



ICSTIS RESPONSE TO THE GOVERNANCE CHANGES CONSULTATION RESPONSES RECEIVED FROM STAKEHOLDERS

At the end of the consultation paper stakeholders were asked for views on the following proposals:

- 1. The principle of a degree of separation of Board and Code Compliance work*
- 2. The proposal of a smaller Board (generally of ten) with the revised composition indicated*
- 3. The creation of a Code Compliance Panel which will always provide a legally qualified Chairman of Tribunals*
- 4. The idea of an initial element of common citizenship between the Board and the Code Compliance Panel but with the option to revise this based on experience*
- 5. The amendments made to the Code (as attached) to give effect to the proposals stated*
- 6. Any other ways in which this framework or ICSTIS processes might be revised to achieve maximum public and industry trust within the parameters set out*

Responses

There were 10 responses received in total from various stakeholders and these are categorised as follows;

Originating Networks:

- o BT

Premium rate trade associations

- o PRA - Premium Rate Association
- o NOC - Network for Online Commerce
- o MBG - Mobile Broadband Group
- o MDA - Mobile Data Association

Broadcasters

- o BSkyB

Service Providers

- Amplefuture Ltd

Content Providers

- Open Vantage Ltd

Independent third parties

- PromoVeritas Ltd

Individuals

- Dr Mike Ward

Summary of responses:

As a general overview there was broad support across all responses for the proposed changes to ICSTIS' governance arrangements. However, and in order to deal with a few areas of concern raised by respondents, a summary of responses to the questions is provided below and ICSTIS' formal response to key issues raised by respondents is given.

Q1. Do respondents agree with the principle of a degree of separation of Board and Code Compliance work?

Agree – 7 Disagree – 0 No view expressed – 3

The majority of respondents agreed with the concept of a degree of separation of Board and Code Compliance work. However, one respondent was of the opinion that there should be a total separation of Board and Code Compliance Panel ("CCP") work (i.e. that the Board should cease to be involved in adjudicatory work) to be more in accordance with the general principles of law.

Conclusion

ICSTIS intends there to be a complete separation of Board and CCP work at the point when it considers that the CCP members, following comprehensive training, have acquired the necessary skill and experience to fully manage the adjudication system. Even when total separation is effected there may be isolated instances where eligible Board members may be required to sit at Tribunals such as to cover code compliance member absences due to sickness or other issues. It should also be noted that the Board remains ultimately responsible for ICSTIS' adjudicatory work.

Q2. Do respondents agree with the proposal of a smaller Board (generally of ten) with the revised composition indicated?

Agree – 5 Disagree – 1 No view expressed – 4

Of those that agreed with this proposal two were of the view that the Board should be smaller than the proposed number of 10, with the Board being solely focussed on

strategic direction and policy making and there being no need to supervise the work of the Executive.

The respondent in disagreement stated that a reduction in the manner proposed would lead to an increased in industry representation from 25% to 33% which is not a step in the right direction. If industry input is required this should be done via the ILP representation. The respondent also considered that the reduction in Board numbers means a reduction in the number of Board members able to sit on Tribunals - from the current 9 down to 6 which reduces any flexibility in Tribunal composition.

Conclusion

The reduction in the Board overall from 10 to 12 members, whilst continuing to retain 3 members with current industry interests does mean that the industry membership of the Board increases slightly from 25% to 30%. This marginal change is not significant to ICSTIS' independence given that 70% of members will be independent members free of any current industry interests with PRS. This change also remains within the tolerance suggested by Ofcom in its criteria for transferring responsibilities to regulatory bodies.

In respect of the Tribunal flexibility, whilst the proposal does lead to a reduction in Board members capable of sitting on Tribunals, this needs to be balanced with the creation of the CCP itself which will have 6 members not active on ICSTIS' Board so the flexibility overall is in our view not diminished.

Q3. Do respondents agree with the creation of a Code Compliance Panel which will always provide a legally qualified Chairman of Tribunals

Agree – 8 Disagree – 0 No view expressed – 2

There was broad agreement with this proposal. However, two respondents sought clarification in relation to the proposed appointments of the lay members – who they would be and how they would be chosen. There was a concern raised that the inclusion of lay members could lead to wrong or inconsistent decisions thereby undermining trust in the adjudicatory system and operation.

