



**CODE OF PRACTICE**  
**TENTH EDITION**  
January 2004  
(Amended July 2005)

The Independent Committee  
for the Supervision of Standards  
of Telephone Information Services

# ICSTIS

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## INTRODUCTION TO ICSTIS

ICSTIS, the Independent Committee for the Supervision of Standards of Telephone Information Services is the regulatory body for premium rate services. The Committee consists normally of nine members, all appointed in their individual capacities. ICSTIS is a non-profit making limited company. The Committee is supported by a permanent Secretariat.

## MISSION STATEMENT

### Our Vision:

As the regulator for premium rate services our vision is that anyone can use these services with absolute confidence.

### Our Mission:

In pursuit of our vision we create a Code of Practice which sets appropriate standards for the promotion, content and overall operation of premium rate services, taking account of those who may be especially vulnerable, particularly children. We advise providers of premium rate services on compliance with our Code. If they do not comply, we promptly enforce its provisions to minimise any consumer harm caused.

- So that we can continue to protect and inform consumers faced with constantly changing technology, we regularly review our standards, consulting widely to obtain a cross-section of opinion.

### Our Values:

In carrying out our mission, we are committed to the following values:

- staying aware of, and responsive to, the ways in which consumers, or particular sets of consumers, may be vulnerable when using premium rate services and striving to ensure that they receive the necessary protection,
- independence at all times from the sector, companies or individuals that we regulate or that fund our work,
- openness, fairness, even-handedness and impartiality when dealing with any individual or company involved in the provision of premium rate services,
- consistency when making decisions and imposing sanctions relating to non-compliance with our Code of Practice and having in place mechanisms to ensure that consistency,
- co-operative engagement with the constantly developing premium rate industry as the best means of securing its support for our work,

- working with legislators and other regulators to ensure that those who influence the operation of premium rate services fully understand and support our work,
- maintaining our understanding of relevant technological developments so that our regulation remains targeted, proportionate and allows innovation and investment,
- being accessible to consumers and helping them understand how premium rate services work so that they can better protect themselves,
- acknowledging the important contribution made by all members of the organisation.

## REMIT

ICSTIS is responsible for regulating premium rate services in the UK. ICSTIS regulates services in their entirety – their content, promotion and overall operation – through its Code of Practice. Premium rate services offer some form of content, product or service that is charged to users' telephone bills. Typical services include TV votelines, scratch-cards, technical helplines, chat, mobile phone ringtone and logo downloads, horoscopes, competitions and interactive TV games. Services are usually advertised on 090 dialling codes, although certain services on mobile phones may use short access codes. ICSTIS also regulates directory enquiry services (offered on 118 numbers).

## SANCTIONS

ICSTIS investigates complaints, and has the power to fine companies and bar access to services. ICSTIS can also bar the individual behind a company from running any premium rate services under any company name on any telephone network for a set period.

## FUNDING

ICSTIS is independent of the industry but is funded by a levy on it. For further details, see our website: [www.icstis.org.uk](http://www.icstis.org.uk)

## COPY ADVICE AND GENERAL ENQUIRIES

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# Introduction

## 1.1 DEFINITIONS

1.1.1 'Premium rate services' are defined in section 120 of the Communications Act 2003 ('the Act') as follows:

Subsection (7) provides:

"A service is a premium rate service...if –

- a** it is a service falling within subsection (8);
- b** there is a charge for the provision of the service;
- c** the charge is required to be paid to a person providing an electronic communications service by means of which the service in question is provided; and
- d** that charge is imposed in the form of a charge made by that person for the use of the electronic communications service."

Subsection (8) provides:

"A service falls within this subsection if its provision consists in –

- a** the provision of the contents of communications transmitted by means of an electronic communications network; or
- b** allowing the user of an electronic communications service to make use, by the making of a transmission by means of that service, of a facility made available to the users of the electronic communications service."

Subsection (14) provides:

"References in this section to a facility include, in particular, references to –

- a** a facility for making a payment for goods or services;
- b** a facility for entering a competition or claiming a prize; and
- c** a facility for registering a vote or recording a preference."

1.1.2 A 'network operator' means, for the purposes of this Code:

- a** a person who is a provider of premium rate services within the meaning of section 120(11) of the Act; or
- b** any person falling within section 120(10) of the Act, who bills subscribers directly for electronic communications services and is able to perform or can require the performance of all of the obligations that may be imposed by Section 2 of this Code from time to time.

For the avoidance of doubt, all references in this Code to network operator or network operators are references to a person defined in this paragraph.

- 1.1.3** A 'service provider' is any person engaged in the provision of premium rate services who contracts with, or enters into arrangements with, a network operator for facilities enabling the provision of premium rate services or who contracts or enters into arrangements with any person who does not fall within section 120(9) of the Act who has himself contracted with or entered into arrangements with a network operator for such facilities.

Where a network operator itself provides premium rate services other than as a network operator, the network operator or such part of its organisation as is responsible for the provision of the same will be treated as a service provider for the purposes of this Code.

#### EXPLANATORY NOTE

The first paragraph of the above definition of 'service provider' effectively repeats the previous definition and goes on to include some future-proofing. ICSTIS anticipates that it is possible that persons who are not defined within the Act might at some point be engaged in the provision of e.g. numbers, although at the time of writing, ICSTIS is not aware of any such party that falls outside section 120 of the Act.

Electronic communications service providers who fall within section 120(10) of the Act are broken down into those who can operate as network operators and those who can not.

- 1.1.4** An 'information provider' is any person on whose behalf a service provider may provide a service.
- 1.1.5** An 'associated individual' is any sole trader, partner in or director or senior manager of a service provider or information provider, any manager having day-to-day responsibility for the conduct of its relevant business and any individual in accordance with whose directions or instructions such persons are accustomed to act or any member of a class of individuals designated by ICSTIS.
- 1.1.6** 'Live services' are premium rate services which involve two-way or multi-way live conversation.
- 1.1.7** A 'chatline service' means a service which consists of or includes the enabling of more than two persons (the participants) to simultaneously conduct a telephone conversation with one another without either:

- a each of them having agreed with each other; or
- b one or more of them having agreed with the person enabling such a telephone conversation to be conducted,

in advance of making the call enabling them to engage in the conversation, without knowing the respective identities of the other intended participants or the telephone numbers on which they can be called. For the avoidance of any doubt, a service by which one or more additional persons who are known (by name or telephone number) to one or more of the parties conducting an established telephone conversation can be added to that conversation by means of being called by one or more of such parties is not on that account a chatline service, if it would otherwise not be regarded as such a service.

- 1.1.8** An 'online service' is a premium rate service which is connected through a computer, mobile phone, television or similar device and which allows data to be transferred to and/or from customers, and which may or may not have a visual element.
- 1.1.9** The term 'promotion' means anything where the intent or effect is, either directly or indirectly, to encourage the use of premium rate services and the term promotional material shall be construed accordingly.
- 1.1.10** A 'call', for the purposes of this Code, means any communication through an electronic communications network, whether initiated by a customer or initiated by or facilitated by a service provider.
- 1.1.11** 'Electronic communications network' has the meaning given to it in Section 32(1) of the Act (as reproduced in Annexe 1).
- 1.1.12** 'Electronic communications service' has the meaning given to it in Section 32(2) of the Act (as reproduced in Annexe 1).
- 1.1.13** A 'communications provider' is defined in section 405 of the Act as a person who, within the meaning of section 32(4) of the Act, provides an electronic communications network or an electronic communications service. Section 32(4) of the Act is reproduced in Annexe 1.
- 1.1.14** The 'Adjudicator' is the person, independent of ICSTIS, network operators, service providers or information providers, who adjudicates upon claims for compensation in respect of unauthorised calls to live services.

**1.1.15** The 'Independent Appeals Body' is a body of persons, independent of ICSTIS, appointed to provide tribunals to hear appeals against adjudications made by ICSTIS pursuant to ICSTIS oral hearings, and to hear appeals against refusals by ICSTIS of applications for permission to provide services or against conditions imposed by ICSTIS upon such permission.

**1.1.16** The 'Chairman of the Independent Appeals Body' is the person, being a qualified solicitor or barrister of not less than 10 years' standing, appointed to be Chairman of the Independent Appeals Body.

**1.1.17** 'Ofcom' is the Office of Communications; references to Ofcom and to any statutory authority or other regulatory body include any replacement successor bodies.

**1.1.18** A 'person' means any natural or legal person.

## 1.2 TERMS OF REFERENCE

**1.2.1** The role of ICSTIS is to supervise the provision and content of, and promotional material for, premium rate services and, with the support of Ofcom, to enforce this Code of Practice. In the performance of this role ICSTIS may:

- a** set and maintain standards and, as appropriate, requirements for the content, promotion, marketing and provision of premium rate services, and keep these standards under review,
- b** monitor premium rate services to ensure compliance with these standards,
- c** consult widely with interested parties before changing these standards,
- d** make arrangements and determine procedures for the proper support (including funding) of ICSTIS and the efficient and effective operation of its regulation of premium rate services,
- e** determine any categories of premium rate service which may only be provided on the basis of prior written permission from ICSTIS, identify conditions which should be attached to the grant of such prior permission, keep such categories and conditions under review, and receive, consider and determine applications for prior written permission,
- f** administer a system for the payment of claims for compensation for unauthorised use of live services, and provide a system for adjudications where such claims are disputed,
- g** investigate and adjudicate upon complaints relating to the content, promotion and marketing of premium rate services, and issue directions designed to achieve compliance with the Code which may include the imposition of sanctions,

- h** issue directions either generally or to individual providers of premium rate services to procure compliance with the Code and/or to secure enforcement of its provisions,
- i** publish reports on its work at regular intervals and generally publicise its role. This includes reports to Ofcom, as and when required, relating to the regulation of the premium rate industry and the adequacy and appropriateness of regulatory arrangements.

**1.2.2** In carrying out its activities, ICSTIS undertakes to have regard to the five principles of good regulation, namely:

- transparency
- accountability
- proportionality
- consistency
- targeting

## 1.3 THE SCOPE OF THIS CODE

**1.3.1** This Code covers the provision of premium rate services and has been approved by Ofcom under section 121 of the Act. Accordingly, all providers of premium rate services as defined in section 120 of the Act are bound by the terms of this Code.

**1.3.2** Providers of premium rate services to whom the condition set by Ofcom under section 120 of the Act applies will be obliged to comply with directions pursuant to 120(3)(a) given by ICSTIS in accordance with this Code for the purpose of enforcing its provisions.

**1.3.3** Insofar as the condition set by Ofcom does not apply to any description of premium rate services, the provisions of this Code apply to those services only through voluntary arrangements made between ICSTIS and the network operators.

### EXPLANATORY NOTE

The condition set by Ofcom under section 120 does not apply to all premium rate services. As was the case before, some services are excluded from the terms of the condition. However, again as before, these services are still premium rate services for the purposes of this Code.

# Administrative Provisions (Network Operators)

## 1.4 GEOGRAPHIC REACH OF THE CODE

**1.4.1** Save as is provided below, this Code applies to all premium rate services which are accessed by a customer or provided by a service provider in the United Kingdom.

**1.4.2** The Electronic Commerce (EC Directive) Regulations 2002 No. 2013 ('the Regulations') apply to the provision of premium rate services which are information society services (as defined in the Regulations) and are supplied between member states of the European Economic Area ('EEA'). This Code will apply to such services when the service provider responsible for the provision of those services under this Code is:

- a** established in the United Kingdom, or
- b** established in another EEA Member State but where its services are accessed or may be accessed from the United Kingdom and ICSTIS determines that it is necessary to apply the Code to that service for one of the reasons set out in the Regulations.

### EXPLANATORY NOTE

Where there is a need to protect UK consumers from services, the Regulations allow for enforcement action to be taken even if the service provider is established in another EEA Member State.

More detailed information concerning the Regulations is available on the DTI's website at [www.dti.gov.uk](http://www.dti.gov.uk).

## 1.5 AMENDMENTS TO THE CODE OF PRACTICE AND GUIDANCE

This Code may be amended by ICSTIS from time to time following consultation with interested parties, but no such amendment(s) shall come into effect until Ofcom has published notification of their approval.

**1.5.1** ICSTIS may issue and/or amend guidance concerning provisions of this Code from time to time. Such guidance may include advice on the way it is anticipated that certain types or categories of service are likely to be dealt with under the Code and/or the way in which specific provisions are likely to be applied in relation to such services. ICSTIS will always consult with Ofcom prior to issuing or amending guidance and may, subject to considerations of consumer protection and urgency, consult with other interested parties.

## 2.1 ICSTIS' DIRECTIONS/NOTICES

**2.1.1** ICSTIS may issue such written directions or notices to network operators as it considers are necessary to procure or facilitate compliance with the obligations imposed upon network operators under this Code.

**2.1.2** Any written direction or notice required to be provided in accordance with any of the rules or procedures in this Code shall be delivered by hand, sent by e-mail, or sent by ordinary prepaid post. Where there is proof of posting, delivery is presumed to have taken place on the first working day following posting.

## 2.2 GENERAL RESPONSIBILITIES (INCLUDING FUNDING)

**2.2.1** Network operators are responsible for ensuring that ICSTIS' regulation is satisfactorily maintained by carrying out directions given by ICSTIS where necessary to assist in the enforcement of ICSTIS' decisions.

**2.2.2** Network operators are also required to have regard to and to comply with the funding provisions which can be found in Annexe 3.

