

UKCTA Response to ICSTIS Consultation

A Public Consultation Seeking Comments On The Draft 11th Edition Of The ICSTIS Code Of Practice

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SUMMARY

UKCTA welcomes the opportunity to comment on the proposed 11th Edition of the ICSTIS Code of Practice. Overall, we welcome this document and recognise the hard work that ICSTIS has expended in its production. We appreciated the opportunity to meet with ICSTIS to raise and debate issues we identified in advance of the formal submission of our response to the Consultation.

Our response is in two parts; part 1 contains the answers to the questions posed by ICSTIS and part 2 contains comments on the Code itself.

As ICSTIS and Industry move forward together to implement the Recommendations of the Ofcom Report into PRS Regulation, UKCTA recognises the increased responsibility placed upon Network Operators to prevent fraud and scams happening in the first place in order to protect consumers from harm. Whilst we are fully prepared to accept our responsibilities in this respect which we agree are necessary to protect the credibility of the PRS Industry, it should not be seen as a mechanism for ICSTIS regulating Service Providers through the Network Operators. We are concerned that some of the changes to the Code give the impression that ICSTIS are in fact moving in this direction.

As ever with regulation, key to its success is consistent enforcement and it is in this respect where we would like to see ICSTIS adopt a more pro-active approach rather than wait for complaints to be received before taking action in a reactive manner. We recognise the resource constraints within which ICSTIS works but nevertheless we believe changes can be made in the way that ICSTIS operates to introduce a greater pro-active approach to enforcement in a cost neutral manner.

Many of the new provisions placed upon Network Operators and in particular those on Terminating Networks, are designed to prevent consumer harm from occurring in the first place and as such are pro-active in nature. We believe that ICSTIS, by adopting an increased pro-active approach to regulatory enforcement will significantly improve its effectiveness in the regulation of premium rate services.

We note under the heading 'Timescales and Next Steps' in the Consultation Document that there is no provision for a Statement to be issued after the Consultation to enable the final version of the CoP proposed by ICSTIS to be accepted by Industry before implementation. We are not advocating another 'consultation', just an opportunity to review the proposed final version in case there are any issues that need to be resolved before implementation. This would be entirely consistent with ICSTIS's five principles of good regulation detailed in the CoP.

We do not believe the Questions adequately covered the changes to the Code. There were many changes from the 10th Code in the draft 11th Code and the availability of tracked changes to the 10th Code would have been of considerable help in readily identifying the changes. As it stood, it was an extremely time consuming exercise to have to keep cross-referring between the 10th Code and the draft 11th Code to identify the changes.

PART 1 – RESPONSE TO QUESTIONS

SECTION 1 – DEFINITIONS

Draft Paragraph 1.1.3 – Definition of a Network Operator

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 fulfil the obligations of a network can be considered a network for the purposes of our Code?

UKCTA questions the use of terminology from an unrelated piece of regulation. UKCTA would argue that Network Operator is a redundant term and that ICSTIS would gain more benefit and understanding from using the terminology from the Communications Act 2003. Thus making the term Communications Provider a more appropriate phrase to describe those involved in PRS and which can then be referred back to definitions within the Communications Act and give a better understanding of Section 120 which has already been referred to.

There needs to be clarity between OCP and TCP responsibilities.

UKCTA does not disagree with the principle of the proposed definition; however raises the following points:

- Inclusion of Section 120 (12) of the Communications Act 2003 in the definition contained within paragraph 1.1.3i of the draft CoP would ensure completeness.
- Paragraph 1.1.3ii refers to a 'direct network connection', which needs to be clearly defined. It is absolutely critical to ensure proper identification of a NO that there is no ambiguity or openness to interpretation in the definition.
- UKCTA questions whether the proposed definition captures all players such as New Voice Services and VoIP providers who may have virtual interconnection arrangements.
- UKCTA believes 'direct network connection' refers to an interconnect standard connection with a party that is obligated to attain TMBS approval but clarification is required.
- The provision should also clarify what is meant by "relevant turnover" in the context of the CoP. We presume it means the same as in the TMBS definition but could potentially be misinterpreted in the context of the CoP to mean simply PRS turnover.

