PREMIUM RATE ASSOCIATION RESPONSE TO THE ICSTIS DOCUMENT:

A PUBLIC CONSULTATION SEEKING COMMENTS ON THE DRAFT 11TH EDITION OF THE ICSTIS CODE OF PRACTICE

September 2005

Introduction and Summary

The Premium Rate Association (PRA) welcomes the opportunity to comment on the proposed changes to the ICSTIS Code of Practice. This response takes account of input by our Service Provider and Network Operator members.

The bulk of this response is dedicated to the individual questions posed by ICSTIS, however we have included a short preliminary section below in which we raise concerns over amendments to the substance of the Code that have not been highlighted by ICSTIS elsewhere. We also attach at Appendix One a summary of word count and semantic changes carried out by a law student and their brief appraisal of the effect they believe these changes have. Clearly ICSTIS will know of these changes, but we think it is important to note them and interesting to see an independent view of their effect.

General Points

- One of the most fundamental concerns of our membership centres upon the overall usefulness of the CoP as a working document. We accept the fact that the regulatory environment is becoming increasingly complex but feel that the Code itself could have been written with less legalistic emphasis without loosing any of its impact. Our membership needs a document which is written in language which is easily understood and offers absolute clarity regarding the key requirements and issues.
- We had understood that the consultation period was to be three months, yet this was reduced to two without explanation.
- We feel that a document showing proposed amendments tracking changes from the original would have been helpful to work with and would have made ICSTIS' intentions easier to understand.
- We note that the ICSTIS value "Independence at all times from the sector….." has been removed. Presumably this is to accommodate the arrival of industry members on the Board.
- The requirement for live entertainment services operators to receive training (5.3.1 10th Code) has been omitted, yet remains for virtual chat services (7.3.7 11th Code) this appears to be a dichotomy and reflects a point we continuously raise, that is a level playing field for all, governed by a Code which is easy to understand and implement although, as one of our members commented recently, the dishonest players in the industry are those most likely to put the Code straight into a drawer.

ICSTIS' Consultation Questions

Section 1 - Definitions

Draft paragraph 1.1.3 – Definition of a N/O's

Section 1: Question 1
What are your views on our proposed definition of NOs? Do you believe that our

proposal is workable and will help ensure that only those companies that can fulfill the obligations of a network can be considered a network for the purposes of the Code?

We believe that the proposed definition will result in a dramatic drop in the number of NO's dealt with by ICSTIS (75 to14 -possibly increasing in the future to 27)
We are concerned that an artificial definition as a sub-set of the term set out by the Communications Act could be open to challenge. What about those who are not obliged to apply for approval, for example those who fall below the required turn-over and therefore are not recognised by Ofcom under the metering and billing provisions, yet meet all other criteria and wish to be viewed as a TCP (ECN under 'The Act') by ICSTIS?

We understand ICSTIS' concern about wishing to apply the appropriate rules to the relevant parties, but are not convinced the proposed amendment has met the need, as it seems to change the Code without addressing the issue. We would suggest that the current definition of a network remains as it is understood now: the party, which obtains numbers from Ofcom, is the network at the beginning of the chain and should apply the 30 day withhold rule to a network that interconnects with it. In this way there would be no way for a rogue network further along the chain to disappear. Alternatively you could require that a recognised NO with an Interconnect Agreement with BT will not contract with an unknown or unrecognised party. Obviously the legality of this proposal would need to be checked under competition law.

An even simpler solution would be for ICSTIS to adopt the Radio Authority-type stance and to state concisely "that no NOs will sub-let or resell their network in order to seek to avoid code compliance." Since Ofcom approves the ICSTIS code this may just be a simple, neat and effective resolution.

Section 1: Question 2
We have stopped short of including a requirement for NOs to become signatories to Artificial Inflation of Traffic (AIT) arrangements. What are your views on ICSTIS requiring AIT arrangements in the Code?

We believe strongly that it is not for ICSTIS to include requirements relating to AIT, as this is an area more appropriately dealt with by the NO's and forums such as TUFF. We already have examples of networks that are withholding money on the basis of "breaches" of the ICSTIS Code, where no ICSTIS 'breach investigation' is being undertaken against the Service Provider(s) in question. It is vital that instances where Premium Rate Services really are being abused in an attempt to defraud are clearly identified by the networks, and ICSTIS should concentrate on adjudicating on other Code breaches rather than allowing the powers/role of ICSTIS to be devolved to the NO's.