### EXPLANATORY NOTE

ICSTIS is an industry-funded regulator. The funding necessary to support ICSTIS is collected from the industry by charging a levy in respect of revenue generated by premium rate services.

The detailed funding provisions may be found in Annexe 3.

## 2.3 SPECIFIC OBLIGATIONS

**2.3.1** Network operators must bring this Code to the attention of those with whom they contract in respect of the provision of premium rate services and, through their commercial arrangements, must in particular:

- a** require, through contracts, that service providers comply with this Code (or such successor versions as may from time to time be issued) and any directions that are made by ICSTIS in accordance with it,
- b** include provision(s), pursuant to section 1 of the Contracts (Rights of Third Parties) Act 1999, stating that ICSTIS may directly enforce the term(s) that are included within that contract pursuant to paragraph **a** above,
- c** require that service providers bring the Code to the notice of any information providers with whom they contract in respect of the provision of premium rate services,

- d** insofar as a network operator provides any facilities for the provision of premium rate services to any person who is not defined within section 120(9) of the Act, the network operator must ensure that the arrangements made with that person are such that the network operator is able to perform its obligations under this Code as though that person was a premium rate service provider under the provisions of the Act.

#### EXPLANATORY NOTE

If network operators provide facilities such as numbers for resale to anyone who is not defined as a provider of premium rate services in the Act then special care has to be taken to ensure that the involvement of such an intermediary does not hinder or disrupt proper regulation. See also the Explanatory Note to paragraph 1.1.3.

- 2.3.2** Prior to providing premium rate services, a network operator must supply ICSTIS with details of how ICSTIS may contact it, including details of the name of a partner, director or senior manager of the network operator, the business address, a contact telephone number and, wherever possible, an e-mail address for the network operator, together with the registered number of the company where appropriate. Where any of the details notified to ICSTIS under this paragraph change, the network operator must notify ICSTIS of the same without delay.
- 2.3.3** Prior to making its electronic communications network and/or services available to a service provider so that the service provider may provide premium rate services, a network operator must record the name of a partner, director or senior manager of the service provider, the business address, a contact telephone number and, wherever possible, an email address for the service provider. Aggregated information relating to a network operator's service providers should be provided on an appropriately regular basis. Where it comes to the attention of the network operator that any of the details notified to ICSTIS under this paragraph have or may have changed, the network operator must notify ICSTIS of the same without delay.
- 2.3.4** In support of ICSTIS in its regulatory work, upon being directed to do so by ICSTIS, whether in writing or otherwise, network operators should, without delay and in any event within such reasonable period of time as ICSTIS may direct, supply ICSTIS with any or all of the following:

- a** details of the service provider(s) with whom they have contracted for the provision of such premium rate numbers or ranges of numbers as ICSTIS may specify,
- b** details of every telephone number or short code that has been allocated to any particular service provider which is being or may be used for the provision of premium rate services,
- c** details of their contractual arrangements with any particular service provider in respect of the provision of premium rate services and, in particular, details of the frequency with which outpayments are or are to be made to the particular service provider, and
- d** such information as ICSTIS considers could assist it in order to establish responsibility for Code breaches or to determine the severity of any breach or potential breach of the Code including (but not limited to) information concerning the number of calls that have terminated on any particular number or numbers over which premium rate services have been supplied, the period of time over which such calls were made and details of outpayments that were or are to be made in respect of a particular number(s).

#### CONFIDENTIALITY

Confidential information received by ICSTIS from a network operator will be kept in confidence by ICSTIS and will not be divulged to any third party other than ICSTIS employees, and officers and professional advisors without the consent of the network operator (such consent should not be unreasonably withheld or delayed).

- 2.3.5** On receiving a direction from ICSTIS, a network operator must, without delay, do one or more of the following as directed:
  - a** terminate access to such premium rate numbers as ICSTIS may specify,
  - b** terminate access to all numbers that are allocated to any specified service provider,
  - c** terminate access to all numbers over which a specified premium rate service or type of service may be operated,
  - d** withhold such an amount of money as ICSTIS may direct out of monies payable by the network operator to a specified service provider until permitted by ICSTIS to do otherwise, or withhold all sums payable to a specified service provider in respect of certain numbers or premium rate services (as may be specified) until permitted by ICSTIS to do otherwise, or withhold all sums payable to a specified service provider until informed by ICSTIS that it may do otherwise,
  - e** pay over to ICSTIS such an amount of any funds withheld pursuant to sub-paragraph (d) above as ICSTIS may direct in order to satisfy outstanding fines and/or administrative charges.

# Administrative Provisions (Service Providers)

- 2.3.6** Network operators must have regard to any sanctions imposed by ICSTIS under paragraphs 7.7.2e and f and must not enter into arrangements with a person which it knows or reasonably suspects will facilitate the non-compliance with or frustration of any term of any sanction imposed by ICSTIS under those provisions.
- 2.3.7** Network operators must use all reasonable endeavours to respond to ICSTIS' communications within a reasonable period of time having regard to the mode of communication and the urgency of the situation.
- 2.3.8** Network operators who also operate as service providers are responsible for the application of these rules to themselves or the relevant part of themselves as though the rules were being applied to third party service providers.
- 2.3.9**
- a** Network operators shall not make, and shall withhold, payments to service providers for a period of at least 30 days after the making of the calls to which the payments relate.
  - b** Where:
    - i** there has been an adjudication, pursuant to paragraph 7.6, in respect of a breach of the Code by a service provider; and,
    - ii** a fine and/or administrative charge has been imposed on that service provider which has not been paid in accordance with the terms of that fine and/or administrative charge:

ICSTIS may direct the network operator who has contracted with the service provider in respect of the premium rate service(s) to which the fine and/or administrative charge relates, to pay to ICSTIS an amount no more than the amount of the fine and/or administrative charge that has not been so paid provided that the amount is no more than the amount that should have been withheld by the network operator in accordance with the Code or as directed under the Code.

- c** For the avoidance of doubt, where a network operator fails to pay to ICSTIS the amount that it is directed to pay by ICSTIS pursuant to paragraph 2.3.9(b) because that network operator has failed to withhold monies pursuant to paragraph 2.3.9(a) or for any other reason, that network operator shall remain liable to pay over the entire amount directed.
- d** This sub-paragraph is without prejudice to the Code generally and, in particular, paragraphs 2.3.5, 7.5(c)(ii) and 7.7.2(d).

## 3.1 RESPONSIBILITY (INCLUDING FUNDING)

- 3.1.1** Service providers are responsible for ensuring that the content and promotion of all of their premium rate services (whether produced by themselves or by their information providers) comply with all relevant provisions of this Code.
- 3.1.2** There are guideline documents ('ICSTIS Guidelines') giving detailed advice on certain areas of the Code which are available from the Secretariat (ICSTIS Guidelines may also be found on the website at [www.icstis.org.uk](http://www.icstis.org.uk)). Further guidance on any matters relating to the Code is also available from the Secretariat.
- 3.1.3** Service providers are responsible for funding ICSTIS in accordance with the funding provisions which can be found in Annexe 3.
- 3.1.4** Any written direction or notice required to be provided in accordance with any of the rules or procedures in this Code shall be delivered by hand, sent by e-mail or sent by ordinary prepaid post. Where there is proof of posting, delivery is presumed to have taken place on the first working day following posting.

## 3.2 SETTING UP A SERVICE

- 3.2.1** Before providing services, a service provider must ensure that ICSTIS is notified of the following:
- a** any number ranges (including dialling codes) or other connection arrangements allocated to it by the network operator, and
  - b** the name, address, e-mail address, telephone and fax number of the person representing the service provider who is nominated to receive all communications in connection with the application of the Code.

Any changes or additions to the above must be notified in writing to ICSTIS immediately.

- 3.2.2** Where certain codes or number ranges have been designated by either Ofcom or a network operator for the provision of particular service categories, services within these categories must use those codes or number ranges. Ofcom's designations will have precedence over any issued by a network operator.

**3.2.3** Before promoting or providing services, the service provider must have readily available all documentary and other evidence necessary to substantiate any factual claims made. This material, together with a statement outlining its relevance, must be provided without delay if requested by ICSTIS.

**3.2.4** Service providers must use all reasonable endeavours to ensure that all of their services are of an adequate technical quality.

### **3.3 PRIOR PERMISSION**

**3.3.1** ICSTIS may require that particular categories of service must not be provided unless ICSTIS has given its prior written permission for any service within that category. ICSTIS will give reasonable notice of such a requirement and the category of service to which it applies and will publish a full list of such service categories from time to time. Prior permission may be granted subject to the imposition of additional conditions. Such permission may be withdrawn or varied upon reasonable grounds and with notice in writing. The decision to refuse an application for prior permission, or to impose particular conditions upon the grant of it, or to withdraw or vary it, is subject to appeal, after an Oral Hearing, to the Independent Appeals Body under the procedures set out in Section 7.11.

**3.3.2** Where a service provider can demonstrate in relation to a particular service that any requirement of the Code can be adequately satisfied by alternative means, ICSTIS may give prior written permission subject to conditions for the service to be provided incorporating such alternative means. Such permission may be withdrawn or varied upon reasonable grounds and with notice in writing.

### **3.4 DATA PROTECTION**

**3.4.1** Service providers must make a notification to the Office of the Information Commissioner under the Data Protection Act 1998, and must, in their notification:

- a** disclose ICSTIS as a potential recipient of personal data, and
- b** state that data collected from callers may be used by ICSTIS for regulatory purposes.

**3.4.2** Service providers must not give any undertaking to callers, suppliers, network operators, information providers or others which could preclude any information being given to ICSTIS in confidence. Service providers must, where necessary, under the Data Protection Act 1998, warn consumers that any data collected may be passed to ICSTIS.

**3.4.3** Services which involve the collection of personal information, such as names, addresses and telephone numbers (which includes the collection of Calling Line Identification (CLI) or caller display information), must make clear to callers the purpose for which the information is required. The service must also identify the data controller (if different from the service provider or information provider) and any different use to which the personal information might be put, and give the caller an opportunity to prevent such usage.

### **3.5 OTHER REGULATORS AND CODES OF PRACTICE**

Attention is drawn to the fact that there are other codes of practice which apply to promotions in print media, television and radio, such as those of Ofcom, and the British Codes of Advertising and Sales Promotion which are supervised by the Advertising Standards Authority. Service providers should take account of these other codes of practice and those published by any successor bodies.

### **3.6 NUMBER RE-USE**

A service must not be replaced on the same number by another service which might give offence to or might be inappropriate for callers reasonably expecting the original service.

### **3.7 ENGAGEMENT OF ASSOCIATED INDIVIDUALS**

Service providers must not knowingly engage or permit the involvement as a named individual of anyone who is subject to a recommendation made by ICSTIS under paragraph 7.7.2, contrary to the terms of the recommendation.

### **3.8 PROMOTION BY NON-PREMIUM RATE SERVICES**

Wherever a premium rate service promotes, or is promoted by, a non-premium rate electronic communications service, both services will be considered as one where, in the opinion of ICSTIS, it is reasonable to do so.

# General Provisions (Service Providers)

## 4.1 LEGALITY

Services and promotional material must comply with the law: they must not contain anything which is in breach of the law, nor omit anything which the law requires. Furthermore, services and promotional material must not facilitate or encourage anything which is in any way unlawful.

## 4.2 DECENCY

### 4.2.1 Services and promotional material must not:

- a** contain material indicating violence, sadism or cruelty, or be of a repulsive or horrible nature,
- b** involve the use of foul language.

### 4.2.2 Services and promotional material must not, or must not be likely to:

- a** result in any unreasonable invasion of privacy,
- b** induce an unacceptable sense of fear or anxiety,
- c** encourage or incite any person to engage in dangerous practices or to use harmful substances,
- d** induce or promote racial disharmony,
- e** cause grave or widespread offence,
- f** debase, degrade or demean,
- g** promote or facilitate prostitution.

## 4.3 HONESTY

### 4.3.1 Services and promotional material must not:

- a** mislead, or be likely to mislead, by inaccuracy, ambiguity, exaggeration, omission or otherwise,
- b** be such as to seek to take unfair advantage of any characteristic or circumstance which may make consumers vulnerable.

## 4.4 PRICING INFORMATION

Guideline No. 1 gives advice on how various provisions of the Code will be interpreted in respect of pricing information.

**4.4.1** The service provider must state clearly in all promotional material the likely charge for calls to each service. Prices must be noted in the form of a numerical price per minute, or the total maximum cost to the consumer of the complete message or service, both of which must be inclusive of VAT. When applicable, promotional material must make clear that calls from some networks may cost more than the likely charge shown.

**4.4.2** Textual pricing information must be easily legible, prominent, horizontal and presented in a way that does not require close examination. Where services fall within the ambit of the Distance Selling Regulations 2000 (published by and available from the Department of Trade and Industry), service providers must comply with their requirements on pricing prominence.

**4.4.3** In the case of promotions transmitted in television programme time, the pricing information must be spoken as well as being visually displayed if the maximum call cost can exceed £2.00.

**4.4.4** Direct-dialled services which cost 50 pence or less and are terminated by forced release are exempt from all ICSTIS requirements concerning pricing information.

**4.4.5** In cases where it is unlikely that a consumer will have seen or heard any promotion containing pricing information, the service provider must place a short, distinct pricing message at the beginning of the service.

## 4.5 ADDRESS INFORMATION

For any promotion the identity and contact details of either the service provider or information provider, where not otherwise obvious, must be clearly stated so that customers can contact them directly.