UKCTA would like to understand what evidence ICSTIS believes it would require under paragraph 2.1.2a for a party to substantiate their recognition as a Network Operator. UKCTA believes this should not be burdensome nor require the disclosure of commercial terms. In addition, ICSTIS must ensure that this new obligation does not unduly disrupt the business of existing Network Operators.

Finally it is not clear from the draft CoP what happens to a provider who fails to meet the requirements of a Network Operator. UKCTA understands that the intention is to treat such providers as Service Providers or Information Providers. However the CoP would benefit from greater clarity on this issue.

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?

Requiring a NO to become a signatory of AIT arrangements raises the question of ICSTIS's involvement in such terms, as there is no single defined standard AIT arrangement. UKCTA believes such an approach would be fraught with issues especially where there is a dispute regarding proposed AIT terms. The approach adopted appears sufficient.

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?

No comment.

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 network operator, we have managed to ensure that a company in the value chain can be easily identified?

UKCTA seeks clarification as to how ICSTIS would interpret the role of a reseller of network services in the value chain.

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?

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?

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?

There is much to commend in the commentary by ICSTIS on the Scope of the Code in the Consultation Document but it does not go far enough with regard to the application of the Code. We support the principle of universality but recognise that the degree of regulation and how regulation is applied must be proportionate to the risk of fraud and consumer harm.

We believe there is a need for ICSTIS, in a Co-regulatory environment with Industry, to have better regard to the implementation and adherence to its stated five principles of good regulation; namely transparency, accountability, proportionality, consistency and targeting.

UKCTA would welcome dialogue with ICSTIS in these areas which impact on ICSTIS's internal organisation, processes and management. We believe a thorough review and improvement in these areas would result in increased efficiency of operation and effectiveness of regulation in preventing consumer harm.

With regard to the Scope of the Code, UKCTA believes there is a need for DQ to be better identified as a Premium Rate Service. Similarly, with any other new services that do not fall within the traditional 09 number range. An example would be any 08 services that may be re-defined as Premium Rate Services in the future.

With regard to paragraph 1.5.2 of the Code, we do not agree that ICSTIS can make amendments to the Code without consultation or at the very least giving industry the opportunity to comment on the proposed amendments before implementation. UKCTA suggests any such amendments are subject to a minimum 28 day review. ICSTIS's attempt earlier this year to make amendments without prior notice or reference to industry to the very issue stated in this paragraph of 'Time Limits' in respect of various processes is a case in point. ICSTIS were just not aware of the practicalities and commercial reality of the consequences of the proposed changes.

SECTION 2 - ADMINISTRATIVE PROVISIONS (NETWORK OPERATORS)

Draft Paragraph 2.1.2 – Supply of Information by a Network Operator

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?

As mentioned in our response to Section 1, Question 1, UKCTA remains unclear as to the evidence required especially from a party under paragraph 1.1.3iii of the NO definition. UKCTA expects that a NO with a TMBS approval obligation could supply such evidence.

UKCTA believes paragraph 2.1.1b should be amended to omit 'or Information Provider' as generally arrangements with an Information Provider are with a Service Provider and not a NO. In addition paragraph 8.1.4 of the draft CoP refers to ICSTIS dealing with Information Providers only in the circumstances where an Information Provider accepts responsibility.

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?

