

# Ofcom Broadcast and On Demand Bulletin

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## Broadcast competitions

**Type of case** Broadcast Standards

**Outcome** In Breach

**Service** ITV, ITV2 and ITV4

**Date & time** Various dates and times

**Category** Competitions

Handing of communications with viewers in accordance with Licence Conditions.

**Summary** The broadcaster identified six broadcast competitions, which ran between 2016 and 2019, where a proportion of eligible postal entrants were excluded. Breaches of Rule 2.13 and Rule 2.14 of the Broadcasting Code and Licence conditions relating to the handling of communications.

### Introduction

ITV runs regular broadcast competitions in programmes across several of its channels. These competitions normally invite viewers to participate by submitting their entry by telephone call, text message, ITV's website or post. While a premium rate charge is normally applied to telephone, text message and online entries, those entering by post incur a delivery charge only (i.e. the cost of a stamp).

Television broadcast competitions that feature at least one premium rate method of entry are subject to third-party verification of the proper handling of entries. ITV Broadcasting Limited ("ITV" or "the Licensee") notified Ofcom that, through this verification process, it had identified an issue that affected some postal entries to a viewer competition promoted during *Good Morning Britain* and *Lorraine* between 8 March and 18 April 2019.

ITV said the issue resulted in a proportion of eligible postal entries being excluded from the selection pool of potential prize winners. The Licensee added that an internal investigation had identified similar issues affecting a further five competitions promoted during the following programmes:

- *Good Morning Britain and Lorraine*, ITV, 20 June – 8 July 2016;
- *This Morning and Loose Women*, ITV, 6 March – 24 March 2017;
- *Ant and Dec’s Saturday Night Takeaway*, ITV and ITV2, 31 March – 14 April 2018;
- *La Vuelta*, ITV4, 30 Aug – 15 September 2019; and,
- *X Factor: The Band*, ITV and ITV2, 9 December – 15 December 2019.

In all cases, some viewers who participated using the postal entry route had no chance of being selected to win the competition.

Ofcom considered these broadcast competitions raised potential issue under Rules 2.13 and 2.14 of the Code.

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

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

Additionally, Ofcom considered these incidents raised potential issues under the following licence conditions regarding the handling of communications from viewers<sup>1</sup>.

- (2)(a) Arrangements for the management of methods of communication publicised in programmes and intended to allow communication between members of the public and the Licensee must ensure, in particular, that:
  - (i) Reasonable skill and care is exercised by the Licensee in the selection of the means of communications and in the handling of communications received;

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<sup>1</sup> ITV channels operate under different licences, and the numbering, but not the text of the relevant licence conditions regarding the handling of communications from viewers, vary between them. ITV’s daytime and evening programming is broadcast under a Licence held by ITV Broadcasting Limited. The licence for its early morning output is held by ITV Breakfast Broadcasting Limited. The licence for the services ITV2 and ITV4 is held by ITV2 Limited. The relevant licence conditions are:

- Condition 14(A) of ITV Broadcasting Limited’s Channel 3 licence;
- Condition 13(A) of ITV Breakfast Broadcasting Limited’s Channel 3 licence; and
- Condition 6(A) of ITV2 Limited’s Digital Terrestrial Programme Service licence (‘DTPS’) and Television Licensable Content Service licence (‘TLCS’).

- (ii) Voting, competition, games or similar schemes are conducted in such ways as to provide fair and consistent treatment of all eligible votes and entries;
- (3)(a) The Licensee shall implement and maintain appropriate compliance procedures to ensure arrangements for the management of methods of communication publicised in programmes and intended to allow communication between members of the public and the Licensee fulfil all the requirements set out in paragraph 2 above.

Ofcom requested comments from ITV (which holds responsibility for the compliance of programmes on all of the ITV channels) on how these competitions complied with Rules 2.13 and 2.14 of the Code and additionally, how its handling of entries from these competitions complied with the Licence Conditions referenced above.

### **ITV's response to Ofcom's request for comments**

ITV said it takes care when conducting viewer competitions, which are underpinned by principles of honesty, integrity, transparency, accuracy and fairness. It explained that its paid entry competitions and prize draws have used post as the free route of entry<sup>2</sup> since 2014, and that it publicised this route at the same time as other routes of entry. It added that it does not discriminate between paid and postal entries when selecting winners.