The identity means the name of the company, partnership or sole trader and the contact details must consist of one of the following:

- a** a full postal address including postcode, or
- b** a PO Box number including postcode (PO Box numbers cannot be used in the case of employment, employment information and business opportunity services), or
- c** a telephone helpline number (to be charged at no more than UK national rate).

#### 4.6 SERVICE IDENTIFICATION

**4.6.1** In all promotional material, the code, prefix or short access number must be presented in such a way that it can be readily identified as a premium rate code or an international prefix.

**4.6.2** If the service operates on an international number, it must be made clear in the promotional material that an international call is required.

#### 4.7 PROMOTIONS WITH LONG SHELF-LIVES

In the case of services which are promoted in publications or other media which are likely to have a shelf-life of three months or more, a statement must be included in the promotion to the effect that the information given is correct as at the date of publication and that date must also be stated. If the call charges increase during the life of the promotion, such services must be prefaced with a short message informing callers of the new rate(s).

#### 4.8 USE OF THE WORD 'FREE'

No premium rate service may be promoted as being free. No product or service may be promoted as being free, or described in a way that implies it is free (for example, a gift), if the most obvious or practical way of obtaining it is by using a premium rate service except in cases where the cost to the consumer does not exceed the delivery costs of the product and the promotional material states the maximum cost of the call.

#### 4.9 INAPPROPRIATE PROMOTION

Service providers must use all reasonable endeavours to ensure that promotional material does not reach those for whom it, or the service which it promotes, is likely to be inappropriate. Service providers must use all reasonable endeavours to ensure that their services are not promoted in an inappropriate way.

#### 4.10 PROMOTIONS IN NON-PRINT MEDIA

Promotions transmitted by radio, television, teletext, telephone, facsimile, Internet, short message service (SMS), e-mail or any other form of non-print communication must observe the provisions of this Code in the manner most reasonable and appropriate to the technology employed.

#### 4.11 EDITORIAL PROMOTIONS

In the case of promotions that appear in editorial material, service providers must use all reasonable endeavours to ensure compliance with the provisions of this Code.

#### 4.12 DELAY

Services must not be unreasonably prolonged or delayed.

#### 4.13 UNDUE ENCOURAGEMENT OF UNAUTHORISED USE

Services and promotional material must not be of a nature which unduly encourages unauthorised calls.

#### 4.14 INCORRECT INFORMATION

Services must not contain incorrect information and it must be made clear to consumers when time-sensitive information was last updated.

# Provisions Relating Specifically To Live Services (Service Providers)

## 5.1 PRIOR PERMISSION

- a** A service provider must not provide any live service without first obtaining a certificate from ICSTIS giving the service provider permission to provide that service. Service providers must not continue operating a live service in the event that no certificate is in force. Such permission may be withdrawn or varied upon reasonable grounds and with notice in writing. The decision to refuse an application for prior permission, or to impose particular conditions upon the grant of it, or to withdraw or vary it, is subject to appeal, after an oral hearing, to the Independent Appeals Body.
- b** Such permission may be subject to any conditions that ICSTIS may consider appropriate to ensure that the particular service does not cause consumer harm. Guideline No. 2 gives further information on the conditions which may be imposed.
- c** In what ICSTIS considers to be appropriate cases, it will not issue a certificate unless it is satisfied that compensation arrangements exist (as set out in Section 5.10 of this Code) for the prompt and effective provision of compensation to any person whose connection to the electronic communications network has been the subject of unauthorised use involving calls to the relevant live service(s), and in respect of which the Adjudicator has made an award under Section 5.10 of this Code.

## 5.2 MONITORING

**5.2.1** ICSTIS may set down such conditions as it sees fit in the granting of a certificate under paragraph 5.1. Without prejudice to that general power, ICSTIS may require that service providers:

- a** ensure that all calls are effectively monitored by an operator (who is the person acting on behalf of the service provider and to whom a caller may speak when accessing the live service),
- b** ensure that all calls are continuously recorded to allow investigation of complaints.

**5.2.2** Where recording of calls has been required, such conditions as ICSTIS may think appropriate will apply but, in particular, service providers will normally be required:

- a** to use recording equipment compatible with ICSTIS replay facilities which enables the time, date and content of live services to be accurately identified from the recording; such recordings must enable ICSTIS monitoring at all times,

- b** to disconnect such services immediately if recording should cease at any time for any reason,
- c** to retain such recordings for a period of at least one year and deliver them to ICSTIS and the Adjudicator, intact, within three working days of request,
- d** before starting to operate any service, to supply to ICSTIS the following:
  - i** a statement from the installer of the recording equipment, detailing the type of recording equipment and the total number of simultaneous conversations which the recording equipment can support as configured,
  - ii** a statement from the network operator(s) detailing the total number of lines, and the number ranges associated with them, provided to the service provider,
  - iii** completed copies of declaration forms prescribed and issued by ICSTIS.Any change to the above must be notified to ICSTIS within one month of the change.
- e** to permit representatives of ICSTIS to visit any premises at which any part of their operations in connection with the provision of the live service is conducted with or without notice at any time to investigate whether this Code is being complied with in all respects and to inspect the recording equipment,
- f** to give such information and co-operation as ICSTIS may reasonably request which pertains to compliance with this Code.

## 5.3 EMPLOYMENT AND TRAINING

**5.3.1** Before commencing employment, operators must be given adequate training in the relevant requirements of this Code. A record of training must be kept at the service provider's offices.

**5.3.2** No such operator shall be under the age of 18. ICSTIS may, however, vary this requirement for individual services.

## 5.4 INTRODUCTORY MESSAGES

**5.4.1** All providers of live services must ensure that on connection each caller receives a brief introductory message giving details of all of the call costs and the name of the service provider providing the live service.

**5.4.2** Callers to live services where recording of calls has been required by ICSTIS must be warned that rules apply governing disallowable conversation. They must also be informed that a recording of the conversation may be made available to the regulatory body and the Adjudicator.

## 5.5 PROMOTIONAL MATERIAL

- a** Unless the live service is available 24 hours a day or permission not to provide such information has been granted by ICSTIS, hours of operation must be stated on the promotional material.
- b** Unless ICSTIS has granted permission to do so, no promotion may be directed primarily at persons under 18 years of age or encourage such persons to call the service.
- c** The promotional material must state clearly that conversations are being constantly recorded where there is such a requirement.

## 5.6 THE CONDUCT OF LIVE SERVICES

Guideline No. 3 gives advice on how various provisions of the Code will be interpreted in respect of the conduct of live services.

- 5.6.1** Service providers must actively discourage callers from seeking or giving out surnames, places of work, addresses or telephone numbers, or arranging or attempting to arrange any meeting while connected to a live service. ICSTIS may grant an exemption in respect of this requirement for services where the giving of such information is a necessary part of the service.
- 5.6.2** Unless ICSTIS grants permission to do otherwise:
  - a** Service providers must ensure that operators use reasonable endeavours to prevent persons under 18 years of age from taking part in any live service.
  - b** If an operator has reasonable grounds, upon questioning a caller, to suspect that the caller is under 18, the service provider must end the call.
- 5.6.3** The service provider shall take reasonable steps to identify and cut off calls made without the permission of the person who pays for the connection to the electronic communications network.
- 5.6.4** If a caller has been connected to the live service for a significant amount of time without speaking, he must be prompted to speak and, if he does not then speak, he must be cut off.

**5.6.5** ICSTIS will engage in random monitoring of conversations to check that the conditions of this Code are being complied with. ICSTIS will, in cases where conversations are required to be recorded, also call for random samples of those recordings for the same purpose.

## 5.7 SEXUAL ENTERTAINMENT LIVE SERVICES

- 5.7.1** Sexual entertainment live services are services of a clearly sexual nature or any services for which the associated promotional material is of a clearly sexual nature, or indicates directly, or implies, that the service is of a sexual nature. See also Section 6.7. Chatlines may not operate as sexual entertainment services.
- 5.7.2** Services which are pay for product live services, where the product is of a clearly sexual nature, are sexual entertainment live services. Such services must operate on the designated codes for sexual entertainment live services (which, at the date of publication of this Code, are 0909 and 0908).

## 5.8 LIVE SERVICES OFFERING COUNSELLING

Guideline No. 4 gives advice on how various provisions of the Code will be interpreted in respect of live counselling services. In addition:

- a** Operators of live counselling services must hold qualifications, or be of a status, appropriate to the type of service offered.
- b** Service providers must provide adequate safeguards for vulnerable callers.

## 5.9 CHATLINE SERVICES

Guideline No. 5 gives advice on how various provisions of the Code will be interpreted in respect of chatline services.

- 5.9.1** Before a caller may participate in a chatline service, the service provider must obtain the caller's name, address and date of birth and confirmation that he has the permission of the bill-payer to make the call.
- 5.9.2** Chatline services must not be promoted as sexual entertainment services and operators must use all reasonable endeavours to prevent conversation which is primarily of such a nature.
- 5.9.3** Service providers must ensure that there is a minimum of one operator monitoring up to 20 callers. Operators may take part in chatline conversations.

- 5.9.4** Calls to chatline services are subject to a maximum per minute charge to the subscriber at a rate which ICSTIS may vary from time to time but which, at the date of publication of this Code, is 60 pence per minute.
- 5.9.5** Service providers must give callers call cost warnings automatically after the caller has spent £10.00 and £20.00 on the call. All calls must be terminated by forced release at £30.00 call spend.
- 5.9.6** Service providers must ensure that chatline services are only accessible to callers when the service is called directly. Callers may not be connected to chatline services through other premium rate services; nor may callers to chatline services be connected through those services to other premium rate services.

## 5.10 CLAIMS FOR COMPENSATION

Guideline No. 6 gives further information about the procedures and background to the ICSTIS Compensation Scheme, including the role of the Adjudicator. The Scheme exists to provide compensation to individuals whose connections to the electronic communications network are used without their permission to access live services.

- 5.10.1** Under the ICSTIS Compensation Scheme, providers of certain Live Conversation Message Services are required to contribute to the Live Conversation Service Providers' Compensation Fund ('the LCSP Compensation Fund') and providers of certain chatline services are required to contribute to the Chatline Services Compensation Fund ('the CS Compensation Fund'). Such service providers must also enter into a contract with the Trustees of the relevant Compensation Fund in a form agreed by ICSTIS and lodge a Bond with ICSTIS as security against meeting compensation claims (a 'Compensation Scheme Bond').
- 5.10.2** The Compensation Scheme Bond is a legally binding document by which a third party (such as a bank) guarantees the service provider's ability to pay sums awarded to a claimant by the Adjudicator. The body providing the bond must be approved by ICSTIS; the bond must be in a form, and must guarantee the amount, required by ICSTIS. This bond must remain in place while the relevant live services are being operated, and for a period of one year thereafter.
- 5.10.3** Claims for compensation may be made by any person whose connection to the electronic communications network has been the subject of unauthorised use. When claims are received by ICSTIS, the relevant service provider(s) will be given an opportunity to settle them to the satisfaction of the claimant.

- 5.10.4** Service providers must, within one month, investigate all claims put to them.
- 5.10.5** Service providers must promptly pay all claims which are valid under the terms of the Compensation Scheme. Guideline No. 6 sets out how service providers may determine the validity or otherwise of a claim.
- 5.10.6** If a claim is not met in full, the service provider must, if requested by the Secretariat, notify ICSTIS of the reasons and must provide details of any investigations carried out into a claim.
- 5.10.7** If the service provider does not settle the claim to the satisfaction of the claimant within such time as the Adjudicator considers reasonable (and which will be notified to the service provider), the Secretariat will investigate the claim and prepare a report on each case which will be promptly passed to the Adjudicator for adjudication. A copy of the report will be made available to the service provider for comment and representation. The Adjudicator will make an adjudication, after such investigation as he considers appropriate, on the basis of the material in front of him.
- 5.10.8** An oral hearing may be held at the instigation of the Adjudicator, the claimant or the service provider in question.
- 5.10.9** The Adjudicator will provide his adjudication promptly in writing.
- 5.10.10** If the Adjudicator directs that an award should be made, the service provider must make immediate payment of the award and of any administrative charges relating to the award.
- 5.10.11** If the service provider in question does not make immediate payment of any such award, and ICSTIS consequently takes steps to enforce the service provider's Bond, the service provider concerned must forthwith cease to provide any live services.
- 5.10.12** Service providers, ICSTIS and the Adjudicator must provide the Director General with such information as he may reasonably require regarding the operation of the Compensation Scheme.

# Additional Provisions Relating To Specific Categories of Service (Service Providers)

Section 6 supplements, but does not replace, the general provisions in Section 3.

## 6.1 CHILDREN'S SERVICES

**6.1.1** Children's services are those which, either wholly or in part, are aimed at or would reasonably be expected to be particularly attractive to persons under 16 years of age and references to children in this part of the Code are to persons under 16 years of age.

**6.1.2** Promotional material for children's services must clearly state:

- a** the maximum possible cost of the service, and
- b** that the service should only be used with the agreement of the person responsible for paying the telephone bill.

**6.1.3** Children's services, and any associated promotional material, must not:

- a** contain anything which is likely to result in harm to children or which exploits their credulity, lack of experience or sense of loyalty,
- b** include anything which a reasonable parent would not wish their child to hear or learn about in this way,
- c** involve an invasion of privacy of any child,
- d** make direct appeals to children to buy, unless the product or service is one which they could reasonably be expected to afford for themselves,
- e** encourage children to ring other premium rate services or the same service again.

