



Cân i Gymru

Type of case	Broadcast Standards
Outcome	Breach of Rules 2.13, 2.14 and 9.30
Service	S4C
Date & time	1 March 2024, 20:00
Category	Broadcast voting
Summary	<p>Due to a technical fault with the voting system used during S4C’s annual song contest, some viewers voted multiple times, as their telephone votes were not confirmed during their calls to register them. As a result, Ofcom considered the broadcast vote was conducted unfairly and was materially misleading, in breach of Rules 2.13 and 2.14. Further, each call was charged at a premium rate of 25p, but access charges were not made clear to viewers, in breach of Rule 9.30.</p>

Introduction

S4C (or “the broadcaster”) is the Welsh-speaking public service broadcaster for Wales.

Ten viewers complained to Ofcom about problems they had experienced when attempting to vote in S4C’s annual song contest, *Cân i Gymru*.

During the live broadcast, eight contestants each performed their own song and viewers were given the opportunity to vote by telephone for their favourite entry (or entries), during a voting window of just under half an hour, after which the winner was announced.

Having provided a recording of the broadcast on request, S4C contacted Ofcom and said:

“Following our investigation into the matter, we discovered that there were technical problems with the voting system on the night. Those who called to register a vote were not issued with the pre-recorded message to confirm successful receipt of their vote. Consequently, many voters made further calls to attempt to register their vote and were charged for each call”.

“Since then, we have launched a scheme to enable all callers who were charged for more than one call to claim a refund...”.

When viewing the material provided, Ofcom also noted that:

- a different controlled premium rate number, commencing 09..., was dedicated to votes for each contestant; and
- throughout the programme, when told how to vote for a contestant, viewers were given the following cost information, as part of an on-screen graphic:

“25c yw cost yr alwad o linell ddaearol. Gall y gost amrywio rhwng cyflenwyr a bydd yn sylweddol uwch o ffonau symudol”.

In English, this means:

“25p is the cost of a call from a landline. The cost can vary between suppliers and will be significantly higher from mobile phones”.

Ofcom considered the broadcast raised potential issues under the following rules of the Ofcom Broadcasting Code (“the Code”):

Rule 2.13: “Broadcast competitions and voting must be conducted fairly”.

Rule 2.14: “Broadcasters must ensure that viewers and listeners are not materially misled about any broadcast competition or voting”.

Rule 9.30: “The cost to viewers for using non-geographic telephony services must be made clear to them and broadcast as appropriate”.

Ofcom therefore requested comments from S4C on how the programme complied with these rules.

Response

The broadcaster said the winner of its annual composition and performance contest, *Cân i Gymru*, was selected through a televoting system provided by a third party, adding that eight phone lines were available for viewers to cast their votes. Both S4C and the production company had access during the programme to an app that showed the number of calls received.

The broadcaster confirmed that, “during the voting [period] on the night of the competition...S4C received comments on social media and through its viewers’ hotline stating that the voting system was not working”. It added that “this was checked by S4C through the app, which showed a significant number of votes being cast, so it seemed that the system was working properly”. The broadcaster said, “no notification was received from the third-party provider that there was a fault with the system” and the contest therefore continued on the night, with the winner announced after the process of counting and verifying the votes for each contestant.

S4C said the telephone voting system had been designed to play a confirmation message to each caller once they had cast their vote, informing them that their vote had been registered, after which it would end the call. The broadcaster reconfirmed that, as a result of a subsequent investigation into the comments and complaints received during the programme, it had discovered that the confirmation message had not been played when voters had called to cast their telephone votes. It added that this had left some viewers under the impression that their vote had not been

recorded. S4C confirmed that all calls were counted as valid votes.

The broadcaster said it had therefore “decided to refund all individuals for all additional votes they had cast following their initial vote” for a particular contestant, which it publicised “on S4C’s website and social media sites as well as on the S4C television channel”. It added that: on 14 March 2024, it also announced an S4C Viewer’s Hotline and “contacted each individual who had contact[ed] them to make a comment or complaint, to inform them of the refund system”; and viewers had “until 31 May 2024 to submit a refund application in accordance with the guidelines set out”.

S4C said it also carried out a re-count of the vote “on a ‘one call, one vote’ basis”, adding that “the same result ensued as the one announced live on television on the night” and clarifying that “the result was the same winner...”.

