



## **The Premium Rate Association response to ICSTIS’ document**

### **“Changes to Governance and the ICSTIS Code of Practice (11<sup>th</sup> Edition): an ICSTIS consultation.”**

The PRA, a membership driven trade association welcomes this opportunity to offer our member’s comments to this consultation document and the questions that it poses. We must state that we are surprised that ICSTIS are involved in governance and code changes so shortly before the findings of the Ofcom “Review of the Scope of ICSTIS regulation” are published. Particularly when there are so many other obvious issues that require urgent ICSTIS attention in the media.

However, we commend the spirit of the proposed changes to the way in which ICSTIS’ board functions, and how it adjudicates on cases brought to it by the Executive. Any change that would lead to a more forward thinking and pre-emptive ICSTIS is of benefit to both the consumer and the industry. This combined with an intention to improve the quality of adjudications is a step forward.

As a trade organisation we are very aware of the costs to businesses that have to defend their names and finances with company resources and legal representation through Oral Hearings and Reviews to challenge sub-standard adjudications particularly where ICSTIS are not obliged to compensate fully vindicated companies for the costs associated with their defence. We would hope that ICSTIS will start to look towards a future position whereby it will accept responsibility for costs incurred through defence of untenable cases brought by ICSTIS. Perhaps therefore concentrating the mind on only bringing adjudications that are fair, just and fully provable in an attempt to use the money of the Service providers that fund ICSTIS to full and best advantage for the industry and ultimately the consumer.

## Consultation Comments

The following are our direct responses to the areas to which you invited comment.

*1) The degree of separation of Board and Code Compliance work.*

We believe that the board currently struggles to be proactive in the true sense of the word in its policy and strategic direction, and has had to adopt a fall back position of reactive regulation as referenced by Sir Alistair Graham in the Annual Statement document when he says that ICSTIS “must be able to act strategically and effectively when problems arise.” This is not sufficient ideology for a regulator in a dynamic industry, ICSTIS must stay on the front foot. If this change in the ownership of the adjudicatory function frees up the Board to concentrate their energies on the the aforementioned and the work of the Executive this would be seen to be a step forward. We are encouraged to see that high levels of communication between the board and the code compliance panel will be established. This is imperative for the effective operation of both areas.

*2) The proposal of a smaller Board (generally of ten) with the revised composition indicated.*

The PRA have always held serious doubts regarding Board membership of individuals who have current commercial interests in companies operating in the Premium Rate sector. Although it has not been signified that the reduction in board members is happening immediately we would question the thinking behind the decision, namely –

- a) Why is 10 the optimal number of board members?
- b) A result of the reduction in board members under the Board composition proposal will be an increase of industry representation on the Board from 25% to 33% which the PRA do not believe to be a step in the right direction. If ICSTIS and the board in particular, are looking for industry input into their work would it not be preferential to use bodies like the ILP which represent the majority of the sector rather than focussing on the input of those a select few.
- c) With the reduction of Board members permitted to sit on Tribunal Panels falling from 9 to 6 does this not limit the scope of Board inclusion on Code Compliance issues and go against ICSTIS’ intention to make the Code Compliance Panel flexible in terms of their composition to “make best use of the adjudicatory knowledge and experience of existing non-industry Board members and to ensure a level of continuity.”
- d) Why is it proposed that the Chief Executive will be automatically appointed to the Board?

- 3) *The creation of a Code Compliance Panel which will always provide a legally qualified Chairman of Tribunals.*

The PRA see this proposal as a positive approach to improving the quality of the current adjudicatory process. Although we question why we need a name change unless this is to make the process more legally focused. We note the statement that the anticipation of a reduced number of cases opting for reviews and oral hearing as a result is inappropriate as these options are important rights that can be exercised by the defendants. However, these figures combined with any outcomes of reviews and oral hearing and their comparisons to the initial decisions would provide a useful indicator of the effectiveness of this change in code compliance decision making. Unless the net result is a reduction in reviews and oral hearing then this cannot be a neutral cost exercise. We take your meaning to be that a lawyer involved in the adjudication/tribunal process would be able to ensure that any cases brought were legally tested and sound and therefore the process would become more cost effective.

We would also like to ask how, and from where the 3 lay people who may sit on the Code Compliance Panel will be selected, and who would have a right to veto an appointment?

- 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.*

The Board obviously has a wealth of experience that can be used to great effect in a Tribunal setting and certainly at the outset of the proposed new Code Compliance Panel it would seem foolhardy to dispose of this resource.

- 5) *The amendments to the Code (as attached) to give effect to the proposals stated.*

The proposed amendments to the Code seem satisfactory to effect the proposed changes. The only area for concern surrounds the lack of code provision of description for the transferability of the powers of the Chairman of the Code Compliance Panel in his absence. If full powers such as the power to accept or decline applications for reviews and suspension of sanction are transferable to either of the 2 legally qualified Panel members then this must be noted in the code for the sake of clarity.

- 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.*

This Code change would give an opportunity to increase the documentation surrounding the Review process. At present the Review does not have codified format in terms of permissible representation of either the Executive or the Defendant. It also lacks description of the procedure for requesting a suspension of sanctions and as such has to “borrow” these clauses from those applicable to Oral Hearings.

The PRA would also like ICSTIS to outline likely timescales involved for each process, the current 12 week guideline is not sufficient for the purpose of providing clear and transparent regulation.

## **Summary**

To conclude, in theory this proposal should provide a more focussed Board and a greater level of trust in adjudicatory procedure. However, being funded by the industry which includes our members we are keen to prevent this change to ICSTIS' governance and operation from adding an extra financial burden. Efficiency as a regulator should be represented by cost effective adjudications and as such the costs of the new system in each case in its entirety divided by the number of cases should give a good reflection of the real cost savings, neutrality or increases per case provided by the addition of the Code Compliance Panel.

We also question whether there is a real need for the change of name from Adjudication Panel to Tribunal. The term certain feels more legally based and looks very much like ICSTIS are heading in the direction of statutory regulation. If this perception is to be carried through to reality the Tribunal must surely act in a legal manner and be equipped with robust and accurate evidence based measures upon which to base their decisions.

Once again we thank ICSTIS for this opportunity to comment and as ever make ourselves available for further comment on an of the information above.