Section 1: Question 3
What comments do you have on whether there are any other ways for ICSTIS to define a NO for the purposes of the Code?

Artificial definitions/barriers are always likely to lead to problems as people look, consciously or otherwise to circumvent them. The previous definition under which the NO was the party that took numbers allocated by Ofcom was unequivocal, and ICSTIS needs to be satisfied that the amended definition can stand up to destruction testing.

Draft paragraph 1.1.4 – Definition of a service provider

Section 1: Question 4
What views do you hold on whether, through both the definition of a service provider and the new proposed definition of a N/O's, we have managed to ensure that a company in the value chain can be easily identified?

There is no essential change to SP definition, however as previously mentioned the NO definition is flawed and does not adequately deal with the problems of virtual networks and resellers. We must as an industry address all aspects of the value chain and the revenue flow in order to combat the real issue of abuse.

Paragraph 1.3 – Scope of the Code

Section 1: Question 5
What comments do you have on the scope and application of the PRS regulatory regime?

The PRA notes that the scope and application of the PRS regime are not being considered under this consultation. Should Ofcom decide to widen the scope in future to cover higher priced (or all) NTS services, then ICSTIS will need to consider the weight with which regulation is applied to new areas ensuring that it was fair, proportionate, easy to implement and could be clearly interpreted.

Section 1: Question 6
Do you consider that PRS regulations should formally cease to apply in areas where the risk of consumer harm appears to be relatively low? If so, how could we identify and differentiate those areas within the context of broad definition of PRS?

The Code should continue to apply to all those areas that fall within the PRS definition. Historically ICSTIS has and should continue, to operate with a lighter touch in areas that cause less consumer harm. If a category of service is removed arbitrarily it leads to scope for confusion and possible consumer harm. This has been seen in the decision to only regulate PRS above 10 pence per minute which has led to the movement of Virtual Chat and 121 Chat onto 0870, where they operate outside the control of the ICSTIS Code .

Section 1: Question 7
Can you comment on whether existing PRS regulations are applied proportionately, with more intrusive measures sufficiently focused on higher risk activities or providers?

ICSTIS has experience of using proportionate regulation, as reflected in such activities as the of prior permission process, by which some services are required to apply for permission until ICSTIS is satisfied that the risk of consumer harm is passed. We assume that the term "higher risk" in the question refers to the risk to the consumer and the cautionary and salient note is ICSTIS actually does have the history to be able to administer 'fair' honest and appropriate regulation in particular with regard to specific providers of these services. The NOs do not have such full and complete information and is worrying that they are taking ICSTIS's role into their on hands.

<u>Section 2 - Administrative provisions (NOs)</u>

Draft paragraph 2.1.2 – Supply of information by a NOs

Section 2: Question 1
Can you see any issues or problems with NOs being able to provide ICSTIS with the

requisite information on whether they meet the criteria to be recognised as an NO for the purposes of the Code? Please specify any other information you feel should be required?

Is it heavy handed to ask for the names and home addresses of directors? This information can be gathered from companies' house if required and is the public domain.

In Sub para (iv), the word "necessary" seems too subjective in this context. We would propose "……enabling contact as necessary"

Draft paragraph 2.3.1 – Provision of service provider details

Section 2: Question 2
Can you comment on whether or not we have successfully ensured that recommendation 2 of the Ofcom report (which states that NOs must provide ICSTIS with information on the identity of their SPs etc) has been transposed adequately in the draft provision?

We note that there is no requirement to supply number ranges of service providers. Would this not help with regard to double checking the information as supplied by the service provider?

Draft Paragraph 2.4 – Number porting

Section 2: Question 4
Can you provide comments on whether, from an enforcement perspective, there is justification for going beyond Ofcom's recommendation 3 relating to number porting?

We do not believe that there is a need to go further. Porting has not caused any significant problems in the past as take up has generally been low (due to the internal expense of swapping NO). The key is that ICSTIS is given information in a timely manner so that it has correct service provider details in case of problems. The appropriate point for ICSTIS to be notified is at the point Ofcom is informed of porting agreement.

Section 2: Question 5
Can you provide comments on whether there are any practical issues or hurdles you can see in relation to number porting that need to be specifically addressed?