UKCTA believes ICSTIS has addressed Recommendation 2 of the Ofcom Report but has gone further than that envisaged by Recommendation 2 with the inclusion of paragraph 2.3.1g. We accept and understand the need for proper due diligence to be undertaken by a Terminating Network Operator before entering into contract with Service Providers. However, it must be proportionate in its application and as such there is a need for clarification with respect to the following:

- In what circumstances does ICSTIS envisage waiving such requirement for a NO to attain / undertake the provisions in paragraph 2.3.1 a to g? UKCTA believes a level playing field is required that should apply to all equally. This is the principle of 'universality' which ICSTIS says elsewhere in the Code should be adopted.
- In paragraph 2.3.1b what is meant by 'has sufficient resources to discharge its obligations under this Code'? On the matter of solvency, a NO can carry out a credit check. However a solvency situation can change rapidly and a NO cannot be reasonably expected to police this on a regular basis. Many PRS Service Providers rely on the revenue generated from the services they offer to market as their key business revenue source. Understandably available capital resources are not a key factor in this type of legitimate business model.
- In paragraph 2.3.1f, adequate customer service and redress mechanisms need to be defined. For example, is adequacy defined in terms of availability, response times etc? We have stated elsewhere in our response that the whole issue of redress needs to be discussed between ICSTIS and Industry to agree how it will work and who has what responsibilities in the overall process.
- Service Provider responsibilities under the CoP are extensive. It would not be reasonable or practical for a NO to ensure Service Provider compliance with every area of the CoP, such as checking the legalities of every premium rate service its customers

are operating at any given moment in time, as appears to be required by paragraph 2.3.1 g. We have mentioned earlier that it is the responsibility of ICSTIS to directly regulate Service Providers and not indirectly through Network Operators. If ICSTIS is unable to provide further clarity on this paragraph of the CoP, UKCTA believes it would be unreasonable to include the paragraph at all.

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?

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?

UKCTA does not agree with the ICSTIS proposal to go beyond Recommendation 3 of the Ofcom Report as practically this would have a detrimental operational impact of inter working with the number portability process. This is due to the scope of changes that occur before porting actually takes place and even the cancellation of a pending porting event. UKCTA agrees that a NO can advise ICSTIS of the numbers ported after the porting event and when the window for emergency restoration has elapsed under the Industry Number Portability Processes.

UKCTA expects that NOs will not have to advise ICSTIS of all numbers ported prior to implementation of the revised code; such historical porting activity would be captured on responses to Directions for number information.

Paragraphs 2.4.1 & 2.4.2 refer to the exporting NO advising ICSTIS of the Service Provider in relation to a ported number. However, when a number is exported all retail association with respect to the customer of the number ends, therefore the exporting / losing NO cannot advise ICSTIS of the Service Provider of an exported number.

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?

Although UKCTA is concerned about the decision to split and alter the wording of the previously proposed paragraph 2.3.9, UKCTA fully supports the concept and intention behind this new provision in paragraph 2.5.4 of the draft Code. We believe it to be proportionate but cannot comment on its effectiveness until there is experience of its application in practice.

Draft Paragraph 2.6 – Network Operator 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?

As stated in the consultation document (pg11) ICSTIS intends to provide a statement to show how the sanctions will be determined. UKCTA offers ICSTIS its' support with this development

as it is an area for concern. The production of such a statement is crucial in ensuring the key principles of transparency, proportionality and consistency are met. For example, in relation to Formal Directions, UKCTA members have already expressed concern regarding the timing and interpretation of non-compliance where such timing requests may be considered unreasonable and impractical.

UKCTA believes the wording of paragraph 2.6.1c should be amended to remove reference for ICSTIS to instruct a NO to cease its network. We believe ICSTIS cannot instruct a NO to cease its network in its entirety especially where the network provides other communications services in addition to premium rate. The paragraph should be amended to reflect ICSTIS's instruction to cease the carriage of premium rate / categories of premium rate services.

UKCTA does not support the inclusion of paragraph 2.6.1d as UKCTA fails to see where instances of claims for refunds would be valid beyond the provisions already captured in paragraph 8.6.6.

SECTION 3 - ADMINISTRATIVE PROVISIONS (SERVICE PROVIDERS)

Help notes – Our Approach

We believe the Questions in this Section are more appropriately answered in detail by Service Providers. However, UKCTA has considered each of the questions and provided a short response. Should ICSTIS wish to discuss in more detail with us, then we would be pleased to do so.

