

Joint Ofcom and ICSTIS response to Culture, Media & Sport Committee report on call TV quiz shows

Introduction

- 1 Ofcom and ICSTIS welcome the Culture, Media and Sport Committee's ("the Committee") report and are pleased to be able to respond to the Committee.
- 2 Recent reports of malpractice in the premium rate service ("PRS") industry highlight the importance of the Committee's report, the regulators current rules and regulations and the recent consultations concerning new rules in this sector. The revelations about the operation of PRS have seriously damaged the trust between the broadcaster and the audience and raises serious concerns about consumer protection. Both Ofcom and ICSTIS, working together, wish to emphasise as strongly as possible that effective regulation of Call TV Quiz Services is of paramount importance and that much work has already and continues to be done to ensure robust protection for the public.
- 3 In addition to investigating specific cases, Ofcom has recently announced an Inquiry into the apparent systematic failures of compliance in this area. In particular, Ofcom is concerned about the way that the structure of relationships between broadcaster, producer and service provider can best be aligned to ensure the greatest level of consumer protection.
- 4 This question is directly concerned with the issue of trust between broadcaster and audience. As the sectoral regulator for broadcasting - as identified by the Committee - Ofcom agrees with the Committee that it bears the leading role in this issue. Ofcom is therefore responsible for ensuring that all regulatory responses are properly co-ordinated, and that there is an appropriate range of both organisations and rules to protect consumers. ICSTIS is responsible for the day to day regulation of the promotion and operation of premium rate services (e.g. whether callers are overcharged or whether the pricing of the call is free), while Ofcom itself regulates the editorial standards in such programming (e.g. investigations into fake winners). Ofcom also requires all broadcasters to ensure that any material they broadcast which uses PRS is fully compliant with ICSTIS's code. As a result of this interlocking set of relationships, we believe that the necessary measures and expertise are in place or in hand to achieve the report's objective of fair, open and trustworthy quiz services. However, as noted above this sector remains under close regulatory scrutiny and conclusions to consultations on tighter regulation is imminent.

- 5 Having suitable rules and mechanisms for effective investigation and enforcement is of course crucial; and, as the Committee rightly observed, good co-ordination is vital too. We address the subject of co-ordination in detail later in this response but would make the point here that this joint response is itself a strong expression of the two regulators working together and understanding clearly their respective roles and the leadership framework that has been established under Ofcom's supervision.
- 6 Our response addresses those of the Committee's conclusions and recommendations that are relevant to Ofcom's and ICSTIS's roles, separately or jointly, in the order set out in the report.

Responses to conclusions and recommendations

(1) We understand that ICSTIS's conclusions [from its review of the sector] are imminent, and we urge the Gambling Commission to publish its own findings as soon as possible. (Paragraph 25)

- 7 ICSTIS published the results of its recent monitoring and research into Call TV quiz shows on 29 January 2007. In the light of its review, ICSTIS also launched a public consultation addressing many of the concerns raised in the Committee's report and aimed at strengthening the rules across the sector. The consultation closed on 12 March 2007 and ICSTIS is expecting to publish its proposals for action next month.
- 8 A copy of ICSTIS's Analysis and Consultation Document is attached as an annex to this document.
- 9 ICSTIS also met with broadcasters on 8 March 2007 to discuss ongoing concerns regarding the use of Premium Rate Services in all participation programming, not just Call TV quiz shows. Following this meeting ICSTIS set out a range of actions aimed at restoring public trust and confidence in these services and ensuring consumers are protected. This included:-
- Asking all broadcasters and their partners to carry out a review of their current and forthcoming participation TV programming to ensure there is no risk of consumer harm. Responses are to be provided to ICSTIS by 26 March 2007.
 - The introduction of systematic monitoring by ICSTIS and inspections to ensure services are being run as they should.
 - An expectation that providers would publish complete, accurate and easily understood rules for all competition services.
 - The introduction of a licensing regime for all premium rate service providers operating participation TV services within three months. Such a licensing system will define where responsibility for compliance with the ICSTIS Code of Practice lies so that viewers can have absolute confidence in services. As part of establishing a licensing regime, ICSTIS will explore with the industry the benefit of introducing a trust mark or quality standard to build long-term public confidence in services.

(7) We commend the operators who have voluntarily introduced practices intended to help viewers who make repeated premium rate calls appreciate

how much they are spending. We recommend that ICSTIS commission or carry out research into the effectiveness of alerts and limits on the number of calls, particularly (in co-operation with consumer bodies) among individuals who have got into debt. ICSTIS should consider making it a requirement for quiz show operators to take steps to ensure that callers are aware of how much they are spending. (Paragraph 38)

- 10 The ICSTIS review, published on 29 January 2007, included details of recent research and monitoring undertaken into the operation of Call TV Quiz Services. As a result of this review ICSTIS has consulted on proposals to impose a requirement on operators to provide announcements to callers at each £10 step they spend to ensure that they are aware of their overall spend.

