

# Changes to Governance and the ICSTIS Code of Practice (11th Edition): an ICSTIS Consultation

## Introduction

The premium rate sector (PRS) is rife with fraud and criminality. Services provided by this sector include (but are by no means limited to): parcel delivery services with no parcels; competitions with no prizes or entrants; reverse charge SMS subscriptions with no subscribers; missed calls with no callers; and dialler services with no service – other than a clandestine premium rate dialling service.

Although such activities are illegal, the firms who carry out these activities are not subjected to prosecution. PRS fraud is, instead, regulated by ICSTIS. In return for ICSTIS's role in shielding the premium rate sector from the attentions of the legal authorities and providing a complaints *cul de sac* for the victims of premium rate fraud, the Sector funds ICSTIS and the Treasury handsomely each year (through levies and fines) but not to an extent where the viability of the fraudulent enterprise is seriously threatened.

It is this symbiotic relationship between fraudster and regulator which lies behind the fact that the general public are so ill-served by the premium rate sector. It is difficult to imagine that the public will have any real protection from this species of criminality unless and unless wholesale structural changes are made to the industry and the bodies that are charged with its regulation and control.

## The Premium Rate industry – a web of deception

In all other areas of commerce, the customer has a contractual relationship with the company who presents the bill. This is not the case in the premium rate sector. Mobile phone users who discover that they are being defrauded in some way (perhaps by receiving unsolicited reverse charge SMS) complain (naturally enough) in the first instance to the network provider who has sent the bills. The network provider denies any responsibility and directs the fraud victim to the “service provider”. The service provider also denies any responsibility and directs the fraud victim to the “content provider” who may in turn deny responsibility and blame another content provider<sup>1</sup>.

Although ICSTIS are able to insist, in their dealings with the PRS, that “the buck stops” with the “service provider”, the public have no such powers and are left to navigate the web of fraudulent and dishonest PRS companies by ringing a series of semi-premium rate 087 numbers – thereby supplementing the profits of the very companies who are benefiting from the fraud about which the victim wishes to complain.

Many of the content providers are based in offshore tax havens beyond the reach of the UK authorities and frequently change identities thereby making life even more difficult for complainants.<sup>2</sup>

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<sup>1</sup> For example: Dialogue Communications Ltd are currently sending unsolicited reverse charge SMS on short code 84010. Dialogue Communications Ltd are directing complainants to their client --- ----- [details removed by ICSTIS]. Content providers --- ----- are directing complainants to content providers Moby Magic. Moby Magic are directing complainants back to --- -----.

<sup>2</sup> One of the content providers responsible for a series of scams investigated by ICSTIS is known variously as: "Watermead Investments Holdings Limited", "Goldeford Investments", "Bergholt Investments", "Gabriel Investments", "Liquid Capital", "Abinger Overseas Ltd". All these are aliases for Company No 655407, 3rd Floor, Omar Hodge Building, Wickhams Cay I, P.O.BOX 362, Road Town, Tortola, British Virgin Islands owned by -----, 2nd Floor, Barkly Wharf, Caudan, Port Louis, MU - although he is actually based in Marbella.

The situation in the regulatory sector parallels that in the premium rate sector. Thus Paul Burstow (MP for Sutton & Cheam) recently asked the Secretary of State for Culture, Media and Sport unsolicited mobile telephone text messages for which people are charged. He was answered by Margaret Hodge (Minister of State Industry and the Regions, Department of Trade and Industry) who informed Mr Burstow that such messages “are illegal under statutory controls that were introduced as part of the Privacy and Electronic Communications (EC Directive) Regulations 2003” and that “Enforcement is undertaken by the Information Commissioner”<sup>3</sup>. In reality, however, The Information Commissioner insists that “this issue falls outside the remit of the Information Commissioner” and refers complainants to OFCOM – adding for good measure that OFCOM have informed the Information Commissioner that “such reverse charged messages cannot be randomly generated by the sender”<sup>4</sup> (an assertion which OFCOM have denied<sup>5</sup>).

