

**CODE FOR PREMIUM RATE SERVICES  
APPROVED UNDER SECTION 121  
OF THE COMMUNICATIONS ACT 2003**

DRAFT Code of Practice (Eleventh Edition)

**CODE OF PRACTICE  
2005**

**ICSTIS**

as approved by  
the Office of Communications  
for the purposes of sections 120 and 121  
of the Communications Act 2003  
on XXXX 2005

## INTRODUCTION TO ICSTIS

ICSTIS is the regulatory body for premium rate services. The Board consists of up to twelve members, all appointed in their individual capacities.<sup>1</sup> Up to three members of the Board have contemporary industry knowledge. ICSTIS is a non-profit making limited company. The Board is supported by a permanent Executive.

### MISSION STATEMENT

#### Our vision

As the regulator for premium rate services, our vision is that anyone can use these services with absolute confidence.

#### Our mission

In pursuit of our vision, we create a Code of Practice which sets appropriate standards for the promotion, content and overall operation of premium rate services, taking account of people, particularly children, who may be especially vulnerable. We promote compliance by giving advice on our Code to providers of premium rate services. If there are breaches of the Code, we promptly enforce its provisions in order to minimise consumer harm and encourage compliance in the future.

So that we can continue to protect and inform consumers faced with constantly changing technology, we regularly review our standards, consulting widely to obtain a cross-section of opinion.

#### Our values

In carrying out our mission, we are committed to the following values:

- ❖ staying aware of, and responsive to, the ways in which consumers, or particular sets of consumers, may be vulnerable to harm when using premium rate services and striving to ensure that they receive the necessary protection,
- ❖ openness, fairness, even-handedness and impartiality when dealing with any individual or company involved in the provision of premium rate services,
- ❖ consistency when making decisions and imposing sanctions relating to breaches of our Code and having in place mechanisms to ensure that consistency,
- ❖ co-operative engagement with the constantly developing premium rate industry to secure its support for our work,
- ❖ working with legislators and other regulators to ensure that those who influence the operation of premium rate services fully understand and support our work,
- ❖ maintaining our understanding of relevant technological developments so that our regulation remains targeted and proportionate, and allows innovation and investment,
- ❖ being accessible to consumers and helping them understand how premium rate services work so that they can better protect themselves,

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<sup>1</sup> Board members are recruited following an open recruitment and selection process. For full details of the recruitment process and information on current Board members, please see [www.icstis.org.uk](http://www.icstis.org.uk).

- ❖ acknowledging the important contribution made by all members of the organisation.

## **INDEPENDENCE**

**ICSTIS operates in an entirely independent manner. Apart from up to three members who are appointed on the basis of their contemporary industry knowledge, no member of the Board may have any commercial interest in the premium rate sector. Any Board member with such commercial interests will take no part in any adjudication process.**

## **REMIT**

ICSTIS is responsible for regulating premium rate services in the UK. Through this Code, ICSTIS regulates services in their entirety – their content, promotion and overall operation. Premium rate services offer some form of content, product or service that is charged to users' telephone bills. Typical services include televotes, scratchcards, technical helplines, chat, mobile phone ringtone and logo downloads, horoscopes, competitions and interactive TV games. Services are often provided on the Internet. Services are usually advertised on 09 dialling codes, although certain services on mobile phones may use short access codes. ICSTIS also regulates directory enquiry services (offered on 118 numbers).

ICSTIS regulates through the imposition and enforcement of responsibilities on defined parties who are collectively termed providers of premium rate services. These are those who provide the networks which carry the services (network operators), those who provide the services which the networks then carry (service providers) and those who provide the content of the service if the service provider does not do that itself (information providers).

ICSTIS provides Help Notes which, although not part of the Code, do provide detailed advice on certain areas. These notes, together with a copy of the relevant legislation and other relevant material, are available on the ICSTIS website ([www.icstis.org.uk](http://www.icstis.org.uk)) and on request from ICSTIS.

## **SANCTIONS**

ICSTIS investigates complaints and has the power to fine companies, bar access to services and order refunds. ICSTIS can also bar the individual person behind a company from running any premium rate services under any company name on any telephone network for a set period.

## **FUNDING**

ICSTIS is funded by a levy on the industry. For further details, see our website.

## **COPY ADVICE AND GENERAL ENQUIRIES**

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# CONTENTS

- 1 INTRODUCTION**
  - 1.1 Definitions
  - 1.2 Terms of reference
  - 1.3 The scope of this Code
  - 1.4 Geographic reach of the Code
  - 1.5 Amendments and advice
  
- 2 PROVISIONS APPLICABLE TO ALL NETWORK OPERATORS**
  - 2.1 General Responsibilities (including funding)
  - 2.2 Data protection
  - 2.3 Arrangements with service providers
  - 2.4 Number exportation and control
  - 2.5 Specific obligations
  - 2.6 Network operator non-compliance
  
- 3 ADMINISTRATIVE PROVISIONS (SERVICE PROVIDERS)**
  - 3.1 Responsibility (including funding)
  - 3.2 General duties of service providers
  - 3.3 Prior permission
  - 3.4 Data protection
  - 3.5 Number re-use
  - 3.6 Engagement of associated individuals
  - 3.7 Promotion by non-premium rate services
  
- 4 INFORMATION PROVIDERS**
  
- 5 GENERAL PROVISIONS APPLICABLE TO ALL PREMIUM RATE SERVICES**
  - 5.1 Legality
  - 5.2 Harm and offence
  - 5.3 Fairness
  - 5.4 Internet services
  - Promotions**
  - 5.5 Pricing information
  - 5.6 Address information
  - 5.7 Service identification
  - 5.8 Promotions with long shelf-lives
  - 5.9 Use of the word 'free'
  - 5.10 Inappropriate promotion
  - 5.11 Promotions in non-print media
  - 5.12 Editorial promotions
  - 5.13 Services specifically targeted at children
  
- 6 PROVISIONS RELATING SPECIFICALLY TO LIVE SERVICES**
  - 6.1 Permission requirements
  - 6.2 Introductory messages
  - 6.3 Promotional material
  - 6.4 The conduct of live services
  - 6.5 Sexual entertainment live services
  - 6.6 Live services offering counselling
  - 6.7 Chatline services
  - 6.8 Claims for compensation

## **7 ADDITIONAL PROVISIONS RELATING TO SPECIFIC CATEGORIES OF SERVICE**

- 7.1 Advice services
- 7.2 Betting tipster services
- 7.3 Chat, contact and dating services
- 7.4 Competitions and other games with prizes
- 7.5 Consumer credit services
- 7.6 Directory enquiry services ('DQ')
- 7.7 Fundraising and charitable promotions
- 7.8 Pay-for-product services
- 7.9 Sexual entertainment services
- 7.10 Subscription services

## **8 PROCEDURES AND SANCTIONS**

- 8.1 Complaint investigation
- 8.2 Informal procedure
- 8.3 Standard procedure
- 8.4 Emergency procedure
- 8.5 Adjudication
- 8.6 Sanctions
- 8.7 Reviews
- 8.8 Oral hearings
- 8.9 Administrative charge

## **9 PROCEDURES CONCERNING NETWORK OPERATORS**

## **10 APPEALS**

### **ANNEX 1 FUNDING ARRANGEMENTS**

### **ANNEX 2 THE PROCEDURES OF THE INDEPENDENT APPEALS BODY**

# INTRODUCTION

## 1.1 Definitions

### Framework

1.1.1 Premium rate services are defined in section 120 of the Communications Act 2003 ('the Act') as follows:

Subsection (7) provides:

"A service is a premium rate service...if:

- a it is a service falling within subsection (8);
- b there is a charge for the provision of the service;
- c the charge is required to be paid to a person providing an electronic communications service by means of which the service in question is provided; and
- d that charge is imposed in the form of a charge made by that person for the use of the electronic communications service."

Subsection (8) provides:

"A service falls within this subsection if its provision consists in:

- a the provision of the contents of communications transmitted by means of an electronic communications network; or
- b allowing the user of an electronic communications service to make use, by the making of a transmission by means of that service, of a facility made available to the users of the electronic communications service."

Subsection (14) provides:

"References in this section to a facility include, in particular, references to:

- a a facility for making a payment for goods or services;
- b a facility for entering a competition or claiming a prize; and
- c a facility for registering a vote or recording a preference."

1.1.2 "General conditions of entitlement" means those conditions contained in a Notification under section 48(1) of the Act published by Ofcom on 22 July 2003; and

"Total metering and billing system" has for the purposes of this Code the same meaning as in Condition 11 of the general conditions of entitlement.

1.1.3 'Network operator' means for the purposes of this Code in respect of any premium rate service:

- i a person who falls within section 120(10) and/or section 120(11) of the Act and who is obliged to obtain approval for its total metering and billing system in accordance with Condition 11 of the general conditions of entitlement; or
- ii a person who falls within section 120(10) or section 120(11) of the Act and has a direct network connection with a person who is obliged to obtain

approval for its total metering and billing system in accordance with Condition 11 of the general conditions of entitlement and is billed directly for that connection by the person who is so obliged.

- 1.1.4 'Service provider' is the first person who falls within section 120(9)(a)-(d) or section 120(10) of the Act who, not being a network operator himself, contracts with or enters into arrangements with a network operator for use of the network operator's facilities in the provision of the relevant premium rate service.

Where a network operator itself provides premium rate services in any given case in which he falls within section 120(9)(a)-(d) as well as being the network operator in respect of the relevant service then that network operator or such part of its organisation as is responsible for the provision of the same will be a service provider for the purposes of this Code.

- 1.1.5 'Information provider' is any person falling within section 120(9) (a)-(d) of the Act, not himself being a service provider for the purposes of this Code.

### **General**

- 1.1.6 'Adjudicator' is the person, independent of ICSTIS, network operators, service providers or information providers, who adjudicates upon claims for compensation in respect of unauthorised calls to live services.

- 1.1.7 'Associated individual' is any sole trader, partner in or director or manager of a service provider or information provider, anyone having day-to-day responsibility for the conduct of its relevant business and any individual in accordance with whose directions or instructions such persons are accustomed to act, or any member of a class of individuals designated by ICSTIS.

- 1.1.8 'Call', for the purposes of this Code, means any communication which passes through an electronic communications network, whether initiated by a customer or initiated by or facilitated by a service provider, and 'caller' shall be construed accordingly.

- 1.1.9 'Chairman of the Independent Appeals Body' is the person, being a qualified solicitor or barrister of not less than 10 years' standing, appointed to be Chairman of the Independent Appeals Body.

- 1.1.10 'Chatline service' means a premium rate service which consists of or includes the enabling of more than two persons (the participants) to simultaneously conduct a conversation with one another without either:

- a each of them having agreed with each other; or
- b one or more of them having agreed with the person enabling such a telephone conversation to be conducted,

in advance of making the call enabling them to engage in the conversation, the respective identities of the other intended participants or the telephone numbers on which they can be called. For the avoidance of any doubt, a service by which one or more additional persons who are known (by name or telephone number) to one or more of the parties conducting an established telephone conversation can be added to that conversation by means of being called by one or more of such parties is not on that account a chatline service, if it would otherwise not be regarded as such a

service<sup>2</sup>.

- 1.1.11 'Communications provider' is defined in section 405 of the Act as a person who, within the meaning of section 32(4) of the Act, provides an electronic communications network or an electronic communications service.
- 1.1.12 'Directory enquiry' ('DQ') service is a premium rate service, the main purpose of which is to enable customers to obtain telephone numbers that they seek.
- 1.1.13 'Electronic communications network' has the meaning given to it in section 32(1) of the Act.
- 1.1.14 'Electronic communications service' has the meaning given to it in section 32(2) of the Act.
- 1.1.15 'Independent Appeals Body' ('IAB') is a body of persons, independent of ICSTIS, appointed to provide tribunals to hear appeals in respect of service providers and following oral hearings:
- against adjudications made by ICSTIS,
  - against refusals by ICSTIS of applications for permission to provide services,
  - against conditions imposed by ICSTIS upon such permission,
  - in respect of network operators, against adjudications made by ICSTIS which direct that a sanction be imposed.
- 1.1.16 'Live services' are premium rate services which involve two-way or multi-way live voice conversation.
- 1.1.17 'Multi-Media Messaging' ('MMS') is a service which enables users to send and/or receive messages comprised of a combination of media.
- 1.1.18 'Ofcom' is the Office of Communications. References to Ofcom and to any statutory authority or other regulatory body include any replacement successor bodies.
- 1.1.19 'Person' means any natural or legal person.
- 1.1.20 'Promotion' means anything where the intent or effect is, either directly or indirectly, to encourage the use of premium rate services, and the term promotional material shall be construed accordingly.
- 1.1.21 'Short Message Service' ('SMS') is a service which enables users to send and/or receive text messages.