(9) We welcome Ofcom's finding, in response to a complaint, that ITV had conducted a competition unfairly and had been in breach of Rule 2.11 of the Broadcasting Code. (Paragraph 43)

- 11 Ofcom investigates all complaints that raise issues under the Broadcasting Code where there are specific rules and guidance to ensure fairness in broadcast competitions. Ofcom believes that publicly highlighting cases of inappropriate question-setting or other irregular practice in the arrangement of competitions plays a significant role in letting audiences and broadcasters know what is and is not acceptable. The publicity that is generated for the broadcaster acts as a further, powerful deterrent.
- 12 Ofcom also has the power to impose statutory sanctions (including fines and revocation of licences) against broadcasters for repeated and serious breaches of its codes. ICSTIS can also fine telephone operators of PRS up to £250,000. Both regulators stress that they are quite prepared to use the full range of sanctions should it be warranted.

(10) Some methodologies used for puzzles on Call TV quiz shows are not obvious. We believe that this is tolerable as long as viewers are made aware there is a cryptic element: but this is currently not made clear. Guidance from Ofcom on the issue is sound but does not go far enough. We recommend that Ofcom should require broadcasters to inform viewers that puzzle solutions may not be as simple as they seem. We believe that checks by an independent third party on proposals for new puzzle types and on each puzzle for conformity with agreed rules are valuable in building confidence in the propriety of the games. They are also in the industry's own interests. If there is continued evidence of abuse and significant numbers of complaints about games methodologies, Ofcom should consider making it obligatory for all broadcasters of Call TV quiz shows to verify games with a third party and lodge solutions with them to prevent underhand changes being made while the show is on air. We recommend that Ofcom should consider carefully whether operators should be required to broadcast not just the solutions but also a brief explanation as to how they are arrived at. (Paragraph 48)

- 13 Ofcom currently requires broadcasters not to mislead viewers about the difficulty or cryptic nature of a competition. That seems to us to be the right approach. In practice, the description and layout of a game will generally alert the audience to

what sort of puzzle to expect – word searches, ‘word tower’ games, number puzzles and so on – and only where programming actively misdirects viewers about the ease or method of solution can we reasonably bring rules to bear. Considerations of fairness will apply here too: if a game is wrongly conducted for any reason, including misrepresentation of complexity, Ofcom’s rules and guidance on fairness operate. Importantly, therefore, by operating a general rule on fairness Ofcom is able to intervene where a game might entail an absurdly contrived or perverse solution, for example, whether or not some indication is given about its being cryptic or irregular.

- 14 Ofcom requires broadcasters to reveal on air the answer to all quizzes. It does not require that the actual methodology behind an answer is revealed, since it may be commercially sensitive and ultimately make such games impossible to run. However, when Ofcom receives a complaint concerning this issue, it insists that the broadcaster provide it with the methodology, so it can, as an independent regulator, verify the answer and validation process.
- 15 Ofcom currently requires that broadcasters are able to demonstrate to it that an answer has not been changed in the course of a competition. Lodging answers with a third party is one obvious means of doing so, as the guidance indicates. But it is a licensee’s responsibility to comply with the requirement; the burden of proof lies with the broadcaster. However a broadcaster goes about it, Ofcom expects unambiguous evidence of compliance. It is satisfied that at present the application of this guidance offers a suitable degree of regulation while allowing flexibility for broadcasters in fulfilling it. Nevertheless, if Ofcom became aware of systematic problems in this area, it would not hesitate to create rules that effectively protect the viewer.
- 16 More generally, Ofcom’s view is that detailed prescriptive rules are generally not well suited to matters of content regulation. In applying the general standards set out in the Communications Act 2003, Ofcom’s focus is primarily on outcomes – what is broadcast – rather than the process of achieving that outcome. Rules based on process may not be applicable in all cases: compliance with a set of rules, no matter how detailed, may still not achieve the desired outcome. The burden of compliance, including the editorial processes involved, should rest unambiguously with the broadcaster.
- 17 Even so, Ofcom agrees with the Committee that if systematic abuse becomes apparent it should consider tightening this area, including exploring whether some closely defined process requirements should be established.

(11) We are surprised that there have been so few complaints in Ofcom’s Broadcast Bulletins about games methodology or about the obscurity of answers. On balance, unless there is a significant drop in confidence in the integrity of Call TV quiz programmes, we accept that Ofcom’s role in ensuring fairness should continue to be primarily one of responding to complaints rather than taking a proactive stance. We recommend, however, that Ofcom should publish periodic reports on the findings of its exercises in monitoring Call TV quiz programmes. Ofcom should in particular watch for any sign that top prizes are consistently going unclaimed because they are associated with puzzles which are so obscure that no viewers solve them. (Paragraph 50)

- 18 Ofcom agrees with the Committee that at present responding to complaints is the appropriate stance for Ofcom to take. Ofcom would like to re-emphasise that the

process of investigating complaints does lead to many hours of programming being examined and in effect monitored.