OFCOM, in turn, refer all complaints about “unsolicited mobile telephone text messages for which people are charged” to ICSTIS<sup>6</sup> and ICSTIS point out that such messages are *not* “illegal under statutory controls that were introduced as part of the Privacy and Electronic Communications (EC Directive) Regulations 2003” and that this act only covers the unsolicited free promotional SMS that advertises the charged SMS<sup>7</sup>.

Of course, despite what ICSTIS say, the sending of “unsolicited mobile telephone text messages for which people are charged” *is* illegal. It is theft. But the police appear to be under instructions not to pursue PRS fraud and they refer complaints about all such fraud to ICSTIS<sup>8</sup>.

## ICSTIS and the police

Earlier this year, on March 08, Sir Alistair Graham said to the media (in connection with the TV based PRS fraud which has been widely reported in recent weeks) “We are not some soft touch regulator and we should have our findings in a couple of weeks. If we find any evidence of suspected criminal activity we have close links with the City of London police.”<sup>9</sup> This carefully phrased sentence is clearly designed to imply that ICSTIS might report PRS fraud to the police – though it does not actually say this. The reason that Sir Alistair Graham does not actually say that ICSTIS might report PRS fraud to the police, is, presumably, because he is aware that ICSTIS will do no such thing. There has not been a single case of prosecution for PRS fraud during ICSTIS’s watch.

George Kidd claims that the police take the view that PRS fraud is “mis-selling”<sup>10</sup>; whereas DCI Cowan of the City of London Economic Crime Department says that the police can only become involved when the “regulatory bodies ask for police assistance”<sup>11</sup>.

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<sup>3</sup> <http://www.theyworkforyou.com/wrans/?id=2007-02-20a.114648.h&s=icstis#g114648.r0>

<sup>4</sup> Sharon Boot; Case Reception Unit; Office of the Information Commissioner; Case Reference Number ELE0139960

<sup>5</sup> Neil Paterson; Information Compliance Officer; Ofcom; 1-2784139 PRS SMS.

<sup>6</sup> <http://www.ofcom.org.uk/complain/mobile/company/prs/>

<sup>7</sup> <http://www.icstis.org.uk/consumers/adjudications/default.asp?node=&id=606> (see *LEGALITY Paragraph 4.1*)

<sup>8</sup> <http://www.online.police.uk/> (site currently out of action)

<sup>9</sup> [http://www.theregister.co.uk/2007/03/08/icstis\\_calls\\_for\\_action/](http://www.theregister.co.uk/2007/03/08/icstis_calls_for_action/)

<sup>10</sup> Private email correspondence dated Tue 2007-01-09 10:19

<sup>11</sup> Private email correspondence dated Mon 2006-11-06 10:58

As the police have pointed out to the networks, it is not only the service and content providers who may be committing criminal offences here. “The COLP ECD advised Networks of the importance of due diligence and the dangers of doing business with people that they suspected were involved in criminality. It was stressed that Network Operators may be committing offences if they continue to do business with people after such suspicion arises.”<sup>12</sup> Since the network operators are clearly very much aware that the service providers with whom they do business are engaged in dishonesty and yet continue to do a great deal of business with those companies, it would seem that commercial considerations are continuing to take precedence of enforcement of the law.

The proceeds of PRS crime are shared between the content providers, the service providers, the network providers and (ultimately) ICSTIS itself. ICSTIS appears to see nothing wrong with accepting levies from companies who make their money from criminal activity

## ICSTIS and the public

ICSTIS is the body charged with the responsibility of protecting the public from PRS fraud. ICSTIS often seems to see its role more of one of promoting PRS. ICSTIS regularly issues press releases praising the “phenomenal success”<sup>13</sup> of the PRS which talk, not of eliminating fraud, but of “boosting consumer trust”<sup>14</sup> in an industry which ICSTIS knows to be riddled with fraud. The success, growth, profitability, or dynamism of the PRS should be a matter on which a regulator should take a disinterested view. A regulator should be concerned with ensuring honesty. If a regulator can regulate without getting in the way of honest operators, then this is an added bonus. But this is a secondary consideration – especially, it has to be said, in the PRS where in many areas (TV “quizzes”, unsolicited reverse charge “jokes”, “premium rate parcel delivery services”) there are currently no operators who meet this description.

