



**Prize Competitions and Free Draws:
ICSTIS' response to a consultation
document issued by the Gambling
Commission**

Issued by ICSTIS on 27th October 2006

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Executive Summary

ICSTIS welcomes the opportunity to respond to the Gambling Commission's consultation paper on Prize Competitions and Free Draws.

We would like to highlight, in particular, the following points from our response:

Current legal uncertainty: we agree with the Commission that the current law is unclear and the distinction between lotteries, prize competitions and free draws has become blurred. We hope this situation will be rectified under the Gambling Act 2005 (hereafter referred to as "the Act"). This consultation document demonstrates the likelihood of continuing uncertainty. It is important that this uncertainty is addressed to the maximum extent possible through guidance and as necessary through the courts.

Regulatory boundaries: the Commission recognises that it will have no regulatory responsibility in respect of competitions and draws, but that it will expect to monitor the boundary between them and lotteries. Again we agree with the Commission but would observe that when monitoring boundaries it would be advantageous, and good regulatory practice, to do this in co-operation with other bodies such as ICSTIS who will continue to have responsibilities to monitor and regulate the boundary from the other direction. This will ensure that our detailed regulatory knowledge, including an understanding of the complexities of the value-chains involved in this area, and the best evidence-base can be utilised by the Commission in setting any future policy around the boundary. It will also provide competition and gambling providers with a higher degree of regulatory certainty than they currently enjoy.

Free entry routes: The material question to this debate is what usage would constitute the evidence base. This, we think, may be a matter for the Courts to ultimately determine unless some other evidenced-base can be established on which the Commission and other stakeholders concur.

Payment to enter considerations: In respect of the telephony issues and payment to enter considerations, we make a number of observations on the points (i) to (iii) of paragraph 23 of the consultation and the telephony concepts used some of which are dated and do not easily take account of how modern telephony operates and is charged.

Section One Introduction

In the introduction to the consultation paper the Gambling Commission (hereafter referred to as the “Commission”) makes three comments on which we would make the following points:

- **Current legal uncertainty:** we agree with the Commission that the current law is unclear and the distinction between lotteries, prize competitions and free draws has become blurred. As an independent regulatory body with 20 years experience in regulating these types of service we observe that there has been, over that time, a difference between public policy expressions about the legality of some of these services by those charged with regulatory or enforcement responsibilities and any appetite to bring prosecutions against those who are apparently committing offences under the 1976 Lotteries and Amusements Act. At times that has left ICSTIS in a difficult regulatory position as we have been advised that we have been tolerating services which may be unlawful by those charged with a duty to take action to enforce the law who have, for whatever reason, not seen it as a sufficient priority to do so. We hope this situation will be rectified under the Gambling Act 2005 (hereafter referred to as “the Act”). This consultation document demonstrates the likelihood of continuing uncertainty. It is important that this uncertainty is addressed to the maximum extent possible through guidance and as necessary through the courts.
- **Greater certainty under the new Act:** the Commission says that it welcomes the fact that the Act contains provisions designed to clarify the distinction between prize competitions, free draws and lotteries. We would like to hope that this is the case. However section 11 of the consultation appear to challenge this view by suggesting that it may be necessary to bring a prosecution in order to secure a clearer definition of the meaning of phrases such as “significant proportion” in the Act. If this is the case then it may be that the clarity we, and many other bodies, argued for when the legislation was being framed and agreed, may not exist.
- **Regulatory boundaries:** the Commission recognises that it will have no regulatory responsibility in respect of competitions and draws, but that it will expect to monitor the boundary between them and lotteries. Again we agree with the Commission but would observe that when monitoring boundaries it would be advantageous, and good regulatory practice, to do this in co-operation with other bodies such as ICSTIS who will continue to have responsibilities to monitor and regulate the boundary from the other direction. This will ensure that our detailed regulatory knowledge, including an understanding of the complexities of the value-chains involved in this area, and the best evidence base can be utilised by the Commission in setting any future policy around the boundary. It will also aid providing competition and gambling providers with a higher degree of regulatory certainty than they currently enjoy.