## **1.2 Terms of reference**

- 1.2.1 The powers of ICSTIS in relation to this Code of Practice enable it to supervise the provision and content of and promotional material for premium rate services and, with the support of Ofcom, to enforce this Code. In the performance of this role, ICSTIS may:
- a set and maintain standards and, as appropriate, requirements for the content, promotion, marketing and provision of premium rate services and for the

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<sup>2</sup> Definition contained in the Condition set under section 120 of the Act 23rd December 2003

- payment of refunds in appropriate cases, and keep these standards and requirements under review,
- b monitor premium rate services to ensure compliance with these standards,
  - c consult widely with interested parties before changing these standards,
  - d make arrangements and determine procedures for the proper support (including funding) of ICSTIS and the efficient and effective operation of its regulation of premium rate services,
  - e determine any categories of premium rate service which may be provided only on the basis of prior written permission from ICSTIS, identify conditions which should be attached to the grant of such prior permission, keep such categories and conditions under review, and receive, consider and determine applications for prior written permission,
  - f administer a system for the payment of claims for compensation for unauthorised use of live services, and provide a system for adjudications where such claims are disputed,
  - g investigate and adjudicate upon complaints relating to the content, promotion and marketing of premium rate services, and issue directions designed to achieve compliance with the Code which may include the imposition of sanctions,
  - h issue directions either generally or to individual providers of premium rate services (as defined in section 120(9) of the Act) to procure compliance with the Code and/or to secure enforcement of its provisions,
  - i publish reports on its work at regular intervals and generally publicise its role and take steps to inform consumers about premium rate services and regulation of them by ICSTIS,
  - j report to Ofcom as and when required concerning the regulation of the premium rate services,
  - k do all such things as ICSTIS reasonably considers to be conducive to or to facilitate the achievement of these terms of reference or effective premium rate regulation generally.

1.2.2 In carrying out its activities, ICSTIS undertakes to have regard to five principles of good regulation, namely:

- transparency
- accountability
- proportionality
- consistency
- targeting

1.2.3 Confidentiality

Confidential information (such confidentiality being judged on an objective basis) received by ICSTIS will be kept in confidence by ICSTIS and will not be divulged to any third party other than ICSTIS employees, officers, professional advisors and Ofcom or other proper authority without consent (such consent not being unreasonably withheld or delayed), unless it is necessary for ICSTIS to divulge such information in order to discharge its responsibilities under this Code.

1.2.4 Delegation of powers

The Board may delegate its powers to sub-committees which will be formed of no fewer than two Board members.

### **1.3 The scope of this Code**

- 1.3.1 This Code (including its Annexes) regulates the provision of premium rate services and has been approved by Ofcom under section 121 of the Act. Accordingly, all providers of premium rate services as defined in section 120 are bound by the terms of this Code.
- 1.3.2 Providers of premium rate services to whom the Condition set by Ofcom under section 120 of the Act applies are obliged, pursuant to section 120(3)(a), to comply with directions given by ICSTIS in accordance with this Code for the purpose of enforcing its provisions.
- 1.3.3 Insofar as the Condition set by Ofcom does not apply to any description of premium rate services, the provisions of this Code apply to those services only through voluntary arrangements made between ICSTIS and the network operators.

### **1.4 Geographic reach of the Code**

- 1.4.1 Save as is provided below, this Code applies to all premium rate services which are accessed by a customer or provided by a service provider in the United Kingdom.
- 1.4.2 The Electronic Commerce (EC Directive) Regulations 2002 No. 2013 ('the Regulations') apply to the provision of premium rate services which are Information Society services (as defined in the Regulations) and are supplied between member states of the European Economic Area ('EEA'). This Code will apply to such services when the service provider responsible for the provision of those services under this Code is:
  - a established in the United Kingdom, or
  - b established in another EEA member state but where its services are accessed or may be accessed from the United Kingdom and ICSTIS determines that it is necessary to apply the Code to that service for one of the reasons set out in the Regulations.

### **1.5 Amendments and advice**

- 1.5.1 This Code may be amended by ICSTIS from time to time following consultation with interested parties.
- 1.5.2 This Code contains specific monetary limits in respect of various services and time limits in respect of various processes. ICSTIS may from time to time make reasonable amendments to those limits (subject to paragraph 1.5.3 below) without consultation provided that it shall give prior notification of one month to Ofcom.
- 1.5.3 No amendments to this Code shall come into effect until Ofcom has published notification of its approval.
- 1.5.4 ICSTIS may issue and/or amend advice concerning provisions of this Code from time to time. This may be in the form of Help Notes and will include advice on the way it is anticipated that certain types or categories of service are likely to be dealt with under the Code and/or the way in which specific provisions are likely to be applied in relation to such services. Help Notes are intended to assist those involved in the provision of premium rate services to comply with the Code but do not bind ICSTIS and do not form part of this Code.

## PROVISIONS APPLICABLE TO ALL NETWORK OPERATORS

### 2.1 General responsibilities (including funding)

2.1.1 Network operators must ensure that ICSTIS' regulation is satisfactorily maintained by:

- a carrying out their own obligations under this Code promptly and effectively,
- b taking all reasonable steps to prevent the evasion or undermining of the regulation of premium rate services by a service provider or information provider.

2.1.2 Network operators, prior to or promptly following commencement of the provision of any premium rate services, must supply ICSTIS with:

- a evidence to show that they meet the criteria necessary to be recognised as a network operator for the purposes of this Code,
- b such information as ICSTIS requires in order to ensure effective identification of and communication with them and their responsible officers including in particular:
  - i a fully functioning active address within the UK,
  - ii in the case of a limited company, its registered number and the names and home addresses of each of the directors,
  - iii the name of the person responsible for the day-to-day operation of the network operator's premium rate business,
  - iv telephone and fax numbers and e-mail addresses for the network operator enabling contact at all necessary times.

Where any of the information provided to ICSTIS under this paragraph changes, the network operator must provide ICSTIS with the changed information immediately.

2.1.3 Network operators must have regard to and comply with the funding provisions which are at Annex 1 of this Code.

2.1.4 Network operators must respond promptly to ICSTIS communications. If ICSTIS specifies a time period for response, they must adhere to it.

2.1.5 Any direction given by ICSTIS shall be effective if sent in writing to the postal address, fax number or the e-mail address provided by the network operator. Directions will state clearly the action required by the network operator and the time within which such action must be taken. In the case of post, delivery is presumed to have taken place on the first working day following posting.

2.1.6 Network operators who also operate as service providers are responsible for the application to themselves (or the relevant part of themselves) of the provisions in this Code relating to service providers as though those provisions were being applied to third party service providers.

### 2.2 Data protection

2.2.1 Network operators must make a notification to the Office of the Information Commissioner under the Data Protection Act 1998 and must, in their notification:

- a disclose ICSTIS as a potential recipient of personal data,
- b state that data collected from callers may be used by ICSTIS for regulatory purposes.

2.2.2 Network operators must not give any undertaking to callers, suppliers, service providers, information providers or others which could preclude any information being given to ICSTIS in confidence.

### 2.3 Arrangements with service providers

2.3.1 Before making its network and/or services available to a service provider for premium rate services, the network operator must (unless ICSTIS waives any such requirement in writing):

- a supply to ICSTIS such information as ICSTIS requires in respect of the service provider in order to ensure effective identification of and communication with service providers and in particular:
  - i the full address where the service provider is located and (if different) the address within the UK where the service provider may be contacted,
  - ii in the case of a limited company, its registered number and the names and home addresses of each of the directors,
  - iii the name of the director with primary responsibility for premium rate services,
  - iv the name of the person responsible for the day-to-day operation of the service provider's premium rate services,
  - v telephone and fax numbers and e-mail addresses for the service provider and the individuals named under iii and iv above, enabling contact to be made with each of them at all necessary times.

Whenever it comes to the attention of a network operator that any of the information provided to ICSTIS under this paragraph may have changed, it must so inform ICSTIS immediately.

- b obtain satisfactory evidence that the service provider is solvent and has sufficient resources to discharge its obligations under this Code,
- c prior to supplying to ICSTIS the information required in accordance with paragraph 2.3.1a above, make sufficient inquiry so as to satisfy itself fully that the information supplied to ICSTIS is accurate. In undertaking these inquiries, network operators must obtain clear evidence, in particular in respect of the identity of the people named in accordance with paragraph 2.3.1a iii and iv above,
- d retain records of the inquiries made and responses to those inquiries and a copy of all evidence obtained, and make those records and copies available to ICSTIS upon being directed by ICSTIS to do so,
- e bring this Code to the attention of the service provider,
- f satisfy itself, by taking reasonable measures, that the service provider has in place adequate customer service and redress mechanisms including a UK customer service telephone number in order to enable the service provider to discharge its obligations under the Code,
- g satisfy itself, by taking reasonable measures, that its electronic communications network and/or service are not being utilised for services not compliant with this Code.

2.3.2 In its contract with any service provider under which a network operator makes its network and/or services available to a service provider, the network operator must:

- a require that the service provider complies with this Code (or such successor versions as may from time to time be issued) and any directions that are made by ICSTIS in accordance with it,

- b include provision(s), pursuant to section 1 of the Contracts (Rights of Third Parties) Act 1999, so that ICSTIS may directly enforce the term(s) of that contract.

2.3.3 Network operators shall not make, and shall withhold, payments to service providers for a period of at least 30 days after the making of the calls to which the payments relate.

## **2.4 Number exportation and control**

2.4.1 If a number is exported to a different network operator, the original network operator must promptly inform ICSTIS of the name of the service provider, the number exported and the identity of the network operator to whom the number has been exported.

2.4.2 If a network operator ceases to have or does not have control of any number allocated to it for any reason, that network operator shall promptly so inform ICSTIS of the name of the service provider, the relevant number and the network operator who has control of the relevant number.

## **2.5 Specific obligations**

2.5.1 When directed to do so by ICSTIS, network operators shall provide to ICSTIS within such time as it shall specify such information (including copy documents) as it requires in relation to any complaint received or investigation being carried out by it. Such information may include, but is not limited to:

- a service provider details and copies of contracts with service providers and/or any agents or other parties concerned in the process of providing the network operator's network facilities or other communications services to service providers,
- b the number and length of calls to or from any number,
- c information concerning historic traffic levels to services of the relevant service providers,
- d the times when calls were made,
- e all details of outpayments including amounts, bank details and dates of payment to service providers (which may include such proof of payment as ICSTIS shall specify),
- f details of other numbers held by a relevant service provider.

2.5.2 When directed to do so by ICSTIS, network operators shall immediately:

- a terminate access to such premium rate services and/or numbers as ICSTIS may specify,
- b terminate access to all numbers that are allocated to any specified service provider,
- c terminate access to some or all numbers over which a specified premium rate service or type of service may be operated,
- d withhold such an amount of money as ICSTIS may direct out of monies payable by the network operator to a specified service provider until permitted by ICSTIS to do otherwise, or withhold some or all money payable to a specified service provider in respect of certain numbers or premium rate services (as may be specified) until permitted by ICSTIS to do otherwise, or withhold all money payable to a specified service provider until informed by ICSTIS that it may do otherwise,

- e pay over to ICSTIS such an amount of any money withheld pursuant to paragraph 2.3.3 above or to sub-paragraph 2.5.2d above as ICSTIS may direct in order to satisfy outstanding fines and/or administrative charges, such payment to be made within 30 days of such direction,
- f pay refunds on behalf of service providers when so instructed by ICSTIS in accordance with paragraph 8.6.6.