We are not aware of any issues raised by this proposal. However, NOs should only have to notify ICSTIS at the point of porting – not when intent is shown (as explicit in 2.4.1)

Draft Paragraph 2.5.4 – Network responsibility for shortfall in fines etc

Section 2: Question 6
Do you believe that the proposed provision on network responsibility for shortfalls in fines etc is clear in its application, effectiveness and proportionality? If not, why not?

We believe that this is clear and acceptable.

Draft Paragraph 2.6 – N/O's non-compliance

Section 2: Question 7

Can you provide comments on ways in which we might amend or supplement the proposed text on network non-compliance to ensure that our approach meets the key principles of transparency, proportionality and consistency?

The proposed text seems to meet these requirements.

Section 3 - Administrative provisions (service providers)

Help notes – Our Approach

Section 3: Question 1
What are your views on how useful you feel the format of 'help notes' will be and, in particular, do you have any comments on how to make them more useful to you?

Help notes will be an improvement on Guidelines as they can be issued, amended and updated without consultation (as long as they are not used as a stick to beat the industry). They will be able to provide up to date examples of the Committee's thinking and should, as far as possible, avoid legalese, so that they are relevant and easy to understand by all service providers.

Section 3: Question 2
What alternatives should we consider in providing the premium rate industry with regular guidance on how to operate premium rate services? For example, would more regular statements on how to comply with the Code provisions be useful?

Help notes should form the basis of the information provided however, an 'alert' system could be used to notify of adjudications which set key precedents, changes in legislation, and significant social or political change. For example, the dialler activity which led to much consumer harm before the industry became "aware" of the problem. This protects the consumer and, in turn, the industry.

Section 3: Question 3
How might ICSTIS help industry groups develop their own notes on Code compliance?

The greatest service that ICSTIS can perform in order to assist industry groups in their interpretation of the Code is to ensure that the Code is unambiguous and written in a language which can be understood by all.

If the Code offered absolute clarity there would be less of a likelihood of groups generating their own help notes which could quickly lead to information that is out of date, incorrect or just misleading, being circulated. ICSTIS should be the single source of information, any other source, such as quasi statutory advice or, in our members cases, NOs initiating their own breaches will lead to issues.

Draft Paragraph 3.2.7 – Customer service arrangements

Section 3: Question 4
What are your views on the extent to which you believe the draft provision relating to the requirement for SPs to have in place customer service arrangements reflects the requirements set out in Recommendation 9 of the Ofcom Report?

The draft provisions seem to adequately cover the requirements as set out by Ofcom. However, para 3.2.7 does not tie in fully with para 5.6. It is not clear for example if the customer service phone number referred to in 3.2.7 must/should be advertised or whether one run by the IP could take its place.

Section 3: Question 5
How useful do you believe it would be to have a specific help note setting out examples of application in addition to the Code provision relating to customer service arrangements?

We do not believe this is necessary. ICSTIS seems to be moving away from the legislation that underpins it, that is the Communications Act, but seems to have a more ambiguous code moving away from the 'flexible' operational attitude it should be so proud of. It is for service provider companies to decide what 'customer face' they have – ICSTIS does not need to become involved in setting this out. The important point is that the user of the product or service can contact the provider to raise any issue and that this must be possible in a clear and "recognised" manner.

Section 4 - Information providers

Section 4: Question 1
What comments do you have on whether having provisions requiring IPs to comply with the Code are useful, practical and workable?

It seems sensible to include in the Code something that has been happening in reality for some time. We have seen IPs referred to in case reports and this system will work when all parties are acting responsibly. It will not work where SPs are simply trying to pass the buck, and ICSTIS needs to guard against situations where passing on responsibility simply allows the SP time to disappear. It is also important to remember where the contractual responsibility truly lies.

Section 5 - General provisions applicable to all PRS

Draft paragraphs 5.2 to 5.3 – Harm and Offence

Section 5: Question 1
Do you have views on whether the proposed amendments to the harm and offence provisions are appropriate and will allow services to be judged more easily against generally accepted standards in society? Alternatively, please let us have any alternative wording that you believe we should consider in regard to the harm and offence provisions.

"Decency" becomes "harm and offence" under the new provision. You have kept exactly the same content below although you have transposed the order. We are concerned that in both the English language and the law "decent" is a tried and tested formula. Decent is what society has deemed to be acceptable whilst both harm and offence are personal and vary according to the individuals educational levels and upbringing.