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?

We believe this concept is to be welcomed provided care is taken that it does not become a substitute for Guidelines. We believe consumers and Industry would both benefit from greater clarity from ICSTIS. In particular, it is our understanding that Help Notes are just that and will sit outside of the Code and not be enforceable in themselves. Anything that is enforceable must be included in the Code. Anything outside of the Code is not enforceable.

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?

We note the question refers to 'guidance'. ICSTIS needs to be consistent and keep the alternatives to a minimum. We understand the existing Guidelines are being incorporated into the Code. We therefore believe that if Guidance is needed, then the Code should be amended or additional Help Notes issued.

Section 3: Question 3

How might ICSTIS help industry groups develop their own notes on Code compliance?

We believe the joint Industry/ICSTIS/Ofcom Working Group that determined how best to implement Ofcom Recommendation No. 1 in the Ofcom Report into PRS Regulation published in December 2004 provides a fine example of how this can be achieved. The Group had its origins in an initiative taken by OCPs, before the Ofcom Report was published, to look at how they could share information to help prevent consumer harm. The Group was subsequently extended to include TCPs, Ofcom and ICSTIS to implement Recommendation No. 1.

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 degree to which a SP is to have in place customer service arrangements must reflect practicality and commercial reality. For example, a Sole Trader, cannot be expected to have the same degree of customer service arrangements in place as an SME. ICSTIS should issue a Help Note to explain how it intends for this requirement to be applied and implemented.

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?

A Help Note is essential for the reasons stated in the answer to Q4. Although not a complete answer because of the diversity in the size and scope of SP businesses, it maybe possible to use the experience of DQ Providers who must have customer service arrangements in place.

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?

UKCTA welcomes this development because it may help with resolving the issue of Resellers, Aggregators, etc. in the value chain who believe they should not be held accountable for breaches of the ICSTIS Code when it is not they themselves who have caused the breach but rather their customer. However it does introduce a new party to the value chain (which incidentally has not been defined in the Code of Practice). There is the risk that this could create fragmented definitions, which when applying to the live situations exposes gaps. Nevertheless, we believe it can be made to work and would be willing to work with ICSTIS and others in the Industry to develop a Help Note to explain in more detail than is in the Code how it will work in practice and how ICSTIS will enforce this provision. For instance, it is not clear to UKCTA when, how and to whom a Service Provider would “undertake” to retain backstop compliance responsibility.

In addition there should be an obligation on ICSTIS when communicating directly with an Information Provider to ensure that the corresponding Service Provider and Terminating Network Operator are copied in on all such correspondence.

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.

UKCTA believes the proposed amendments are appropriate for the reasons offered in the consultation document. ICSTIS refers to generally accepted standards for judging services. For reasons of transparency, an indication of such standards considered by ICSTIS would be a useful reference for inclusion in a Help Note for Service Providers.

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?

UKCTA shares the concerns regarding protection from unauthorised use and preventing access to adult content by minors but queries why this should be technology specific and not be applicable to say all services that are for consumers aged over 18. The CoP already contains references to content rating (as per paragraph 7.9.7) for the medium used for sexual entertainment services. Generally the majority of customers are offered call barring facilities by their communications provider and filter controls for Internet services that offer protection.

ICSTIS states within the Consultation Document that it proposes to hold a workshop later in the year to discuss specific issues relating to Age Verification. UKCTA believes that any amendment of the Code concerning Age Verification should be deferred pending the results of the workshop.

ICSTIS notes in its Consultation Document that Service Providers will incur costs in moving to age verification systems. Have the costs of such a change and the practicalities of implementing such a change been investigated? ICSTIS's rationale for inclusion appears weak to UKCTA as a breakdown for the reasons for Dialler complaints is not provided to reflect how many were attributable to inappropriate access by minors.

Section 5: Question 3

Do you have any comments on its practicability and any effects its introduction may have on premium rate service providers?