The Licensee informed Ofcom that it uses a bespoke system to select winners from entry pools. Each eligible paid entry is automatically entered into the selection pool. Postal entries are handled by a third party, which provides ITV with a spreadsheet containing the total number of postal entries, which the Licensee then manually adds to the selection pool. ITV explained that, once the competition has closed, its system assigns a 19-digit positive or negative number to each entry at random and the entry with the lowest number is selected as the winner.

ITV explained that the independent third party (separate to the third party handling postal entries) who was responsible for the verification of its voting and competitions for 2019, identified a discrepancy between the number of postal entries received and the number entered into the system for a competition broadcast during *Good Morning Britain* and *Lorraine* in March and April 2019. The Licensee said that having discovered the discrepancy, it undertook a review of every broadcast competition it had conducted since 2014 and identified an additional five competitions, out of a total of 712, where the number of postal entries entered into the system did not reflect the number received. ITV said that the total number of affected postal entries across the six competitions was 41,252.

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<sup>2</sup> Although there is a charge for the delivery of postal entries (e.g. the cost of a postage stamp), no charge is applied to enter the competition itself. The Gambling Act 2005 categorises such routes as free to enter.

The Licensee said that the discrepancies resulted from human error by ITV staff undertaking the manual operation of transferring the postal entry data from the spreadsheet. In each case, the operator misread the information and entered data from an incorrect cell on the spreadsheet<sup>3</sup>.

ITV explained that its Operations team had an agreed understanding in place that a 'buddy checking' system should operate when postal entry data was inputted into the system. However, it said that this process did not prevent the errors and was not consistently carried out or recorded and therefore not auditable.

ITV said that following the incident, it put in place a programme of improvement for its postal entries procedures. This included:

- working towards implementing a process where data is imported directly from the third-party that handles postal entries;
- requiring a formal management sign off when inputting entry data manually;
- increasing the postal entry data retention period from six months to two years; and,
- redesigning the spreadsheets provided by the third party to improve clarity.

The Licensee acknowledged that all valid entries should have been included in the original selection process for these competitions and that postal entrants would have participated on the understanding that a valid entry by the free postal route would have been entered into the selection process. However, it argued that nothing in the promotion of the affected competitions was materially misleading and the terms and conditions accurately reflected ITV's process, adding that it was not ITV's intention to exclude any valid free postal entries. The Licensee continued that, while some entries were excluded, this did not result in actual financial loss to the postal entrants.

ITV said that in order to determine whether the affected entrants would have won a prize when the competitions were conducted, it re-ran the selection process for each competition by assigning 19-digit numbers to each of the missing entries and comparing them with numbers already allocated to existing entries in the original selection. The Licensee said that if any of the additional entries were selected as the winner, it intended to donate the value of the corresponding prize to charity or in the case of the most recent competition (where it still held entrants' details), award the same prize to the postal entry selected in the process. ITV informed Ofcom that for each competition, the lowest 19-digit number generated in the re-run selection process (i.e. the entry that was selected in that re-run competition) was assigned to an entry in the original draw (i.e. not one of the missed postal entries). Therefore, ITV concluded that the omission of these postal entrants had no actual impact on the original competition outcome, and none of the entrants whose entries were accidentally excluded from the original winner selection were denied a prize as a result.

ITV added that, despite the unfortunate and occasional human errors, it had at all times complied with its licence conditions regarding the management of communications between itself and the public. ITV

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<sup>3</sup> The spreadsheet supplied by the third party responsible for handling postal entries contains data relating to a number of ITV's broadcast competitions.

also considered it had exercised reasonable care and skill in its compliance arrangements for its broadcast competitions and provided systems to ensure fair and consistent treatment of all entries.

ITV said that as required by its licence conditions, it commissions a third party to undertake regular end-to-end analysis of the technical and administrative systems used for the receipt and processing of competition entries. When submitting its representations, ITV provided Ofcom with a copy of the most recent review.

ITV said that to place these errors into context, it had run over 700 broadcast competitions since it had introduced postal entries in 2014 and the number of affected competitions represented less than 1% of this total. It reiterated the action it undertook as soon as the issue was identified. The Licensee said that while it had not sought to refund the cost of the entry route (i.e. the cost of a postage stamp) to entrants whose personal details were still available, it intended to donate a sum of money to charity as mark of its sincere regret that “a handful of” innocent human errors resulted in some entrants being excluded from the original selection process.

In conclusion, ITV said it deeply regretted the errors in the handling of its postal entries in the relevant competitions and apologised to all affected entrants. It asked Ofcom to consider the steps it had taken to mitigate any potential harm and prevent such incidents happening again.