Complaints to ICSTIS by the public are often rebuffed (especially if they concern unsolicited SMS) with the standard line that the SMS in question “would not be unsolicited”<sup>15</sup> and the suggestion that the SMS is a result of a service that they or their friends, family members or colleagues have, at some point, signed up to. The FAQs on the ICSTIS site<sup>16</sup> acknowledge that the public may have complaints about *unsolicited* faxes or *unsolicited* emails, but not that they might have complaints about *unsolicited* text messages. Until very recently, the online complaints form<sup>17</sup> asked: “Did you or someone in your household call the service? (if your complaint relates to a number on your phone bill, you should click 'Yes’)” presenting something of a conundrum for recipients of bills for unsolicited SMS and for rogue dialler calls.

Replies from ICSTIS to complainants include the standard text: “ICSTIS does not have the power to force a service provider to refund consumers”<sup>18</sup>. Since this statement is manifestly untrue (as the ICSTIS code of practice puts it: “ICSTIS investigates complaints and has the power to [...] order

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<sup>12</sup> [http://www.icstis.org.uk/pdfs\\_news/COLPNetwork06.pdf](http://www.icstis.org.uk/pdfs_news/COLPNetwork06.pdf)

<sup>13</sup> See for example [http://www.icstis.org.uk/pdfs\\_news/IQSummer06.pdf](http://www.icstis.org.uk/pdfs_news/IQSummer06.pdf)

<sup>14</sup> See for example [http://www.icstis.org.uk/pdfs\\_news/PressRelease\\_calltvquiz\\_SoE.pdf](http://www.icstis.org.uk/pdfs_news/PressRelease_calltvquiz_SoE.pdf)

<sup>15</sup> See for example letter from Jane Fallon; Case Team Administrator; 21 November 2006; ref 295969/11

<sup>16</sup> <http://www.icstis.org.uk/consumers/faqs/default.asp>

<sup>17</sup> [http://www.icstis.org.uk/consumers/how\\_to\\_complain/complaintform.asp](http://www.icstis.org.uk/consumers/how_to_complain/complaintform.asp)

<sup>18</sup> See for example letter from unidentified Case Team Administrator; 14 November 2006; ref 295970/11

refunds.”<sup>19</sup>) it can only be concluded that this statement is simply designed to deter complainants from pursuing their cases with ICSTIS.

In short, there are some types of fraud which ICSTIS simply does not want to hear about. Even if the complainant persists, ICSTIS may accept the complaint but refuse to investigate: “Although you are able to forward a copy of your itemised bill for your case against [the company which claims to have a contract for a reverse charge SMS subscription with you and which has several ICSTIS adjudications against it for SMS fraud], the subscription was completed by a user calling a 0871 number and initiating the service. The bill you can provide will show that you have not dialled the 0871 from that particular phone; it will not however prove that you have not dialled the number from any other phone you have access to. I appreciate it would be very difficult for any user to provide this evidence, but in order for ICSTIS to prove that the messages were unsolicited and take action against the service provider we must have evidence to this effect.”<sup>20</sup>.

In other words, if a service provider claims that a member of the public has made an contract with it, even though the service provider can present no evidence whatsoever of that contract, the onus is on the member of the public to prove that he or she did not make a contract with the service provider – something which, by its very nature, is impossible to do.

As ICSTIS told a national newspaper recently<sup>21</sup>; "In 99% of cases, people have signed up to receive these messages, although they may have done it unwittingly". Even this highly questionable statistic is taken at face value, it reveals a shocking state of affairs. For every complaint from a member of the which ICSTIS regards as legitimate, there are ninety-nine which arise from the complainant having been tricked into signing up for something. ICSTIS seems not to regard a contract that someone is tricked into signing as grounds for a legitimate complaint.

## **ICSTIS and sanctions against service providers**

ICSTIS, as it is fond of telling the media, has a number of sanctions it can and does apply, including: reprimands, fines, and bars.

Since service providers have no reputation to preserve with the public (who never have to deal with service providers until they become the victims of fraud) this is a somewhat hollow threat. The network providers know that the service providers are dishonest but are not thereby deterred from commercial relationships with these firms. As is demonstrated by the fact many service providers have been repeatedly reprimanded for essentially the same offence, reprimands have no effect whatsoever on fraudulent behaviour in the PRS.

