcom codes with which broadcasting licensees are required to comply, including the Ofcom Broadcasting Code. The Broadcasting Code (“the Code”) took effect on 25 July 2005 (with the exception of Rule 10.17 which came into effect on 1 July 2005). The Code is used to assess the compliance of all programmes broadcast on or after 25 July 2005. It can be found at: <http://www.ofcom.org.uk/tv/ifi/codes/bcode/>

With certain exceptions, the Code applies to the BBC. The BBC is jointly regulated by Ofcom and the BBC Trust. The distribution of responsibility between Ofcom and the Trust is set out in a Memorandum of Understanding<sup>1</sup> (“MoU”) between the two bodies.

### **Background to findings in this Bulletin**

In 2007, there were a number of allegations made in the press about broadcasters mishandling the use of telephone interactivity, including premium rate services (“PRS”), in audience competitions and voting.

In response to this press interest, the BBC carried out two separate ‘trawls’ of its output to detect any instances of editorial breaches involving audience deception on its services. The first ‘trawl’ was launched on 7 March 2007 and looked into the BBC’s use of PRS in programmes. The second ‘trawl’, launched on 12 July 2007, was much wider in scope to include any audience deception. The BBC subsequently informed Ofcom of a number of cases that it had uncovered during its investigations. A group of these cases resulted in the imposition of statutory sanctions by Ofcom earlier in 2008<sup>2</sup>.

In addition, Ofcom also received a number of complaints in 2008 concerning the conduct of votes and competitions.

Ofcom’s decisions on the remainder of these BBC cases are included in this Bulletin. These include: a notice of the imposition of statutory sanctions in two cases (with weblinks to the full adjudications); a number of ‘in breach’ findings; a statement on various BBC programmes involving competitions; and ‘not in breach’ findings relating to various BBC programmes involving audience voting.

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<sup>1</sup> This MoU was amended in July 2008 to confer joint jurisdiction in respect of BBC programmes where deceptive or misleading content is broadcast by the BBC and arises from an explicit on-air invitation to the audience to participate in a vote or competition and harm or offence to members of the public is, or is likely to be, caused. Full details of the addition to the MoU can be found at: [http://www.ofcom.org.uk/about/csg/ofcombbs/mou\\_addition/](http://www.ofcom.org.uk/about/csg/ofcombbs/mou_addition/)

<sup>2</sup> Full details of Ofcom’s adjudications in 2008 on these previous BBC cases are available at: [http://www.ofcom.org.uk/tv/obb/ocsc\\_adjud/bbcjuly08/](http://www.ofcom.org.uk/tv/obb/ocsc_adjud/bbcjuly08/)

## **Summary of action taken by the BBC following its investigations**

The BBC advised Ofcom that when it received the findings of its investigations (see page 3, above), it immediately suspended all competitions until it could complete a review of its practices and guidelines. The BBC Director General had set out an action plan to prevent any repeat of the incidents, and to ensure programmes were made to the highest standard. Action taken by the BBC included:

- The creation of an Editorial Standards Board to supervise the implementation of the action plan.
- A comprehensive review of BBC competitions. At the heart of this review was the need to ensure that the public could place its trust in competitions broadcast by the BBC. New guidance was issued to content producers and a new Code of Conduct created. Competitions were not re-introduced until January 2008 and the BBC advised that it now ran fewer competitions. Further, there was a substantial change to the BBC's approach to, and use of, competitions that was designed to embed in the BBC's culture the overriding principle that competitions must be run fairly, and "where there is tension between fairness and any other consideration, fairness must prevail".
- A comprehensive review of compliance procedures and processes. All the proposals identified in this review have since been implemented. A senior manager is now responsible for editorial standards and compliance on each of the production divisions' boards. In addition, a new editorial compliance forum, which reports to the Editorial Standards Board meets monthly.
- A review of the use of telephony, which resulted in the creation of the Interactive Technical Advice and Compliance Unit to provide specialist technical and business affairs support to production and content teams.
- The creation of a mandatory staff training programme called "Safeguarding Trust", to ensure that every member of the BBC's staff understands the importance of the issue of trust. All BBC staff engaged in content production and numerous individuals who regularly work for the BBC on freelance contracts had completed the training.
- Steps to ensure that all staff, including freelancers and casuals, sign contracts stating they will comply with the BBC's editorial standards.