Rule 2.13

S4C said “the televoting system [used in the programme] was provided...by a specialist company authorised by the Phone-paid Services Authority [(“PSA”)]”, which had “conducted a test of the system before the lines opened”, when no problem had been found. The broadcaster said it was not therefore possible for it to foresee or avoid the fault that had occurred on the night. S4C therefore considered it had taken “all proper care with the choice of network and operating arrangements of the televoting system”, adding that, “despite the fault on the night, [it was] satisfied that the competition was run fairly”.

The broadcaster also responded to Ofcom’s Preliminary View recording a breach of Rule 2.13, that it was not possible to determine from the data provided by the broadcaster whether multiple voters had voted more than once intentionally or because they were unsure whether their vote had been registered, making the result unreliable. S4C said it had analysed the data it had provided to support its view that only a little over one fifth of the duplicate votes for the winning song had needed to be intentional for the result of the contest to be valid. To support further its view on the reliability of the vote, S4C also provided a breakdown of total and duplicate voting figures for its four most recent annual contests. It drew Ofcom’s attention to the fact that the proportion of votes that were duplicates in 2021, 2022 and 2023 were a little over half of the total votes cast and that “even though the [proportion] for 2024 is higher, the result would have been the same even if [it] was consistent with 2021, 2022 and 2023”.

S4C therefore concluded that “on the balance of probabilities, the evidence therefore shows that the result was fair and reliable”, adding that the televoting provider had re-confirmed “that the...figures are valid and that they too conclude that the result was fair”. The broadcaster also emphasised that “it is not always possible to know with certainty if someone who has voted more than once has intended to do so, even in the absence of any technical issues on the side of the broadcaster or its agent”, adding that “this could be due to poor signal or a technical issue on the side of the telecommunications company” and “only reasonable steps can be taken to prevent this”.

Rule 2.14

The broadcaster said it considered viewers were not materially misled about the voting system, adding that:

- potential phone charges were made clear to viewers;

- each call made by viewers during the voting window cast a valid vote, even though no message was provided to confirm it;
- every viewer who had voted multiple times for a contestant was offered a refund for each subsequent vote they had made from any single phone number; and
- it considered that the system fault had not affected the result of the contest.

In response to Ofcom’s Preliminary View recording a breach of Rule 2.14, that viewers “had been misled as a result of the lack of information provided and had suffered financial detriment as a consequence”, S4C apologised “for the fact that viewers did not receive a message confirming that their vote had been received” and accepted “that an element of unintentional misleading occurred”. However, the broadcaster said it did not accept that viewers were materially misled, as “S4C acted quickly in ensuring that no one was at a loss financially” and had not acted negligently or unfairly. The broadcaster said there was therefore “no basis (taking into account Ofcom’s guidance on rules 2.13-2.16) to conclude that S4C has undermined viewers’ trust or caused offence”.

Rule 9.30

S4C considered that “all appropriate information about cost [was provided] during the programme, so viewers would have been aware of the costs before voting”.

In response to Ofcom’s Preliminary View recording a breach of Rule 9.30, that the cost to viewers for using non-geographic telephony services was neither made clear to them nor broadcast as appropriate, S4C said it accepted “the information provided to viewers was not ideal and [it undertook] in future to ensure that there is a clear and unmistakable difference between the two elements of the cost of the call, namely the service charge and the access charge”.

S4C said it will “work with the production sector to emphasise the importance of providing clear information regarding the cost of calls”, adding that it aims “to ensure (as has happened historically, but did not happen on this occasion) that any competition terms and conditions relating to any S4C programme are checked by a member of [its] legal team before transmission”.

To support or clarify its representations to Ofcom, S4C provided:

- copies of 135 comments/complaints it had received from viewers on the matter under investigation by Ofcom;
- the terms and conditions of the refund process it had implemented;
- a refund system communication report, detailing precisely how it had informed the public of the incident and publicised the refund process it had implemented;
- a transcript (translated into English by S4C) of oral and on-screen solicitations to vote that had been broadcast during the contest; and
- spreadsheets detailing each vote it had received and the contest results under both the vote counting system used during the broadcast, which included multiple votes for a contestant made from any single phone number, and the system used as a result of the broadcaster’s investigation, which included only one vote for a contestant from each phone number used.