"Fairness" – is this really better than "Honesty"? The issue is whether the service and/or advertisement mislead: are they honest or dishonest. We note, however, that this word has been chosen to be in line with other regulators in particular under EU directorship.

Again we feel that this change adds no weight and no extra clarity.

Draft paragraph 5.4 - Internet Services

Section 5: Question 2
Do you have any views as to whether you believe the additional protection of requiring the use of age verification for Internet services is necessary?

We believe that the age verification requirement should be introduced into the Code as an additional deterrent against children using services that are inappropriate for them. The cautionary note is whether any age verification system can be fully accurate or relied upon without the consumer being present with birth certificate in hand!

Section 5: Question 3
Do you have any comments on its practicability and any effects its introduction may have on premium rate service providers?

If premium rate service providers genuinely do not want unauthorised/underage access to their sites then this should have no negative impact on them. This is all part of a responsible industry putting all deterrents it can in place as previously mentioned.

Section 5: Question 4
Can you offer any views on what you would consider constitute a 'robust' system of age verification for Internet services?

As well as the traditional suggestions of credit card and/or bill details there are immediate online checks that can be carried out through companies such as Experian. No system can be entirely foolproof, but any additional step of ID verification is going to be an additional deterrent.

Section 5: Question 5
Are (there) other practical and proportionate measures ICSTIS could take specifically in relation to preventing inappropriate access by minors to adult internet services?

With the addition of age checking requirements and continued consumer education, there would not appear to be much more that ICSTIS could do. Parental responsibility must be viewed as the ultimate protection against children accessing inappropriate services. Dynamic technical solutions are available to filter content. Ultimately in society the parent must ensure that only the appropriate standard of what is decent and not harmful is viewed or accessed by their children.

Draft paragraph 5.5.1 - Pricing Information

Section 5: Question 7
Can you comment on whether you believe that listing all the requirements for pricing in one place in the Code is logical and will make finding relevant information easier for service providers?

It seems a logical step to include all pricing requirements in one place. This also helps make it clear that they apply to all services. However, we wonder whether this makes the introductory paragraph under 5.4 redundant. Once again we would suggest that there should be a RRP for

pricing which would bring an end to the problems currently caused by mark-ups, by NO overcharging consumers and causing damage to 'our' industry, with regard to perception. We believe that ICSTIS should support and promote this as the best solution to having clarity of pricing that will benefit all involved.

Section 5: Question 8
Do you have any comments on whether the inclusion of a pricing proximity requirement in the Code would be practical, enforceable and future proof? Would you consider that a pricing proximity provision would be more effective as a series of prescriptive Code provisions or a generic Code provision supported by help notes?

A pricing proximity requirement is likely to be too subjective to be readily enforceable and is only likely to be workable for print media. We feel that advice on this would sit better within a help note.

Section 5: Question 9
Do you have views on whether you believe that pricing information should be spoken as well as displayed for television advertising? Do you believe there are alternative ways to provide pricing information to consumers in television promotions which we should explore?

It may be helpful to provide spoken pricing information in advertisements – particularly where the number is spoken rather than just displayed. However, as is seen in the insurance and home loan industries, "small print" can be spoken extremely quickly, which would not assist those with difficulty in hearing and may leave our industry under attack from disability groups.

Draft paragraph 5.6 – Address Information

Section 5: Question 10
Do you have any views on whether setting out the general principle of providing address information is better than being prescriptive as we currently are in the Code?

The draft provision is an improvement and should assist customers who wish to contact the service provider directly. This is with the proviso that the contact details must be those that lead to a source of consumer help and not, for example, the registered office address. There is no linkage with the customer service arrangements (telephone number) required under 3.2.7, which it is presumably intended should be displayed in the advertisement. At the least a telephone number should be used which would mean some from of protection in that there is a means of tracing this number via Ofcom.

Draft paragraph 5.9 - Use of the word "Free"

Section 5: Question 11
Do you views on the inclusion of a 'buy one get one free' type provision in the Code and do you consider there to be any inherent risks in adopting such a provision which could lead to a greater degree of consumer harm?