2.5.3 A network operator must have regard to any sanctions imposed by ICSTIS under paragraphs 8.6.2e, f and g, and must not enter into or continue arrangements with anyone who it knows or should in the relevant circumstances suspect is likely to cause non-compliance with or frustration of any sanction imposed by ICSTIS under those provisions.

2.5.4 A network operator which pays money to a service provider contrary to paragraph 2.3.3 above or after receipt of a direction by ICSTIS to withhold money from that service provider may be directed by ICSTIS to pay to it an amount no more than the amount of the fines, administrative charges or refunds that have not been so paid provided that the amount is no more than the amount that should have been withheld by the network operator in accordance with the Code or as directed under the Code.

## **2.6 Network operator non-compliance**

2.6.1 Non-compliance by a network operator with any of its obligations set out in this Code shall be dealt with in accordance with Section 9 and, if ICSTIS determines that a network operator is in breach of any of its obligations, it may make a direction imposing a sanction on the network operator in the form of any or all of the following:

- a a reprimand and/or a requirement that the network operator must remedy the failure,
- b an instruction to pay an appropriate fine,
- c an instruction to cease to provide its network and/or services for the carriage of any particular type or category of premium rate services for a certain period,
- d an instruction to pay reasonable and valid claims for refunds.

## **ADMINISTRATIVE PROVISIONS (SERVICE PROVIDERS)**

### **3.1 Responsibility (including funding)**

- 3.1.1 Service providers are responsible for ensuring that the content and promotion of all of their premium rate services (whether produced by themselves, information providers or others) comply with all relevant provisions of this Code.
- 3.1.2 Service providers are responsible for funding ICSTIS in accordance with the funding provisions in Annex 1.
- 3.1.3 Any direction or notice required to be given in accordance with any of the rules or procedures in this Code shall be effective if sent in writing to the postal address, fax number or e-mail address provided. In the case of post, delivery is presumed to have taken place on the first working day following posting.

### **3.2 General duties of service providers**

- 3.2.1 Before providing any premium rate services, a service provider must register with ICSTIS by completing a registration form (available on the ICSTIS website or from ICSTIS). The information that ICSTIS may require to be provided on this form may include:
  - a any number ranges (including dialling codes) or other connection arrangements allocated to it by Ofcom or any network operator,
  - b the name, address, e-mail address, telephone and fax number of the person representing the service provider who is nominated to receive all communications in connection with the application of the Code,
  - c if the service requires or involves access to any website, the URL of the site.
- 3.2.2 Changes or additions to information provided to ICSTIS in accordance with this Code must be notified to ICSTIS immediately.
- 3.2.3 Where certain codes or number ranges have been designated by either Ofcom or a network operator for the provision of particular categories of service, these must be used. Ofcom's designations will have precedence over any issued by a network operator.
- 3.2.4 Before promoting or providing services, the service provider must have readily available all documentary and other evidence necessary to substantiate any factual claims made. This material, together with a statement outlining its relevance to the factual claim in question, must be provided without delay if requested by ICSTIS.
- 3.2.5 Service providers must use all reasonable endeavours to ensure that all of their services are of an adequate technical quality.
- 3.2.6 Service providers must bring the Code to the notice of any information providers with whom they contract in respect of the provision of premium rate services and must ensure that information providers are aware that they must comply with the Code.
- 3.2.7 Service providers must have in place customer service arrangements which must include a customer service telephone number (which must not itself be a premium rate service) in the UK and an effective mechanism for the consideration of claims for refunds and their payment where justified.

### **3.3 Prior permission**

- 3.3.1 ICSTIS may require that particular categories of service must not be provided without its prior written permission for any service within that category. ICSTIS will give reasonable notice of such a requirement and the category of service to which it applies and will publish a full list of such service categories from time to time. Prior permission may be granted subject to the imposition of additional conditions. Such permission may be withdrawn or varied upon reasonable grounds and with notice in writing.
- 3.3.2 Where a service provider can demonstrate to the satisfaction of ICSTIS in relation to a particular service that any objective of the Code can be adequately satisfied by means other than strict adherence to Code provisions, ICSTIS may give prior written permission subject to conditions for the service to be provided incorporating such alternative means. Such permission may be withdrawn or varied upon reasonable grounds and with notice in writing.

### **3.4 Data protection**

- 3.4.1 Service providers must make a notification to the Office of the Information Commissioner under the Data Protection Act 1998 and must, in their notification:
- a disclose ICSTIS as a potential recipient of personal data,
  - b state that data collected from callers may be used by ICSTIS for regulatory purposes.
- 3.4.2 Service providers must not give any undertaking to callers, suppliers, network operators, information providers or others which could preclude any information being given to ICSTIS in confidence. Service providers must warn consumers that any data collected may be passed to ICSTIS.
- 3.4.3 Services which involve the collection of personal information, such as names, addresses and telephone numbers (which includes the collection of Calling Line Identification (CLI) or caller display information), must make clear to callers the purpose for which the information is required. The service must also identify the data controller (if different from the service provider or information provider) and any different use to which the personal information might be put, and give the caller an opportunity to prevent such usage.

### **3.5 Number re-use**

A service must not be replaced on the same number by another service which might give offence to, or might be inappropriate for, callers reasonably expecting the original service.

### **3.6 Engagement of associated individuals**

Service providers must not knowingly engage or permit the involvement in the provision of premium rate services of anyone who is subject to a prohibition made by ICSTIS under paragraph 8.6.2, contrary to the terms of the prohibition.

### **3.7 Promotion by non-premium rate services**

Wherever a premium rate service promotes, or is promoted by, a non-premium rate

electronic communications service, both services will be considered as one where, in the opinion of ICSTIS, it is reasonable to do so.

## **INFORMATION PROVIDERS**

- 4.1 Information providers must comply with the provisions of this Code where applicable to them or to the service and/or promotion with which they are concerned.
- 4.2 ICSTIS operates this Code through processes which primarily involve network operators and service providers. ICSTIS deals with information providers in its procedures and imposes sanctions directly on them only in limited circumstances as set out in paragraph 8.1.4.

## **GENERAL PROVISIONS APPLICABLE TO ALL PREMIUM RATE SERVICES**

### **5.1 Legality**

Services and promotional material must comply with the law. They must not contain anything which is in breach of the law, nor omit anything which the law requires. Furthermore, services and promotional material must not facilitate or encourage anything which is in any way unlawful.

### **5.2 Harm and offence**

5.2.1 Services and promotional material must not, or must not be likely to:

- a result in any unreasonable invasion of privacy,
- b induce an unacceptable sense of fear, anxiety or distress,
- c encourage or incite any person to engage in unreasonably dangerous practices or to use harmful substances,
- d induce or promote racial disharmony,
- e cause grave or widespread offence,
- f debase, degrade or demean,
- g promote or facilitate prostitution.

5.2.2 Services and promotional material must not, in circumstances where it is not reasonable for a consumer to expect such content or material (and subject to 5.2.1 above):

- a contain material indicating violence, sadism or cruelty, or be of a repulsive or horrible nature,
- b involve the use of foul language.

### **5.3 Fairness**

5.3.1 Services and promotional material must not:

- a mislead, or be likely to mislead, by inaccuracy, ambiguity, exaggeration, omission or otherwise,
- b be such as to seek to take unfair advantage of any characteristic or circumstance which may make consumers vulnerable.

5.3.2 Services must not be unreasonably prolonged or delayed.

5.3.3 Services must not be of a nature which unduly encourages unauthorised use.

5.3.4 Services and promotional material must not contain incorrect information and must make clear to consumers when time sensitive information was last updated.

### **5.4 Internet services**

Service providers should note that where spend limits or other controls apply generally to premium rate services, they apply equally to Internet premium rate services.

5.4.1 Unless permission to do otherwise is specifically granted by ICSTIS, premium rate

services which provide access to a website must not allow any further access via the service to the worldwide web until the caller has disconnected from the premium rate service.

- 5.4.2 No premium rate service which requires that software is downloaded to the caller's equipment in order to access the service or any part of it can be provided without prior written permission from ICSTIS.

## **PROMOTIONS**

### **5.5 Pricing information**

- 5.5.1 The service provider must state clearly in all promotional material the likely charge for calls to each service. Therefore:

- a prices must be expressed in the form of a price per minute or the total maximum cost to the consumer of the complete message or service, both of which must be inclusive of VAT. When applicable, promotional material must make clear that calls from some networks may cost more than the likely charge shown.
- b providers of reverse-billed premium rate SMS must clearly state in all promotional material the likely charge, including VAT, for receiving a text message. Any promotional material transmitted by text messaging must also contain full pricing information.

- 5.5.2 Written pricing information must be easily legible, prominent, horizontal and presented in a way that does not require close examination.

- 5.5.3 In the case of promotional material transmitted on television, the pricing information must be spoken as well as being visually displayed if the maximum call cost can exceed £2.

- 5.5.4 In addition to complying with the provisions of paragraph 5.4, providers of services which can be accessed, and/or the promotional material for which can be accessed, by means of electronic devices which provide on-screen display must ensure that:

- a prior to the connection to the premium rate service, the screen displays prominent pricing information together with the premium rate number through which the call will be connected,
- b an on-screen clock is displayed throughout the duration of the call showing the cumulative cost.

- 5.5.5 Services dialled by the caller which cost 50 pence or less and are terminated by forced release are exempt from all ICSTIS requirements on pricing information.

- 5.5.6 In cases where it is unlikely that a consumer will have seen or heard any promotional material containing pricing information, the service provider must place a short, distinct pricing message at the beginning of the service.

- 5.5.7 In the case of SMS services, all instructional messages to the consumer must be sent free of charge.

### **5.6 Address information**

For any promotion the identity and contact details in the UK of either the service

provider or information provider, where not otherwise obvious, must be clearly stated so that customers can contact them directly and without using premium rate services or otherwise having to incur unreasonable expense.

## **5.7 Service identification**

- 5.7.1 In all promotional material, the code, prefix or short access number must be presented in such a way that it can be readily identified as a premium rate code or an international prefix.
- 5.7.2 If the premium rate service operates on an international number, it must be made clear in the promotional material that an international call is required.

## **5.8 Promotions with long shelf-lives**

In the case of premium rate services which are promoted in publications or other media which are likely to have a shelf-life of three months or more, a statement must be included in the promotion to the effect that the information given is correct as at the date of publication and that date must also be stated. If the call charges increase during the life of the promotion, such services must be prefaced with a short message informing callers of the new rate(s).

## **5.9 Use of the word 'free'**

No premium rate service or product obtained through it may be promoted as being free unless:

- a a product or service has been purchased by the consumer using a premium rate mechanism and a second product or service of an equal or greater value is provided at no extra charge, or
- b where a product is provided through the premium rate mechanism and the cost to the consumer does not exceed the delivery costs of the product and the promotional material states the maximum cost of the call.

## **5.10 Inappropriate promotion**

Service providers must use all reasonable endeavours to ensure that promotional material does not reach those for whom it, or the service which it promotes, is likely to be regarded by them as being offensive or harmful. Service providers must use all reasonable endeavours to ensure that their services are not promoted in an inappropriate way.

## **5.11 Promotions in non-print media**

Promotions transmitted by radio, television, teletext, telephone, facsimile, Internet, SMS, MMS, e-mail or any other form of print or non-print communication must observe the provisions of this Code in the manner most reasonable and appropriate to the technology employed.

## **5.12 Editorial promotions**

In the case of promotions that appear in editorial material, service providers must use all reasonable endeavours to ensure compliance with the provisions of this Code.

### **5.13 Services specifically targeted at children**

5.13.1 Services specifically targeted at children are those which, either wholly or in part, are aimed at or would reasonably be expected to be particularly attractive to children, who are defined for the purposes of this Code as people under 16 years of age.

5.13.2 Promotional material for services specifically targeted at children must clearly state:

- a the maximum possible cost of the service,
- b that the service should only be used with the agreement of the person responsible for paying the telephone bill.