S4C said the information it provided included a breakdown of “the number of refund claims received, processed, settled in full and rejected”. Ofcom could not ascertain such figures from the information it provided. However, the broadcaster clarified that it had rejected only four refund applications, due to the relevant claimants not having shared their telephone bills with S4C and/or having refused to share their bank details with it.

In response to the concluding concern in Ofcom’s Preliminary View that the broadcaster “had not detailed in its representations how the fault in the voting system arose or what steps had been taken to avoid recurrence”, S4C said:

- the production company for *Cân i Gymru* had used the same televoting provider for the last 12 years of the contest, with no issue having occurred until this year;
- S4C understood that, before the contest, the production company had performed three tests on the voting system, when “different members of the production team phoned the voting line for each song, and all received a message confirming the successful vote for each song in line with the numbers allocated”;
- the technical fault had been accidental (concerning which full details were also provided by S4C, in confidence); and
- in future, S4C aims to:
 - offer more than one form of voting in the contest;
 - run a systems’ test while voting is live, telling viewers of any issue(s) during the broadcast; and
 - delay the announcement of results until any such issue(s) have been resolved.

Decision

Reflecting our duties under the Communications Act 2003, Section Two of the Code requires that generally accepted standards are applied to the content of television services so as to provide adequate protection for members of the public from the inclusion of harmful material in programmes. Such protection includes, but is not limited to:

- Rules 2.13 and 2.14 of the Code, which, among other things, require broadcasters to ensure that broadcast voting is conducted fairly and does not materially mislead audiences; and
- Rule 9.30, which requires that non-geographic telephony service costs are made clear to viewers.

In this instance, when running its annual song contest, S4C conducted broadcast voting to establish the winner. During the live broadcast, viewers were informed how to vote for each act by using one of eight phone lines, each of which was dedicated to one of eight contestants. However, when viewers called to vote, no confirmation that their vote had been registered was provided.

Rule 2.13

Broadcast voting in live television contests must be conducted fairly, to ensure the integrity of the results and audience trust, in both broadcasters and the material they broadcast.

Ofcom acknowledged that, in using the services of a third party to conduct the vote that took place in *Cân i Gymru*, S4C's opportunity to detect and mitigate the effect of the voting system fault that occurred was limited. We also acknowledged that S4C considered it had taken "all proper care with the choice of network and operating arrangements of the televoting system", given it had used the services of a PSA-authorized service provider, which had tested the system before broadcast voting commenced and had found no problems with it.

However, Ofcom did not agree with S4C that the vote had been conducted fairly. In our view, any viewer who chose to vote may have believed their vote had not been registered, due to the lack of any acknowledgement to the contrary when they called the relevant number to place their vote. The data S4C provided confirmed that almost 80% of the votes recorded were multiple votes.

Ofcom acknowledged that, on the basis of the full breakdown of votes provided, the outcome – i.e. the final placement of each contestant from third to first place, as broadcast – was identical, irrespective of whether multiple votes were discounted as a result of the technical fault.

However, we took into account that the failure in the system used to conduct the vote had made it impossible to establish which of the resultant multiple votes (i.e. almost 80% of the total votes cast) were made on the basis of the voter:

- not knowing whether their vote had been registered and therefore calling to vote again; or
- intentionally voting multiple times for a particular contestant.

We also took into account S4C's subsequent representations, in which the broadcaster highlighted that the proportion of votes that were duplicates in three previous contests (2021, 2022 and 2023) were consistently a little over half of the total votes cast and that "even though the [proportion] for 2024 is higher, the result would have been the same even if [it] was consistent with 2021, 2022 and 2023". However, Ofcom disagreed with S4C's conclusion that "on the balance of probabilities, the evidence therefore shows that the [2024] result was fair and reliable". We accepted the broadcaster's view that "it is not always possible to know with certainty if someone who has voted more than once has intended to do so, even in the absence of any technical issues on the side of the broadcaster or its agent". Nevertheless, from the figures S4C provided, not only was there a higher proportion of duplicate votes in the 2024 contest (in which the technical fault occurred), but the total number of votes cast in it were between almost two and three times those cast in each of the three previous contests, for which there appeared no definitive explanation.

Ofcom does not dispute that the overall outcome of the vote may have been valid, but, for the above reasons, we consider it was unreliable. The broadcast voting that took place in *Cân i Gymru* was not therefore conducted fairly, in breach of Rule 2.13 of the Code.