- 19 It is important to bear in mind that in the area of Call TV Quiz Services, as in all of Ofcom's content work, it is the viewing audience that provides the biggest and most effective monitoring operation.
- 20 Problems with the operation of behind-the-scenes PRS systems and studio procedures, however, are not easily detected or exposed by viewers; monitoring in that respect would be valuable. ICSTIS is therefore pleased to be able to confirm that as part of its recent research it undertook extensive monitoring of the way Call TV Quiz shows operate. ICSTIS also undertakes monitoring as part of the general regulatory process and will be conducting systematic inspections of operating premises to ensure compliance.
- 21 Ofcom is not aware of any evidence that top prizes are regularly going unclaimed. However, Ofcom's Inquiry will examine this matter carefully.

(12) We signal our strong view that any practice of misleading viewers about call volumes or of blocking calls would be more than unfair: it would be fraudulent and should be punished under criminal law. It would also be a disgrace to the Call TV quiz industry. (Paragraph 52)

- 22 ICSTIS has made clear, publicly, that where evidence of fraud or other criminal practice comes to light, it will not hesitate to pass on that information to the police. ICSTIS has an excellent relationship with the City of London Police, who have already investigated one case of alleged fraud by a call TV Quiz Service. As a result of that Police investigation it was decided by the CPS that there were insufficient grounds on which to bring charges.
- 23 Since the publication of the Committee's report, other issues have come to light which suggest that audiences may have been misled in other ways – for instance, about the existence of winners. Ofcom is investigating a number of such cases, and will publish its findings in due course.

(13) We accept the statement by ITV that the number of callers being charged for calls made after they have exceeded call limits set by broadcasters and who therefore cannot participate is very small. Nonetheless, it is unacceptable in principle that such callers should continue to be charged, particularly when they do not understand the futility of such calls. We welcome the undertaking by ICSTIS that it will investigate the practice of continuing to charge. We find it difficult to believe that there is no suitable way of preventing such calls from being charged, and we urge BT to assist in finding a solution. In the meantime, customers should be refunded the cost of any calls made which have been blocked from entering the competition. (Paragraph 56)

- 24 ICSTIS' consultation on Call TV Quiz Services identifies the technological problems that are associated with resolving this issue. ICSTIS have sought more information about the actual nature and size of this problem overall as well information about how this problem could be resolved. ICSTIS is committed to keeping this issue under review, recognising that technical solutions may not be straightforward. However,

both Ofcom and ICSTIS agree with the Committee that it is unacceptable for callers who have been barred entering a competition, because they have spent too much money, to be charged.

(14) We believe that there is scope for raising the standards which broadcasters should meet in presenting information on the cost of participation on-screen, possibly by prescribing the balance to be maintained between that information and the premium rate number. (Paragraph 62)

- 25 The current ICSTIS Statement of Expectations sets out rules requiring operators to provide spoken and on-screen information about the cost of participation. However, the ICSTIS consultation proposed to strengthen these rules by mandating operators to provide cost information, verbally, at intervals of no more than 10 minutes to ensure viewers fully understand the cost of participating in a Call TV quiz show. This is in addition to the current requirement to display the cost of a call every minute. Given the broad support for this proposal from consultation, ICSTIS expects to bring forward, as a matter of priority, strengthened rules for pricing information to be provided verbally

(15) We accept that there may be practical difficulties for operators in displaying a figure purporting to show the odds of any viewer getting through to the studio by making a call at that particular moment, but we believe that they are not insurmountable. We are firmly of the view that there should be more transparency about the factual information on which a calculation of the odds would be based. (Paragraph 65)

- 26 ICSTIS, with Ofcom's support, acknowledges that improved transparency to consumers about the chances involved in participating in Call TV Quiz Services is critical and essential to consumer trust, understanding and confidence in these services. The recent ICSTIS consultation therefore sought views on practical ways in which this might be achieved. The result of this consultation and any new rules is expected to be published next month. The consultation demonstrated broad support for the need for improved transparency in this area and ICSTIS expects to bring forward, as a matter of priority, strengthened rules in this area.

(16) We recommend that broadcasters should be required to display some recent historical information about volume of incoming calls, with an indication of the odds of being connected to the studio. The operators and regulators should together devise a model for prescribing what information should be provided and how often. We acknowledge that considerable care will need to be taken to ensure that the information given to viewers will indeed increase transparency. (Paragraph 68)

- 27 As noted above, ICSTIS is considering the responses to its recent consultation on practical ways to increase transparency to consumers about the chances of getting through to the studio.