**6.1.4** Children's services must:

- a** cost no more than £3.00,
- b** be terminated by forced release,
- c** if the service generally costs more than 50 pence, be prefaced by a short statement that the service should only be used with the permission of the person who pays the bill.

## 6.2 COMPETITIONS AND OTHER GAMES WITH PRIZES

Guideline No. 7 gives advice on how various provisions of the Code will be interpreted in respect of competitions and other games with prizes.

**6.2.1** Services in this sector ('competition services') fall into five basic categories:

- lotteries,
- competitions,
- other games with prizes,
- an entry mechanism into a draw,
- information about prizes and how to claim them.

Most of these are subject to legal restrictions. In the light of paragraph 4.1, before setting up such services, service providers are strongly advised to seek advice on legal and excise duty implications.

**6.2.2** Promotional material for competition services which generally cost more than £1.00 must clearly display:

- a** the cost per minute and likely playing time, or the full cost of the call,
- b** details of how the competition operates and an indication of any tie-breakers.

**6.2.3** Interactive competition services which generally cost more than £5.00 must, as soon as is reasonably possible after the caller has spent £2.50, and after each £2.50 of call spend thereafter, require an active confirmation that the caller wishes to continue with the call. Failure to provide the correct response must, after the provision of any necessary prize claim information, cause the service to be terminated immediately by forced release.

**6.2.4** Competition services which are aimed at or would reasonably be expected to be particularly attractive to persons under 16 years of age must not:

- a** offer cash, or anything which can be readily exchanged for cash, as a prize,
- b** feature long or complex rules.

**6.2.5** Promotional material must clearly state any information which is likely to affect a decision to participate, in particular:

- a** any closing date,
- b** any significant terms and conditions, including any restriction on the number of entries or prizes which may be won,
- c** an adequate description of prizes, and other items offered to all or a substantial majority of participants, including the number of major prizes,

- d** any significant age, geographical or other eligibility restrictions,
- e** any significant costs which a reasonable consumer might not expect to pay in connection with collection, delivery or use of the prize or item.

**6.2.6** The following additional information must also be made readily available on request, if not contained in the original promotional material:

- a** how and when prize-winners will be informed,
- b** how prize-winner information may be obtained,
- c** any criteria for judging entries,
- d** any alternative prize that is available,
- e** the details of any intended post-event publicity,
- f** any supplementary rules which may apply.

**6.2.7** Competition services must have a closing date, except where there are instant prize-winners. An insufficient number of entries or entries of inadequate quality are not acceptable reasons for changing the closing date of a competition or withholding prizes.

**6.2.8** Competition services and promotional material must not:

- a** use words such as 'win' or 'prize' to describe items offered to all or a substantial majority of participants,
- b** exaggerate the chance of winning a prize,
- c** suggest that winning a prize is a certainty,
- d** suggest that consumers must dial a premium rate number in order to participate if an alternative postal entry route is available.

**6.2.9** Service providers must ensure that:

- a** prizes are awarded within 28 days of the closing date, unless a longer period is clearly stated in the promotional material,
- b** all correct entries have the same chances of winning,
- c** if there is any subjective assessment in the selection of the winning entries (for example, tie-breakers) in a competition open to the general public, then judging is by a person or persons independent of the service provider and any intermediaries involved, or by a judging panel including at least one independent member.

## **6.3 EMPLOYMENT, EMPLOYMENT INFORMATION AND BUSINESS OPPORTUNITY SERVICES**

Guideline No. 8 gives advice on how various provisions of the Code will be interpreted in respect of employment, employment information and business opportunity services. Service providers should be aware that the scope of such services is limited by the Employment Agencies Act 1973.

**6.3.1** Promotional material for such services must clearly state:

- a** the maximum total cost of the call,
- b** the type of work to be done and the geographical location,
- c** the basis and level of remuneration, and the level of earnings that may realistically be expected, which must be capable of substantiation,
- d** any additional expense including any investment that may be required over and above the cost of the telephone call.

**6.3.2** As soon as is reasonably possible after the caller has spent £2.50, and after each £2.50 of call spend thereafter, the service provider must inform the caller of the cost of the call.

## **6.4 ADVICE SERVICES**

Guideline No. 9 gives advice on how various provisions of the Code will be interpreted in respect of sex advice services. Guideline No. 10 gives advice specifically in respect of services offering legal advice.

**6.4.1** All advice services must:

- a** be conveyed in a responsible manner,
- b** indicate clearly in the promotional material, or at the beginning of the service, the identity, the current status and any relevant professional qualifications and experience of the person(s) or organisation supplying the information or advice. If the advice is given by a person with no relevant qualifications, the service must explain the source of the information.
- c** be prefaced with a statement that the caller should not act upon advice which needs individual interpretation without first consulting a suitably qualified practitioner.

**6.4.2** To avoid being classified as sexual entertainment services, the content of advice services must not be presented in a sexually titillating manner. There are further restrictions in respect of sexual entertainment services (see Section **6.7**).

## **6.5 ONLINE SERVICES**

Guideline No. 11 gives advice on how various provisions of the Code will be interpreted in respect of online services.

In particular, service providers should note that where spend limits or other controls apply generally to services, they apply equally to online services.

**6.5.1** Unless permission to do otherwise is specifically granted by ICSTIS, online services must not allow any further access via the service to the worldwide web until the caller has disconnected from the premium rate service.

**6.5.2** In addition to complying with the provisions of paragraph **6.5.1**, providers of online services which can be accessed, and/or the promotions for which can be accessed, by means of electronic devices which provide on-screen display must ensure that:

- a** prior to the connection to the premium rate service, the screen displays prominent pricing information together with the premium rate number through which the call will be connected, and
- b** an on-screen clock is displayed throughout the duration of the call showing the cumulative cost.

**6.5.3** Online sexual entertainment services must comply with the provisions of Section **6.7**. They must also, prior to connection of the call to the service:

- a** provide the caller with the facility to set a PIN (which must not be published) or similar access restriction,
- b** require confirmation that the caller is the bill-payer and is 18 years of age or over,
- c** inform the caller that most personal computers and similar access devices contain programmes which enable access to sexual or similar subject matter to be restricted,
- d** display call cost information in a separate box shown on screen.

## **6.6 PAY FOR PRODUCT SERVICES**

Guideline No. 12 gives advice on how various provisions of the Code will be interpreted in respect of pay for product services.

**6.6.1** Pay for product services are those, costing more than £1.00 in total, in which the benefit to the customer is either the delivery during or consequent to the call of a product or service paid for wholly or in part by the customer through a network operator, or the provision during the call of electronic data which the customer is able to receive and store. Such services are required to conform to the requirements of the Distance Selling Regulations 2000.

**6.6.2** Unless permission to do otherwise is specifically granted by ICSTIS, pay for product services must:

- a** not cost more than £20.00, or such other amount as may be published by ICSTIS from time to time in relation to all or any type of pay for product service,
- b** include an introductory message, giving the likely total cost of the call and a statement to say that the caller will need to complete the entire call in order to obtain the product or service,
- c** take one call only to enable delivery of the item in question,
- d** terminate by forced release.

**6.6.3** The promotional material for pay for product services must clearly state:

- a** and give prominence to the likely total cost of the product or service,
- b** that the caller will need to complete the entire call in order to obtain the product or service, including the number of minutes the caller will need to stay connected to the service in order to complete the purchase,
- c** any significant information which is likely to affect a decision to participate, including the main characteristics of the product or service,
- d** any additional costs relating to delivery charges (where applicable),
- e** any details about the arrangements for delivery and/or performance.

**6.6.4** If a pay for product service can cost more than £5.00 and involves the delivery of tangible goods to a geographical address:

- a** the service provider must keep records of the names and dispatch addresses of callers for a minimum of six months, and
- b** the service must require an active confirmation from the caller that they

accept that their personal details and delivery address will be retained and made available in the case of a claim for unauthorised use.

**6.6.5** Service providers must:

- a** have in place, and implement in appropriate circumstances, a reasonable complaints handling procedure,
- b** pay reasonable and valid claims for compensation.

## **6.7 SEXUAL ENTERTAINMENT SERVICES**

Guideline No. 22 gives advice on how various provisions of the Code will be interpreted in respect of sexual entertainment services.

**6.7.1** Sexual entertainment services are services of a clearly sexual nature or any services for which the associated promotional material is of a clearly sexual nature, or indicates directly, or implies, that the service is of a sexual nature.

**6.7.2** Services which are pay for product services, where the product is of a clearly sexual nature, are sexual entertainment services. Such services must operate on the designated code for sexual entertainment services (which, at the date of publication of this Code, is 0909).

**6.7.3** Sexual entertainment services, and promotions for them, must not contain references which suggest or imply the involvement of persons under 18 years of age.

**6.7.4** Promotions for sexual entertainment services must not appear in publications targeted at persons under the age of 18.

**6.7.5** Promotions for sexual entertainment services must be in context with the publication or other media in which they appear. Services should be in context with the advertising material promoting them. The content of a service should not be contrary to the reasonable expectations of those responding to the promotion.

**6.7.6** All sexual entertainment services must provide an introductory message at the beginning of the service stating that:

- a** the caller must be over the age of 18, and
- b** the caller should be either the bill-payer or have the bill-payer's permission to call the service, and

**c** call details may appear on the telephone bill.

**6.7.7** In addition, all non-live sexual entertainment services must:

- a** cost no more than £20.00,
- b** terminate by forced release.

For the avoidance of doubt, this includes online non-live sexual entertainment services.

**6.7.8** Promotions for sexual entertainment services, and the services themselves, must be compatible with access control and rating arrangements available for and appropriate to the medium through which they are available. Providers of online sexual entertainment services which can be accessed by means of electronic devices at premium rate must ensure that all websites are content-rated with the Internet Content Rating Association (ICRA) or any successor organisation as recognised by ICSTIS.

## **6.8 FUNDRAISING AND CHARITABLE PROMOTIONS**

Guideline No. 13 gives advice on how various provisions of the Code will be interpreted in respect of fundraising and charitable promotions. Service providers should be aware that the scope of such services is limited by the Charities Act 1992 and the regulations issued under it.

Promotional material for charitable and fundraising promotions must make clear:

- a** either the total sum per call or the amount per minute which will be paid to the beneficiary,
- b** the identity of the beneficiary,
- c** any restrictions or conditions attached to the contribution to be made to the beneficiary.

## **6.9 CONSUMER CREDIT SERVICES**

Guideline No. 14 gives advice on how various provisions of the Code will be interpreted in respect of consumer credit services.

## 6.10 BETTING TIPSTER SERVICES

Guideline No. 15 gives advice on how various provisions of the Code will be interpreted in respect of betting tipster services.

## 6.11 VIRTUAL CHAT AND CONTACT AND DATING SERVICES

Guideline No. 16 gives advice on how various provisions of the Code will be interpreted in respect of virtual chat services.

### 6.11.1 a Definition of Virtual Chat Services

Virtual chat services enable two or more callers to exchange separate recorded messages while connected to the service. These services do not involve live conversation. Virtual chat services may also enable contact details to be exchanged between callers in the course of exchanging messages.

### b Definition of Contact and Dating Services

Contact and dating services enable people previously unacquainted with each other to make initial contact and arrange to meet in person. They do not enable callers to exchange separate recorded messages while connected to the service. In the context of contact and dating services, the 'advertiser' is the person featured in the initial message.

6.11.2 a Service providers must use reasonable endeavours to ensure that the caller is an authorised user and that nobody under the age of 18 uses virtual chat or contact and dating services.

b Service providers must use reasonable endeavours to discourage sexually explicit virtual chat on services which are advertised in generally available publications.

6.11.3 All virtual chat and contact and dating services must, as soon as is reasonably possible after the caller has spent £10.00, and after each £10.00 of call spend thereafter:

- a inform the caller of the price per minute of the call,
- b require callers to provide a positive response to confirm that they wish to continue the call. If no such confirmation is given, the service must be terminated.

6.11.4 Service providers who operate virtual chat or contact and dating services which enable contact details to be exchanged, either in the course of exchanging messages or using voice-mail boxes, must:

- a warn callers and advertisers of the risks involved when telephone numbers are given out to other individuals and give clear advice on sensible precautions to take when meeting people through such services,
- b ensure that publicly available elements of the service do not contain telephone numbers, addresses or any other means of direct contact,
- c when requested by the advertiser, ensure that their details are removed from the service at the earliest opportunity and in all cases within 24 hours,
- d make clear in the promotional material any restrictions on the location, sex and age range of callers to the service,
- e bar access to a voice-mail box where the advertiser has not collected responses for more than four weeks. If the service provider is unable to tell when responses are collected, no advertisement may be published for more than four weeks.

6.11.5 Providers of virtual chat services must:

- a have in place, and implement in appropriate circumstances, a reasonable complaints handling procedure,
- b pay reasonable and valid claims for compensation.

6.11.6 Before commencing employment, service provider employees who are involved in operating virtual chat services (whether or not for the purposes of monitoring) must be given adequate training in the relevant requirements of this Code. No such employee shall be under the age of 18.

# Procedures And Sanctions

## 7.1 DELEGATION OF POWERS

The Committee may delegate its powers to sub-committees which will be formed of no fewer than two Committee members.

## 7.2 COMPLAINT INVESTIGATION

**7.2.1** ICSTIS will consider and, where appropriate, investigate all complaints which it receives, provided that the complaint is made within a reasonable period from the time when it arose.

**7.2.2** ICSTIS, through its Secretariat, monitors premium rate services. The Secretariat can itself initiate a complaint where there appears to be a breach of the Code.