5.13.3 Services specifically targeted at children, and any associated promotional material, must not:

- a contain anything which is likely to result in harm to children or which exploits their credulity, lack of experience or sense of loyalty,
- b include anything which a reasonable parent would not wish their child to hear or learn about in this way,
- c involve an invasion of privacy of any child,
- d make direct appeals to children to buy, unless the product or service is one which they could reasonably be expected to afford for themselves,
- e encourage children to ring other premium rate services or the same service again.

5.13.4 Services targeted specifically at children must:

- a cost no more than £3,
- b be terminated by forced release,
- c if the service generally costs more than 50 pence, be prefaced by a short statement that the service should only be used with the permission of the person who pays the bill.

## **PROVISIONS RELATING SPECIFICALLY TO LIVE SERVICES**

### **6.1 Permission requirements**

- 6.1.1 Unless exempt under paragraph 6.1.2 below, no live services may be provided without prior permission from ICSTIS.
- 6.1.2 ICSTIS may identify categories of live services which are exempt from the prior permission requirement. Such exemptions may be withdrawn or modified by ICSTIS at any time on reasonable notice and a list of exempt categories will be published by ICSTIS from time to time.
- 6.1.3 ICSTIS may set down such conditions as it sees fit in the granting of permission under paragraph 6.1.1.

### **6.2 Introductory messages**

- 6.2.1 All providers of live services must ensure that on connection each caller receives a brief introductory message giving details of the call costs and the name of the service provider providing the live service.

### **6.3 Promotional material**

- a Unless the live service is available 24 hours a day or permission not to provide such information has been granted by ICSTIS, hours of operation must be stated on the promotional material.
- b Unless ICSTIS has granted permission to do so, no promotion may be directed primarily at persons under 18 years of age or encourage such persons to call the service.
- c The promotional material must state clearly that conversations are being constantly recorded where such a condition has been imposed.

### **6.4 The conduct of live services**

- 6.4.1 Service providers must actively discourage callers from seeking or giving out surnames, places of work, addresses or telephone numbers, or arranging or attempting to arrange any meeting while connected to a live service. ICSTIS may grant an exemption in respect of this requirement for services where the giving of such information is a necessary part of the service.
- 6.4.2 Unless ICSTIS grants permission to do otherwise:
  - a Service providers must ensure that operators use reasonable endeavours to prevent persons under 18 years of age from taking part in any live service.
  - b If an operator has reasonable grounds, upon questioning a caller, to suspect that the caller is under 18, the service provider must end the call.

- 6.4.3 The service provider shall take reasonable steps to identify and cut off calls made without the permission of the bill-payer.

### **6.5 Sexual entertainment live services**

- 6.5.1 Services which are pay-for-product live services, where the product is of a clearly sexual nature, are sexual entertainment services (see paragraph 7.9).

## **6.6 Live services offering counselling**

- 6.6.1 Operators of live counselling services must hold qualifications and experience, or be of a status, appropriate to the type of service offered.
- 6.6.2 Service providers must provide adequate safeguards for vulnerable callers.

## **6.7 Chatline services**

- 6.7.1 Before a caller may participate in a chatline service, the service provider must obtain the caller's date of birth and confirmation that he has the permission of the bill-payer to make the call.
- 6.7.2 Chatline services must not be promoted or operate as sexual entertainment services and operators must use all reasonable endeavours to prevent conversation which is primarily of such a nature.
- 6.7.3 Service providers must ensure that there is a minimum of one operator monitoring up to 20 callers. Operators may take part in chatline conversations.
- 6.7.4 Calls to chatline services are subject to a maximum per minute charge to the subscriber at a rate which ICSTIS may vary from time to time but which, at the date of publication of this Code, is 60 pence per minute.
- 6.7.5 Service providers must give callers call cost warnings automatically after the caller has spent £10 and £20 on the call. All calls must be terminated by forced release at £30 call spend.
- 6.7.6 Service providers must ensure that chatline services are only accessible to callers when the service is called directly. Callers may not be connected to chatline services through other premium rate services; nor may callers to chatline services be connected through those services to other premium rate services.

## **6.8 Claims for compensation**

- 6.8.1 Where it considers it appropriate, ICSTIS will not grant permission under paragraph 6.1.1 unless it is satisfied that compensation arrangements exist for the prompt and effective provision of compensation. Compensation must be available to any person whose connection to the electronic communications network has been the subject of unauthorised use involving calls to the relevant live service(s) and in respect of which the Adjudicator has made an award in accordance with paragraph 6.8.4 of the Code.
- 6.8.2 At the time of publication of this Code, neither live entertainment services nor chatlines may be provided unless a compensation scheme approved by ICSTIS is in place and the relevant service provider has complied with the terms of the relevant compensation scheme.
- 6.8.3 Claims for compensation may be made by any person whose connection to the electronic communications network has been the subject of unauthorised use. When claims are received by ICSTIS, the relevant service provider(s) will be given an opportunity to settle them to the satisfaction of the claimant.
- 6.8.4 If the service provider does not settle the matter to the satisfaction of the claimant within a reasonable time, the matter will be referred to the Adjudicator who will

determine the matter in accordance with his procedures and who may require that the service provider pays the claim or part of it, together with an administrative charge and appropriate provision for the claimant's costs.

## **ADDITIONAL PROVISIONS RELATING TO SPECIFIC CATEGORIES OF SERVICE**

Section 7 supplements, but does not replace, the general provisions in Section 5.

### **7.1 Advice services**

7.1.1 All advice services must:

- a be conveyed in a responsible manner,
- b indicate clearly in the promotional material or at the beginning of the service, the identity, the current status and any relevant professional qualifications and experience of the person(s) or organisation supplying the information or advice. If the advice is given by a person with no relevant qualifications, the service must explain the source of the information.
- c be prefaced with a statement that the caller should not act upon advice which needs individual interpretation without first consulting a suitably qualified practitioner.

7.1.2 To avoid being classified as sexual entertainment services, the content of advice services must not be presented in a sexually titillating manner. There are further restrictions in respect of sexual entertainment services (see paragraph 7.9).

### **7.2 Betting tipster services**

7.2.1 Service providers must ensure that services and promotional material do not:

- a make claims about future selections being certain winners or about the certainty of profits,
- b quote odds for future selections unless the availability of these odds can be substantiated.

7.2.2 Service providers must make clear that opinions on particular selections given in services or promotional material are opinions and not statements of fact.

7.2.3 Service providers must ensure that any claims made, including previous selections and general statements about tipsters' records of success, are capable of being substantiated.

### **7.3 Chat, contact and dating services**

The chat and dating services covered by this Section are virtual chat, SMS chat and MMS chat. Live chat is covered in paragraph 6.7.

7.3.1 a **Definition of virtual chat services**

Virtual chat services enable two or more callers to exchange separate recorded messages while connected to the service. These services do not involve live conversation. Virtual chat services may also enable contact details to be exchanged between callers in the course of exchanging messages.

b **Definition of SMS and MMS chat services**

SMS and MMS chat services enable two or more people to exchange text messages and/or pictures with each other while connected to the service.

These chat services may also enable contact details to be exchanged between callers in the course of exchanging messages.

**c Definition of contact and dating services**

Contact and dating services enable people previously unacquainted with each other to make initial contact and arrange to meet in person. They do not enable callers to exchange separate recorded messages while connected to the service. In the context of contact and dating services, the 'advertiser' is the person featured in the initial message.

- 7.3.2
- a Service providers must use reasonable endeavours to ensure that the participant in any chat service is an authorised user and that nobody under the age of 18 uses virtual chat or contact and dating services.
  - b The only exception to this rule are non-adult (non-sexual entertainment) SMS and MMS chat services offered to the 16-17 age group, provided that the advertising of such services occurs in publications where the target readership is not below 16 years of age.
  - c In the case of group SMS and MMS chat services, consumers must be informed before they enter the service of the minimum number of messages they will receive and the price per message.
  - d In the case of MMS or SMS chat services, the generic 'STOP' command must be available and consumers must be so informed prior to entering the service. Clear instructions must be given on use of the 'STOP' command, including any necessary information concerning the placing of 'STOP' within any message to be sent by the consumer. When the 'STOP' command has been sent, the service provider must make no further charge for messages.
  - e Service providers must use reasonable endeavours to discourage sexually explicit chat on services which are advertised in generally available publications.
- 7.3.3 All chat and contact and dating services must, as soon as is reasonably possible after the caller has spent £10, and after each £10 of call spend thereafter:
- a inform the caller of the price per minute of the call,
  - b require callers to provide a positive response to confirm that they wish to continue the call. If no such confirmation is given, the service must be terminated.
- 7.3.4 Service providers who operate chat or contact and dating services which enable contact details to be exchanged, either in the course of exchanging messages or using voicemail boxes, must:
- a warn callers and advertisers of the risks involved when contact details are given out to other individuals and give clear advice on sensible precautions to take when meeting people through such services,
  - b ensure that publicly-available elements of the service do not contain telephone numbers, addresses or any other means of direct contact,
  - c when requested by the advertiser, ensure that their details are removed from the service at the earliest opportunity and in all cases within 24 hours,
  - d make clear in the promotional material any restrictions on the location, sex

- e and age range of callers and of advertisers to the service, bar access to a voicemail box where the advertiser has not collected responses for more than four weeks. If the service provider is unable to tell when responses are collected, no advertisement may be published for more than four weeks.

7.3.5 Providers of virtual chat and SMS and MMS chat services must:

- a have in place, and implement in appropriate circumstances, a reasonable complaints handling procedure,
- b pay reasonable and valid claims for refunds.

7.3.6 a All claims for refunds will be referred to the service provider who must carry out an adequate investigation.

- b Where the service provider's investigation shows that the calls were made without the knowledge and permission of the bill-payer, then a full refund of the amount payable by the bill-payer must be offered.

7.3.7 Service provider employees who are to be involved in operating virtual chat services (whether or not for the purposes of monitoring) must be given adequate training in the relevant requirements of this Code before commencing employment. No such employee shall be under the age of 18.

## **7.4 Competitions and other games with prizes**

7.4.1 Competition services fall into five basic categories:

- lotteries,
- competitions,
- other games with prizes,
- an entry mechanism into a draw,
- information about prizes and how to claim them.

Most of these are subject to legal restrictions. Before setting up such services, service providers are strongly advised to seek advice on legal and excise duty implications.

7.4.2 Promotional material for competition services which generally cost more than £1 must clearly display:

- a the cost per minute and likely playing time, or the full cost of the call,
- b details of how the competition operates and an indication of any tie-breakers.

7.4.3 Interactive competition services which generally cost more than £5 must, as soon as is reasonably possible after the caller has spent £2.50, and after each £2.50 of call spend thereafter, require an active confirmation that the caller wishes to continue with the call. Failure to provide the correct response must, after the provision of any necessary prize claim information, cause the service to be terminated immediately by forced release.

7.4.4 Competition services which are aimed at or would reasonably be expected to be particularly attractive to persons under 16 years of age must not:

- a offer cash, or anything which can be readily exchanged for cash, as a prize,

b feature long or complex rules.

7.4.5 Promotional material must clearly state any information which is likely to affect a decision to participate, in particular:

- a any closing date,
- b any significant terms and conditions, including any restriction on the number of entries or prizes which may be won,
- c an adequate description of prizes and other items offered to all or a substantial majority of participants, including the number of major prizes and details of any restriction on their availability or use,
- d any significant age, geographical or other eligibility restrictions,
- e any significant costs which a reasonable consumer might not expect to pay in connection with collection, delivery or use of the prize or item,
- f any conditions concerning access to or use of prizes,
- g where a prize consists wholly or in part of vouchers (e.g. holiday vouchers), the promotional material must specifically and prominently state the value of a single voucher as well as any aggregated value.

7.4.6 The following additional information must also be made readily available on request, if not contained in the original promotional material:

- a how and when prize-winners will be informed,
- b how prize-winner information may be obtained,
- c any criteria for judging entries,
- d any alternative prize that is available,
- e the details of any intended post-event publicity,
- f any supplementary rules which may apply.