(17) While it is right and proper that operators should be able to ban participants caught cheating from further participation, we believe that any participant who has been banned should be given full information on the reasons why the ban has been imposed. (Paragraph 69)

28 Ofcom requires that licensees make clear to viewers if exclusions apply to entry – age requirements for example. The problem in the case presented to the Committee showed the need for participants to be clear about the Terms and Conditions which apply, and specifically whether a large win would lead to a ban on participation. Ofcom agrees that the Broadcasting Code's guidance note, which covers TV competitions, might be strengthened to require that any participant barred from entry be given full reasons by the licensee. ICSTIS has also made clear that all providers will review their Terms and Conditions to ensure they are complete, accurate and easily understood.

(18) We welcome the recognition by regulators that close co-operation is needed in the Call TV quiz sector. Given the distinct areas of expertise of each of the regulators, we believe there should continue to be a regulatory role for each. However, we recommend that there should be one regulator, in our view Ofcom, taking the lead and orchestrating oversight. We believe that members of the public have no clear idea which body they should complain to if they have concerns, and we recommend that a single body should take responsibility for registering all complaints and forwarding them, as necessary, to the appropriate body. This would allow regulators and broadcasters alike to gain a clearer picture of where concerns lie. (Paragraph 76)

29 Ofcom and ICSTIS are pleased that the report acknowledges the regulators' recognition of the need for close co-operation. And we readily agree with the Committee's view that one regulator – Ofcom – should take the lead and orchestrate oversight.

30 It is important to stress that Ofcom already has general oversight of ICSTIS's activities. ICSTIS regulates premium rate services (PRS) under a Memorandum of Understanding with Ofcom, which approves its Code of Practice, budget and annual activity plan, including an assessment of its performance and the prioritisation of its strategic direction. On a day to day basis, therefore, there are well established arrangements between the two regulators that cover such matters as broadcasting, telecoms investigations and general strategy.

31 In the light of its overall responsibility for the broadcasting sector, Ofcom is separately starting an inquiry into the apparent systematic failures of compliance in this area. In particular it will examine the structure of relationships between broadcaster, producer and service provider, examining how they can best be aligned to ensure the greatest level of consumer protection.

32 Separately, Ofcom is currently undertaking a broad review of the scope of regulation of premium rate services. The aim of the review is to consider whether current PRS regulation meets the needs of consumers while supporting an innovative and growing PRS industry. Both regulators are keen to ensure the most effective regulation of PRS in the converging media landscape.

33 Ofcom and ICSTIS recognise the need, clearly articulated in the Committee's report, to ensure that the public are clear about their respective roles in the regulation of quiz

TV and to ensure the most effective regime exists for detecting and acting against abuses.

- 34 However, we do not share the Committee's view that a single point of complaint would be in the best interest of consumers. We believe that all complaints should be accepted irrespective of where they are lodged, and redirected by the regulators themselves to the most appropriate respondent. Ofcom and ICSTIS have well-organised and easily accessed procedures for the registration of complaints. Complainants to either body may write, call, email or use web-based facilities. Both bodies' identities and contact details are widely publicised including in ICSTIS's case on the back of telephone bills and in many phone directories. And of course both bodies' complaint handling machinery is well-tested and efficient.
- 35 Ensuring that any transfer of complaints (or aspects of complaints) is done by the regulators themselves is consistent with the way in which both regulators have processed all other broadcasting complaints that involve PRS, high profile examples of which have included public concern about the recent Five Brainteaser programme (where it is alleged that the names of winners were fabricated) and the current "You Say, We Pay" competition on Channel 4's Richard and Judy. Of course, both regulators will continue to explain fully to complainants who is considering their complaint and why.
- 36 Ofcom is leading in the co-ordination of work on investigations, sanctions and general policy in this area. Ofcom is currently acting as the hub for Call TV Quiz Services regulation, ensuring, among other things, that decisions about ICSTIS and Ofcom rules – including reviews of them – and their application complement each other and maximise consumer protection. Similarly, Ofcom is active in gathering to the centre any information about Call TV Quiz Services that might influence the regulatory position, including close contact with the Gambling Commission. Distributing that information and co-ordinating responses to it is of course another part of the leadership role.
- 37 A further, important illustration of Ofcom's leadership in this area is its Participation TV project. That project has already issued a discussion paper and, underpinned with powers of compulsion, sought very detailed information from licensees. Since Call TV Quiz Services is the largest and much the highest profile type of Participation TV, a substantial part of the forthcoming consultation will be given over to it. Consumer protection concerns figure prominently in the work. In considering the most appropriate way to regulate this sector, Ofcom will look at a number of options, including the introduction of new rules.

23 March 2007

ANNEX

ICSTIS Call TV Quiz Services Review: Analysis and Consultation Document