**7.2.3** During complaint investigations, or as part of the adjudication process, ICSTIS may direct the service provider to disclose to the Secretariat, in confidence and within a reasonable time period, any additional relevant information or documents. This may include, for example, information about call volumes, patterns and revenues, details of the numbers allocated to an information provider, or details of services operating on particular premium rate numbers.

## 7.3 INFORMAL PROCEDURE

If an apparent breach of the Code is of a minor nature, causing little consumer harm, the 'informal procedure' may be used. Factors including the seriousness of the breach and the service provider's case history may be taken into account when deciding whether the informal procedure should be applied. In such cases:

- a** The service provider will be contacted and informed of the apparent breach.
- b** If the service provider agrees that a breach of the Code has taken place, the service provider will be required to remedy the breach. No other sanction will be imposed nor any administrative charge levied.
- c** The service provider will be sent a letter confirming what has been agreed.
- d** If the service provider disputes the breach, the standard procedure may be invoked.
- e** A record will be maintained in respect of breaches of the Code dealt with through the informal procedure.

## 7.4 STANDARD PROCEDURE

When the Secretariat receives or initiates a complaint, the 'standard procedure' will usually be used:

- a** The service provider will be given all the necessary information about the complaint, including details of the service or promotional material which gives rise to the apparent breach of the Code, and will be referred to the relevant provisions of the Code.
- b** The service provider will be given a reasonable time in which to respond and to provide any information requested. This response will normally be required within five full working days. In exceptional circumstances, a shorter time limit may be set – but this will not be less than 24 hours.
- c** If the service provider fails to respond within the required period, ICSTIS will proceed on the assumption that the service provider does not wish to respond.
- d** The Secretariat will prepare a report, together with relevant supporting evidence, which will be placed before a sub-committee of ICSTIS appointed to adjudicate upon the matter (an 'adjudication panel').
- e** The adjudication panel may invite the service provider to make informal representations to it in person in order to clarify any matter or the service provider may request the opportunity to make such informal representations to the adjudication panel.

## 7.5 EMERGENCY PROCEDURE

Where it appears to the Secretariat that a breach of the Code has taken place which is serious and requires urgent remedy, the 'emergency procedure' will be used:

- a** The Secretariat will undertake an immediate investigation of the complaint.
- b** On completion, the Secretariat will notify its findings to three members of the Committee.
- c** If all three members agree that there appears to be a serious breach of the Code requiring urgent remedy, the Secretariat will:
  - i** use reasonable endeavours to notify the service provider (by telephone, fax or e-mail) that the service appears to be in breach of the Code, that the emergency procedure has been invoked and that the service must be removed immediately,

- ii** advise the network operator of the breach and direct that it withholds from the service provider any payments outstanding under the contract between it and the service provider,
- iii** if the service provider cannot be contacted, direct also that the network operator bar access to the relevant service(s) or number(s) forthwith.
- d** Once the service has been removed, the service provider will be provided with all the necessary information relating to the complaint and will be referred to the relevant provisions of the Code. The service provider will then be required to respond in writing within three working days.
- e** All relevant information will, in the absence of special circumstances, be laid before an adjudication panel within 10 working days from the date of the notification in **b** above.
- f** The adjudication panel may invite the service provider to make informal representations to it in person in order to clarify any matter or the service provider may request the opportunity to make such informal representations to the adjudication panel.
- g** The time limits set out in this Section may be extended at ICSTIS' discretion if it considers that their strict application might cause injustice.

## 7.6 ADJUDICATION

On the basis of the evidence presented, the adjudication panel will decide whether there has been a breach of the Code. Each case will be considered and decided on its own merits. Service providers will be notified of the adjudication in writing. Where the adjudication has been made on the papers alone, or following informal representations in person, the notification will include reference to the service provider's right to an oral hearing.

## 7.7 SANCTIONS

- 7.7.1** Once the adjudication panel has determined that there has been a breach of the Code, the Secretariat will put before it the service provider's details. These will include a list of any relevant breaches previously upheld and sanctions imposed, and the numbers of lines and numbers allocated to the service provider.
- 7.7.2** ICSTIS has a range of sanctions which it may apply according to the degree of seriousness with which it regards the breach. Having taken all relevant circumstances into account, ICSTIS may:

- a** require the service provider to remedy the breach, and/or
- b** issue a formal reprimand, and/or
- c** require the service provider to submit certain or all categories of service and/or promotional material to ICSTIS for prior permission for a defined period, and/or
- d** impose an appropriate fine on the service provider to be collected by ICSTIS. ICSTIS may direct any relevant network operator(s) to withhold and pass over to ICSTIS the sum(s) due in terms of the fine from the payments outstanding under the contract between the network operator(s) and the service provider, and/or
- e** direct the relevant network operator(s) to bar access to some or all of the numbers allocated to the service provider for a defined period, and/or
- f** inform any relevant network operator(s) that the service provider and/or any associated individual found to have been involved knowingly in a serious breach of the Code by the service provider is prohibited from providing, or contracting for the provision of, any premium rate services, or a particular type or category of service, for a defined period, and/or
- g** require, in appropriate circumstances, that the service provider pays reasonable and valid claims for compensation.

**7.7.3** The failure of any service provider to comply with any sanction imposed upon it will itself amount to a breach of the Code and may result in further sanctions being imposed.

**7.7.4** If an adjudication panel considers that it may wish to make a recommendation under paragraph **7.7.2f** in respect of any named individual, it shall first make all reasonable attempts to so inform the individual concerned and the service provider in writing, and shall inform each of them that either of them may request an opportunity to make informal representations to the adjudication panel in person and of the right of either of them (or of ICSTIS itself) to require an oral hearing.

## 7.8 ORAL HEARINGS

- 7.8.1** Any service provider, applicant for permission or named individual ('the Applicant') may, by notice in writing to the Secretariat, require that an oral hearing be held:
  - a** in the event of a refusal by ICSTIS to grant prior permission to provide a service, or only to grant it upon condition,
  - b** following receipt of any communication from the Secretariat alleging a breach or breaches of the Code of Practice,
  - c** in respect of any adjudication made by ICSTIS without an oral hearing.

**7.8.2** The Applicant must, within such written notice, provide details of the allegation or decision in respect of which the oral hearing is required. Where no adjudication has been made, the Applicant must clearly identify the matter in respect of which the oral hearing is to be held.

**7.8.3** Such written notice may be provided to the Secretariat at any time up to 10 working days after receipt by the Applicant of written notification of a decision by ICSTIS or at any time prior to the adjudication being made where the oral hearing is required following an allegation of a breach of the Code of Practice.

**7.8.4** ICSTIS may require at any stage of its processes that an oral hearing be held.

**7.8.5** Oral hearings shall take place before no fewer than two members of the ICSTIS Committee ('the hearing panel').

**7.8.6** The Applicant is entitled to appear at the oral hearing in person or to be represented. The Secretariat will attend the oral hearing in order to put the case against the Applicant and may instruct a representative to act on its behalf.

**7.8.7** The enforcement of sanctions imposed pursuant to an adjudication is not automatically suspended by written notice requiring an oral hearing. The Applicant may apply in writing to the Chairman of the hearing panel ('the Chairman') setting out the grounds on which the sanction should be suspended. The Chairman will grant the application only if he is satisfied that not to do so would give rise to undue hardship, and that to do so would not give rise to a significant risk of public harm.

#### **7.8.8** Procedures for Hearing

##### **7.8.8.1** Pre-hearing Process

- a** The Chairman may, at his own discretion, or upon the application of either party (the Applicant or the Secretariat) to the oral hearing, convene a conference of the parties at which he may give such directions as he considers necessary for the fair and speedy hearing of the oral hearing.

Such directions may include, for example, directions for:

- the admission of facts before the hearing,
- the disclosure of documents,
- the provision of expert reports,
- the exchange of written statements,
- the preparation of agreed bundles of documents,
- the submission and exchange of outline arguments.

Directions may be given as to the date by which such actions shall be taken.

- b** Not less than 10 working days before the date of the oral hearing, the Applicant shall be notified in writing (at the address of the Applicant last made known to ICSTIS) of the day, time and place of the oral hearing.
- c** Within 5 working days of receipt of the notice specifying the date of the hearing, the Applicant shall inform the Secretariat in writing of whether he intends to appear in person at the hearing and the name of any person who will be representing him at the hearing.
- d** Neither party shall, without the consent of the other party or permission of the Chairman, call any witnesses or present any written statements or other documents unless written notice has been given to the other side at least 5 working days before the hearing, together with a summary of what such witnesses are expected to say and a copy of the statements or other documents.

**7.8.8.2** If the Applicant is neither present nor represented at the hearing, and the hearing panel has no cause to believe there is a good reason for the Applicant's absence, the matter shall be determined by the hearing panel as it sees fit in the absence of the Applicant.

##### **7.8.8.3** The Hearing

In respect of alleged breaches of the Code of Practice:

- a** The Secretariat shall outline the grounds of the case and call such witnesses and refer to such documents as it is entitled to do.
- b** The Applicant shall then be entitled to respond to the case put by the Secretariat and to call such witnesses or present any written statements or other documents as he is entitled to do.
- c** The Secretariat shall then be entitled to address the hearing panel.
- d** The Applicant shall be entitled to reply.
- e** A witness in person may be cross-examined. A witness who has been cross-examined may be re-examined.

- f** The Chairman of the hearing panel may question any witness at any time.

In respect of a case concerning an application for permission, the Chairman shall adopt such procedures as he shall deem to be most convenient.

The Chairman of the hearing panel shall have the power to vary any of these procedures at any time and to adjourn the hearing if satisfied that it is in the interests of justice to do so.

#### **7.8.8.4 Confidential Information**

The hearing panel shall be entitled to consider and act upon confidential information without directly or indirectly disclosing to the Applicant (or the Secretariat as the case may be) the source of that information provided that the Applicant (or the Secretariat) is given a reasonable opportunity to rebut its substance.

#### **7.8.8.5 Recording**

A sound recording shall be made of the oral hearing. Recordings will be made available to the Secretariat and the Applicant.

#### **7.8.9 Public Hearing**

An oral hearing shall be conducted in private, unless the Applicant or the Secretariat otherwise requires. If an oral hearing is in public, either party may request that any part of the hearing be conducted in private and any such application shall itself be heard in private.

#### **7.8.10 Powers of the Hearing Panel**

The hearing panel shall decide the matter entirely afresh. For the avoidance of doubt, the hearing panel may:

- a** impose a greater or lesser sanction than that previously imposed by an adjudication panel,
- b** reverse a decision to issue or refuse a permission,
- c** set such conditions on a permission as it sees fit,
- d** agree to impose such sanctions, permissions and/or conditions, and administrative charges as may be jointly proposed by the Secretariat and the Applicant ('adjudication by consent').

#### **7.8.11 Decision and Publication**

The hearing panel shall, as soon as is practicable after the hearing, provide a

reasoned written decision. This written decision shall be published by ICSTIS.

## **7.9 REVIEWS**

**7.9.1** On reasonable grounds, ICSTIS may, at its discretion, review determinations made in respect of applications for prior permission and adjudications and/or sanctions in the light of new material.

**7.9.2** A service provider or applicant for prior permission may request a review by setting out in writing the case for such a review.

#### **7.9.3 Review Procedure**

Having received a written request setting out the reason why a determination made in respect of an application for prior permission or an adjudication and/or sanction should be reviewed, ICSTIS will decide whether the review is merited and may proceed with the review forthwith or set a later date for such a review.

**7.9.4** Following such written request, one or more nominated Committee members may suspend any sanction imposed, pending a review by the Committee.

## **7.10 ADMINISTRATIVE CHARGE**

All service providers found to be in breach of the Code may be invoiced for the administrative and legal costs of the work undertaken by ICSTIS. Non-payment within the period laid down by ICSTIS will also be considered to be a breach of the Code and may result in further sanctions being imposed. ICSTIS may request that the relevant network operator withholds and passes over to ICSTIS the sum(s) due from the payments outstanding under the contract between the network operator and the service provider.

## **7.11 APPEALS**

**7.11.1** Applicants may, after an oral hearing at which the Applicant or his representative has appeared, appeal against ICSTIS' decisions and adjudications (other than any adjudication by consent) to the Independent Appeals Body ('IAB') on the following grounds:

- the disputed decision was based on error of fact,
- the disputed decision was wrong in law, or
- ICSTIS exercised its discretion incorrectly in reaching its decision.

# Procedures Concerning Network Operators

**7.11.2** In order to institute an appeal, the Applicant must provide a written notice of appeal setting out the grounds upon which the appeal is made and the facts and matters upon which it is based, to be received by the clerk to the IAB ('the Clerk') within 20 working days of the issue of the ICSTIS adjudication or determination which is the subject of the appeal.

**7.11.3** The notice of appeal must be accompanied by:

- the written adjudication,
- the case bundle used at the ICSTIS oral hearing,
- a security deposit of £5,000 or an application (to be determined by the Chairman of the IAB) to waive or reduce such a security deposit setting out the grounds for such waiver or reduction,
- a description of any new evidence upon which the Applicant intends to rely and which, for good reason, was previously unavailable,
- if the notice of appeal and/or any necessary accompanying documents are being provided to the Clerk more than 20 working days after the issue of the ICSTIS adjudication, then the Applicant must also provide an application (to be determined by the Chairman of the IAB) for the appeal to proceed, setting out the reasons for the delay and the grounds for such application.