### **ITV’s response to Ofcom’s Preliminary View**

ITV also responded to Ofcom’s Preliminary View that ITV had breached Rules 2.13 and 2.14 of the Code and licence conditions regarding the handling of communications from viewers. It repeated its deep regret for the errors. It also reiterated that the number of entrants affected was a very small proportion of total number of entries submitted, across a very small percentage of competitions (less than 1% of competitions in the period). It also submitted that the exclusion of the postal entries was not a result of any attempt by ITV to treat postal entries less fairly and at the time when each competition was publicised to viewers it had no reason to believe that subsequent errors would mean some of these entrants would stand no chance of winning.

ITV emphasised that the assignment of random numbers in the winner selection process is not based on the size of the pool of entrants or the time of data import. It therefore argued that re-running the selection process with the missing entrants was a reasonable step in determining whether a missing entrant should have been awarded a prize following the original draw. ITV acknowledged that it had no way of awarding prizes to entrants where it had not retained their data, but reiterated that it would have donated the prize value to charity had the re-run resulted in a prize being won by a postal entrant whose data had not been retained by ITV.

ITV explained that its six-month retention period for postal entries had been agreed on the basis that its third-party verification provider carried out its work in two periods six months apart, before collating this information to complete an annual review. ITV said neither it nor its third-party verifier had anticipated that its annual review would have identified issues with competitions that had taken place more than six months before the previous review. ITV said it would retain data for longer in future in recognition of this fact.

ITV referred to [two Ofcom investigations](#)<sup>4</sup> into competitions broadcast in 2013. ITV considered the issues in these cases were similar to those subject to this investigation and that, in the previous cases, Ofcom had considered the cases as resolved.

While it acknowledged that the previous investigations arose due to a technical error beyond the immediate control of the broadcasters, ITV argued that the result of the error and the way in which it mitigated potential harm was the same as in the previous decisions. It therefore requested that Ofcom consider the matters in this investigation to be similarly 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. Ofcom also has a duty to ensure that licensed services comply with the terms of their licences, including in relation to the handling of communications from viewers.

### Rules 2.13 and 2.14

Rule 2.13 of the Code requires broadcasters to ensure that broadcast competitions and voting are conducted fairly. Rule 2.14 states that broadcasters must ensure that audiences are not materially misled about any broadcast competition or voting.

In this case, between 2016 and 2019, 41,252 viewers entered ITV competitions that they had no chance of winning. Ofcom acknowledged that the failure to include these entries resulted from human error and ITV's third-party verification process indicated this affected only six competitions out of a total of 712 broadcast between 2014 and 2019. We also acknowledged: ITV's swift and comprehensive review of all its competitions to determine whether the incident identified by its third-party verifier had occurred in any other competitions; that ITV had notified Ofcom of its findings; and that it had put measures in place to reduce the likelihood of a recurrence.

While the errors affected a small proportion of ITV's competitions overall, Ofcom took into account that these errors resulted in a significant number of viewers being unfairly excluded from the chance of winning competitions, albeit unintentionally.

We also recognised that in promoting these competitions, ITV did not intend to materially mislead viewers, and indeed were at that time proceeding on the basis that their procedures would ensure postal entries were included, albeit it later transpired ITV's procedures did not achieve this. We noted that the terms and conditions reflected the competitions' mechanics. Nonetheless, as ITV acknowledged, viewers entering by post would have participated on the understanding that their entry would have had an equal chance of being selected as other entries, but for six competitions (accounting for 41,252 entries) this was not the case. ITV submitted that the error did not result in financial loss to these entrants. The Gambling Act 2005 categorises post as a "free" route of entry because the cost applies to the delivery of the entry only rather than participation in the competition itself. However, while postal entries do not involve a financial gain for a competition organiser, there is

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<sup>4</sup> [Issue 229 of Ofcom's Broadcast Bulletin](#), published on 7 May 2013 (pages 17-21).

clearly a financial cost to the entrant in paying the cost of postage, to enable the delivery of their postal entry. This action was taken on the understanding that they would have a chance, equal to that of other entrants, of winning a competition prize, but for those entrants affected by the error this was not the case. It is clear that viewers would not have incurred the postal cost had they appreciated they would have had no chance of winning.

Ofcom also took into account the action taken by ITV in an attempt to determine whether the affected entrants would have won a prize if their entries had been included when the competitions were conducted. ITV told us that it had re-run the selection process for each competition and found that in each case, none of the numbers allocated to the missing entries were lower than the winning entries' numbers and it therefore concluded that the affected entrants would not have won a prize.