There was also a concern that the basis on which Board or lay members would be selected for a particular case is unclear.

Conclusion

ICSTIS proposes to recruit lay members who are professional adjudicators, i.e. those who are not lawyers but who have had substantial experience in adjudicating in other regulatory bodies or organisations. As the Tribunal hearings are not court hearings, and ICSTIS deals in essence with the application of its Code of Practice and not law in general, we would expect such lay members to bring value to the determination process in Tribunal hearings and act as a counterbalance to the use of a wholly legalistic approach to determinations which would be offered by the lawyers.

In addition, it is proposed that the Board will lead the selection process and approval of all CCP appointments. The appointments process itself will be conducted to OCPA (Office of the Commissioner for Public Appointments) standards.

As regards the flexibility between use of Board and lay members it is expected that in the future (when the CCP is able to manage the adjudicatory system) the legally qualified chair of the Tribunal will be only be supported by the lay members. However, as stated in the conclusion to Q1 there is clearly a need for Board members to be involved in CCP work during the initial stages of the CCP's formation and training.

Other circumstances may require a Board member to sit on Tribunal hearings such as to cover sickness, holiday or other type absences of the lay members.

Q4. Do respondents agree with the idea of an initial element of common citizenship between the Board and the Code Compliance Panel but with the option to revise this based on experience?

Agree – 2 Disagree – 3 No view expressed – 5

In answer to this question one respondee stated that it was not happy with the possibility of a CCP Chairman sitting with two Board members and that as a minimum a Tribunal should comprise at least a lay member. Another reiterated its belief that there should be a total separation between the Board and Code Compliance work.

Conclusion

ICSTIS is of the view that there is a need for initial common citizenship (and thereafter occasional involvement) for the reasons given in its response for Qs 1 and 3 above.

Q5. Do you agree that the amendments made to the Code (as attached) give effect to the proposals stated?

Agree – 2 Disagree – 3 No view expressed – 5

Of those that considered that the proposed Code amendments were not sufficient one felt that it was silent on the appointments terms of the lay and legal members, and silent on the need for reviews and oral hearings to be determined by tribunal members not previously involved in the matter. Another respondee was of the view that the proposed Code amendments needed to be in plain English and not unhelpful language.

Conclusion

ICSTIS considers that the Code is not the appropriate place to detail appointment terms of Code Compliance members just as the appointment terms of Board members are not detailed in the Code. The appropriate place for such information would be in their Code of Conduct which will be published alongside the Board member Code of Conduct which is available to download on the ICSTIS website.

ICSTIS is also of the view that as there will be only a total of 6 members of the Code Compliance Panel and 6 Board members available for Tribunal work there may be situations where, due to absences, it is impossible to exclude the use of a Panel (or Board) member previously involved. However, in these situations ICSTIS will ensure that the Tribunals are not chaired by a chair previously involved in the case.

ICSTIS has noted the comments regarding clarity of the language used in the proposed Code amendments and will review the amendments accordingly.

Q6. Are there any other ways in which this framework or ICSTIS processes might be revised to achieve maximum public and industry trust within the parameters set out?

Comments given – 9 No comments given – 1

There were various suggestions given by the various respondees which ICSTIS has noted and will take into consideration. There were two comments in particular for which ICSTIS considers a response is appropriate: The quarterly report from the CCP chair to the Board should be made available to stakeholders in a timely manner; and, that the proposed changes to ICSTIS governance arrangements should not add an extra financial burden on the Industry.

Conclusion

ICSTIS does not consider it appropriate to publish the proposed quarterly reports as such reports may include information relating to particular cases dealt with within that quarter. ICSTIS proposes to include a general overview of its adjudicatory work in the Boards annual report.

As regards the issue of an extra financial burden ICSTIS has stated in the consultation document that the changes proposed are governance ones. They do not affect the responsibilities and rights set out in the Code and therefore any costs associated with such will generally be unchanged. ICSTIS also reiterates that it is not proposing changes in the provisions relating to payment of deposits or liabilities for administrative charges and other costs.