UKCTA has no comments at this point in terms of practicability and feels Service Providers will be able to provide a comprehensive response. However, similarly to our response to Section 5: Question 2, the scale of the problem is not clearly defined nor are the costs of implementation understood, without which consideration regards the proportionality cannot be determined.

Section 5: Question 4

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

No comment.

Section 5: Question 5

Are other practical and proportionate measures ICSTIS could take specifically in relation to preventing inappropriate access by minors to adult internet services?

Refer to our response to Section 5: Question 2.

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?

UKCTA welcomes the placement of all pricing provisions in one place within the CoP and agrees this is logical.

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?

On consideration of the debate within the consultation document, UKCTA agrees with ICSTIS that a set of prescriptive Code provisions may not be future proof. Generic Code provisions supported by Help Notes will assist Service Providers in understanding ICSTIS's interpretation of the Code. This is the current position with such as the pricing proximity provisions within the competition services guideline.

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?

UKCTA agrees that spoken pricing information on television advertising will provide greater awareness to inform customer choice.

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?

UKCTA queries why this section is titled 'Address Information' as there is no specific requirement to supply a correspondence address. The requirement can be satisfied by publishing a customer service telephone number. The Service Provider (or Information Provider) should supply a correspondence address (in the UK) for consumers when requested, as some other agencies such as the Citizens Advice Bureau advise customers to make complaints in writing.

Draft Paragraph 5.9 - Use of the word “Free”

Section 5: Question 11

Do you have 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?

UKCTA agrees with the inclusion where it is clear to the customer how to claim / attain the offer if that differs from calling the PRS service itself as this can confuse some consumers.

UKCTA believes that ICSTIS must also keep in mind obligations placed on all providers to comply with the consumer protection legislation that requires pricing and package information to be displayed in a particular way. The ASA and the DMA using their codes of practice carefully manage this area. It would seem eminently sensible for ICSTIS to ensure its obligations were consistent with those of the ASA and the DMA, to avoid any possible conflict between regulations or codes.

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 matter of what is a children's service largely depends on who is intended as the audience of the Code. If the communications providers are to be expected to implement controls, it must be possible for them to understand across the entire range of services, what the distinction is between children's services and take into account any developments that are likely over the next few years in children's services. This brings the ICSTIS code directly into discussion with the industry currently working on the definitions of harm and protection of minors in the TVWF directive consultation currently being conducted by the Commission. It is not clear whether ICSTIS code will take priority over the Directive at a UK level and indeed what would happen if the ICSTIS Code were inconsistent with the EU Directive.

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?

Remain. UKCTA agrees with ICSTIS that with the competing demands on children's pocket money, £3 appears appropriate for services specifically targeted at children. UKCTA notes that some services with higher total call costs do appeal to mass markets that include children yet are not specifically targeted at children.

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?

The matter of protection of minors and human dignity is a very wide area and is closely linked to matters of corporate social responsibility. UKCTA is not sure that this is an area for the ICSTIS Code and indeed how any proposals might be implemented in practice.

General Comment

All responses to Section 5 should also give due consideration to guidelines and regulations already in operation such as ASA, Distant Selling, Trading Standards and E-Commerce.

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?

UKCTA agrees with the approach adopted by ICSTIS of publishing exempt categories and are happy to work with ICSTIS on the publication of such a list.

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?

No comment.

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?

UKCTA does not agree with the change from the 10th Code which states 'Claims for compensation maybe made' to the draft Code which states 'compensation must be available'.

The Compensation Scheme for Live Services has UKCTA believes worked well and does not require any fundamental changes. UKCTA points out however that the wording of paragraph 6.8 in the draft CoP is significantly different from paragraph 5.10 of the current code and appears to imply that ICSTIS can discontinue administering the current compensation scheme. In particular the reference in paragraph 7.6.5b i of the draft CoP refers to the ICSTIS Compensation Scheme that is not detailed in paragraph 6.8 of the draft code, yet is within the current code paragraph 5.10.