We are concerned about the introduction of the 'buy one get one free' approach as the offer needs to relate to a product/service where the cost of one 'element' is clearly recognised e.g. a can of Coke. If this were used on ring-tone services, it would be difficult for the consumer to assess the basic cost of the product. We do not feel that this is likely to be a workable provision as

there will be situations where the consumer has no idea of the intrinsic cost of the product and will not, therefore, accept that the BOGOF is genuine.

The original part of the paragraph is still awkward and difficult to interpret correctly. Does 5.9 needs to be in there at all – can the "misleading" provisions not cover it?

Draft paragraph 5.13 - Services specifically targeted at children

Section 5: Question 12
Can you offer views on whether it is right and necessary to more carefully define what constitutes a children's service? How could this be done?

The new para 5.12.1 adequately meets the desire to define children's services more appropriately.

Section 5: Question 13
Do you have any views on whether the maximum call costs for children's services should remain at £3 or whether it should be varied?

As no evidence has been put forward to suggest that the limit should be increased, it seems appropriate to maintain the current £3.00 limit.

Section 5: Question 14
What guiding principles do you believe might reasonably be applied if we were to consider an increase to the maximum tariff for children's services and what additional safeguards should be considered in protecting children?

We do not support an increase in the maximum tariff . If ICSTIS were to go down this road it would need to take into consideration whether children's provisions were tough enough to manage the potential increase to 'consumer harm'.

Section 6 - Provisions relating specifically to Live services

Draft paragraph 6.1 - Live services

Section 6: Question 1
Do you have any comments or views on our proposed approach in relation to regulating Live services?

We believe that option three is a good way forward. The only concern is that ICSTIS proposes to publish a list of exceptions from those services that require permission, which is the opposite of the proposal for prior permission.

Section 6: Question 2
Are there alternative options that we could consider in reducing the level of regulatory burden in this area while maintaining adequate levels of consumer protection?

ICSTIS needs to consider what dangers live services present now in comparison to other services (in particular internet) and when viewed against the differences to the early days of premium rate when a belt and braces approach was required in order to safeguard bill-payers. Do live services still have such unique characteristics that they need to be backed up by the fund and compensation scheme, or could they simply be brought within para 3.2.7 of the new code,

supported by the redress/refund sanction system? We are, howeve,r interested to note the political reasoning behind not doing this, and we do accept that it still provides a barrier to entry.

Draft paragraph 6.8.1 to 6.8.4 - Claims for compensation

Section 6: Question 3

Do you have any views on whether you consider the draft provisions more clearly set out the regulations governing claims for compensation?

The draft provisions are clearer – but as set out above, we wonder whether it is time to question the need for the scheme at all. If Ofcom no longer require permission, do they still require full safety net that the scheme provides?

If ICSTIS decides to take this further, we would suggest that a second stage consultation would be needed.

Section 6: Question 4
Do you consider the use of a help note in relation to these provisions is better suited than detailed Code provisions in providing examples of how the claims for compensation work in practice? If not, what could you recommend that might better achieve this aim?

Yes, we believe that this works better.

Draft paragraph 6.5.1 appears to be superfluous as this is covered by draft para 7.8.7

Section 7 - Additional provisions relating to specific categories of service

Draft Paragraph 7.2 - Betting tipster services

Section 7: Question 1
Can you offer your opinion as to whether you are content with the inclusion of the betting tipster provisions in the draft Code?

We question whether betting tipster services still cause sufficient concern to warrant a separate section, or whether they can be captured by the misleading (fairness/honesty) provisions?

What evidence does ICSTIS have they that they are a problematic service type? The argument that they are being kept in the Code to remind case officers what the requirements are seems flawed.

Draft paragraph 7.3 - Chat, Contact and Dating Services

Section 7: Question 2
What views do you hold on our proposals in relation to chat, contact and dating services?

We believe that it is sensible to include text chat services within this section.

Section 7: Question 3
What views do you hold on whether the proposed provisions are adequate to prevent use of adult chat services by younger children?

It is left to the service provider to make the system work and for ICSTIS to determine what constitute "reasonable endeavours", however the provision seems adequate.

Draft paragraph 7.3.5 and 7.3.6 – Reasonable and valid claims for compensation

Section 7: Question 4
Do you have any views on the appropriateness of having specific provisions relating to service providers' responsibility for paying reasonable and valid claims for refunds chat, contact and dating services given that there is a general duty on service providers to consider claims for compensation for all services?