**7.11.4** If an Applicant or his representative failed to appear in person at an oral hearing for good reason, but the oral hearing proceeded in his absence and ICSTIS has refused to permit a further oral hearing, the Applicant may apply to the Chairman of the IAB to request him to require that ICSTIS holds a further oral hearing.

**8.1** If it appears to ICSTIS that any network operator has failed to comply with a direction(s) given by ICSTIS for the purpose of enforcing this Code:

- a the network operator will be contacted on an informal basis regarding its apparent non-compliance. ICSTIS or the network operator may, at any time, request a meeting between ICSTIS and the network operator at which the issues can be discussed with a view to clarification and resolution;
- b if the matter is not resolved through informal contact, ICSTIS will write to the network operator formally setting out its apparent non-compliance and the network operator will be given a reasonable time within which to respond (this will normally be five working days);
- c if the network operator accepts the alleged non-compliance, it shall immediately make good such failure;
- d if the network operator does not accept the alleged non-compliance, ICSTIS will reconsider the matter and set out its opinion which it shall provide in writing to the network operator, and notify it of the steps it is directing the network operator to take;
- e if the network operator does not forthwith take such steps as ICSTIS may direct, ICSTIS shall notify Ofcom in writing that it considers the network operator to have contravened the terms of the condition issued by Ofcom under section 120 of the Act;
- f ICSTIS may in any event notify Ofcom that it considers the network operator has contravened the terms of any condition made under section 120 of the Act where ICSTIS considers that the network operator has been in serious and/or repeated breach of its obligations, whether or not the network operator subsequently complied with directions given by ICSTIS;
- g in making a notification to Ofcom, ICSTIS may provide to Ofcom such details of the network operator's past conduct as ICSTIS considers are relevant.

# Annexe 1

## Communications Act – Sections 32 And 405 (Extract)

### 32 MEANING OF ELECTRONIC COMMUNICATIONS NETWORKS AND SERVICES

- (1) In this Act “electronic communications network” means:
- a** a transmission system for the conveyance, by the use of electrical, magnetic or electro-magnetic energy, of signals of any description; and
  - b** such of the following as are used, by the person providing the system and in association with it, for the conveyance of the signals:
    - (i)** apparatus comprised in the system;
    - (ii)** apparatus used for the switching or routing of the signals; and
    - (iii)** software and stored data.
- (2) In this Act “electronic communications service” means a service consisting in, or having as its principal feature, the conveyance by means of an electronic communications network of signals, except in so far as it is a content service.
- (3) In this Act “associated facility” means a facility which:
- a** is available for use in association with the use of an electronic communications network or electronic communications service (whether or not one provided by the person making the facility available); and
  - b** is so available for the purpose of:
    - (i)** making the provision of that network or service possible;
    - (ii)** making possible the provision of other services provided by means of that network or service; or
    - (iii)** supporting the provision of such other services.
- (4) In this Act:
- a** references to the provision of an electronic communications network include references to its establishment, maintenance or operation;
  - b** references, where one or more persons are employed or engaged to provide the network or service under the direction or control of another person, to the person by whom an electronic communications network or electronic communications service is provided are confined to references to that other person; and
  - c** references, where one or more persons are employed or engaged to make facilities available under the direction or control of another person, to the person by whom any associated facilities are made available are confined to references to that other person.
- (5) Paragraphs (a) and (b) of subsection (4) apply in relation to references in subsection (1) to the provision of a transmission system as they apply in relation to references in this Act to the provision of an electronic communications network.
- (6) The reference in subsection (1) to a transmission system includes a reference to a transmission system consisting of no more than a transmitter used for the conveyance of signals.
- (7) In subsection (2) “a content service” means so much of any service as consists in one or both of the following:
- a** the provision of material with a view to its being comprised in signals conveyed by means of an electronic communications network;
  - b** the exercise of editorial control over the contents of signals conveyed by means of such a network.
- (8) In this section references to the conveyance of signals include references to the transmission or routing of signals or of parts of signals and to the broadcasting of signals for general reception.
- (9) For the purposes of this section the cases in which software and stored data are to be taken as being used for a particular purpose include cases in which they have:
- a** been installed or stored in order to be used for that purpose; and
  - b** are available to be so used.
- (10) In this section “signal” includes:
- a** anything comprising speech, music, sounds, visual images or communications or data of any description; and
  - b** signals serving for the impartation of anything between persons, between a person and a thing or between things, or for the actuation or control of apparatus.

### SECTION 405 (EXTRACT)

“Communications provider” means a person who (within the meaning of section 32(4)) provides an electronic communications network or an electronic communications service.

# Annexe 2

## Communications Act - Sections 120 To 124

### 120 CONDITIONS REGULATING PREMIUM RATE SERVICES

- (1) OFCOM shall have the power, for the purpose of regulating the provision, content, promotion and marketing of premium rate services, to set conditions under this section that bind the persons to whom they are applied.
- (2) Conditions under this section may be applied either:
- a generally to every person who provides a premium rate service; or
  - b to every person who is of a specified description of such persons, or who provides a specified description of such services.
- (3) The only provision that may be made by conditions under this section is provision requiring the person to whom the condition applies to comply, to the extent required by the condition, with:
- a directions given in accordance with an approved code by the enforcement authority and for the purpose of enforcing its provisions; and
  - b if there is no such code, the provisions of the order for the time being in force under section 122.
- (4) The power to set a condition under this section includes power to modify or revoke the conditions for the time being in force under this section.
- (5) Sections 47 and 48 apply to the setting, modification and revocation of a condition under this section as they apply to the setting, modification and revocation of a condition under section 45.
- (6) OFCOM must send a copy of every notification published under section 48(1) with respect to a condition under this section to the Secretary of State.
- (7) A service is a premium rate service for the purposes of this Chapter if:
- a it is a service falling within subsection (8);
  - b there is a charge for the provision of the service;
  - c the charge is required to be paid to a person providing an electronic communications service by means of which the service in question is provided; and
  - d that charge is imposed in the form of a charge made by that person for the use of the electronic communications service.
- (8) A service falls within this subsection if its provision consists in:
- a the provision of the contents of communications transmitted by means of an electronic communications network; or
  - b allowing the user of an electronic communications service to make use, by the making of a transmission by means of that service, of a facility made available to the users of the electronic communications service.
- (9) For the purposes of this Chapter a person provides a premium rate service ("the relevant service") if:
- a he provides the contents of the relevant service;
  - b he exercises editorial control over the contents of the relevant service;
  - c he is a person who packages together the contents of the relevant service for the purpose of facilitating its provision;
  - d he makes available a facility comprised in the relevant service; or
  - e he falls within subsection (10), (11) or (12).
- (10) A person falls within this subsection if:
- a he is the provider of an electronic communications service used for the provision of the relevant service; and
  - b under arrangements made with a person who is a provider of the relevant service falling within subsection (9)(a) to (d), he is entitled to retain some or all of the charges received by him in respect of the provision of the relevant service or of the use of his electronic communications service for the purpose of the relevant service.
- (11) A person falls within this subsection if:
- a he is the provider of an electronic communications network used for the provision of the relevant service; and
  - b an agreement relating to the use of the network for the provision of that service subsists between the provider of the network and a person who is a provider of the relevant service falling within subsection (9)(a) to (d).

- (12) A person falls within this subsection if:
- a he is the provider of an electronic communications network used for the provision of the relevant service; and
  - b the use of that network for the provision of premium rate services, or of services that include or may include premium rate services, is authorised by an agreement subsisting between that person and either an intermediary service provider or a person who is a provider of the relevant service by virtue of subsection (10) or (11).
- (13) Where one or more persons are employed or engaged under the direction of another to do any of the things mentioned in subsection (9)(a) to (d), only that other person shall be a provider of the relevant service for the purposes of this Chapter.
- (14) References in this section to a facility include, in particular, references to:
- a a facility for making a payment for goods or services;
  - b a facility for entering a competition or claiming a prize; and
  - c a facility for registering a vote or recording a preference.
- (15) In this section:
- “approved code” means a code for the time being approved under section 121;
- “enforcement authority”, in relation to such a code, means the person who under the code has the function of enforcing it; and
- “intermediary service provider” means a person who:
- a provides an electronic communications service used for the provision of the relevant service or an electronic communications network so used; and
  - b is a party to an agreement with:
    - (i) a provider of the relevant service falling within subsection (9)(a) to (d), or
    - (ii) another intermediary service provider, which relates to the use of that electronic communications service or network for the provision of premium rate services, or of services that include or may include premium rate services.

## 121 APPROVAL OF CODE FOR PREMIUM RATE SERVICES

- (1) If it appears to OFCOM:
- a that a code has been made by any person for regulating the provision and contents of premium rate services, and the facilities made available in the provision of such services;
  - b that the code contains provision for regulating, to such extent (if any) as they think fit, the arrangements made by the providers of premium rate services for promoting and marketing those services; and
  - c that it would be appropriate for them to approve that code for the purposes of section 120,
- they may approve that code for those purposes.
- (2) OFCOM are not to approve a code for those purposes unless they are satisfied:
- a that there is a person who, under the code, has the function of administering and enforcing it; and
  - b that that person is sufficiently independent of the providers of premium rate services;
  - c that adequate arrangements are in force for funding the activities of that person in relation to the code;
  - d that the provisions of the code are objectively justifiable in relation to the services to which it relates;
  - e that those provisions are not such as to discriminate unduly against particular persons or against a particular description of persons;
  - f that those provisions are proportionate to what they are intended to achieve; and
  - g that, in relation to what those provisions are intended to achieve, they are transparent.
- (3) OFCOM are not for those purposes to approve so much of a code as imposes an obligation as respects a premium rate service on a person who is a provider of the service by virtue of section 120(12) (“the relevant provider”) unless they are satisfied that the obligation:
- a arises only if there is no one who is a provider of the service otherwise than by virtue of section 120(12) against whom it is practicable to take action;

- b** arises only after a notice identifying the service and setting out respects in which requirements of the code have been contravened in relation to it has been given to the relevant provider by the person responsible for enforcing the code; and
  - c** is confined to an obligation to secure that electronic communications networks provided by the relevant provider are not used for making the service available to persons who are in the United Kingdom.
- (4)** The provision that may be contained in a code and approved under this section includes, in particular, provision about the pricing of premium rate services and provision for the enforcement of the code.
- (5)** The provision for enforcement of a code that may be approved under this section includes:
  - a** provision for the payment, to a person specified in the code, of a penalty not exceeding the maximum penalty for the time being specified in section 123(2);
  - b** provision requiring a provider of a premium rate service to secure that the provision of the service is suspended or otherwise ceases or is restricted in any respect;
  - c** provision for the imposition on a person, in respect of a contravention of the code, of a temporary or permanent prohibition or restriction on his working in connection with the provision of premium rate services or, in the case of a body corporate, on its providing such services or on its carrying on other activities in connection with their provision.
- (6)** OFCOM may, at any time, for the purposes of section 120:
  - a** approve modifications that have been made to an approved code; or
  - b** withdraw their approval from an approved code.
- (7)** Where OFCOM give or withdraw an approval for the purposes of section 120, they must give notification of their approval or of its withdrawal.
- (8)** The notification must be published in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in OFCOM's opinion, are likely to be affected by the approval or withdrawal.

## 122 ORDERS BY OFCOM IN THE ABSENCE OF A CODE UNDER S.121

- (1)** OFCOM may make an order under this section if, at any time, they consider that there is no code in force to which they think it would be appropriate to give, or to continue to give, their approval under section 121.
- (2)** An order under this section may make such of the following provisions as OFCOM think fit:
  - a** provision imposing requirements with respect to the provision and contents of premium rate services, and with respect to the facilities made available in the provision of such services (including provision about pricing);
  - b** provision imposing requirements with respect to the arrangements made by the providers of premium rate services for the promotion and marketing of those services;
  - c** provision for the enforcement of requirements imposed by virtue of paragraph (a) or (b);
  - d** provision making other arrangements for the purposes of those requirements.
- (3)** The power to make provision by an order under this section includes, in particular:
  - a** power to establish a body corporate with the capacity to make its own rules and to establish its own procedures;
  - b** power to determine the jurisdiction of a body established by such an order or, for the purposes of the order, of any other person;
  - c** power to confer jurisdiction with respect to any matter on OFCOM themselves;
  - d** power to provide for a person on whom jurisdiction is conferred by the arrangements to make awards of compensation, to direct the reimbursement of costs or expenses, or to do both;
  - e** power to provide for such a person to enforce, or to participate in the enforcement of, any awards or directions made under such an order;
  - f** power to make provision falling within section 121(5)(c) for the enforcement of the provisions of the order; and
  - g** power to make such other provision as OFCOM think fit for the enforcement of such awards and directions.

(4) An order under this section may require such providers of premium rate services as may be determined by or under the order to make payments to OFCOM in respect of expenditure incurred by OFCOM in connection with:

- a the establishment and maintenance, in accordance with such an order, of any body corporate or procedure; or
- b the making of other arrangements for the purposes of the requirements of such an order.

(5) An order under this section is not to impose an obligation as respects a premium rate service on a person who is a provider of the service by virtue only of section 120(12) ("the relevant provider") unless the obligation:

- a arises only if there is no one who is a provider of the service otherwise than by virtue only of section 120(12) against whom it is practicable to take action;
- b arises only after a notice identifying the service and setting out respects in which requirements of the order have been contravened in relation to it has been given to the relevant provider by OFCOM; and
- c is confined to an obligation to secure that electronic communications networks provided by the relevant provider are not used for making the service available to persons who are in the United Kingdom.