In considering the following cases, Ofcom took account of the steps outlined above.

## Standards cases

### Notice of Sanctions

#### **British Broadcasting Corporation (“BBC”)**

*Dermot O’Leary, Radio 2, 2 June 2006 to 9 December 2006*

*Tony Blackburn, BBC London 94.9FM, December 2005 to December 2006*

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On 18 December 2008, Ofcom published its decisions to impose statutory sanctions on the BBC for breaches of Rule 2.11 of the Code (competitions should be conducted fairly) in the two cases above.

Ofcom has found that Rule 2.11 was breached in each programme, as follows:

#### ***Dermot O’Leary, Radio 2, 2 June 2006 to 9 December 2006***

The full adjudication can be found at:

[http://www.ofcom.org.uk/tv/obb/ocsc\\_adjud/BBCRadio2.pdf](http://www.ofcom.org.uk/tv/obb/ocsc_adjud/BBCRadio2.pdf)

For the reasons set out in the adjudication, Ofcom imposed a financial penalty of **£70,000** on the BBC, and directed it to broadcast a statement of Ofcom’s findings on Radio 2, on a specified occasion, in a form to be determined by Ofcom.

Listener competitions were included in eight pre-recorded editions of *Dermot O’Leary* that were broadcast ‘as live’. Listeners to the broadcasts were invited to participate in the competitions when they had no chance of entering or winning.

#### ***Tony Blackburn, BBC London 94.9FM, December 2005 to December 2006***

The full adjudication can be found at:

[http://www.ofcom.org.uk/tv/obb/ocsc\\_adjud/BBCLondon94.9FM.pdf](http://www.ofcom.org.uk/tv/obb/ocsc_adjud/BBCLondon94.9FM.pdf)

For the reasons set out in the adjudication, Ofcom imposed a financial penalty of **£25,000** on the BBC, and directed it to broadcast a statement of Ofcom’s findings on BBC London 94.9FM, on a specified occasion, in a form to be determined by Ofcom. Listener competitions were included in five pre-recorded editions of *Tony Blackburn* that were broadcast ‘as live’. Listeners to the broadcasts were invited to participate in the competitions when they had no chance of entering or winning.

## In Breach

### Blue Peter

BBC1, 4, 9 and 11 January 2006, 17:00

CBBC, 4, 9 and 11 January 2006, 18:30

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#### Introduction

In January 2006, the long-running children's programme *Blue Peter* conducted an online audience vote to determine the name of its new kitten.

#### 4 January 2006

The kitten was presented to the viewers during the programme broadcast on 4 January 2006. One of the presenters invited viewers to suggest names for the kitten:

*"We want you to suggest names by email via the internet, we haven't got long 'cos obviously he needs a name as soon as possible so can you get them in by Monday please".*

At the same time, the relevant page of the *Blue Peter* website said:

*"We're giving you the chance to choose the new kitten's name. What do you think he should be called?"*

Emailed suggestions were then collated into a shortlist of five names.

#### 9 January 2006

At the beginning of the edition of *Blue Peter* broadcast on 9 January 2006 the presenters introduced the kitten again, and discussed some of the names that had been submitted by viewers. The following conversation occurred between two of the presenters:

Presenter 1: *"They're very bizarre names. What do you think of those then? Not a lot actually. But ultimately it is your decision because you, your vote, will decide the name of the eighth Blue Peter kitten".*

Presenter 2: *"Yes and if you haven't suggested a name yet and you would like to, get onto the website now because in about twenty minutes' time we're gonna read some more names out".*

Just before the end of the programme the presenters discussed various suggestions, and the sequence ended with one of them saying: *"Very exciting stuff...it's entirely up to you, you choose".*

As the programme went to air at 17:00, a shortlist of five names appeared on the *Blue Peter* website, with an invitation to viewers to vote for their favourite, and the statement *"the name with the most votes will be the name of the kitten".*

When the poll closed, a total of 22,489 votes had been cast. The final tally showed 'Cookie' with 8,910 votes (40%) as the winner, and, in second place, 'Socks', with 5,210 votes (23%).