As with live services, we wonder whether these provisions should be highlighted for this type of service only, or whether the general requirement on service providers to pay compensation (para 3.2.7) backed up by a help note should be adequate. It is important to define clearly what needs to be paid back (whole amount showing on consumer's bill with/without VAT etc.)

Draft paragraph 7.6 - Directory Enquiries (DQ) Services

Section 7: Question 5
Do you have any views on whether you believe that the proposed provisions clearly set out the regulations applicable to DQ services and are proportionate and appropriate?

We are happy with the suggested draft paragraph 7.6 with the exception of the word "professes" in para 7.6.2. which seems superfluous. However if DQ services are allowed to implement the removal of cost warning so should other (live) services. There is no correlation between service type and harm in our opinion.

Draft paragraph 7.8 - Pay for product services

Section 7: Question 5
What are your views on our approach to pay for product services? Do you believe that the approach will increase clarity? If not, why not? Are there other alternative options you believe we should consider in clarifying the regulations in respect of pay for product services?

The new approach to P4P services is a sensible one and should increase clarity. Paragraph 7.8.5 should only apply to tangible goods to geographic address (as existing para 6.6.4), as this would be impossible to obtain for, say, a high cost purchase from a vending machine (CD etc) or pin codes for internet access. It must be remembered that it was pay for product that lead to the FTC and FCC being formed in USA. We believe that there should a distinction between:

Pay for Product:- which are tangible and more likely FMCG and

Pay for Service:- which are intangible and have no intrinsic commercial value (such as ring tones)

Draft paragraph 7.9.6 – Maximum cost for non-live sexual entertainment services

Section 7: Question 6
Do you have views on whether you consider our approach in respect of the maximum cost for non-live sexual entertainment services fair, proportionate and necessary?

As long as service providers are taking active steps to ensure that access to their services is authorised by adults (over 18 year-olds), they should be allowed to increase the maximum duration on request to do so. A positive affirmation from the consumer of a wish to continue could be an additional requirement for such permissions. Is it reasonable that you can get married at 16 (with your parents' permission), hold a job, etc. but cannot phone sex lines?

Draft paragraph 7.10 - Subscription services

Section 7: Question 7
What are your views whether you believe the draft provisions for subscription services will adequately safeguard consumers while, at the same time, allow service providers to continue providing a variety of subscription services?

7.10.2 requires a lot of information to be sent in a text – provided this (and the reminders) can be done in 160 characters, then it is an acceptable requirement.

What about advertisements for further similar services within a service – must they supply all of 7.10.1 again?

Section 7: Question 8
Are there other alternative options you believe we should consider in clarifying the regulations in respect of subscription services?

Until these services are operating without causing consumer harm and/or confusion, there need to be stringent requirements on their promotion and operation.

<u>Section 8 - Procedures and sanctions</u>

Draft paragraph 8.1.4 – Complaint investigation

Section 8: Question 1
Could you comment on whether you agree with the proposed model to deal with IPs? Do you consider that it is a workable alternative? We welcome comments on whether you can see any other ways in which we can deal with IPs directly.

This has been happening in practice for some time and it is sensible to recognise it in the Code. However it must be remembered that the ICSTIS contact is the SP and it is they who form a contract with the IP. The service provider must remain in the loop as suggested, as an option to deal directly with the IP could lead to instances of the service provider falling out of the picture completely. Indeed ICSTIS may not have sight of the contract that is held between the two parties and if they got it wrong could it not be argued that ICSTIS interrupted trade. Would the NO

provisions require them to back up in instances where ICSTIS had chosen not to deal with the service provider? This seems unlikely as the Code does not legislate for and IP/NO relationship.

We ask for absolute clarity as to whom ICSTIS through their agreement with Ofcom do in fact regulate is it now the NO and the SP?

Draft paragraph 8.4d – Emergency Procedure

Section 8: Question 2
What are your views on the Secretariat being able to invoke the Emergency Procedure in cases that exhibit similar characteristics?

In reality this has been happening for some time particularly with SMS and dialler cases, so it is sensible to acknowledge and formalise the procedure.

Section 8: Question 3
Do you have any views on the timescales required for service providers and the Secretariat to be increased?

The timescales are in place largely to protect ICSTIS. If an adjudication goes in favour of the service provider, ICSTIS could be sued for damages for the time that the service was off-air. It is therefore for ICSTIS to be satisfied that increasing the time does not expose it to unacceptable risk.