Fines are set at a level which typically represent a fraction of the money made under a particular fraudulent scheme. Moreover, service providers pass on any ICSTIS fines to the content providers. As is demonstrated by the fact many service providers have been repeatedly fined for essentially the same offence, fines have no effect whatsoever on fraudulent behaviour in the PRS.

Bars typically prevent a specific service provider from working with a specific content provider to perpetrate a specific fraud. Investigation of ICSTIS adjudications shows that service provider who are barred simply set up new partnerships with new content providers and carry on as before. As is demonstrated by the fact many service providers have been repeatedly barred for essentially the same offence, bars have no effect whatsoever on fraudulent behaviour in the PRS.

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<sup>19</sup> [http://www.icstis.org.uk/pdfs\\_code/11th\\_edition.pdf](http://www.icstis.org.uk/pdfs_code/11th_edition.pdf)

<sup>20</sup> Email sent by Karen Kingdom; Customer Service Supervisor; Thu 2007-04-12 15:14

<sup>21</sup> <http://lifeandhealth.guardian.co.uk/experts/annatims/story/0,,2014490,00.html>

Finally, ICSTIS boasts that it individuals behind both service providers and content providers can be named and banned from the industry. So far, this has happened to just two individuals – who will be free to resume their criminal careers in 18 months' time.

## What changes to Governance and the ICSTIS CoP are required?

In the longer term, the only way to create regulatory regime that is fit for purpose is dissolve the current industry structure and replace it something analogous to the banking sector. There are many methods by which fraudsters can access or attempt to access money in bank accounts – including methods which rely on fraudsters exploiting the gullibility of the public. If, however, a bank account holder discovers an entry in a bank statement which he or she does not recognize, he or she can contact the bank who will quickly take responsibility for finding out whether the transaction was fraudulent, will report any criminal activity to the authorities, and will take full financial responsibility for any losses suffered by the account holder – providing the account holder acted in good faith (albeit misplaced faith).

ICSTIS should also be dissolved and replaced with a body which is dedicated to the protection of the public rather than promotion of the interests of the PRS.

Such measures will, however, take a create deal of time and careful planning. In the shorter term, there are a number of measures that should be taken as a matter of urgency in order to reduce the threat from the PRS:

1) ICSTIS should force the network providers to institute a simple mechanism whereby customers are given the option (when they sign up for a mobile contract and subsequently) to opt out of *all* premium rate services. (Currently, you can block outgoing PR calls with the network operator and incoming free promotional material [at least to some extent] with the TPS and dialler software on your PC, but you can take no action whatsoever to block incoming reverse charge SMS *pre-emptively*).

2) In cases where firms are discovered to be involved in *criminal* activities, (cf cases where firms hide information or supply misleading information about their services or indulge in similar acts of *unfair* business practice) ICSTIS should immediately report those firms to the police and help the police to prosecute the criminals involved and bring them to justice.

3) ICSTIS should force the network providers to provide a "one-stop-shop" (paid for by the industry) where customers could - with a single phone call or internet session - report fraud and claim a refund. The onus should then be on the network and service providers to prove that the customer requested a service, the service existed, and the service was supplied to the customer (rather like the situation in the whole of the rest of commerce in this country in fact).

4) ICSTIS should make greater efforts to educate the public about the PRS and the steps that they can takes to protect themselves from (at least some) of the "services" which the PRS has to offer:

never ever ring a number beginning "09" advertised by a TV company or by anyone else  
ask your mobile phone network to bar all such calls from every phone in your family  
register all your land lines and mobile phones with the telephone preference service  
go through your phone bills with a fine toothcomb every month  
if you are on PAYG, be especially vigilant about any texts you receive  
never ever respond to a call or a text from a short code or an "09" number - except to send a "STOP" message  
never ever buy ringtones or wall-paper using your mobile phone  
install anti-virus and anti-spyware software on your PC, keep this software fully up-to-date and use  
if you are on ADSL, make sure you have unplugged your old ISDN or dial-up modem cable from the phone socket  
never submit your mobile number to a web site unless you are absolutely sure you need to  
if you are unsure about any of the technical information above, educate yourself now