## 11 January 2006

During the edition of *Blue Peter* broadcast on 11 January 2006, the presenters announced that the new kitten was to be named 'Socks'. This was despite the name 'Cookie' receiving the most votes.

We asked the BBC for comments with regard to Rule 2.2 of the Code which states "Factual programmes or items or portrayals of factual matters must not materially mislead the audience".

### **Response**

The BBC said the programme's Editor maintained that "it was always his intention that the production team would choose the new kitten's name". The Editor further maintained that he sought to change the presenters' scripts for the 9 January 2006 programme between the rehearsal and the broadcast to make that clear. He wished to avoid giving the impression that the vote alone would determine the kitten's name, and he considered the choice of 'Socks' both to be appropriate for the cat's appearance, and an appropriate matter for "editorial discretion".

The BBC added that during the rehearsal on 11 January 2006, the kitten was given the name 'Cookie', but that at the 'notes meeting' after the rehearsal, the Editor informed the production team that the winning name would be 'Socks'. The BBC reiterated, that "the Editor maintains it was always his intention to have the final say on the name for the new kitten".

The BBC explained that the issue came to the attention of BBC senior management during the second 'trawl' of its content in July 2007. On 20 September 2007 the BBC issued a press release explaining what had occurred, and on the same day the Director General wrote on the BBC's blog, 'The Editors', "*Letting down the children who watch Blue Peter and who trust it implicitly is a truly terrible idea – even if all that is at stake is the difference between calling a cat 'Cookie' or 'Socks'.*"

During the edition of *Blue Peter* broadcast on 25 September 2007, the following apology was broadcast:

Presenter 1: (holding a kitten): *"Ah look at that, our pets are loving their new environment. And the new set isn't the only new thing around here. Check out this little fella. This is our brand new kitten, Cookie. He's only 13 weeks old and he's a little ragdoll and he's so cute we're all in love with him".*

Presenter 2: (with Socks): *"He's absolutely gorgeous. Now you may have already heard of Cookie in the news. Cookie is the name that actually should have been given to Socks when he arrived last year. At the time we asked you to go online for the name that you wanted and Cookie came out on top but he was called Socks, the name that came second. That was wrong so today we'd like to say we're sorry".*

Presenter 1: *"Yes, we would, and what better way to say sorry than this cute thing, You can read more about Cookie on my blog on the website and why not get online and send him a little good luck message".*

## **Decision**

Ofcom recognises that, for editorial reasons, there may be circumstances in which broadcasters may wish to retain the right to veto the outcome of a viewer vote. In such cases, however, we expect this to be made clear to the audience before they participate. The programme should not suggest to the audience that the vote is the only factor that will determine the outcome.

In this case the information given to the audience when encouraging them to participate stated that the outcome of the vote would decide the name of the kitten (this was unequivocal in the programme of 9 January 2006). However, this was not the case. The audience was therefore deceived. This deception involved not only those viewers who voted but also all viewers who watched the programme, believing the kitten's name was the viewers' choice.

Even though the issue concerned something as innocuous as the naming of a cat, Ofcom considers such deception to be serious, especially given that the programme is primarily aimed at children and is one of the UK's longest running and most trusted children's programmes. As the BBC acknowledged, viewers were misled and their trust in the programme undermined. The programme was therefore in breach of Rule 2.2 of the Code.

## **Breach of Rule 2.2**



## In Breach

### Film Café

*BBC Asian Network, 17 February 2007, 10:00*

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#### Introduction

*Film Café* was a weekly radio programme broadcast on BBC Asian Network until June 2007. Once a year, the programme organised its own Bollywood film awards, with categories such as 'Best Actor', 'Best Actress' and 'Best Film'. Some of the categories were voted for by listeners via the BBC Asian Network website. The programme contained encouragements to listeners to vote in this way.

The winners were announced during the edition of the programme broadcast on 17 February 2007. In the 'Best Supporting Actress' category, Hema Malini received the most votes, but Soha Ali Khan was announced on-air as the winner. In the 'Best Actress' category, Kajol Devgan received the most votes but Rani Mukherjee was announced on-air as the winner.