7.4.7 Competition services must have a closing date, except where there are instant prize-winners. An insufficient number of entries or entries of inadequate quality are not acceptable reasons for changing the closing date of a competition or withholding prizes.

7.4.8 Competition services and promotional material must not:

- a use words such as 'win' or 'prize' to describe items offered to all or a substantial majority of participants,
- b exaggerate the chance of winning a prize,
- c suggest that winning a prize is a certainty,
- d suggest that consumers must call a premium rate number in order to participate if an alternative postal entry route is available.

7.4.9 Service providers must ensure that:

- a prizes are awarded within 28 days of the closing date, unless a longer period is clearly stated in the promotional material,
- b all correct entries have the same chances of winning,
- c if there is any subjective assessment in the selection of the winning entries (e.g. tie-breakers) in a competition open to the general public, then judging is by a person or persons independent of the service provider and any intermediaries involved, or by a judging panel including at least one independent member.

## 7.5 Consumer credit services

Prior permission must be obtained from ICSTIS for the provision of any service which provides, or provides advice relating to, consumer credit, regardless of the level of credit to which such a service relates.

## **7.6 Directory enquiry services ('DQ')**

- 7.6.1 A DQ service provider offering a full national directory enquiry service must subscribe to a database that provides access to all UK non-ex-directory residential and business telephone numbers and which is updated by fixed line originating network operators.\*
- 7.6.2 A DQ service provider providing an international directory enquiry service must have, or have access to, a directory equivalent to the national directory available in the country or countries it professes to cover.
- 7.6.3 If any DQ service does not provide a full national directory enquiry service then the service provider must make it obvious in any promotional material what the extent of the available service is.
- 7.6.4 Service providers must ensure that a DQ service immediately offers a telephone number (where one is available) in response to a request where sufficient information to identify the end user of a telephone number has been given. The number can be offered in another format such as e-mail or text message.
- 7.6.5 a Where service providers offer the service of call completion, callers must be informed of the cost of that service prior to agreeing to proceed. The caller must also be provided with a clear opportunity to decline call completion and to exercise the option of obtaining the number at that point without redialling the DQ service.
- b Service providers must not offer call completion or connection to:
- i any premium rate service which requires payment into the ICSTIS Compensation Scheme,
  - ii any individual, business or organisation with whom the service provider of the DQ has an agreement to share call revenue,
  - iii any sexual entertainment service.
- 7.6.6 DQ services are exempt from the live service provisions in this Code requiring that:
- a calls from persons under the age of 18 must be terminated,
  - b no operator on a live service may be under the age of 18.
- 7.6.7 Customers who have provided adequate relevant information to enable identification of the number requested but have not received it from the DQ service must be offered a refund or a credit for the cost of the DQ call if they make a complaint. The refund or credit must include the cost of the original call and the cost of any subsequent call to complain. This is in addition to any further obligation that may arise by reason of paragraph 3.2.7.

\* At the time of publication of this Code, the only available database that meets these criteria is BT's OSIS database.

## **7.7 Fundraising and charitable promotions**

Service providers should be aware that the scope of such services is limited by

legislation relating to charities.

Regardless of the platform on which fundraising or charitable promotions operate, the promotional material for them must make clear:

- a either the total sum per call or the amount per minute which will be paid to the beneficiary,
- b the identity of the beneficiary,
- c any restrictions or conditions attached to the contribution to be made to the beneficiary.

## **7.8 Pay-for-product services**

7.8.1 Pay-for-product services are those, costing more than £1 in total, in which the benefit to the customer is either the delivery during or consequent to the call of a product or service paid for wholly or in part by the customer through a network operator, or the provision during the call of electronic data which the customer is able to receive and store. Such services are required to conform to the requirements of the Distance Selling Regulations 2000<sup>3</sup>.

7.8.2 Pay-for-product services do not include products received as part of a subscription service (in respect of which see paragraph 7.10).

7.8.3 Unless permission to do otherwise is specifically granted by ICSTIS, service providers must ensure that pay-for-product services:

- a do not cost more than £20,
- b include an introductory message giving the likely total cost of the call and adequate information about how the service works,
- c take one call only to enable delivery of the product,
- d terminate automatically once the £20 limit has been reached.

7.8.4 The promotional material for pay-for-product services must clearly state:

- a and give prominence to the likely total cost of the product or service,
- b the total number of minutes the consumer will need to stay connected to the call or the total number of SMS or MMS messages the consumer will need to receive in order to complete the purchase,
- c that the consumer will need to complete the entire call in order to obtain the product,
- d any significant information which is likely to affect a decision to participate, including the main characteristics of the product or service,
- e any additional costs relating to delivery charges (where applicable),
- f any details about the arrangements for delivery and/or performance.

7.8.5 If a pay-for-product service can cost more than £5:

- a the service provider must keep records of the names and dispatch addresses of callers for a minimum of six months,
- b the service must require an active confirmation from callers that they accept that their personal details and delivery address will be retained and made available in the case of a claim for unauthorised use.

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<sup>3</sup> Details of the Distance Selling Regulations can be found at [www.dti.gov.uk/ccp/topics1/ecommm.htm](http://www.dti.gov.uk/ccp/topics1/ecommm.htm)

7.8.6 Service providers must:

- a have in place, and implement in appropriate circumstances, effective customer service arrangements,
- b meet all reasonable and valid claims for refunds (see paragraph 3.2.7), including claims where the person who ordered the goods or services was not the bill-payer or did not have the bill-payer's permission to make the call or engage in the service.

7.8.7 Pay-for-product services, where the product is of a clearly sexual nature, are sexual entertainment services. Such services must operate on the designated code for sexual entertainment services.

## 7.9 Sexual entertainment services

7.9.1 Sexual entertainment services are services of a clearly sexual nature or any services for which the associated promotional material indicates, or implies, that the service is of a sexual nature.

7.9.2 Sexual entertainment services, and promotions for them, must not contain references which suggest or imply the involvement of persons under 18 years of age.

7.9.3 Promotions for sexual entertainment services must not appear in publications targeted at persons under the age of 18.

7.9.4 Promotions for sexual entertainment services must be in context with the publication or other media in which they appear. Services should be in context with the advertising material promoting them. The content of a service should not be contrary to the reasonable expectations of those responding to the promotion.

7.9.5 Save where the relevant network operator has provided an alternative solution acceptable to ICSTIS, all sexual entertainment services must provide a message at the beginning of the service stating that:

- a the caller must be over the age of 18,
- b the caller should be either the bill-payer or have the bill-payer's permission to call the service,
- c call details may appear on the telephone bill.

7.9.6 In addition, all non-live sexual entertainment services must:

- a cost no more than £20 (unless ICSTIS grants specific permission to a service provider to allow a higher maximum charge),
- b terminate by forced release.

7.9.7 Service providers must ensure that promotions for sexual entertainment services, and the services themselves, are compatible with access control and rating arrangements available for and appropriate to the medium through which they are available. Providers of sexual entertainment services which can be accessed by means of electronic devices at premium rate must ensure that all websites which can be accessed are content-rated with the Internet Content Rating Association (ICRA) or any other relevant organisation recognised by ICSTIS.

## 7.10 Subscription services

Subscription services are those where a sign-on process initiates a recurring premium rate service.

#### 7.10.1 Promotional material must:

- a clearly indicate that the service is subscription based. These words should be prominent and highly visible to readers.
- b ensure that the terms of use of the subscription service (e.g. whole cost pricing, opt-out information) are clearly visible,
- c wherever stop instructions are displayed, the information provided must advertise the generic 'STOP' command.

#### 7.10.2 Subscription initiation

Consumers must be sent a free initial subscription message containing the following information before receiving the premium rate service:

- a name of service,
- b confirmation that the service is subscription based,
- c what the billing period is (e.g. per day, per week or per month) or, if there is no applicable billing period, the frequency of messages being sent,
- d how much the user is charged for that billing period,
- e how to leave the service (including the generic 'STOP' command where applicable and providing clear instructions on its use, including any necessary information concerning the placing of 'STOP' within any message to be sent by the consumer),
- f service provider contact details.

#### 7.10.3 Subscription reminders

Once a month the following information must be sent free to subscribers:

- a name of service,
- b confirmation that the service is subscription based,
- c what the billing period is (e.g. per day, per week or per month) or, if there is no applicable billing period, the frequency of messages being sent,
- d how much the user is charged for that billing period,
- e service provider contact details.

#### 7.10.4 Service termination

- a Service providers must send a free generic 'STOP' command reminder every time the total spend reaches £20 since the last 'STOP' command reminder.
- b If the service costs less than £20 per month, the service provider must send a free 'STOP' command reminder every month instead of when £20 has been spent.

#### 7.10.5 Subscription termination

- a After a user has sent a 'STOP' command to a service, the service provider must make no further charge for messages.
- b Users must be free to leave a service at any time and service providers must do nothing to indicate that this is not the case, unless specific permission to do so has been granted by ICSTIS.

## **PROCEDURES AND SANCTIONS**

### **8.1 Complaint investigation**

- 8.1.1 ICSTIS will consider and, where appropriate, investigate all complaints which it receives, provided that the complaint is made within a reasonable period from the time when it arose.
- 8.1.2 ICSTIS, through its Executive, monitors premium rate services. The Executive can itself initiate a complaint where there appears to be a breach of the Code.
- 8.1.3 During complaint investigations, or as part of the adjudication process, ICSTIS may direct any service provider or network operator concerned to disclose to the Executive, subject to the confidentiality provision set out in paragraph 1.2.3 and within a reasonable time period, any additional relevant information or copies of documents. This may include, for example, information about call volumes, patterns and revenues, details of the numbers allocated to a service provider or concerning an information provider, or details of services operating on particular premium rate numbers.
- 8.1.4 Throughout these procedures, ICSTIS will deal direct with service providers and network operators. ICSTIS will also deal with information providers in circumstances where the information provider:
- accepts responsibility for the service and/or its promotion,
  - accepts that, in the event that a breach is established and a sanction and/or administrative charge is imposed, it will be responsible for compliance and/or payment,

and where the relevant service provider undertakes that, in the event that the information provider fails to comply with any sanction and/or make any payment due, the service provider will retain responsibility for compliance and/or payment in respect of any sanction and/or administrative charge that has been imposed and will comply on demand from ICSTIS without any entitlement to further process.

### **8.2 Informal procedure**

If an apparent breach of the Code is of a minor nature, causing little consumer harm, the Executive may use the 'informal procedure'. Factors including the seriousness of the breach and the service provider's case history may be taken into account when deciding whether the informal procedure should be applied. In such cases:

- a The service provider will be contacted and informed of the apparent breach.
- b If the service provider agrees that a breach of the Code has taken place, the service provider will be required to remedy the breach. No other sanction will be imposed nor any administrative charge levied.
- c The service provider will be sent a letter confirming what has been agreed.
- d If the service provider disputes the breach, the standard procedure may be invoked.
- e A record will be maintained in respect of breaches of the Code dealt with through the informal procedure.

### **8.3 Standard procedure**

When the Executive receives or initiates a complaint, the 'standard procedure' will usually be used:

- a The Executive will provide the service provider with all the necessary information about the complaint, including details of the service or promotional material which gives rise to the apparent breach of the Code, and will be referred to the relevant provisions of the Code.
- b The service provider will be given a reasonable time in which to respond and to provide any information requested. This response will normally be required within five full working days. In exceptional circumstances, a shorter time limit may be set but this will not be less than 24 hours.
- c If the service provider fails to respond within the required period, the Executive will proceed on the assumption that the service provider does not wish to respond.
- d The Executive will prepare a report, together with relevant supporting evidence, which will be placed before a sub-committee of ICSTIS delegated to adjudicate upon the matter (an 'adjudication panel').
- e The adjudication panel may invite the service provider to make informal representations to it in person in order to clarify any matter or the service provider may request the opportunity to make such informal representations to the adjudication panel.
- f At any point in the course of a standard procedure, ICSTIS may inform the relevant network operator(s) of the apparent breach of the Code and direct that it withholds from the service provider any payments outstanding under the contract between it and the service provider.