(6) The consent of the Secretary of State is required for the making by OFCOM of an order under this section.

(7) Section 403 applies to the power of OFCOM to make an order under this section.

(8) A statutory instrument containing an order made by OFCOM under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### 123 ENFORCEMENT OF S. 120 CONDITIONS

(1) Sections 94 to 96 apply in relation to a contravention of conditions set under section 120 as they apply in relation to a contravention of a condition set under section 45.

(2) The amount of the penalty imposed under section 96 as applied by this section is to be such an amount not exceeding £100,000 as OFCOM determine to be:

- a appropriate; and
- b proportionate to the contravention in respect of which it is imposed.

(3) In making that determination OFCOM must have regard to:

- a any representations made to them by the notified provider;
- b any steps taken by him towards complying with the conditions contraventions of which have been notified to him under section 94 (as applied); and
- c any steps taken by him for remedying the consequences of those contraventions.

(4) The Secretary of State may by order amend this section so as to substitute a different maximum penalty for the maximum penalty for the time being specified in subsection (2).

(5) No order is to be made containing provision authorised by subsection (4) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

### 124 SUSPENDING SERVICE PROVISIONS FOR CONTRAVENTIONS OF S. 120 CONDITIONS

(1) OFCOM may give a direction under this section to a person who is a communications provider ("the contravening provider") if they are satisfied:

- a that he is or has been in serious and repeated contravention of conditions set under section 120;
- b that an attempt, by the imposition of penalties or the giving of enforcement notifications under section 95 (as applied by section 123) or both, to secure compliance with the contravened conditions has failed;
- c that the giving of the direction is appropriate and proportionate to the seriousness (when repeated as they have been) of the contraventions; and
- d that the giving of the direction is required for reasons of public policy.

(2) OFCOM may also give a direction under this section to a person who is a communications provider ("the contravening provider") if they are satisfied:

- a** that he is, or has been, in contravention of conditions set under section 120 in respect of a premium rate service;
- b** that the circumstances of the contravention make it appropriate for OFCOM to suspend or restrict the provision of premium rate services provided by the contravening provider without the conditions set out in subsection (1) being satisfied; and
- c** that in those circumstances the giving of the direction is urgently required for reasons of public policy.
- (3)** A direction under this section is:
- a** a direction to the contravening provider to secure the suspension of the provision of premium rate services provided by him; or
- b** a direction requiring him to secure compliance with restrictions, set out in the direction, on the provision of such services.
- (4)** A direction under this section:
- a** must specify the services to which it relates; and
- b** except so far as it otherwise provides, takes effect for an indefinite period beginning with the time at which it is notified to the person to whom it is given.
- (5)** A direction under this section:
- a** in providing for the effect of a suspension of restriction to be postponed, may provide for it to take effect only at a time determined by or in accordance with the terms of the direction; and
- b** in connection with the suspension or restriction contained in the direction or with the postponement of its effect may impose such conditions on the contravening provider as appear to OFCOM to be appropriate for the purpose of protecting that provider's customers.
- (6)** Those conditions may include a condition requiring the making of payments:
- a** by way of compensation for loss or damage suffered by the contravening provider's customers as a result of the direction; or
- b** in respect of annoyance, inconvenience or anxiety to which they have been put in consequence of the direction.
- (7)** If OFCOM consider it appropriate to do so (whether or not in consequence of representations or proposals made to them), they may revoke a direction under this section or modify its conditions:
- a** with effect from such time as they may direct;
- b** subject to compliance with such requirements as they may specify; and
- c** to such extent and in relation to such services as they may determine.
- (8)** Sections **99** and **100** apply in the case of a direction under this section as they apply in the case of a direction under section **97**, but as if references in section 100(1) to an electronic communications network or electronic communications service were references to a premium rate service.
- (9)** For the purposes of this section there are repeated contraventions by a person or conditions set under section 120 to the extent that:
- a** in the case of a previous notification given to that person under section **94** (as applied by section 123), OFCOM have determined for the purposes of section **95(2)** or **96(2)** (as so applied) that such a contravention did occur; and
- b** in the period of twelve months following the day of the making of that determination, one or more further notifications have been given to that person in respect of contraventions of a condition set under section 120.
- (10)** For the purposes of this section the seriousness of repeated contraventions of conditions set under section 120 has to be determined by reference to the seriousness of the contraventions of the approved code or order by reference to which the conditions have effect.

# Annexe 3

## Funding Arrangements

### 1 GENERAL PROVISIONS

**1.1** Information obtained by ICSTIS pursuant to these provisions shall be confidential, save that ICSTIS may supply the same to Ofcom insofar as is reasonable for the proper regulation of premium rate services.

**1.2** For the purposes of these funding provisions, the following definitions shall apply:

**a** 'Outpayments' are sums payable by network operators to service providers in respect of revenue generated by premium rate services.

#### EXPLANATORY NOTE

Where a network operator is also the service provider for some or all of its services, the network operator should declare an outpayment in respect of that service, even though there may be no external payment.

**b** 'Revenue' is the sum received by a network operator in respect of or attributable to the provision of a premium rate service, gross of any sum that may be due to third parties arising out of the provision of the said service.

### 2 TIMETABLE

**2.1** ICSTIS will publish a timetable for its annual budgetary and forecasting procedures as set out below, which will specify the dates by which various activities should be carried out by network operators and/or ICSTIS.

**2.2** ICSTIS may, upon giving reasonable notice to interested persons, vary some or all of the dates set out in the timetable.

### 3 BUDGET AND ACTIVITY PLAN

**3.1** As far as is practicable by 30 September each year, ICSTIS will publish a proposed budget and activity plan for wide consultation and scrutiny.

**3.2** Thereafter, having considered the comments received under paragraph **3.1**, ICSTIS will review and then present its proposed budget and activity plan to Ofcom for comment. Ofcom will be invited to make comments upon the proposed budget and activity plan within such a period of time as ICSTIS may specify.

**3.3** Having received comments from Ofcom, ICSTIS will make such amendments to the proposed budget and activity plan as are necessary to secure Ofcom approval.

**3.4** Having received Ofcom approval, ICSTIS will announce its budget for the forthcoming calendar year, specifying the amount it intends to collect ('the Budgeted Figure').

#### EXPLANATORY NOTE

Ofcom must be satisfied that there are adequate arrangements in place for the funding of ICSTIS. For this reason, ICSTIS will keep Ofcom informed and will seek Ofcom's comments on and approval for its budget each year.

ICSTIS' budget will set out the anticipated expenditure for the forthcoming year and will also make provision for the establishment and maintenance of reasonable reserves. In proposing and deciding the total amount that it needs to collect from the industry, ICSTIS will take account of any surplus or deficit from the previous year.

### FORECASTING

**4.1** Subject to paragraph **4.3** below, network operators must, in accordance with the timetable, provide ICSTIS with a forecast of the value of outpayments (gross of the Levy – see Section **5** below) that each of them anticipates making in or for the forthcoming calendar year.

**4.2** If a network operator fails to provide a forecast in accordance with paragraph **4.1** above, ICSTIS may issue a direction to the network operator requiring the provision of a forecast and/or may make its own forecast of the outpayments likely to be made by the relevant network operator during the forthcoming calendar year, based on such information as ICSTIS may have concerning the network operator's outpayments in previous years, information received from other network operators and ICSTIS' own knowledge of the industry.

- 4.3** Where a network operator intends to provide premium rate services over its electronic communications network and has not previously done so, the network operator is not obliged to provide forecasts pursuant to paragraph **4.1** above.

**EXPLANATORY NOTE**

Funds will be collected through a Levy (see Section 5 below).

The Levy is a flat rate sum which network operators withhold from service provider outpayments. The sum is set in terms of pence in the pound as set out in paragraph 5.2.

The Levy is worked out by ICSTIS and its accountants based on network operator forecasts and expectations of the likely performance of the premium rate market. This figure is then divided by the size of the budget approved by Ofcom.

The Levy may change in the course of a year in exceptional circumstances where significant changes in the market mean that the amount of the Levy does not meet the cost of regulation.

**5 LEVY**

- 5.1** ICSTIS will determine the proportion of every outpayment that needs to be retained and paid to ICSTIS ('the Levy'). ICSTIS may from time to time vary the rate at which the Levy is set to ensure that it continues to receive adequate funding to carry out its activities.
- 5.2** ICSTIS will advise network operators (in writing) and other interested parties (by publication on its website) of the Levy to be applied to outpayments from time to time, and issue directions accordingly. The Levy will be expressed as the proportion of each outpayment that must be retained (e.g. 0.xx pence per £1.00).
- 5.3** Following receipt of notification under paragraph **5.2**, network operators must inform all persons to whom they make outpayments of the level at which the Levy has been set and that they (the network operator) will deduct the Levy at source from every outpayment that is made and that the deducted amount will be paid over to ICSTIS.

- 5.4** Network operators are responsible for deducting the Levy notified under paragraph **5.2** from every outpayment that they make. Where a network operator fails to deduct the Levy, the network operator will remain liable to ICSTIS as though it had in fact deducted the Levy.

**6 PAYMENTS**

- 6.1** In accordance with the timetable, ICSTIS will advise each network operator whose outpayments for the forthcoming year have been forecast under Section **4** of this Annexe of the total amount that the network operator is expected to collect in the forthcoming calendar year by the application of the Levy notified for the time being under paragraph **5.2** ('its Contribution').
- 6.2** Each network operator's Contribution will be calculated by multiplying its forecasted outpayments for the forthcoming year by the applicable Levy for the time being (e.g. £1,000,000 x 0.XX).
- 6.3** Upon being advised of its Contribution by ICSTIS pursuant to paragraph **6.1**, a network operator must pay its Contribution to ICSTIS by 12 equal monthly instalments payable by the last day of each month commencing on the following 31 January. Wherever possible, network operators should arrange to make payments by electronic transfer.
- 6.4** Where a network operator falls within paragraph **4.3**, the network operator will make payments to ICSTIS calculated by multiplying its actual outpayments by the applicable Levy each month during the balance of the first calendar year of service provision.
- 6.5** All invoices provided by ICSTIS to network operators will add a charge to VAT.
- 6.6** All network operators must provide ICSTIS with quarterly reports upon the actual levels of outpayments that they are making as soon as is reasonably practicable following the 31st of March, 30th June, 30th September and 31st December.
- 6.7** Network operators may, in exceptional circumstances, seek ICSTIS' agreement to a recalculation of their forecasts and the consequential payments required of them under paragraph **6.3**.

## 7 LATE PAYMENT

- 7.1** If a network operator fails to pay to ICSTIS monies due in accordance with the timescales set out in this Code and/or in accordance with directions issued by ICSTIS, the network operator will be liable to pay interest in respect of such monies at the rate of 3% above the prevailing base rate for the time being of HSBC plc from the date on which the relevant payment became due.

## 8 ADJUSTMENTS

- 8.1** At the end of each calendar year and in any event by no later than 31 January, network operators must provide ICSTIS with a statement of the actual aggregate outpayments that they have made and the revenue that they have received in their capacity as a network operator during the preceding year. The statement must identify all cases in which the network operator has provided premium rate services in respect of which there is no identifiable outpayment (see Section 10 of this Annexe below), or where it has supplied no such services, the network operator must state this in the statement.
- 8.2** Following receipt of the statement referred to in paragraph 8.1 or an auditors' report pursuant to paragraph 9.1, ICSTIS will determine in respect of each network operator the aggregate amount that ought to have been collected pursuant to paragraph 5.4 and the aggregate amount that has been paid pursuant to Section 6 of this Annexe by that network operator.
- 8.3** Where a network operator's payment to ICSTIS based on forecast outpayments exceeds actual outpayment levels, the network operator will be entitled to have the excess amount repaid. ICSTIS will recalculate this sum based on information provided under paragraph 8.2.
- 8.4** Where ICSTIS concludes, pursuant to paragraph 8.2, that a network operator ought to have collected an amount in excess of that actually paid to ICSTIS, the network operator will be liable to ICSTIS for the difference which will be payable forthwith.
- 8.5** ICSTIS will not make a calculation pursuant to paragraph 8.2 in respect of a network operator that has not provided a declaration of its actual outpayments for the entire year pursuant to paragraph 8.1.

## 9 AUDITORS

- 9.1** ICSTIS' auditors for the time being ('the Auditors') shall have the power to request of a network operator direct confirmation by audited statement of the actual level of outpayments made by it and the actual revenue retained by the network operator in respect of premium rate services supplied by it as a network operator during any relevant period. A network operator's auditors must provide such a statement within such reasonable timeframe as the Auditors may request and/or ICSTIS may direct.
- 9.2** Network operators will not be subject to a request under paragraph 9.1 above more than once in every four years save where previous audited statements have revealed significant inconsistencies or where information provided to or obtained by ICSTIS or the Auditors may give the Auditors cause for concern, in which case the Auditors may require the network operator(s) concerned to provide an audited statement more often than once in every four years.
- 9.3** A network operator or a network operator's auditors shall, at the request of the Auditors, supply such further information and/or explanation of such matters as the Auditors may consider necessary to satisfy themselves as to the accuracy of the network operator's figures in such a format as may be prescribed (including by further statement).
- 9.4** If an auditors' report obtained under paragraph 9.1 indicates that the actual outpayments made by a network operator during the relevant year were different from those declared by a network operator under paragraph 8.1, the Auditors will make such adjustments as are necessary pursuant to Section 8.
- 9.5** If the Auditors advise it to be necessary for the proper administration of this part of the Code, ICSTIS may direct that a network operator subjects itself to assessment by an agreed independent auditor for the purpose of establishing whether the network operator has fully complied with its obligations under this part of the Code. The costs of any such assessment shall be borne by ICSTIS unless the independent auditor concludes that the network operator was not in all material respects complying with its obligations under this part of the Code or where the independent auditor was unable to reach any conclusion because of non-co-operation by the network operator, in which cases the costs will be borne by the network operator.