We asked the BBC for comments with regard to Rule 2.2 of the Code which states "Factual programmes or items or portrayals of factual matters must not materially mislead the audience".

#### Response

The BBC stated that in the case of the 'Best Supporting Actress', the wrong winner was announced due to human error, as the interactive producer misread the figures. It said that "it appears that the programme's producers did not check the actual figures, and proceeded on the basis that the interactive producer had correctly identified the winning actress".

In the case of the 'Best Actress', the BBC advised that the incorrect winner was announced because a planned interview with the actual winning actress fell through. The BBC explained that the producer had tried to secure interviews with all the winners. Some of these interviews were pre-recorded and some were arranged to take place as a live element of the programme. However, the production team had no contingency plan in case a problem arose with the live interviews.

At approximately 11:00 (an hour into the programme), the producer received a telephone call from the winner's assistant to say that the interview would not take place. The producer decided to announce Ms Mukherjee (the runner-up) as the 'winner' of the 'Best Actress' award and use a pre-recorded interview with the director of the film that had resulted in Ms Mukherjee being nominated for the award.

On 29 September 2007 the BBC Asian Network broadcast the following apology:

*"As you may have heard, in February this year, Film Café, a programme that is no longer on air, announced its listener chosen Film Café Award winners. It's now clear that we made some mistakes in announcing the results of those awards.*

*Under the Best Actress category, we wrongly announced that Rani Mukherjee had won the award when in fact the listener's choice was Kajol.*

*We also mistakenly announced the result of the Best Supporting Actress award as Soha Ali Khan when it should have been Hema Malini. These were bad mistakes and the Asian Network apologises unreservedly for them”.*

The BBC said that in both instances it “accepts that the audience was misled”, but distinguishes between the two cases, in that in the case of the ‘Best Actress’ award an incorrect winner was announced “as a result of a deliberate action by the producer”, whilst in the case of the ‘Best Supporting Actress’, the incorrect winner was announced “due to human error”.

It added that the decision to substitute Ms Mukherjee for the winner chosen by the listeners “was made by the producer based on her belief as to what was best for the programme” and that her action “contravened the BBC’s Editorial Guidelines”.

### **Decision**

Ofcom recognises the distinguishing factors in this case. However, both instances resulted in the audience being deceived about the true results of the votes. This deception affected not only those listeners who voted but also all those who listened to the programme.

We note that an error in reading the results led to the incorrect announcement in the ‘Best Supporting Actress’ category. We accept that human error can occur in the course of broadcasts. However, we expect broadcasters to have procedures in place to validate the results of audience votes before they are broadcast and therefore minimise the likelihood of mistakes being made on air.

We also accept that unforeseen circumstances can affect the content of broadcasts. Again, we expect broadcasters to have in place contingency plans that can be instigated should the unexpected happen. These plans should not include actions that could result in the audience being misled.

The case demonstrates the production team’s lack of regard for the Code when planning the programme. Its failure to properly prepare and conduct the poll resulted in the audience being misled. The producer’s decision to change the outcome of the ‘Best Supporting Actress’ vote also reveals a willingness to exploit audience trust in the programme and knowingly mislead listeners. The programme was in breach of Rule 2.2 of the Code.

### **Breach of Rule 2.2**

## In Breach

### The Tom Robinson Show

*BBC 6 Music, September 2006*

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#### Introduction

*The Tom Robinson Show* is broadcast on BBC 6 Music. In September 2006 the programme included an ad hoc competition to win tickets to a concert. However, no entries were received from listeners and a winner's name was subsequently made up by the producer of the show.

Ofcom requested the BBC's comments under Rule 2.11 of the Code (fair conduct of competitions).

#### Response

The BBC advised that in or around September 2006, Tom Robinson had interviewed members of a music band. During the interview, the band made an unplanned offer to listeners of a pair of tickets for a forthcoming concert. An ad hoc competition was created in which listeners were invited to submit a text message to the programme with the answer to a music based question, on the basis that the first correct answer would win the tickets. No entries were received and, on the spur of the moment, and in order to spare the band, the programme and the presenter any embarrassment, the producer invented a winning name which was broadcast.