Rule 2.14

Ensuring that viewers are not materially misled about broadcast voting helps ensure audience trust in broadcasters and the material they broadcast. When a vote involves payment, it can also help to ensure that viewers do not suffer financial detriment.

Ofcom acknowledged that, in this instance, S4C considered viewers were not materially misled about the voting system, given:

- potential call charges were made clear to viewers;

- each call made by a viewer cast a valid vote; and
- appropriate refunds were offered to viewers who had voted multiple times.

We noted that every call to vote (over any of the eight available voting lines) was charged at a premium rate of 25p, together with any other charges for which the caller may have been liable (see 'Rule 9.30', below). In addition, as noted above (see 'Rule 2.13'), every viewer who chose to vote and believed their vote had not been registered, due to the lack of any acknowledgement to the contrary when they called the relevant number to place their vote, was left unaware that they had voted. In Ofcom's view: any such viewer had been misled as a result of the lack of information provided; and, in the event that they then called in an 'attempt' to vote again, had suffered financial detriment as a consequence.

Ofcom took into account both S4C's subsequent apology "for the fact that viewers did not receive a message confirming that their vote had been received" and its acceptance "that an element of unintentional misleading occurred". However, even though the broadcaster considered it had "acted quickly in ensuring that no one was at a loss financially" and had not acted negligently or unfairly, we disagreed with its conclusion that there was therefore "no basis...to conclude that S4C has undermined viewers' trust or caused offence". Ofcom accepts that the broadcaster may have subsequently made significant efforts to mitigate the effect of any financial detriment caused by the technical fault that had occurred. Nevertheless, even though S4C clarified that it had rejected only four refund applications, we could not ascertain from the information it had provided "the number of refund claims received, processed, settled in full and rejected", as the broadcaster had claimed we could.

Ofcom therefore considers that viewers were materially misled about broadcast voting, in breach of Rule 2.14 of the Code.

Rule 9.30

It is essential that viewers solicited to use a non-geographic telephony service during a broadcast know the costs involved in using such a service. Making these clear helps both to ensure viewers do not suffer financial detriment and to maintain their trust in the broadcaster and the material it broadcasts.

Ofcom acknowledged S4C's view that "all appropriate information about cost [was provided] during the programme, so viewers would have been aware of the costs before voting". However, we disagreed.

Controlled premium rate services ("CPRS") commencing 09...¹ are non-geographic telephony services², to which Rule 9.30 therefore applies. They are also Unbundled Tariff Numbers ("UTNs"), and their retail price has two separate elements, consisting of an Access Charge, which is paid to the phone company originating the call and forming part of the consumer's tariff package, and a Service Charge, which is paid to the phone company terminating the call and may be shared with the company providing the service.

¹ 09 CPRS are mainly used for competitions, TV voting, horoscopes, chat lines, adult lines, recorded information and professional advice services.

² Non-geographic numbers are phone numbers that are not linked to a specific location.

Ofcom's [Guidance to Rule 9.30 of the Code](#) clarifies that "the Service Charge is the charge linked to each individual ... 09 ... number" and adds:

"It is the amount which applies to calls to that number from all fixed and mobile phones. Importantly, the Service Charge must be identified whenever the number is presented (i.e. in advertising and programming).

"Broadcasters are required to give viewers specific pricing information when UTNs are used; in particular broadcasters are required to make clear in a prominent position and in close proximity to the UTN, the relevant Service Charge. Ofcom advises that one of the following messages are used, either:

"Call cost [i.e. service charge] per minute plus your phone company's access charge",

or:

"Calls cost [i.e. service charge] per minute plus your network access charge"."

In this instance, the call cost information provided by S4C when telling viewers how to vote for a contestant, comprised the following (in Welsh), as part of an on-screen graphic:

"25p is the cost of a call from a landline. The cost can vary between suppliers and will be significantly higher from mobile phones".

In Ofcom's view this message did not clarify the full cost implications associated with the UTNs the broadcaster was promoting, as it failed to draw viewers' attention specifically to the Access Charge associated with them. The cost to viewers for using non-geographic telephony services was therefore neither made clear to them nor broadcast as appropriate, in breach of Rule 9.30.

Conclusion

Ofcom reminds all broadcasters that they are ultimately responsible for all the material they broadcast. We therefore welcomed the actions taken by S4C to avoid recurrence.

Breach of Rules 2.13, 2.14 and 9.30