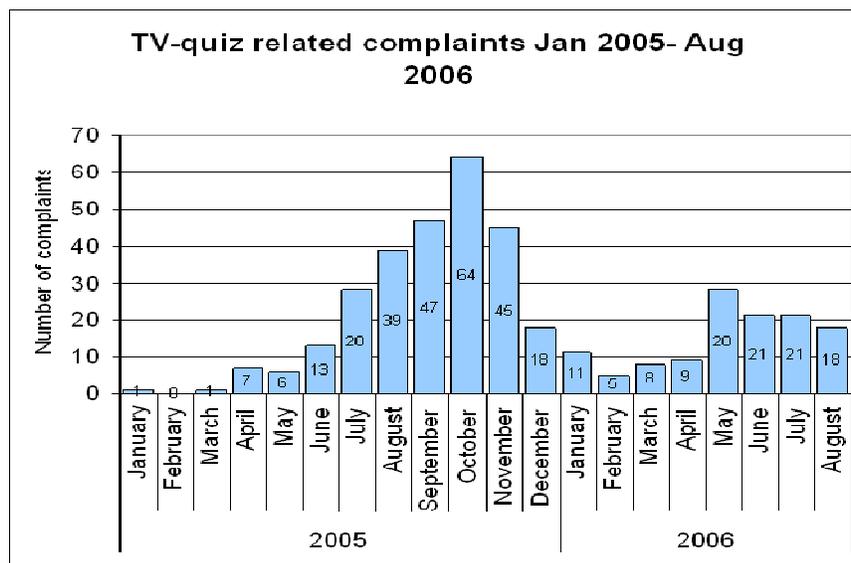
Section Two Definition of a lottery

We have no specific comments about the definitional points made in this section of the consultation paper. The Commission concludes that Quiz TV Services are complex lotteries. The Commission presents this view as a matter of fact. It may not be quite so clear cut and it may be a position that others who operate these services may wish to challenge. We also note, and it may be material to any discussion on this issue, that the Commission makes no reference to the fact that nearly all such Quiz TV programmes offer a free alternative entry mechanism for participating in these shows. We note in subsequent presentations on this consultation that the Commission does acknowledge the use of alternative free entry routes by many of these providers.

Quiz TV Services

The Commission is aware that ICSTIS regulates such services where they operate a payment mechanism using premium rate charging. All current services do. Insofar as they represent broadcast output, they also need to comply with Ofcom's requirements as published in its Programme Code. Earlier this year, following extensive consultation, ICSTIS issued a Statement of Expectations for Quiz TV Services, a copy of which is at **Appendix One** to this response. This Statement was designed to strengthen the consumer safeguards and make as transparent as possible the cost of these services to all participants. Where these services provide a "live element" – which most do for those who are successful in getting through to air - then these services also require ICSTIS prior permission. As part of this process, we have made clear that no service may operate in a way that breaches the law. We would expect any reputable company investing significantly in such a venture to have secured legal advice, and we are advised that this is the case by many such providers.

Complaints to ICSTIS about Quiz TV Services are as follows:



The Commission will observe that the trend in complaints has been a positive one, although we know also that Ofcom has also had a considerable amount of complaints about these services. However, we are not complacent about these services and their potential for consumer harm and for this reason are undertaking an extensive review of these services as we announced on 10th October 2006. We are also talking to others involved in the value chain, especially

telephone companies with a contractual relationship with consumers, to better understand what concerns or detriment may be arising which may not be immediately logged with us for investigation purposes.

Clearly, the Commission has an important role to play in determining the boundary between lotteries and prize competitions. That boundary is one that may be open to some legal interpretation. Insofar as it is, the Commission may wish to have regard to the evidence base of consumer harm that ICSTIS and others have established around these services over the last 15 months. As part of this we can confirm that none of our complaints from the public raise issues about misuse of the phone line by children who have been drawn into these services. The need for a solid evidence base becomes the more critical when the media spotlight is focusing on these services.

Insofar as the Commission, in determining the boundary between gambling and competitions with prizes is giving consideration to the licensing objectives under section 1 of the Act, it may be assured that we, through our consumer protection regime, supported by Ofcom and tough sanctions, are already discharging the equivalent of these responsibilities.

There is clearly continuing uncertainty over what is and is not a lottery in law. Insofar as it is appropriate to factor consumer harm into decision taking it would seem appropriate to examine this today and reflect on the substance and adequacy of existing consumer protection arrangements.