Ofcom considered that the process undertaken by ITV was limited in its value. While Ofcom understood ITV's intention to mitigate the impact of the errors, and that the number allocation system was not based on the size of the pool of entrants, rerunning the competitions could not, in Ofcom's view, retrospectively ensure fairness or prevent entrants from having been materially misled.

It is clearly the case that each individual entry has only a small chance of winning, and postal entries formed a small proportion of overall entries. However, we considered that:

- participants were entering on the basis they would have had a small chance of winning rather than none;
- the replication process undertaken by ITV did not prove that an excluded postal entry would not have won had they been included in the original competition draw, because affected entries may have been allocated a different number by the selection software if included in the original process;
- therefore, the result of the re-runs could not exactly replicate what would have happened if the errors had not occurred;
- because ITV did not retain details of postal entries beyond a six-month period, in five of the six competitions that were re-run, it would have had no means of awarding prizes had the affected entrants been allocated a winning number; and,
- although we acknowledge ITV's intention to make a donation to charity equivalent to the value of any prize had this occurred, viewers were entering for the chance to win a prize themselves. Therefore, this gesture, whilst well-intentioned, could not in practice resolve the issue for entrants.

Taking the above factors into account, Ofcom's Decision is that competitions were not run fairly, and that the Licensee failed to ensure that viewers were not materially misled, in breach of Rules 2.13 and 2.14.

### **Licence conditions regarding the handling of communications**

As set out in the terms of its licences for its various channels, ITV must ensure that it has in place arrangements regarding the handling of communications from viewers.

The Licensee submitted that in accordance with the relevant licence condition requirements, it had, at all times exercised reasonable skill and care with regard to the handling of communications received by members of the public and ensured fair and consistent treatment of all entries.

However, Ofcom considered that the process of manually adding postal entry data from a spreadsheet into the entry pool for competitions, especially when the spreadsheet contained a range of information, carried a risk. While Ofcom recognised that ITV had put in place measures to ensure that the data was correctly entered, these procedures were not followed or formally recorded for auditing on several occasions. As a result, multiple errors occurred when manually transferring the data.

Given the frequency with which third-party reviews were produced, Ofcom considered that ITV's policy of retaining postal entry details for six months only was insufficient for such entries to always be considered fully as part of the review. This is a point ITV recognised in its response to our Preliminary View.

It is therefore Ofcom's Decision that ITV failed to take reasonable care through its processes to ensure the competitions were conducted in such ways as to provide fair and consistent treatment of all eligible entries.

In its response, ITV made comparisons with two Ofcom resolved decisions published in 2013, and asked Ofcom to reach a similar conclusion. Ofcom considered these cases differed in that errors resulted from a technical fault with the telecommunications software, and the broadcasters were able to identify the affected entrants and take steps to resolve the issues.

In the present case, ITV's own procedures regarding the manual entry of data were not followed in six competitions, leading to incorrect information entered into the competitions' winner selector system, and by the time the errors were identified, in five out of six competitions, the broadcaster had no way of identifying entrants that were treated unfairly or materially misled. Furthermore, no attempt at refunding the entrants that the broadcaster could identify was made.

Therefore, aside of the way in which ITV attempted to re-run the competitions, Ofcom considered the reasons for the errors themselves and their impact on the fairness of the competitions and those who were materially misled were significantly different. Ofcom therefore did not consider the 2013 investigations set any relevant precedent when determining an outcome in this case.

## **Conclusion**

We acknowledge the volume of ITV's broadcast competitions across its programming and that the number of affected competitions in this case was small compared to the amount of competitions the Licensee operates overall. We also recognise the proactive way in which ITV dealt with the issue by notifying Ofcom and immediately setting about to determine the extent and cause of the problem, and how it could avoid a recurrence. However, in Ofcom's view, ITV failed to properly implement and execute procedures that are fundamental to ensuring compliance with rules regarding the operation of its broadcast competitions and the relevant licence conditions.

### **Breaches of Rule 2.13 and Rule 2.14**

#### **Breaches of Condition 6(A) of ITV2 Limited's Digital Terrestrial Programme Service licence ('DTPS') and Television Licensable Content Service licence ('TLCS')**

#### **Breach of Condition 13(A) of ITV Breakfast Broadcasting Limited's Channel 3 licence**

#### **Breach of Condition 14(A) of ITV Broadcasting Limited's Channel 3 licence**