We do not understand the rationale behind the selection of 14 working days for ICSTIS to bring the case to adjudication.

In the consultation document (p26) there is a suggestion that if the service provider can correct the service then it should be allowed to continue to operate. In essence we believe this is correct – but needs more thought given as to how it would operate in practice. There needs to be absolute certainty in ICSTIS (at Board, not Secretariat level) that adequate corrections have been made.

Draft paragraph 8.6.6 – Refunds

Section 8: Question 4
What are your views on whether we have successfully incorporated the requirements of recommendation 8 relating to refunds in the Code?

The provision adequately covers Ofcom's recommendation. It is unfortunate for the consumer pursuing the refund that a further stage may be needed to claim it, that is, they will approach the service provider in the first instance, who will have to direct them to the TCP where the withheld funds are kept.

Paragraph 8.7 – Reviews

Section 8: Question 5
Can you provider us with your view on whether you believe that the procedures as set out in the draft provisions in relation to Reviews are clear?

We think the procedures are clear and note the removal of the requirement to provide new evidence in order to gain a review. We believe that this is practical and will lessen the need for full oral hearings, which were not subject to this requirement in order to proceed.

Paragraph 8.8 – Oral Hearings

Section 8: Question 6
What are your views on whether the Chairman of the Hearing should be able to convene a conference for the purpose of providing Directions?

We support the view that the Chairman of the Hearing should have this right. Oral Hearings have become more legally complex and this should assist the process however we are now approaching a situation where in the interest of fairness maybe hearings should only be held in the Courts

Section 9 - Procedures concerning NOs

Draft paragraph 9.1 – NOs non-compliance

Section 9: Question 1
What comments do you have on whether you believe the procedures as set out in the draft provisions relating to NO non-compliance are fair, clear, adequate and proportionate?

We do not believe there is any agreement that would allow ICSTIS to regulate NOs. In fact, formally and legally it is still Ofcoms' responsibility at this point. If however you are formally announcing that you do regulate NOs then this would appear to be fair.

Section 10 - Appeals

Section 10: Question 1
What are your views on whether the proposed amendment relating to the appeals procedures better reflects the purpose of the IAB and the modern public law of England and Wales?

The substantive change appears to be the replacement of the word "irrationally" with "incorrectly" which appears to be appropriate in this context.

Conclusion

Why does ICSTIS not publish its database f service providers to the industry therefore allowing it to police itself in a non-statutory environment. Any code is only as good as the people who are enforcing it, ICSTIS has a long history and does have true information as to who is seeking to harm consumers and be misleading in the provision of their services and/or content. This would help particularly if there were a huge consumer issue. Whilst we understand that the Data Protection Act does not allow disclosure of private information it does allow public information to be disclosed (i.e. limited companies registered with companies house).

We have asked since 1998 that there be a full and proper registration scheme for this industry, to protect it and the market players and also the consumer. In this manner all parties involved will

know whom they are contracting with and how to contact them. Nothing is perfect and that is why lawyers make so much money every day, however in our industry those long standing players are invariable those who are the passionate campaigners to stop both people entering the market to cause harm and are those who seek to inform consumers fully about their services a before entry.

It will always be difficult to stop those people who enter the industry solely to make money whatever the consequences, even fines will have a limited effect particularly if a “NO” colludes. There will always be those individuals who do not act in a decent, honest or reasonable manner. They will cause harm and offence to consumers.

Appendix A

ICSTIS 11th Code of Practice 2005 – Major alterations from 10th edition

The following is a summary of points deemed to be the most major changes between the 10th and 11th Editions of the Code of Practice.