#### **8.4 Emergency procedure**

Where it appears to the Executive that a breach of the Code has taken place which is serious and requires urgent remedy, the 'emergency procedure' will be used:

- a The Executive will undertake an immediate investigation of the complaint.
- b On completion, the Executive will notify its findings to three members of the Board.
- c If all three members agree that there appears to be a serious breach of the Code requiring urgent remedy, the Executive will:
  - i use reasonable endeavours to notify the service provider (by telephone, fax or e-mail) that the service appears to be in breach of the Code, that the emergency procedure has been invoked and that the service must be removed immediately,
  - ii advise the relevant network operator(s) of the breach and direct that it withholds from the service provider any payments outstanding under the contract between it and the service provider,
  - iii if the service provider cannot be contacted, direct also that the network operator(s) bar access to the relevant service(s) or number(s) forthwith.
- d If, within 10 working days following the confirmation of use of the emergency procedure by three members of the Board in a particular case, other cases come to the notice of the Executive which exhibit substantially the same characteristics, the Executive may itself proceed with the emergency procedure in such other cases. The Executive will promptly inform the Board of such action.
- e Once the service has been removed, the service provider will be provided with all the necessary information relating to the complaint and will be referred to

the relevant provisions of the Code. The service provider will then be required to respond in writing within five working days.

- f All relevant information including any response from the service provider will, in the absence of special circumstances, be laid before an adjudication panel within 14 working days from the date of the notification in b above or as soon thereafter as is practicable.
- g The adjudication panel may invite the service provider to make informal representations to it in person in order to clarify any matter or the service provider may request the opportunity to make such informal representations to the adjudication panel.
- h The time limits set out in this Section may be extended at ICSTIS' discretion if it considers that their strict application might cause injustice.

## **8.5 Adjudication**

On the basis of the evidence presented, the adjudication panel will decide whether there has been a breach of the Code. Each case will be considered and decided on its own merits. Service providers will be notified of the adjudication in writing. Where the adjudication has been made on the papers alone, or following informal representations in person, the notification will include reference to the service provider's right to an oral hearing.

## **8.6 Sanctions**

8.6.1 Once the adjudication panel has determined that there has been a breach of the Code, the Executive will put before it the service provider's details. These will include a list of any relevant breaches previously upheld, sanctions imposed on the service provider and any other relevant information.

8.6.2 ICSTIS has a range of sanctions which it may apply according to the degree of seriousness with which it regards any breaches. Having taken all relevant circumstances into account, ICSTIS may singly or in any combination in relation to each breach:

- a require the service provider to remedy the breach,
- b issue a formal reprimand
- c require the service provider to submit certain or all categories of service and/or promotional material to ICSTIS for copy advice and/or for prior permission for a defined period.
- d impose an appropriate fine on the service provider to be collected by ICSTIS,
- e require that access to some or all of the service provider's services and/or numbers be barred for a defined period and direct the relevant network operator(s) accordingly,
- f prohibit a service provider and/or any associated individual found to have been knowingly involved in a serious breach or series of breaches of the Code from involvement in or contracting for the provision of a particular type or category of service for a defined period,
- g prohibit a service provider and/or any associated individual found to have been knowingly involved in a serious breach or series of breaches of the Code from involvement in or contracting for the provision of any premium rate services for a defined period and so inform all network operators which contract for the provision of premium rate numbers,
- h require, in circumstances where there has been a serious breach of the Code and/or where an intent to mislead or defraud has been demonstrated, that the service provider pays all claims (or any specified category of claims) made by

consumers for refunds, save where there is good cause to believe that such claims are not valid.

8.6.3 The failure of any service provider to comply with any sanction within any reasonable time period imposed on it by ICSTIS will result in:

- a ICSTIS issuing a direction to all relevant network operators requiring suspension of access to some or all of the numbers allocated to the service provider until full compliance with ICSTIS sanctions has been achieved,
- b a breach of the Code by the service provider which may result in further sanctions being imposed.

8.6.4 If an adjudication panel considers that it may wish to make a recommendation under paragraph 8.6.2f or g in respect of any named individual, it shall first make all reasonable attempts to so inform the individual concerned and the service provider or information provider in writing. It shall inform each of them that any of them may request an opportunity to make informal representations to the adjudication panel in person and of the right of any of them (or of ICSTIS itself) to require an oral hearing.

8.6.5 Where an individual requires an oral hearing pursuant to the right set out in paragraph 8.6.4, if the associated individual fails, without good cause, to appear (either himself or through his representative) at an oral hearing which is properly established, then that oral hearing panel may make such a finding as it considers fit.

8.6.6 Refunds

- a Where payment of refunds has been imposed as a sanction in accordance with 8.6.2 h, it is the responsibility of the service provider to pay all claims for refunds as required by ICSTIS except those where there is good cause to believe that any such claim is not valid.
- b If money that would otherwise have been paid to the service provider has been retained by a network operator in accordance with a direction from ICSTIS or other obligation under the Code ('a retention'), the service provider may pass details of payable claims to the network operator which shall make the refund payments due from the retention.
- c If the service provider fails to deal promptly with claims made for refunds, ICSTIS may direct any network operator which has a retention to deal with claims for refunds and pay the refunds from the retention.
- d The obligation of the network operator shall cease three months after completion of the ICSTIS adjudication process and any time period for appeal to the Independent Appeals Body or the conclusion of such appeal or, if sooner, when the retention has been fully expended.
- e If there is a retention remaining at the end of the three-month period, it must be used to discharge in whole or in part ICSTIS fines and/or administrative charges outstanding and payable by the service provider, and, if a retention remains thereafter, the network operator shall be entitled to deduct from the retention its costs and expenses arising from dealing with the refunds.

**8.7 Reviews**

8.7.1 On reasonable grounds, ICSTIS may, at its discretion, review determinations made in respect of applications for prior permission and adjudications and/or sanctions.

8.7.2 A service provider or applicant for prior permission may request a review by setting out in writing the case for such a review.

### 8.7.3 Review procedure

Having received a written request setting out the reason why a determination made in respect of an application for prior permission or an adjudication and/or sanction should be reviewed, ICSTIS will decide whether the review is merited and may proceed with the review forthwith or set a later date for such a review.

8.7.4 Following such written request, one or more nominated Board members may suspend any sanction imposed pending a review.

## 8.8 Oral hearings

8.8.1 Any service provider, applicant for permission or associated individual ('the Applicant') may, by notice in writing to the Executive, require that an oral hearing be held:

- a in the event of a refusal by ICSTIS to grant prior permission to provide a service, or only to grant it upon condition,
- b following receipt of any communication from the Executive alleging a breach or breaches of the Code,
- c in respect of any adjudication made by ICSTIS without an oral hearing,
- d in the circumstances of an intention to make an order under 8.6.2(f) or 8.6.2(g).

8.8.2 The Applicant must, within such written notice, provide details of the allegation or decision in respect of which the oral hearing is required. Where no adjudication has been made, the Applicant must clearly identify the matter in respect of which the oral hearing is to be held.

8.8.3 Such written notice may be provided to the Executive at any time up to 10 working days after receipt by the Applicant of written notification of a decision by ICSTIS or at any time prior to the adjudication being made where the oral hearing is required following an allegation of a breach of the Code.

8.8.4 ICSTIS may require at any stage of its processes that an oral hearing be held.

8.8.5 Oral hearings shall take place before no fewer than two members of the ICSTIS Board ('the hearing panel').

8.8.6 The Applicant is entitled to appear at the oral hearing in person or to be represented. The Executive will attend the oral hearing in order to put the case against the Applicant and may instruct a representative to act on its behalf.

8.8.7 The enforcement of sanctions imposed pursuant to an adjudication is not automatically suspended by written notice requiring an oral hearing. The Applicant may apply in writing to the Chairman of the hearing panel ('the Chairman') setting out the grounds on which the sanction should be suspended. Unless the Chairman considers that there are exceptional reasons in the particular case to grant the application, he will only do so if he is satisfied that not to do so would give rise to undue hardship, and that to do so would not give rise to a significant risk of public harm. If an Applicant has not been granted a suspension of sanction but has not complied with the sanction the Chairman may stay the oral hearing.

8.8.8 Procedures for hearing

#### 8.8.8.1 Pre-hearing process

- a The Chairman will give such directions as he considers necessary for the fair and speedy hearing of the oral hearing.

Such directions may include, for example, directions for:

- the exchange of statements of case,
- the admission of facts before the hearing,
- the disclosure of documents,
- the provision of expert reports,
- the exchange of witness statements,
- the preparation of agreed bundles of documents,
- the submission and exchange of outline arguments,
- the provision of security for the administrative charges of ICSTIS.

Directions may be given as to the date by which such actions shall be taken. The Chairman may strike out a case or take such other steps as he sees fit where any direction is not followed.

- b The Chairman may convene a conference for the purpose of providing directions or may deal with directions by correspondence or telephone, as he sees fit.
- c Not less than 10 working days before the date of the oral hearing, the Applicant shall be notified in writing (at the address of the Applicant last made known to ICSTIS) of the day, time and place of the oral hearing.
- d Within five working days of receipt of the notice specifying the date of the hearing, the Applicant shall inform the Executive in writing of whether he intends to appear in person at the hearing and the name of any person who will be representing him at the hearing.
- f The Chairman may vary any of the time limits set out in these procedures.

- 8.8.8.2 If the Applicant is neither present nor represented at the hearing, and the hearing panel has no cause to believe there is a good reason for the Applicant's absence, the matter shall be determined by the hearing panel as it sees fit in the absence of the Applicant.

#### 8.8.8.3 The hearing

In respect of alleged breaches of the Code of Practice:

- a The Executive shall outline the grounds of the case and call such witnesses and refer to such documents as it is entitled to do.
- b The Applicant shall then be entitled to respond to the case put by the Executive and to call such witnesses or present any written statements or other documents as he is entitled to do.
- c The Executive shall then be entitled to address the hearing panel.
- d The Applicant shall be entitled to reply.
- e A witness in person may be cross-examined. A witness who has been cross-examined may be re-examined.
- f The Chairman of the hearing panel may question any witness at any time.

In respect of a case concerning an application for permission, the Chairman shall adopt such procedures as he shall deem to be most convenient.

The Chairman of the hearing panel shall have the power to vary any of these

procedures at any time and to adjourn the hearing if satisfied that it is in the interests of justice to do so.

#### 8.8.8.4 Confidential information

The hearing panel shall be entitled to consider and act upon confidential information without directly or indirectly disclosing to the Applicant (or the Executive as the case may be) the source of that information, provided that the other party is given a reasonable opportunity to rebut its substance.

#### 8.8.8.5 Recording

A sound recording shall be made of the oral hearing. Recordings will be made available to the Executive and the Applicant.

#### 8.8.9 Public hearing

An oral hearing shall be conducted in private, unless the Applicant or the Executive otherwise requires. If an oral hearing is in public, either party may request that any part of the hearing be conducted in private and any such application shall itself be heard in private.

#### 8.8.10 Powers of the hearing panel

The hearing panel shall decide the matter entirely afresh. For the avoidance of doubt, the hearing panel:

- a may impose a greater or lesser sanction than that previously imposed by an adjudication panel,
- b may reverse a decision to issue or refuse a permission,
- c may set such conditions on a permission as it sees fit,
- d must agree to impose such sanctions, permissions and/or conditions, and administrative charges or otherwise dispose of the matter as may be jointly agreed by the Executive and the Applicant and which has been agreed by the Chairman of ICSTIS ('adjudication by consent').

#### 8.8.11 Decision and publication

The hearing panel shall, as soon as is practicable after the hearing, provide a reasoned written decision. All decisions, whether reached through written or oral process, shall be published by ICSTIS and may identify any network operator, service provider and information provider concerned.

### 8.9 Administrative charge

All service providers found to be in breach of the Code may be invoiced for the administrative and legal costs of the work undertaken by ICSTIS. Non-payment within the period laid down by ICSTIS will also be considered to be a breach of the Code and may result in further sanctions being imposed. ICSTIS may direct that the relevant network operator withholds and passes over to ICSTIS the sum(s) due from the payments outstanding under the contract between the network operator and the service provider.