Addiction is a concern with many goods and services. The fact that a programme has loyal viewers and a percentage of viewers who repeatedly participate does not mean of itself that the programme is a lottery or harmful. We are sensitive to, and experienced in dealing with, the few who might use these or other services excessively. Programmes and network operators have mechanisms which can be deployed to recognise repeat callers to services. The capping of call volumes per customer is, however, a provision we could introduce to our licensing regime for such services if the existing safeguards were shown to be lacking. Our recently announced review will again consider this issue as well as the overall transparency of the service, in particular how well consumers understand the proposition that most callers will not get through live to air even if they think they know the correct answer to the question or puzzle.

Section Three Prize Competitions

The Commission has helpfully attempted in this section of the consultation paper to put some further thoughts and detail to the meaning of Section 14 (5) of the Act, especially in the context of the meaning of exercising skill, judgement or displaying knowledge. In doing so, it exposes the areas of the Act where differences of interpretation are most likely to arise and which may need resolution by the courts. The Commission makes clear that it is keen to avoid this and this is to be welcomed. However, if this is to be managed through guidance then this will have to take on board comments from all stakeholders and where possible draw on evidence of harm or societal concern which is consistent with the licensing objective set out in section 1 of the Act (especially subsection 1c).

We would also make the following specific points on this section of the consultation document:

- Paragraph 12 – The Commission recognise that what is “significant” will depend on the context and the facts of the case. This supports our contention that the Act may not be as clear cut as the Commission appear in places to suggest it may be. The Commission also expresses the view that it will generally be clear where sufficient skill has been required. If this is so, it would have been helpful to have expanded on this in detail in the consultation paper.
- Paragraph 13 – This paragraph is helpful but again the definition of “significant” is open, we suspect, to differing legal interpretations.
- Paragraph 14 – We agree that subsection 14(5) (b) presents more difficult issues for promoters. Businesses trying to run competitions may find themselves not knowing whether the competition is lawful, if relying on subsection 14 (5) (b), until after the competition closes. This, it may be argued is not so much “trial and error” as “error and trial”.
- Paragraph 16 – the evidence test that the Commission is suggesting may be required – “market or other research” - is costly and will need to be offset by the promoter against the income from the promotion. It might be that the cost of evidence makes such services unviable.

Section Four

Free Draws

In paragraph 22 the Commission states that if an alternative entry route is genuinely as convenient and as well publicised as entry by payment it would be expected that a “substantial proportion” of participants would use that route. The assumption in this view is that consumers always exercise choices and make decisions which are rational and in their economic best interest. However, the real world demonstrates in numerous consumer decisions and purchases that this assumption needs to be tempered by all sorts of other qualifications around behaviours, impulses and motivations which a rational calculation does not cater for. We do, however, agree with the Commission that if a free entry route is provided which is neither more expensive nor less convenient then it would be useful to see some evidence base of this through a pattern of usage by some entrants to the competition. The material question to this debate is what usage would constitute the evidence base. This, we think, may be a matter for the courts to ultimately determine unless some other evidence base can be established on which the Commission and other stakeholders concur.

In respect of the telephony issues and payment to enter considerations, we would make the following observations on the points (i) to (iii) of paragraph 23 of the consultation:

- (i) The cost of a freephone call on the 0800 tariff may vary and may not always be free to the end user. Typically, and for a variety of reasons this may happen with 0800 calls from mobile devices. If then a consumer enters a competition which is provided by a freephone route and the consumer is in fact billed for the cost of the call, which well they may, it may be that in the Commission’s current interpretation of Schedule 2 of the Act this would constitute a “payment” for the purposes of section 14 of the Act. However, the same call from other networks, where it was free to the end user, would not constitute a “payment”. This would be an odd outcome and highlights the problem in placing a duty on one party in a value chain for the conduct of other parties with whom that party has no relationship or power to influence.
- (ii) Standard or normal rates for telephone calls have no real meaning given that liberalisation of the telephony market has led to a plethora of packages, including “bundled packages” that most fixed and mobile operators now offer consumers. Clarity may be required.
- (iii) We would accept the assumption made in this subsection where it involves call charges at a premium and which we typically regulate. However, the characteristic described encompasses all calls, even those which might be on 0844/5 and where the actual cost to a consumer may be low, and for some “standard” or “normal”, given the proliferation of use of such numbers in the UK.