- The words 'A' and 'The' have been omitted from the start of many paragraphs.
- 1.2.1 – the word 'Role' has been replaced by 'Powers'.
- Section 2 – 4 new subsections (Data Protection, Arrangements with Service Providers, Number exportation and control, Network operator non compliance). Omitted 'ICSTIS' Directions/Notices'.
- 3.1.3 – The word 'Written' has been taken out. It is now 'Any direction or notice'
- 3.2.6 / 3.2.7 have been newly implemented.
- 3.3.2 – 'Requirement' has been replaced by 'Objective'.
- 3.6 – 'Recommendation' has been changed to 'prohibition'.
- New section (4) on Information Providers
- Changed the title of Section 5 from 'General provisions for Service Providers' to 'General Provisions Applicable to All Premium Rate Services.
- 5.2. Harm and Offence has replaced 'Decency'.
- 5.3. Fairness has replaced 'Honesty'. 5.3.2 / 5.3.3 / 5.3.4 are all new.
- 5.4. Internet Services is a new section
- 5.5.1 – The word 'Therefore' has been placed at the end of the sentence before the bullet points. Bullet point 'b' is new (SMS).
- 5.5.4 is new.
- 5.10 – the word 'inappropriate' has been replaced by 'offensive and harmful'.
- 5.13. Services Specifically Targeted at Children, has moved from Section 6.
- Omitted paragraphs on 'Undue Encouragement of Unauthorised Use' and 'Incorrect Information'
- 6.1.1 – 7 lines omitted on permission.
- Omitted paragraphs on 'Employment and Training'.
- 6.6.1 – Operators of counseling services must now hold experience as well as qualifications.
- Two new paragraphs on Claims for Compensation (6.8.1 / 6.8.2)
- At the end of section 6, ten paragraphs have been taken out.
- New subsection on Betting Tipster Services (7.2). Was previously just a note for 'Guideline 15'.
- 7.3.2 – Three new paragraphs on SMS/MMS.
- 7.3.4 – Bullet point 'a' – 'Contact details' has replaced 'telephone numbers'
- 'Refunds' has replaced 'compensation', in regards to SMS/MMS services.
- New Subsection on Directory Enquiry Services ('DQ')
- 7.7 – the word 'legislation' has replaced 'The Charities Act 1992….'
- A lot more added to 7.8.6 / 7.8.7.
- Taken out 'For the avoidance of doubt…' at the start of 7.9.7.
- New Subsection on Subscription services.
- 8.1.4 is new
- Bullet point 'f' in 8.3 is new.
- Bullet point 'd' in 8.4 is new.

- Changed the response times for the Emergency procedure - extended from three to five days, and 10 to 14.
- 8.6.2 – Bullet point ‘h’. The words ‘pays reasonable and valid claims’ have been replaced by ‘all claims’.
- New points on failure to comply with sanctions (8.6.3).
- New Subsection on Refunds (8.6.6).
- Under 8.8 (Oral Hearings) ‘named individual’ has changed to ‘Associated individual’
- 8.8.8.1 – Bullet point ‘a’. ‘The Chairman may’ has been replaced by ‘The Chairman will’. Two new bullet points – ‘b’ and ‘f’.
- 8.8.10 – bullet point ‘d’ previously started with ‘May’. This has been replaced by ‘must’.
- 8.9 – line 4. The word ‘request’ has changed to ‘direct’.
- Eleven new paragraphs in Section 9. Subsections 9.2 – 9.6 are new.
- 10.1 Last bullet point – the word ‘incorrectly has been changed to ‘irrationality’.

Annex 1

- 3.1 – the publish date for the budget has changed from 30th September to 31st December.
- 6.3 – date has changed from January to March.
- 8.1 – date has changed from 31st January to 30th April.

Annex 2

- 10.1 Last bullet point – ‘Incorrectly’ has changed to ‘irrationally’.
- 11 – the costs have changed. £10,000 has become £25,000 (costs of the parties), and £5000 has become £10,000 (costs of the provision of the Tribunal).

In conclusion, it is my opinion that, in general, the code has become slightly harder to understand and therefore implement.

The exclusion of all Explanatory notes may have a detrimental effect on those previously unfamiliar with the Code as a key clarification to certain points is no longer available. The removal of specific Acts from mention (for example, Section 7.7) makes it harder for those having to implement the guidelines as they now have to actively go out and search for the correct Act.
I feel that the replacement of ‘Decency’ and ‘Honesty’ in Section 5 goes too far in implementing EU wording. The replacements of these words are far too ambiguous, in that there are a huge amount of connotations that can be taken from them and they do not have a specific right or wrong answer or doing. For example, the word ‘Honesty’ has a very concise meaning – something is either honest or dishonest – there is no real go-between in the words. However, the word ‘fairness’ is a matter of opinion – different people will take different views on what is or isn’t fair according to their circumstances. The same is true of the replacement of ‘incorrect’ with ‘irrational’.
From analysing both editions I get the sense that the new Code is more likely to catch out Service Providers.