## PROCEDURES CONCERNING NETWORK OPERATORS

- 9.1 If it appears to ICSTIS that a network operator has failed to comply with its obligations under this Code (whether the subject of a direction or not):
- a ICSTIS will set out in writing the details of the apparent failure to comply.
  - b The network operator will be given a reasonable time to respond. This response will normally be required within five full working days.
  - c Upon receipt of the network operator's response or if the network operator does not respond within the time required, the Executive will prepare a report together with relevant supporting evidence which will be placed before a sub-committee of ICSTIS appointed to adjudicate upon the matter (a 'network operator adjudication panel') ('the panel'). The adjudication will be provided promptly in writing to the network operator.
  - d The network operator or the Executive may require at any point in the procedure that the matter be dealt with by means of an oral hearing provided that no requirement for an oral hearing may be made more than 10 working days after the provision of any adjudication made under paragraph 8.8.3.
- 9.2 Oral hearings taking place under this Section shall be heard by a panel of no less than two Board members, one of whom shall be appointed as the Chairman.
- 9.2.1 The procedures for hearings shall be as set out in paragraph 8.8.8 as though 'network operator' had been substituted for 'Applicant' throughout.
- 9.2.2 The hearing shall be conducted in private unless the network operator or the Executive otherwise requires. If a hearing is in public, either party may request that any part of the hearing be conducted in private and any such application shall itself be heard in private
- 9.2.3 The panel shall, as soon as practicable after the hearing, provide a reasoned written decision. This written decision shall be published by ICSTIS.
- 9.2.4 If the panel determines that the network operator has failed to comply with its obligations under the Code, then the Executive will place before it the network operator's details. These will include a list of any previous determinations of failure to comply, sanctions directed and any other relevant information.
- 9.2.5 The panel may impose, by means of a direction to the network operator imposing a sanction upon it, one or more of the sanctions set out in paragraph 2.6.1, which are:
- "2.6.1 Non-compliance by a network operator with any of its obligations set out in this Code shall be dealt with in accordance with Section 9 and, if ICSTIS determines that a network operator is in breach of any of its obligations, it may make a direction imposing a sanction on the network operator in the form of any or all of the following:
- a a reprimand and/or a requirement that the network operator must remedy the failure,
  - b an instruction to pay an appropriate fine,
  - c an instruction to cease to provide its network and/or services for the carriage of any particular type or category of premium rate services for a certain period,
  - d an instruction to pay reasonable and valid claims for refunds."

- 9.2.6 All network operators on whom a sanction is imposed may be invoiced for the administrative and legal costs of the work undertaken by ICSTIS. Non-payment within the period laid down by ICSTIS will be considered to be a failure by the network operator to comply with its obligations under the Code and may result in the imposition of a further sanction direction.
- 9.3 A direction or the obligation to comply with any other obligation under this Code is not automatically suspended by the initiation or utilisation of any of the procedures set out in paragraph 9.1. The network operator may apply in writing to the Chairman of ICSTIS setting out the grounds on which a direction or obligation should be suspended. Unless the Chairman considers that there are exceptional reasons in the particular case to grant the application, he will only do so if he is satisfied that not to do so would give rise to undue hardship, and that to do so would not give rise to a significant risk of public harm. If the network operator has not been granted a suspension of the direction or obligation and has not complied with the direction or obligation, the Chairman of any oral hearing panel may stay the oral hearing pending compliance.
- 9.4 A network operator may appeal to the Independent Appeals Body against any panel decision which directs that a sanction be imposed.
- 9.5 If a network operator fails to comply with a sanction direction issued following the process set out in Section 9 (including any appeal to the IAB), ICSTIS may refer the matter to Ofcom in accordance with section 120 of the Act for it to take such action as it shall see fit.
- 9.6 In the event that a network operator has committed a gross breach of its obligations under the Code leading to a sanctions direction or has more than one direction imposing sanctions issued against it in respect of actions or inactions occurring within one year, ICSTIS may refer the matter to Ofcom in accordance with section 120 of the Act for it to take such action as it shall see fit.

## APPEALS

- 10.1 Applicants may, after an oral hearing at which the Applicant or his representative has appeared, appeal to the Independent Appeals Body ('IAB') against ICSTIS' decisions and adjudications (other than any adjudication by consent).

Network operators may appeal to the IAB against ICSTIS adjudications which have directed that a sanction be imposed whether or not an oral hearing has taken place. Appeals by an Applicant or network operator ('Appellant') may be made on the following grounds:

- the disputed decision was based on error of fact,
- the disputed decision was wrong in law, or
- ICSTIS exercised its discretion irrationally in reaching its decision.

- 10.2 In order to institute an appeal, the Appellant must provide a written notice of appeal setting out the grounds upon which the appeal is made and the facts and matters upon which it is based, to be received by the clerk to the IAB ('the Clerk') within 20 working days of the issue of the ICSTIS adjudication or determination which is the subject of the appeal.

- 10.3 The notice of appeal must be accompanied by:

- the written adjudication,
- the case bundle used at the ICSTIS oral hearing,
- a security deposit of £5,000 or an application (to be determined by the Chairman of the IAB) to waive or reduce such a security deposit setting out the grounds for such waiver or reduction,
- a description of any new evidence upon which the Appellant intends to rely and which, for good reason, was previously unavailable,
- if the notice of appeal and/or any necessary accompanying documents are being provided to the Clerk more than 20 working days after the issue of the ICSTIS adjudication, the Appellant must also provide an application (to be determined by the Chairman of the IAB) for the appeal to proceed, setting out the reasons for the delay and the grounds for such application.

- 10.4 If an Appellant or his representative failed to appear in person at an oral hearing for good reason, but the oral hearing proceeded in his absence and ICSTIS has refused to permit a further oral hearing, the Appellant may apply to the Chairman of the IAB to request him to require that ICSTIS holds a further oral hearing.

## **ANNEX 1 – FUNDING ARRANGEMENTS**

### **General provisions**

- 1.1 Information obtained by ICSTIS under these provisions shall be confidential, save that ICSTIS may share it with Ofcom to the extent that is reasonable for the proper regulation of premium rate services.
- 1.2 For the purposes of these funding provisions, the following definitions shall apply:
  - a 'Outpayments' are sums payable by network operators to service providers in respect of revenue generated by premium rate services.
  - b 'Revenue' is the sum received by a network operator in respect of or attributable to the provision of a premium rate service, gross of any sum that may be due to third parties arising out of the provision of the said service.

### **Timetable**

- 2.1 ICSTIS will publish a timetable for its annual budgetary and forecasting procedures as set out below. It will specify the dates by which various activities should be carried out by network operators and/or ICSTIS.
- 2.2 ICSTIS may, upon giving reasonable notice to interested parties, vary some or all of the dates set out in the timetable.

### **Budget and activity plan**

- 3.1 As far as is practicable by 31 December each year, ICSTIS will publish a proposed budget and activity plan for wide consultation and scrutiny.
- 3.2 Having considered the comments received under paragraph 3.1 above, ICSTIS will review and then present its proposed budget and activity plan to Ofcom for comment within such a period of time as ICSTIS may specify.
- 3.3 After receiving comments from Ofcom, ICSTIS will make such amendments to the proposed budget and activity plan as are necessary to secure Ofcom approval.
- 3.4 ICSTIS will then announce its budget for the forthcoming calendar year, specifying the amount it intends to collect ('the Budgeted Figure').

### **Forecasting**

- 4.1 Subject to paragraph 4.3 below, network operators must, in accordance with the timetable, provide ICSTIS with a forecast of the value of outpayments (gross of the Levy – see Section 5 below) that each of them anticipates making in or for the forthcoming calendar year.
- 4.2 If a network operator fails to provide a forecast in accordance with paragraph 4.1 above, ICSTIS may issue a direction to the network operator requiring the provision of a forecast and/or may make its own forecast of the outpayments likely to be made by the relevant network operator during the forthcoming calendar year. This will be based on such information as ICSTIS may have concerning the network operator's outpayments in previous years, information received from other network operators and ICSTIS' own knowledge of the industry.

- 4.3 Where a network operator intends to provide premium rate services over its electronic communications network and has not previously done so, the network operator is not obliged to provide forecasts pursuant to paragraph 4.1 above.

### **Levy**

- 5.1 ICSTIS will determine the proportion of every outpayment that needs to be retained and paid to ICSTIS ('the Levy'). ICSTIS may from time to time vary the rate at which the Levy is set to ensure that it continues to receive adequate funding to carry out its activities.
- 5.2 ICSTIS will advise network operators (in writing) and other interested parties (by publication on its website) of the Levy to be applied to outpayments from time to time and issue directions accordingly. The Levy will be expressed as the proportion of each outpayment that must be retained (e.g. 0.xx pence per £1).
- 5.3 Following receipt of notification under paragraph 5.2 above, network operators must inform everyone to whom they make outpayments of the level at which the Levy has been set and that they (the network operator) will deduct the Levy at source from every outpayment that is made and pay the deducted amount to ICSTIS.
- 5.4 Network operators are responsible for deducting the Levy notified under paragraph 5.2 from every outpayment that they make. Where a network operator fails to deduct the Levy, the network operator will remain liable to ICSTIS as though it had in fact deducted the Levy.

### **Payments**

- 6.1 In accordance with the timetable, ICSTIS will advise each network operator whose outpayments for the forthcoming year have been forecast under Section 4 of this Annex of the total amount that the network operator is expected to collect in the forthcoming calendar year by the application of the Levy notified for the time being under paragraph 5.2 ('its Contribution').
- 6.2 Each network operator's Contribution will be calculated by multiplying its forecasted outpayments for the forthcoming year by the applicable Levy for the time being (e.g. £1,000,000 x 0.XX).
- 6.3 Upon being advised of its Contribution by ICSTIS pursuant to paragraph 6.1 above, a network operator must pay its Contribution to ICSTIS by 12 equal monthly instalments payable by the last day of each month commencing on the following 31 March. Wherever possible, network operators should arrange to make payments by electronic transfer.
- 6.4 Where a network operator falls within paragraph 4.3 above, the network operator will make payments to ICSTIS calculated by multiplying its actual outpayments by the applicable Levy each month during the balance of the first year of service provision.
- 6.5 All invoices provided by ICSTIS to network operators will add a charge for VAT.
- 6.6 All network operators must provide ICSTIS with quarterly reports upon the actual levels of outpayments that they are making as soon as is reasonably practicable following 30th June, 30th September, 31st December and 31st March.

- 6.7 Network operators may, in exceptional circumstances, seek ICSTIS' agreement to a recalculation of their forecasts and the consequential payments required of them under paragraph 6.3 above.

### **Late payment**

- 7.1 If a network operator fails to pay to ICSTIS monies due in accordance with the timescales set out in this Code and/or in accordance with directions issued by ICSTIS, the network operator will be liable to pay interest in respect of such monies at the rate of 3% above the prevailing base rate for the time being of HSBC plc from the date on which the relevant payment became due.

### **Adjustments**

- 8.1 At the end of each year and in any event by no later than 30th April, network operators must provide ICSTIS with a statement of the actual aggregate outpayments that they have made, and the revenue that they have received in their capacity as a network operator during the preceding year. The statement must identify all cases in which the network operator has provided premium rate services in respect of which there is no identifiable outpayment (see Section 10 of this Annex). Where it has supplied no such services, the network operator must state this in the statement.
- 8.2 Following receipt of the statement referred to in paragraph 8.1 above or an auditors' report pursuant to paragraph 9.1 below, ICSTIS will determine in respect of each network operator the aggregate amount that ought to have been collected pursuant to paragraph 5.4 above and the aggregate amount that has been paid pursuant to Section 6 of this Annex by that network operator.
- 8.3 Where a network operator's payment to ICSTIS based on forecast outpayments exceeds actual outpayment levels, the network operator will be entitled to have the excess amount repaid. ICSTIS will recalculate this sum based on information provided under paragraph 8.2 above.
- 8.4 Where ICSTIS concludes, pursuant to paragraph 8.2, that a network operator ought to have collected an amount in excess of that actually paid to ICSTIS, the network operator will be liable to ICSTIS for the difference which will be payable forthwith.
- 8.5 ICSTIS will not make a calculation pursuant to paragraph 8.2 in respect of a network operator which has not provided a declaration of its actual outpayments for the entire year pursuant to paragraph 8.1 above.

