



18<sup>th</sup> January 2006

Consultation Co-ordinator  
Gambling Commission  
Berkshire House  
168-173 High Holborn  
London WC1V 7AA

*Dear Sir/Madam*

### **Statement on Principles of Licensing and Regulation**

ICSTIS – the UK premium Rate Services Regulator – welcomes the opportunity to provide comments to the Gambling Commission on the above consultation paper. Specifically these comments are provided by ICSTIS' Secretariat, not the full Committee. In broad terms we welcome the approach proposed by the Gambling Commission as outlined in this paper.

Before commenting further on this consultation paper, it would be worth setting some context to the potential regulatory issues and concerns where the Gambling Commission and ICSTIS may have future interests.

We are the regulator for all Premium Rate Services (PRS) accessed by UK consumers. This is regardless of where the service provider is based globally. PRS are defined in the Communications Act 2003 (S.120) and the ability for Ofcom to approve the ICSTIS Code of Practice, which they currently do, is set down in Section 121 of that Act.

PRS can take a variety of forms in terms of the content offered and in broad terms they share the following characteristics:

- They are charged to a users telephone bill – fixed or mobile;
- They involve the delivery of some form of content, service or product; and
- There is a revenue-share for the cost of the call (which is typically more expensive) between the provider of the service and the telephone company with whom the service provider contracted.

ICSTIS' Code of Practice extends regulation to both the services themselves and their related marketing, promotion or advertising. In respect of the latter, there is a recognised overlap with the ASA with whom we have good working relationships and effective referral arrangements in order to provide some regulatory certainty to PRS providers. Our powers are quite extensive, and following a recent amendment to the Communications Act, allow us to fine service providers up to £250,000. We also have

powers to bar services from operating and in certain circumstances name a specific individual and bar him or her from operating any form of PRS for a defined period. This power is especially useful where rogue traders create new corporate entities for each “scam” they operate.

As we say above, PRS can take many forms and the one that has historically been of most interest to the Gaming Board has been the provision of prize competition services. Here our primary focus is on the risk of consumer harm through misleading advertising, the absence of pricing information, the misrepresentation of the offer or problems in obtaining the prize or “award”. Some have held the view, including us at times, that particular services may in fact be unlawful lotteries. In such cases it is our practice to refer matters which may be unlawful to the appropriate body whilst addressing other breaches of our Code and applying an appropriate sanction that we have at our disposal. Historically, however, and as was recognised in the Bud review on gambling quite openly, the appetite for the police to investigate some of these “pseudo lotteries” was not great due to the uncertainty as to the nature of the legislative position with regards lotteries.

We should equally recognise that many competition services operate in ways that fully comply with our Code of Practice and appear to cause little consumer harm and deploy appropriate free entry alternative routes in ways that appear to comply with existing legislation.

Also, more recently we have seen the arrival using PRS of some remote gambling services. So far these have been very few due to a number of technical and commercial issues which many in the value chain are trying to resolve. In light of this, some time back, having discussed matters with amongst others GamCare, we took the view that any remote gambling service wanting to operate would need to be licensed by ICSTIS before it could operate. We have drawn up some questions that would be used by the Committee to consider and assess an application for permission. The main questions which would commence any consideration are:

**Evidence of an Appropriate License (when applicable)**

- Has the applicant provided evidence that an appropriate licence is held that will cover the proposed service?

**Age Verification**

- What procedures will the applicant have in place to verify that consumers registering to use the service are not underage?
- Are these procedures suitably robust?
- Is the age verification process free for consumers to use?

**Access Controls**

- If the service appears on a website, has the applicant correctly rated the website with ICRA or an equivalent acceptable to ICSTIS?
- Where similar access controls are available on other platforms has the applicant made the necessary arrangements to ensure that the service is compatible?

**Promotional Material**

- Does the promotional material comply with the requirements contained in the Code relating to competition services? In particular, does it meet the following:

- a) Does the promotional material contain sufficiently prominent warnings about underage use?
  - b) Is the amount that a consumer stands to win stated? If the amount that can be won is not fixed, is there an adequate explanation of how the prize winnings will be calculated?
  - c) Is there an explanation of how winnings will be paid? If winnings will be paid in 'money's worth', is it clear what form the winnings will take?
- If consumers are required to pre-register for a service, is there a statement informing them of how long they can expect to wait before they can use the service?
  - Are there details about, or links to, sources of information about responsible gambling?

### **Reality Checks**

- Has the applicant proposed to use reality checks?
- In relation to the service and the method of delivery, do these checks occur with sufficient regularity?
- Can consumers access information about their playing record?

This list is not exhaustive, but is indicative of areas the Committee will consider as part of an application.

### **Principles of Licensing and Regulation**

Turning now to your consultation paper, we would in the context of the above information, offer the following comments:

1.4 We welcome the commitment by the Gambling Commission to work closely with a range of bodies including regulators. We trust that this will include ICSTIS in appropriate areas and that we will be consulted by the Commission on developments of any relevant Codes of Practice as you move forward.

1.6 We agree with your philosophy and approach here. We would observe that our remit extends to misleading advertising where the promotion is for a PRS. In most cases complaints about this are referred to us by telephone companies whose customers initiate a complaint from them following receipt of a high phone bill. We also receive complaints, however from Trading Standards Officers around the UK as well as the ASA who frequently refers matters to us when in our jurisdiction.

1.8 We have taken the view that adequate age verification systems in the context of gambling must be independent and more than "self-verification" by the user themselves. We recognise that no system for verification can ever absolutely protect against a determined child but the processes must have sufficient vigour and checks to ensure that most, if not nearly all, under age users are denied access to a remote gambling service.

### **Next steps**

As PRS develops and evolves and as technological advances make the provision of remote gambling a realistic proposition over mobile devices and the like, the possibility that PRS will be a payment mechanism of choice for remote gambling will increase. For that reason, and for reasons of our interest in prize competitions and that “grey area” between them and gambling proper, we think that ICSTIS and the Gambling Commission will need to maintain a close dialogue as policy develops and the Commission becomes operational. We very much look forward to working with your colleagues in the future.

Yours faithfully

*Paul Whiteing*

**Paul Whiteing**  
**Deputy Director**