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. UKCTA would be happy to work with ICSTIS on this.

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?

UKCTA is content with the inclusion of these provisions.

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?

UKCTA believes the exception at paragraph 7.3.2b should be permitted for Virtual Chat as well and not be specific to SMS an MMS chat.

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?

UKCTA views on the implementation of age verification are stated in our response to Section 5: Question 2.

Draft Paragraph 7.3.5 & 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?

Our views on compensation were detailed in our response to Section 6: Question 3. Given this we do not consider it necessary to have specific provisions relating to claims for refunds on chat, contact and dating services.

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?

Proposed paragraph 7.6.1 refers to a national directory service that is “updated by fixed line originating network operators”. In fact all PATS providers have an obligation (subject to customer demand) to submit customer details to the directory.

Paragraph 7.6.3 implies that a DQ Service does not have to provide access to a full national directory enquiry service. Would ICSTIS confirm if it is intended that a White Pages Services can be provided on a 118 number.

We suggest a clarification to the last sentence of paragraph 7.6.4 so that it reads “*The number can be offered in another format such as email or text message where agreed by the caller*”

With respect to Promotions with long shelf lives and DQ Services, UKCTA seeks clarification from ICSTIS as to whether the requirement to preface with a short message, should a pricing change occur is appropriate for DQ Services. UKCTA believes DQ should be exempt from this provision, as this would elongate the DQ Service call handling time. UKCTA believes ICSTIS should clarify that paragraph 6.2.1 does not apply to DQ services, by adding to paragraph 7.6.6.

Paragraph 7.6.5b i refers to the 'ICSTIS Compensation Scheme' that is not referred to in paragraph 6.8.

UKCTA suggests a clarification to paragraph 7.6.5b iii so that it reads “*any sexual entertainment service provided over a premium rate number*” as a DQ Service Provider would not know if a sexual entertainment service was provided on any other number.

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 definition of Pay for Product in paragraph 7.8.1 implies that any product or service provided over a premium rate number is a Pay for Product. Is this the intention or is it intended that Pay for Products are a subset of all premium rate services?

Subject to clarification of the definition above, UKCTA is happy with the approach to Pay for Product Services except for paragraph 7.8.6 given the provisions within paragraph 3.2.7. UKCTA details its concerns regarding bill-payer permission in Section 6: Question 3 and that equally applies to paragraph 7.8.6b. Given this, we do not consider it necessary to have specific provisions relating to claims for refunds on Pay for Product Services.

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?

UKCTA believes a maximum call cost can assist with preventing call costs escalating yet other services within the Code permit a higher maximum call cost and alignment with these may be appropriate.

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?

UKCTA is happy with the provisions for subscription services.

Section 7: Question 8

Are there other alternative options you believe we should consider in clarifying the regulations in respect of subscription services?

No comment.

SECTION 8 - PROCEDURES AND SANCTIONS

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.

See answer to Question 1 in Section 4.

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?

We believe great care needs to be taken by ICSTIS with regard to the use of the Emergency Procedure. Whatever changes are introduced, it is absolutely essential that the Procedure does not fall into disrepute and all those in the industry act promptly to withhold revenue and terminate services when it is issued.

The more important issue than ICSTIS Secretariat being able to invoke the Emergency Procedure without referral to the Board in cases that exhibit similar characteristics, is the correct use of the procedure in the way it was originally intended i.e. when significant consumer harm is likely to occur. There have been recent instances with several Network Operators who have received the emergency procedure, promptly complied with the instructions only to have it withdrawn a matter of days later. Clearly, if this continues, it will result in SPs and NOs upon receipt of the Procedure challenging its use. This matter needs to be addressed by ICSTIS with some urgency if the Procedure is to retain its credibility.

We would also like to see the criteria published that ICSTIS uses to determine if a breach of the Code warrants the issue of the Emergency Procedure. This is entirely consistent with ICSTIS' undertaking within its Terms of Reference to carry out its activities with regard to five principles of good regulation, one of which is transparency.