The BBC accepted that a breach of trust took place because the audience was knowingly misled by the producer into believing that the winner announced on air was a listener who had entered the competition. However, it continued that no individual involved made any financial gain from this practice and nor did the BBC. The BBC believed that it was evident from the manner in which the producer came forward to admit what had happened that he had had intended no personal gain and that the motive was not to deceive the audience, although the BBC accepted that was the result.

In mitigation, the BBC said that it had not occurred to the producer at the time to think about the issue of audience deception and that his intention had been to produce the best programme he could and to spare the band and those involved from embarrassment in the face of no listener entries to the competition. The BBC stated that it should have been clear to the producer that he should apply Editorial Guidelines and that any proposal to step outside those guidelines should have been referred to the Controller of Editorial Policy. Further the producer could have referred the issue up to the Head of Programmes or more senior members of staff who would have advised him of a different course of action.

The BBC urged Ofcom to take into account the fact that this was an unplanned competition, spontaneously established in response to an offer of tickets, made live on air by the guest band and where the misjudgement occurred on the spur of the moment by the producer to avoid any embarrassment to those involved. It added that, in addition, no member of the public was disadvantaged or was deprived of the opportunity to win the prize.

## **Decision**

Rule 2.11 of the Code states that “Competitions should be conducted fairly, prizes should be described accurately and rules should be clear and appropriately made known”.

Ofcom noted the circumstances that led to the deception of the programme’s audience in this case. In particular, the decision to fake a winner was taken on the spur of the moment during a live broadcast, when no entries had been received for the competition.

Ofcom noted that on this occasion no audience harm was caused because no text messages from listeners were actually received. However, it was clear on this occasion that both editorial continuity and a desire not to embarrass the band took precedence over audience trust in a misguided attempt to hide the fact that no listeners appeared to be interested in the tickets on offer.

By concluding the competition with a fake name, the competition was conducted unfairly, and was therefore in breach of Rule 2.11. Breaching the audience’s trust in this way is unacceptable, regardless of the circumstances in which it has occurred.

## **Breach of Rule 2.11**

## Statement on other BBC competitions

### Various programmes

*Various BBC radio & television services, various dates between 1 January 2005 and June 2007*

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#### Issue

The BBC advised Ofcom that when it decided to investigate instances involving audience deception and the use of PRS in programmes it had deliberately cast its 'trawl' widely. The trawl had been conducted at a time when newspapers were publishing allegations of serious malpractice across the broadcasting industry. The BBC said that it had wished to find any areas where BBC programmes were not being made to the highest standards, and that it had uncovered a variety of concerns in relation to the fair conduct of competitions. It had categorised a number of the instances as "less serious". Among these instances there were a number of common themes, for example: the filtering of competition entrants for editorial reasons; taking steps to produce winners when competitions were run fairly but produced no entrants; assisting competition entrants to enable them to win prizes; and portraying entrant selection as random in cases when it was not.

In relation to the instances that the BBC had categorised as "less serious", the BBC said that in some cases it found that local management had discovered examples of poor practice prior to its investigations and already put a stop to it. It also said that staff turnover in production areas was relatively high. As a consequence, whilst individuals came forward to reveal practices and were confident that the events they described had happened, they had been unable to provide important details such as transmission dates or, on some occasions, even programme titles. The BBC said that it had also dealt with incomplete information, such as a lack of available telephony data, and accounts of incidents which were no more than hearsay. The BBC said that cases it could not adequately substantiate had not been taken any further. It also stated that its assessment at the time had been that there had been instances of poor practice, but not of the same level of seriousness as those specifically reported to the BBC Trust and to Ofcom as serious editorial breaches.

#### Conclusion

As evidenced by the sanctions imposed on the BBC and other broadcasters in this area, Ofcom considers cases that involve audience deception to be extremely serious. This is because any such deception goes to the heart of the issue of trust between a broadcaster and its audience.

If substantiated, the alleged practices summarised above are likely to have breached Rule 2.11 of the Code, which requires competitions to be conducted fairly.

