[GB] BBC Fined for Unfair Conduct of Premium Rate Telephone Competition

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Ofcom, the UK communications regulator, has fined the BBC GBP 50,000 for the unfair conduct of a premium rate telephone competition. It is the first time that the BBC has been fined. A report commissioned by Ofcom has also found that there are systematic failures in compliance in the running of such competitions by a large number of broadcasters; the costs to competitors of such unfair treatment may run into millions of pounds.

The BBC case concerned a telephone competition run on the BBC children's programme "Blue Peter". It was unusual in two ways; firstly because the proceeds went, not to the BBC itself, but to the charity UNICEF, and secondly because of the iconic nature of the programme, a celebrated and long-running magazine programme for older children with a strong educational content. During the live programme there was a technical failure which meant that information about the telephone calls could not be retrieved by studio staff. As a result, no caller could be selected to give the correct answer on air, as had been promised at the beginning of the programme. Instead a researcher on the production team asked a child who was visiting the studio to phone in and give the correct answer; the child was then announced as the winner and received the prize.

In its investigation, the regulator found that the running of the competition had been unfair as no genuine entrant had a chance of winning the prize and a faked winner had been announced. There had thus been a breach of the requirement in the Broadcasting Code that competitions should be conducted fairly; there had also been a breach of the requirement that due care should be taken of the physical and emotional welfare of a person under 18 participating in the programme. The errors were serious ones which had not occurred solely because of the actions of the researcher but were a direct result of management and compliance failures. Ofcom thus used its recently acquired powers to fine the Corporation GBP 45,000 for the first broadcast on BBC1 and GBP 5,000 for the repeat on the digital CBBC channel 90 minutes later.

Ofcom has also published a report on the use of premium rate telephone services in programmes by all broadcasters. It concluded that the scale of such failures is extremely large, with costs which may well run into millions of pounds. The underlying reason is a systemic one, i.e. an absence of systems to require, ensure and audit compliance. Some broadcasters were in denial about their own

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responsibilities, and it is essential that they understand that they have a contractual relationship with consumers who enter a premium rate competition which goes beyond traditional responsibilities to viewers as a whole, something currently properly appreciated only by Sky. A fundamental problem is that broadcasters are themselves outside the regulatory system for premium-rate calls run by ICSTIS, although the Broadcasting Code requires them to observe its rules. This means that different regulatory bodies cover service providers and broadcasters. The report recommends that broadcasters be made responsible for compliance right through the supply chain. This could be accomplished through bringing broadcasters within the jurisdiction of ICSTIS, or by amending the licences of television broadcasters to include consumer protection requirements in relation to premium rate and other direct commercial transactions, to be enforced by Ofcom. The report favours the latter solution, together with a requirement for independent audit of compliance. New guidance to broadcasters should also be issued covering matters such as timing of the closure of competitions and selecting winners. Ofcom is minded to accept the recommendations and is consulting on them.

Ofcom, "Adjudication of Ofcom Content Sanctions Committee - British Broadcasting Corporation (BBC) in Respect of its Services BBC1 and CBBC", 9 July 2007

http://www.ofcom.org.uk/tv/obb/ocsc_adjud/bbc.pdf

Ofcom, "Report of an Inquiry into Television Broadcasters' Use of Premium Rate Telephone Services in Programmes", 18 July 2007

http://www.ofcom.org.uk/tv/ifi/prsinquiry/

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