Provided ICSTIS adheres to the points we have made, then we have no objection to the ICSTIS Secretariat being able to invoke the Emergency Procedure in the described circumstances. Otherwise, we would wish for the Board to retain sole authority for the issue of the Emergency Procedure and to go further by requesting that a complete review is carried out of how the Emergency Procedure is used and issued.

Section 8: Question 3

Do you have any views on the timescales required for service providers and the Secretariat to be increased?

We agree with the proposed increase in the timescales for Service Providers to respond following the invocation of the Emergency Procedure and the consequential increase in the time for the Secretariat out a case before the Board.

However, we strongly urge another timescale to be included within the procedure. That is the time it takes ICSTIS to issue the Emergency Procedure when it first becomes aware that a serious breach of the Code has occurred that warrants urgent remedy. This should be as short

a time as possible consistent with ICSTIS making absolutely certain its invocation is warranted (see response to Section 8 Q2 above). We would welcome ICSTIS' suggestion on a suitable timescale.

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 requirements need much greater clarification, particularly in relation to:

- Process
- Responsibility for making the payment – this should be the OCP
- It is highly probable that there will not be enough money legitimately withheld by the TCP to pay every consumer
- Consumers who receive redress still not paying the bill in question to the OCP.

We would be happy to work with ICSTIS to incorporate these issues into the Code. With respect to paragraph 8.6.6c where the Network Operator would be directed to deal with claims for refunds, the basis for validating the claim for refund, especially if related to service content would not be possible for the NO to undertake. The NO would only be able to validate claims for refunds with very basic proof and is a NO reasonable entitled to request proof of calls from the customer to validate the charges applied by their OCP?

ICSTIS recognises the NO costs associated with administering refunds in paragraph 8.6.6e yet the NO cost recovery is the very last consideration from any remaining retentions and UKCTA queries why this should be the case.

Paragraph 8.7 – Reviews

Section 8: Question 5

Can you provide us with your view on whether you believe that the procedures as set out in the draft provisions in relation to Reviews are clear?

UKCTA welcomes this new provision which appears to be clear.

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?

UKCTA welcomes this new provision.

SECTION 9 - PROCEDURES CONCERNING NOs

Draft Paragraph 9.1 – Network Operator 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?

UKCTA requests that the Directions Process should be a part of the CoP especially where a NO breach to adhere to the Directions Process could be an apparent failure to comply.

UKCTA seeks clarification that the relevant supporting evidence (as stated in paragraph 9.1c) will be provided to the NO.

Is the inclusion of 'made under paragraph 8.8.3' necessary wording in paragraph 9.1d.

UKCTA queries under paragraph 9.2.4 'any other relevant information'. How is information determined as relevant by ICSTIS?

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 provisions appear to be in line with our usual rights, subject to our right to apply to the High Court for a Judicial Review hearing. Clarification is sought regarding the right of appeal following determination by the IAB.

PART 2 – SPECIFIC COMMENTS ON THE CODE

1. Section 1.2 - Terms of Reference:
We have some concerns about adherence in practice by ICSTIS to the five principles of good regulation.
2. Section 1.2 - Terms of Reference:
The Terms of Reference need to be reviewed and changed as appropriate to refer to and reflect:
 - The MoU between Ofcom and ICSTIS.
 - Working with industry in a Co-Regulatory manner in accordance with the Ofcom Co-Regulation Model.
 - Publicising their performance against the KPIs identified in the MoU between Ofcom and ICSTIS.
3. Clause 1.3.3 requires clarification.
4. Paragraph 2.1.1:
 - 2.1.1.a. Needs to be made clear that this applies to only those companies in direct contract with the NO.
 - 2.1.2. Needs to be made clear this is a one-off up front activity.
 - 2.1.5. Needs to be clear that First Class Post will be used. Also, presumption of delivery next working day needs to be looked at in view of unreliable postal service. Directions sent by post cannot be assumed to be effective the day after posting. The lawyers need to be involved in this.
5. Paragraph 2.3.1 - Arrangements with Service Providers:
 - This requires greater clarity, review of the practicalities involved and especially the maintenance of up to date information.
 - Clarity is required that TCPs cannot be accountable for the provision of false SP information if that information was obtained in good faith;
 - Clarity is required that this requirement applies only to SPs in direct contract with TCP i.e. it does not extend to others in the contractual chain.
6. Paragraph 2.3.2a
The NO is obliged to “require that the Service Provider complies with this Code...”. However the SP only has the duty to “bring the code to the notice of any Information Providers”. A uniform approach across the value chain must be taken with regard to this obligation and the SP requirements need to be amended accordingly. Paragraph 3.2.6 also needs to be amended accordingly.
7. Paragraph 2.3.3 – ‘30 Day Outpayment Rule’