Ofcom notes that the BBC has been unable to verify a number of alleged instances that came to light during its trawl due to incomplete recollections of production staff or a lack of available data. In the absence of specific data, it is not possible for Ofcom to reach a decision on individual cases. However, Ofcom is concerned by the diverse nature of the "common themes", which appear to indicate that, at the time, a lack of clarity or understanding by BBC production staff of the importance of conducting listener and viewer competitions fairly. In this regard, Ofcom has taken into account the extensive steps taken by the BBC to uncover these issues and the

comprehensive remedial measures now in place, such as its “Safeguarding Trust” mandatory training programme, the revisions to the guidance attached to its Editorial Guidelines and the tightening of its management controls (see page 4, above).

In light of these actions, and also because of the lack of evidence available, Ofcom does not intend to take further regulatory action in respect of these matters. However, we take this opportunity to stress once again the need for broadcasters to take particular care to ensure that their competitions are conducted fairly. We also remind broadcasters that where Ofcom identifies a breach of the Code as serious, we will consider imposing statutory sanctions.

## Not in Breach

### **Audience voting in various BBC television programmes**

*Strictly Come Dancing, BBC1, 15 December 2007, 18:00*

*Sports Personality of the Year, BBC1, 9 December 2007, 19:00*

*Strictly Come Dancing: The Final, BBC1, 22 December 2007, 21:25*

*Eurovision: Your Decision, BBC1, 1 March 2008, 19:00*

*I'd Do Anything, BBC1, 10 May & 31 May 2008, 19:30 & 18:00*

*Last Choir Standing, BBC1, 30 August 2008, 18:00*

*Eurovision Dance Contest, BBC1, 6 September 2008, 20:00*

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### **Introduction**

Ofcom received a total of 24 complaints about the programmes listed above. All of the complainants contacted Ofcom after having trouble getting through on phone lines to register votes.

The complainants' reactions to difficulties registering votes varied. Complainants variously said:

- merely that they had been unable to vote;
- that because they (and in some cases, others they knew of) had been unable to vote the result was not fair;
- that because they (and in some cases, others they knew of) had been unable to vote they suspected the vote was 'fixed';
- one complainant experienced difficulty voting on a landline phone but did succeed by calling from a mobile phone; and
- one complainant objected that she had tried to vote for a nation in the *Eurovision Dance Contest* well within the voting 'window' but received recorded messages saying the vote had been closed.

Ofcom sought comments on all of the above cases from the BBC under Rule 2.2 of the Code (factual programmes or items or portrayals of factual matters must not materially mislead the audience).

### **Response**

The BBC explained that there a number of factors beyond its control that can result in callers not being able to register a vote. For example, some viewers misdial, and some call outside the voting 'window', despite clear information about the opening and closing of lines being given in the programmes.

Further, the BBC said, in particularly popular programmes, there can be instances of some congestion in the system. The BBC takes steps to address that possibility, for example by telling viewers that lines may be busy and if they don't get through they should try again. This was done, for example, in the 2007 final of *Strictly Come Dancing*.

The technology used for handling telephone votes is operated by BT and is extremely robust, capable of handling 190,000 votes per minute. Viewers' votes are

recorded by an automated system and although the precise call duration depends on how long the caller stays on the line after hearing the recorded message telling them their vote has been registered, the same charge (a 'drop charge') is applied regardless of how long the caller stays on the line.

The broadcaster said that for most programmes that use voting, BT staff are on hand to make adjustments if there appears to be a risk of congestion, and inform the BBC and service providers of any such issues. BBC staff also monitor the flow of votes and liaise with the BBC's Audience Services group, the contact point for complaints.

In respect of *Eurovision Dance Contest*, the BBC supplied a recording with a 'burnt-in' time code that clearly showed the voting beginning at 21:19 and ending at 21:35. Presenters declared when the vote opened, and twice captions warned of its imminent closure – at 21:32 ("*lines close shortly*") and at 21:34 ("*only a minute left*").