Appendix One - Statement of Expectations for Call TV Quiz Services

1.0 Background

This Statement of Expectations is being released due to the increased number of complaints and enquiries that ICSTIS and other bodies have received about Call TV Quiz Services. In particular, some consumers have mis-understood the nature of the service or the charges levied regardless of whether they are successful in getting through to the studio. Accordingly, ICSTIS wishes to ensure that providers of these services have as much clarity as possible as to the regulatory requirements and the interpretation of the Code that the ICSTIS Committee will apply. This Statement should be read in conjunction with the ICSTIS Code of Practice. Service providers should be aware that this Statement details the likely interpretation of the Code of Practice by the ICSTIS Committee. This is particularly so where breaches of the Code are raised by the Secretariat in relation to Call TV Quiz Services.

2.0 Call TV Quiz services defined

This Statement applies only to broadcast output (programmes and channels) on television where:

- The primary function and content of the entire output is participation in competitions by viewers.
- Viewers are invited to call or text a premium rate number to give their answer (normally either by being connected to the presenter or via a call back).
- If viewers are not selected initially, they are informed accordingly and have the opportunity to make repeat attempts.

3.0 The need for prior permission

Where Call TV Quiz Services offer viewers the chance to participate in a live conversation then such services are "Live Services" for the purposes of the current ICSTIS Code of Practice (10th edition as amended) and as such require prior permission to operate. An application form for these services, which is designed to be completed on a self-declaration basis by the service provider, is available on our website. It should be noted that the declaration requirements of the application form are not overly prescriptive but do make reference to this Statement of Expectations. Any service operating after **24th February 2006** without having applied for prior permission from ICSTIS will be in breach of the Code. If permission is not granted for the service then it may not operate a Live element thereafter.

4.0 Expectations

The following points and attempts by service providers to meet them, based on the Committee's interpretation of the Code of Practice in the context of call TV Quiz Services, will be taken into account when considering a complaint about any such service and applying the Code of Practice:

- As required by the Code, pricing information on-screen must be easily legible, prominent, horizontal and not require close examination. If it crawls or scrolls, it should never be off-screen for more than 60 seconds;
- Pricing information on screen must make clear that the charge applies to **all** calls, regardless of whether the viewer is successful in getting through;
- Pricing information should be spoken by a presenter or voice-over at regular intervals. We do not intend to prescribe "regular" in this context but note and welcome as best

practice examples we have seen where this happens at intervals of between 5 and 15 minutes;

- Pricing information, in a basic format, making clear to consumers that all calls are being charged, should be announced in the message at the beginning of every call to the service. An equivalent return text message should be sent to viewers who use Premium SMS to participate;
- Contact information based on a website alone will not suffice and must be complemented by any of the following: a helpline number, a PO Box address or a full address;
- Key terms and conditions (Ts&Cs) must be provided on-screen periodically. Full Ts&Cs must be provided via the contact means provided. Key Ts&Cs are considered to be:
 - Cost per call/minute, regardless of getting through to the studio
 - Any age limit
 - The quiz question and any rules specific to the quiz, where applicable
 - Details of any alternative free entry route (if one is provided)
- When offering cash prizes, and as a precautionary measure, a warning that entrants must be 16 years or over should be stated on screen at regular intervals;
- The use of clocks and other countdown triggers must be clearly explained and must not mislead consumers into making more calls than they might otherwise have done because they think the competition is about to close;
- Providers of Call TV Quiz Services will need to ensure that they have complied with Ofcom's Broadcasting Code (Rule 2.11 states "Competitions should be conducted fairly, prizes should be described accurately and rules should be clear and appropriately made known"). Ofcom will issue separate guidance about compliance with the Broadcasting Code in due course.

5.0 Enforcement and monitoring

ICSTIS will be proactively monitoring Call TV Quiz Services. If the Code appears to have been breached, an investigation will follow and sanctions may be imposed.

6.0 Copy advice

We remind service providers that a free compliance advice service is available from ICSTIS with a usual turnaround of two working days. Please contact copyadvice@icstis.org.uk

Issued by ICSTIS on 27th October 2006