More detail is required in this paragraph. It also needs to make clear that there are no options or alternatives to the ‘rule’. We also suggest this is given greater prominence in the Code with its own section heading.

Key to this is how successful ICSTIS will be with two aspects of enforcement.

First and foremost, we trust this new requirement will not dilute ICSTIS’s responsibilities and activities to regulate Service Providers and enforce and collect fines, etc. imposed on them. We note that collection has improved significantly in recent times and would like to see this continuing. The use of withholds by networks to cover shortfalls, etc. is a second stage in the payment of fines, etc. and should only be used when the former process has been exhausted and not as a first stage alternative.

We urge ICSTIS to provide greater clarity in its application to avoid the possibility of misinterpretation that could in turn result in consumers being no better protected. In particular, it requires clarification in relation to the following aspects of the requirement for TCPs to withhold payments to Service Providers:

- In the event that a SP does not pay a fine following an adjudication by ICSTIS, the NO is only liable for the amount the NO should be withholding in accordance with the Code in that particular 30 day cycle.
- NOs will not be held liable should an issue arise that would relate to payments that have subsequently been legitimately paid out in previous 30-day cycles.
- If the amount legitimately withheld by the TCP is less than the fine, then there is no further liability on the TCP. If the amount being withheld is in excess of the fine, then the balance can be passed to the SP.
- NOs cannot be required to withhold payments due to Service Providers when the NO itself has not received payment as a result of the receipt of an Interconnect Retention Notice.
- NOs cannot be required to pay over monies to ICSTIS in relation to an adjudication that may result in a fine imposed on the Service Provider, where an interconnect retention notice has been received and the NO has itself not received payment.

8. Paragraph 2.4:

NO Number Exportation and Control requires greater clarity and the use of industry recognised terminology related to porting.

9. Paragraph 2.5:

NO Specific Obligations with regard to the supply of information to ICSTIS when directed to do so requires greater clarification. This is an old chestnut that has been discussed previously with ICSTIS.

- The wording also needs to be examined, e.g., in the second line of 2.5.1:
 - a) the word 'reasonably' is required after 'shall'....
 - b) after 'information' add 'having due regard to the practicality of the NO producing the information'...
- In Paragraph 2.5.2, clarification is required when each would apply and under what circumstances.
- In Paragraph In 2.5.2 e, it needs to be clear the amount cannot be more than the proper withhold which may not meet the whole fine and/or administration charge.

10. Annex 1 Funding Arrangements:

We have concern with overall timescales. Timescales need to be specified and not just left to ICSTIS to determine in order to ensure stakeholders have sufficient time to scrutinise and comment on the Activity Plan and Budget.

11. Paragraph 5.11

This paragraph refers to 'any other form of print or non-print communication' in a paragraph titled 'Promotions in non-print media'. This may be a typing error.

12. Paragraph 7.3.7

The draft Code states '(whether or not for the purposes of monitoring)' UKCTA notes that the current (10th Edition) Code provisions on Monitoring (paragraph 5.2) have been omitted from draft Code. UKCTA requests an explanation from ICSTIS as to why these provisions have been removed.