## **Decision**

Ofcom found that the problems encountered by viewers were not matters that called into question any of the programmes concerned. Ofcom was satisfied that in all cases the problems in getting through to vote were likely to have been because of mistakes made by the callers when dialling or misunderstanding when voting periods began and ended, or simply because of congested lines.

The BBC confirmed that in September 2007 – therefore before any of the programmes referred to in this Finding were broadcast – technical changes were made so that callers who don't get through or who call outside the voting 'window' are not charged<sup>1</sup> and will hear a message explaining that their vote has not been registered.

It is important to stress that lines can become overwhelmed, particularly soon after voting lines open during the most popular shows. This can mean that some callers will hear engaged tones. This should not be understood by callers as anything more than the effect of heavy demand on the system as a whole.

Some complainants questioned why one contestant's number was engaged but another's was not. In such cases viewers should be reassured that the technical structure of the telephone network does not allow for calls for different contestants to be treated differently. At least the first eight digits of the phone numbers (the 'stem' numbers) are the same for all contestants, with only the last few (often two) digits of the phone number specific to a contestant. The preceding 'stem' digits common to all the numbers are those used by the network to route the calls to the vote recording system. The system answers calls in turn using a large number of answering points that can capture any of the votes, i.e. any of the final identifying digits. The chance of a call getting through is therefore the same, regardless of which contestant a caller is voting for<sup>2</sup>.

## **Not in breach**

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<sup>1</sup> Ofcom understands that in these circumstances a premium charge is not incurred but that network charges applied by the caller's telephone network provider may be still be charged. Such charges are outside the control of the broadcaster.

<sup>2</sup> The premium rate telecoms regulator, PhonepayPlus (PP+), has published some FAQs on this subject, available at: <http://www.phonepayplus.org.uk/consumers/faq/default.asp>



## Not in Breach

### Sports Personality of the Year

*BBC1, 9 December 2007, 19:00*

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#### Introduction

In this long-standing annual sports review and award programme viewers were encouraged to call premium rate telephone numbers to vote for the Sports Personality of the Year. Six viewers alleged that the public vote was improperly conducted.

Two sets of trophies were seen in the programme. One set was present in the programme's venue (the National Exhibition Centre, Birmingham); the other set was in Las Vegas and shown with two of the sportsmen in the vote, the boxers Ricky Hatton and Joe Calzaghe. Four complainants believed that the trophies in Las Vegas were the originals and suggested that the vote had been "rigged" because, they asserted, the original trophies would only have been sent to the USA if the BBC had known in advance that one or both boxers would be successful in the vote.

The other two viewers considered the BBC's actions in arranging for trophies, whether originals or copies, to be in Las Vegas was itself an indication of prior selection of winners.

Public voting took place only over the course of the live programme, the ten contenders having been previously chosen by shortlists compiled by 31 magazines and newspapers and a panel of sports experts.

Ofcom sought comments from the BBC in respect of Rule 2.2 of the Code (factual programmes or items or portrayals of factual matters must not materially mislead the audience).

#### Response

The BBC stated that the originals of the trophies were in fact on set in the UK when the programme was broadcast live from the National Exhibition Centre in Birmingham. The trophies in the USA were copies.

Copies had been ordered and used for the sequences broadcast live from Las Vegas because the producers considered it likely that either or both of the boxers would do well in the vote. Further, the BBC said that the incumbent Sports Personality of the Year, Zara Phillips, was shown carrying the real trophy to the trophy table at the home venue in Birmingham.

The BBC supplied a list of the voting figures to Ofcom together with certification by a third party verifier that the vote had been properly conducted.

The BBC also said that precisely the same arrangements had been used in 2005. Andrew Flintoff was at the time on tour in Pakistan and was voted the winner. On the night he had been presented with a replica trophy; he received the real trophy later when he was back in England. As with 2007's coverage, three replica trophies had been used for the overseas link.

The BBC did not consider the public to have been misled in any way by 2007's *Sports Personality of the Year* show.

**Decision**

Ofcom accepted that the real trophies had not in fact been sent to the USA.

Ofcom carefully considered and assessed the voting data in this case. It was satisfied that the vote was conducted fairly and the BBC had not misled the audience.

**Not in breach**