**9.6** Where an audit conducted under paragraphs **9.1** or **9.5** has revealed material inconsistencies in the information previously supplied to ICSTIS by a network operator, ICSTIS may refer the network operator to Ofcom under the procedures set out at Section **8** of the Code.

## **10 NO IDENTIFIABLE OUTPAYMENT**

**10.1** Where ICSTIS has received notification under paragraph **8.1** that a network operator has supplied service(s) for which there is no identifiable outpayment, it may direct the relevant network operator to explain the reasons for the lack of any identifiable outpayment(s) and/or to supply details of the level of revenue it has generated in respect of those services.

**10.2** If ICSTIS considers it appropriate to do so, it will direct the network operator to treat the revenue it has generated in respect of such service(s), or such a portion of that revenue as ICSTIS may determine, as though it were in fact an outpayment.

## **11 TRANSITIONAL PROVISIONS**

**11.1** Sections **1**, **2**, **3** and **11** of these funding provisions will come into effect following the approval of this Code by Ofcom.

**11.2** Sections **4** to **10** of these funding provisions will come into effect on 1 January 2004 or such later date as ICSTIS may specify following the approval of this Code by Ofcom.

**11.3** For the purpose of these transitional provisions:

- 'Expenditure Budget' means the 2003 ICSTIS budget that was agreed between ICSTIS and the then network operators.
- 'Applicable Percentage' means the proportion of revenue generated by premium rate services that each network operator was individually liable to contribute toward the Expenditure Budget for 2003.
- 'Contribution' means the sum represented by the application of the Applicable Percentage to each individual network operator.

**11.4** Network operators that were, immediately prior to this Code being approved by Ofcom, dealing with ICSTIS as network operators and funding ICSTIS in accordance with their contracts, must continue to pay to ICSTIS such amounts as would have fallen due under those contractual arrangements until 1 January 2004 or such later date as may be notified by ICSTIS under paragraph **11.2**.

**11.5** Network operators that were not, immediately prior to this Code being approved by Ofcom, dealing with ICSTIS as network operators, must:

- a** declare to ICSTIS, as soon as is practicable, at the end of each calendar month the total revenue that they have received in connection with the provision of premium rate services during the preceding calendar month;
- b** pay to ICSTIS such a sum as ICSTIS may request to represent its Contribution to the Expenditure Budget for the relevant period (calculated by reference to the average Applicable Percentage applied to those network operators falling under paragraph **11.3**).

until 1 January 2004 or such later time as ICSTIS determines that the new funding provisions will have full effect.

**11.6** By the last day of February 2004, network operators (including those identified in paragraph **11.5**) must provide ICSTIS with a statement of the actual total revenue generated by their premium rate services during 2003 ('Actual Total Revenue').

**11.7** The Auditors shall have the power to request of network operators direct confirmation of the Actual Total Revenue. Network operators' auditors must provide such confirmation within such time and in such a format as the Auditors may prescribe.

**11.8** The Auditors intend to monitor 25% of network operators in accordance with paragraph **11.7** above, save that additional network operators may be monitored where previous audits have revealed significant inconsistencies or where other information provided to ICSTIS has given cause for concern.

**11.9** Where there are differences between the Actual Total Revenue declared by a network operator under paragraph **11.6** and the figure given by a network operator's auditors under paragraph **11.7**, the Auditors shall rely on the information provided by the network operator's auditors.

# The Procedures Of The Independent Appeals Body

- 11.10** On receipt of statements provided under paragraphs **11.6** and **11.7** and on completion of the audit of the accounts of ICSTIS for 2003, the Auditors will recalculate each network operator's (including those falling within paragraph **11.5**) Applicable Percentage to the Expenditure Budget, based on their Actual Total Revenue and their actual Contribution to ICSTIS during 2003.
- 11.11** ICSTIS will issue invoices and credit notes reflecting the adjustments to be made under paragraph **11.10** as soon as is reasonably practicable after receipt of the Auditors' recalculation, and the sums due to or from ICSTIS shall be payable within 30 days thereafter.
- 11.12** The Contributions and payments of the network operators shall be exclusive of VAT, which shall be added to invoices at the appropriate rate in force from time to time.

## 1 APPEALS AGAINST ICSTIS ADJUDICATIONS

The ICSTIS Code of Practice (Tenth Edition) provides a right of appeal for service providers, applicants for permission or named individuals (as defined in the Code) who are aggrieved by an ICSTIS decision or determination. The relevant provisions in the ICSTIS Code of Practice (Tenth Edition) are as follows:

### "7.11 APPEALS

7.11.1 Applicants may, after an oral hearing at which the Applicant or his representative has appeared, appeal against ICSTIS' decisions and adjudications (other than any adjudication by consent) to the Independent Appeals Body ('IAB') on the following grounds:

- the disputed decision was based on error of fact,
- the disputed decision was wrong in law, or
- ICSTIS exercised its discretion incorrectly in reaching its decision.

7.11.2 In order to institute an appeal, the Applicant must provide a written notice of appeal setting out the grounds upon which the appeal is made and the facts and matters upon which it is based, to be received by the clerk to the IAB ('the Clerk') within 20 working days of the issue of the ICSTIS adjudication or determination which is the subject of the appeal.

7.11.3 The notice of appeal must be accompanied by:

- the written adjudication,
- the case bundle used at the ICSTIS oral hearing,
- a security deposit of £5,000 or an application (to be determined by the Chairman of the IAB) to waive or reduce such a security deposit setting out the grounds for such waiver or reduction,
- a description of any new evidence upon which the Applicant intends to rely and which, for good reason, was previously unavailable,
- if the notice of appeal and/or any necessary accompanying documents are being provided to the Clerk more than 20 working days after the issue of the ICSTIS adjudication, then the Applicant must also provide an application (to be determined by the Chairman of the IAB) for the appeal to proceed, setting out the reasons for the delay and the grounds for such application.

7.11.4 If an Applicant or his representative failed to appear in person at an oral hearing for good reason, but the oral hearing proceeded in his absence and ICSTIS has refused to permit a further oral hearing, the Applicant may apply to the Chairman of the IAB to request him to require that ICSTIS holds a further oral hearing.”

The procedures which follow are those laid down by the Independent Appeals Body ('IAB') and are under its control.

The IAB is a body of persons independent of ICSTIS appointed to provide tribunals to hear appeals.

## **2 THE PROCEDURES OF THE INDEPENDENT APPEALS BODY**

The IAB is able to hear any appeal lodged with the clerk to the IAB ('the Clerk') in accordance with the provisions of Section 7.11 of the ICSTIS Code of Practice (Tenth Edition).

The Clerk shall forthwith, upon receipt of the notice of appeal, provide a copy of it and of the accompanying documents to the Chairman of the Independent Appeals Body ('the Chairman') and to ICSTIS.

In the event that an Applicant was, for good reason, unable to attend an oral hearing but the oral hearing proceeded in his absence, then the Applicant may apply to the Chairman of the IAB. The Chairman shall obtain the views of the Chairman of the hearing panel in writing, or in a hearing at which the Applicant may also attend. The Chairman may require that ICSTIS provides a further oral hearing. The Chairman shall have the discretion to award the costs of the application.

## **3 THE APPEAL TRIBUNAL**

Upon receipt of a notice of appeal, the Chairman shall appoint an Appeal Tribunal, consisting of three members, to deal with the appeal. The Chairman or Deputy Chairman (if any) shall be the Chairman of the Tribunal ('The Tribunal Chairman').

If the Appellant has applied for a waiver or reduction in respect of the provision of the required security deposit and/or for the appeal to proceed despite having been made late, then as soon as reasonably practicable, the Tribunal Chairman shall convene a hearing at which any such application shall be considered and at which ICSTIS may be heard.

In respect of an application for a waiver of the requirement to provide the security deposit, the Tribunal Chairman shall waive the deposit (or reduce the required level of security) if he determines that there appears to be plain merit in the grounds of appeal and that exceptional hardship will result from the requirement that the security be provided.

In respect of an application for an appeal to proceed despite having been made late, the Tribunal Chairman shall grant such application if he is satisfied that in all the circumstances it is fair to do so and he may impose such conditions as he sees fit as to the further conduct of the appeal or as to lodgement of security for costs.

## **4 ENFORCEMENT OF SANCTIONS**

The enforcement of sanctions imposed by ICSTIS is not automatically suspended by the provision of a notice of appeal. An Appellant may apply to the Tribunal Chairman, by written application to the Clerk, setting out the grounds upon which the sanction should be suspended. The Clerk will forthwith provide a copy to the Tribunal Chairman. The Tribunal Chairman will grant the application only if he is satisfied that not to do so would give rise to undue hardship, and that to do so would not give rise to a significant risk of public harm. He shall seek the views of ICSTIS on those matters prior to making a decision and may convene a hearing to deal with such applications.

## **5 REPRESENTATION**

The Appellant shall be entitled to appear before the Appeal Tribunal in person and be represented.

ICSTIS shall attend as respondent to any appeal before the Appeal Tribunal and may instruct a representative to act on its behalf.

## **6 PRE-HEARING PROCESS**

The Tribunal Chairman may, at his own discretion, or upon the application of either party to the appeal, convene a conference of the parties at which he may give such directions as he considers necessary for the fair and speedy hearing of the appeal. Such directions may include, for example, directions for:

- the admission of facts before the hearing,
- the disclosure of documents,
- the provision of expert reports,
- the exchange of written statements,
- the preparation of agreed bundles of documents,
- the submission and exchange of outline arguments.

Directions may be given as to the date by which such actions shall be taken.

Not less than 10 working days before the date of the hearing of the appeal, the Clerk shall send written notice of the day, time and place of the hearing of the appeal to the last known address of the Appellant and to ICSTIS.

Within 5 working days of receipt of the notice specifying the date of the hearing, both the Appellant and ICSTIS shall each inform the Clerk in writing of whether they intend to appear at the hearing and the name of any person who will be representing them at the hearing.

Neither party shall, without the consent of the other party or permission of the Tribunal Chairman, call any witnesses or present any written statements or other documents unless written notice has been given to the other side at least 5 working days before the hearing, together with a summary of what such witnesses are expected to say and a copy of the statements or other documents.

## **7 THE HEARING**

The Appellant shall outline the grounds of his appeal and call such witnesses and refer to such documents as he is entitled to do.

ICSTIS shall then be entitled to respond to the case put by the Appellant and to call such witnesses or present any written statements or other documents.

The Appellant shall then be entitled to address the Appeal Tribunal.

A witness in person may be cross-examined by the other party in the appeal. A witness who has been cross-examined may be re-examined.

The Tribunal Chairman may question any witness at any time.

The Tribunal Chairman shall have the power to vary any of these procedures at any time and to adjourn the hearing if satisfied that it is in the interests of justice to do so.

If the Appellant is neither present nor represented at the hearing and the Appeal Tribunal has no cause to believe there is a good reason for the Appellant's absence, the appeal may be dismissed.

## **8 CONFIDENTIAL INFORMATION**

The Appeal Tribunal shall be entitled to consider and act upon confidential information without directly or indirectly disclosing to the Appellant (or ICSTIS as the case may be) the source of that information provided that the Appellant (or ICSTIS) is given a reasonable opportunity to rebut its substance.

## **9 RECORDING**

A sound recording shall be made of the proceedings before the Appeal Tribunal. Recordings will be made available to ICSTIS and the Appellant.

## **10 PUBLIC HEARING**

An appeal hearing shall be conducted in private, unless the Appellant or ICSTIS otherwise requires. If an appeal hearing is in public, either party may request that any part of the hearing be conducted in private and any such application shall itself be heard in private.

## **11 COSTS OF HEARING**

The Appeal Tribunal shall make such award for costs of the parties as it shall see fit, subject to a maximum of £10,000 (inclusive of disbursements and VAT). In addition, the Appeal Tribunal shall award the costs of the provision of the Tribunal as it sees fit, subject to a maximum of £5,000 (inclusive of VAT).

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## **12 POWERS OF THE APPEAL TRIBUNAL**

The Appeal Tribunal shall consider all documentation and evidence produced at the ICSTIS oral hearing and may, at its discretion, rehear any witness called before the ICSTIS oral hearing and hear new evidence which for good reason was not available at the ICSTIS oral hearing.

The Appeal Tribunal may:

- confirm, vary or rescind an adjudication or determination or any part of it made by ICSTIS and substitute such other finding as it considers appropriate,
- confirm, vary or rescind any sanction imposed by ICSTIS pursuant to its adjudication made following the oral hearing. For the avoidance of doubt, the Appeal Tribunal may impose a greater sanction than that imposed by ICSTIS provided that such a sanction could have been imposed by ICSTIS.
- confirm, vary or rescind the imposition of an administrative charge made by ICSTIS.

## **13 DECISION AND PUBLICATION**

The Appeal Tribunal shall, as soon as is practicable after the hearing, provide a reasoned written decision. This written decision shall be published by ICSTIS.

## **14 FURTHER APPEAL**

There is no further appeal through ICSTIS' procedures or those of the IAB.



**The Independent Committee for the Supervision  
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