### **Auditors**

- 9.1 The ICSTIS auditor for the time being ('the Auditors') shall have the power to request from a network operator direct confirmation by audited statement of the actual level of outpayments it made and the actual revenue it retained in respect of premium rate services supplied by it as a network operator during any relevant period. A network operator's auditors must provide such a statement within such reasonable time as the Auditors may request and/or ICSTIS may direct.
- 9.2 Network operators will not be subject to a request under paragraph 9.1 above more than once in every four years, save where previous audited statements have revealed significant inconsistencies or where information provided to or obtained by ICSTIS or the Auditors may give the Auditors cause for concern.

- 9.3 A network operator or a network operator's auditors shall, at the request of the Auditors, supply such further information and/or explanation of such matters as the Auditors may consider necessary to satisfy themselves as to the accuracy of the network operator's figures in such a format as may be prescribed (including by further statement).
- 9.4 If an auditors' report obtained under paragraph 9.1 above indicates that the actual outpayments made by a network operator during the relevant year were different from those declared under paragraph 8.1 above, the Auditors will make such adjustments as are necessary pursuant to Section 8.
- 9.5 If the Auditors advise it to be necessary for the proper administration of this part of the Code, ICSTIS may direct that a network operator subjects itself to assessment by an agreed independent auditor for the purpose of establishing whether the network operator has fully complied with its obligations under this part of the Code. The costs of any such assessment shall be borne by ICSTIS unless the independent auditor concludes that the network operator was not in all material respects complying with its obligations under this part of the Code or where the independent auditor was unable to reach any conclusion because of non-co-operation by the network operator, in which case the costs will be borne by the network operator.
- 9.6 Where an audit conducted under paragraphs 9.1 or 9.5 above has revealed material inconsistencies in the information previously supplied to ICSTIS by a network operator, ICSTIS may refer the network operator to Ofcom under the procedures set out at Section 9 of the Code.

#### **No identifiable outpayment**

- 10.1 Where ICSTIS has received notification under paragraph 8.1 above that a network operator has supplied service(s) for which there is no identifiable outpayment, it may direct the relevant network operator to explain the reasons for the lack of any identifiable outpayment(s) and/or to supply details of the level of revenue it has generated in respect of those services.
- 10.2 If ICSTIS considers it appropriate to do so, it will direct the network operator to treat the revenue it has generated in respect of such service(s) or such a portion of that revenue as ICSTIS may determine as though it were in fact an outpayment.

## **ANNEX 2 – THE PROCEDURES OF THE INDEPENDENT APPEALS BODY**

### **1 Appeals against ICSTIS adjudications**

The Independent Appeals Body ('IAB') is a body of persons independent of ICSTIS appointed to provide tribunals to hear appeals.

The ICSTIS Code of Practice (Eleventh Edition) provides a right of appeal for service providers, applicants for permission or associated individuals (as defined in the Code) or for network operators who are aggrieved by an ICSTIS decision or determination. The relevant provisions in the ICSTIS Code of Practice (Eleventh Edition) are as follows:

“10.1 Applicants may, after an oral hearing at which the Applicant or his representative has appeared, appeal to the IAB against ICSTIS’ decisions and adjudications (other than any adjudication by consent).

Network operators may appeal to the IAB against ICSTIS adjudications which have directed that a sanction be imposed whether or not an oral hearing has taken place. Appeals by an Applicant or network operator ('Appellant') may be made on the following grounds:

- the disputed decision was based on error of fact,
- the disputed decision was wrong in law, or
- ICSTIS exercised its discretion irrationally in reaching its decision.

10.2 In order to institute an appeal, the Appellant must provide a written notice of appeal setting out the grounds upon which the appeal is made and the facts and matters upon which it is based, to be received by the clerk to the IAB ('the Clerk') within 20 working days of the issue of the ICSTIS adjudication or determination which is the subject of the appeal.

10.3 The notice of appeal must be accompanied by:

- the written adjudication,
- the case bundle used at the ICSTIS oral hearing,
- a security deposit of £5,000 or an application (to be determined by the Chairman of the IAB) to waive or reduce such a security deposit setting out the grounds for such waiver or reduction,
- a description of any new evidence upon which the Appellant intends to rely and which, for good reason, was previously unavailable,
- if the notice of appeal and/or any necessary accompanying documents are being provided to the Clerk more than 20 working days after the issue of the ICSTIS adjudication, the Appellant must also provide an application (to be determined by the Chairman of the IAB) for the appeal to proceed, setting out the reasons for the delay and the grounds for such application.

10.4 If an Appellant or his representative failed to appear in person at an oral hearing for good reason, but the oral hearing proceeded in his absence and ICSTIS has refused to permit a further oral hearing, the Appellant may apply to the Chairman of the IAB to request him to require that ICSTIS holds a further oral hearing.”

**The procedures which follow are those laid down by the Independent Appeals Body and are under its control.**

## **2 The procedures of the Independent Appeals Body**

The IAB is able to hear any appeal lodged with the Clerk to the IAB ('the Clerk') in accordance with the provisions of Section 10 of the ICSTIS Code of Practice (Eleventh Edition).

The Clerk shall forthwith, upon receipt of the notice of appeal, provide a copy of it and of the accompanying documents to the Chairman of the IAB ('the Chairman') and to ICSTIS.

In the event that an Appellant was, for good reason, unable to attend an oral hearing but the oral hearing proceeded in his absence, then the Appellant may apply to the Chairman of the IAB. The Chairman shall obtain the views of the Chairman of the hearing panel in writing, or in a hearing at which the Appellant may also attend. The Chairman may require that ICSTIS provides a further oral hearing. The Chairman shall have the discretion to award the costs of the application.

## **3 The Appeal Tribunal**

Upon receipt of a notice of appeal, the Chairman shall appoint an Appeal Tribunal, consisting of three members, to deal with the appeal. The Chairman or Deputy Chairman (if any) shall be the Chairman of the Tribunal ('The Tribunal Chairman').

If the Appellant has applied for a waiver or reduction in respect of the provision of the required security deposit and/or for the appeal to proceed despite the notice of appeal having been lodged out of time, then as soon as reasonably practicable, the Tribunal Chairman shall convene a hearing at which any such application shall be considered and at which ICSTIS may be heard.

In respect of an application for a waiver of the requirement to provide the security deposit, the Tribunal Chairman shall waive the deposit (or reduce the required level of security) if he determines that there appears to be plain merit in the grounds of appeal and that exceptional hardship will result from the requirement that the security be provided.

ICSTIS shall be entitled to apply to the Tribunal Chairman for a determination that the appeal should not be permitted to proceed unless the security deposit is increased to a higher level and/or that a sum is lodged as security for costs. The Tribunal Chairman may make such a determination entirely in his discretion.

In respect of an application for an appeal to proceed despite having been made late, the Tribunal Chairman shall grant such application if he is satisfied that in all the circumstances it is fair to do so and he may impose such conditions as he sees fit as to the further conduct of the appeal or as to lodgment of security for costs.

## **4 Suspension of sanctions**

The enforcement of sanctions imposed by ICSTIS is not automatically suspended by the provision of a notice of appeal. An Appellant may apply to the Tribunal Chairman, by written application to the Clerk, setting out the grounds upon which the sanction should be suspended. The Clerk will forthwith provide a copy to the Tribunal Chairman. The Tribunal Chairman will grant the application only if he is satisfied that

not to do so would give rise to undue hardship, and that to do so would not give rise to a significant risk of public harm. He shall seek the views of ICSTIS on those matters prior to making a decision and may convene a hearing to deal with such applications.

If an Appellant has not been granted a suspension of sanction, but has not complied with the sanction imposed, the Tribunal Chairman may stay the appeal on the application of ICSTIS or on his own volition. Appeals stayed for more than six months shall be automatically struck out and may not be recommenced.

## **5 Representation**

The Appellant shall be entitled to appear before the Appeal Tribunal in person and be represented.

ICSTIS shall attend as respondent to any appeal before the Appeal Tribunal and may instruct a representative to act on its behalf.

## **6 Pre-hearing process**

The Tribunal Chairman may, at his own discretion, or upon the application of either party to the appeal, convene a conference of the parties at which he may give such directions as he considers necessary for the fair and speedy hearing of the appeal. Such directions may include, for example, directions for:

- the admission of facts before the hearing,
- the disclosure of documents,
- the provision of expert reports,
- the exchange of written statements,
- the preparation of agreed bundles of documents,
- the submission and exchange of outline arguments.

Directions may be given as to the date by which such actions shall be taken.

For the avoidance of doubt, the Chairman shall have the power to make directions for disclosure of documents and any other directions relating to evidence as though the appeal was a first hearing of the matter which is the subject of the appeal.

Not less than 10 working days before the date of the hearing of the appeal, the Clerk shall send written notice of the day, time and place of the hearing of the appeal to the last known address of the Appellant and to ICSTIS.

Within 5 working days of receipt of the notice specifying the date of the hearing, both the Appellant and ICSTIS shall each inform the Clerk in writing of whether they intend to appear at the hearing and the name of any person who will be representing them at the hearing.

## **7 The hearing**

The Appellant shall outline the grounds of his appeal and call such witnesses and refer to such documents as he is entitled to do.

ICSTIS shall then be entitled to respond to the case put by the Appellant and to call such witnesses or present any written statements or other documents.

The Appellant shall then be entitled to address the Appeal Tribunal.

A witness in person may be cross-examined by the other party in the appeal. A witness who has been cross-examined may be re-examined.

The Tribunal Chairman may question any witness at any time.

The Tribunal Chairman shall have the power to vary any of these procedures at any time and to adjourn the hearing if satisfied that it is in the interests of justice to do so.

If the Appellant is neither present nor represented at the hearing and the Appeal Tribunal has no cause to believe there is a good reason for the Appellant's absence, the appeal may be dismissed.

## **8 Confidential information**

The Appeal Tribunal shall be entitled to consider and act upon confidential information without directly or indirectly disclosing to the Appellant (or ICSTIS as the case may be) the source of that information provided that the Appellant (or ICSTIS) is given a reasonable opportunity to rebut its substance.

## **9 Recording**

A sound recording shall be made of the proceedings before the Appeal Tribunal. Recordings will be made available to ICSTIS and the Appellant.

## **10 Public Hearing**

An appeal hearing shall be conducted in private, unless the Appellant or ICSTIS otherwise requires. If an appeal hearing is in public, either party may request that any part of the hearing be conducted in private and any such application shall itself be heard in private.

## **11 Costs of hearing**

The Appeal Tribunal shall make such award for costs of the parties as it shall see fit, subject to a maximum of £25,000 (inclusive of disbursements and VAT). In addition, the Appeal Tribunal shall award the costs of the provision of the Tribunal as it sees fit, subject to a maximum of £10,000 (inclusive of VAT).

## **12 Powers of the Appeal Tribunal**

The Appeal Tribunal shall consider all documentation and evidence produced at the ICSTIS oral hearing and may, at its discretion, rehear any witness called before the ICSTIS oral hearing and hear new evidence which for good reason was not available at the ICSTIS oral hearing.

The Appeal Tribunal may:

- confirm, vary or rescind an adjudication or determination or any part of it made by ICSTIS and substitute such other finding as it considers appropriate,
- confirm, vary or rescind any sanction imposed by ICSTIS pursuant to its adjudication. For the avoidance of doubt, the Appeal Tribunal may impose a greater sanction (or sanction direction) than that imposed by ICSTIS provided

- that such a sanction could have been imposed by ICSTIS.  
confirm, vary or rescind the imposition of an administrative charge made by ICSTIS.

### **13 Decision and publication**

The Appeal Tribunal shall, as soon as is practicable after the hearing, provide a reasoned written decision. This written decision shall be published by ICSTIS.

### **14 Further appeal**

There is no further appeal through ICSTIS' procedures or those of the IAB.