



## **A Review of ICSTIS' Governance Arrangements**

A public consultation by ICSTIS' Committee on proposal for reviewing and improving ICSTIS' Governance arrangements

**The deadline for comment is Friday 4 June 2004**

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## Section 1

# Executive Summary

ICSTIS was formed in 1986 in order to regulate Premium Rate Services (PRS). Since then there have been several key developments in technology leading to PRS now being used across a range of platforms. PRS is a “payment mechanism” used by a wide variety of organisations to either generate profit or cover some costs. There have been key changes in the nature of the Code of Practice and the relationship that ICSTIS had with Oftel and more recently, with the passage of the Communications Act 2003, with Ofcom. This latter development has had quite far reaching consequences for ICSTIS and its relationships with commercial stakeholders insofar as this led to the development of a new Code which binds networks directly and with funding which now comes from service providers via a levy collected and passed on by networks.

All of this change has led us to conclude that now would be the right time to review the overall governance arrangements of ICSTIS. We (the Committee for the purposes of this consultation) are looking at all structures, responsibilities and processes through which we make and implement the key decisions needed to deliver our vision and mission, including budgeting and resources. As part of this we are also looking at the varied lines of accountability we have with all our stakeholders. We are also looking at how we get the best “buy-in” from stakeholders while maintaining public credibility. Section 5 of the paper sets out a range of governance structure options including retaining the broad current structure around a fully independent Committee of nine members. We have an open mind on the outcome of this Review and have made no assumptions on what structural change, if any, will follow as this will be determined by an overall assessment of the current robustness of the arrangements in place.

We are not proposing to “strip away” the co-regulatory fundamentals of a regime that has served the UK market so well. Rather we are trying to take account of the change in our external environment and to find new ways to accommodate these in ways that secure greater stakeholder “buy in” and improve the quality of regulation. Equally in doing this, we are keen not to lose the best elements of our current governing arrangements that have, and continue, to serve stakeholders well.

The Review examines the seven functional areas that form, or contribute to the delivery of, ICSTIS current remit. These are:

- Strategy, Accountability and constitutional matters
- Determining a Code of Practice
- Prevention and Enforcement
- Funding/budgeting agreement
- Resources
- Reporting
- Staff

This consultation paper analyses and seeks comments how we deliver our remit through each and then outlines a range of structural options for how we might ensure we maximise stakeholder input as a means to effectively delivering ICSTIS’ vision and mission.

We seek the views of all stakeholders by no later than **Friday 4 June 2004**.

Where possible comments should be submitted in writing and sent by e-mail to [pwhiteing@icstis.org.uk](mailto:pwhiteing@icstis.org.uk). Copies may also be sent by mail or fax to:

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## Section 2

# Background

### **Why is ICSTIS' Committee undertaking a Governance Review now?**

ICSTIS was formed in 1986 in order to regulate the emergence of what was then a new phenomenon – the ability to use fixed line telephony as a payment mechanism for various forms of content charged to the phone bill. ICSTIS began its life as an institution of self-regulation. It was originally set up by BT and the Association of Telephone Information and Entertainment Providers (ATIEP) – now a defunct service provider trade body. Originally two of ICSTIS' Committee members were nominated by the PRS sector itself but this was changed in 1990 in order to increase the Committee's independence and also because ICSTIS experienced numerous conflict of interest issues with these members and they were unable to represent the sector adequately. Since that time ICSTIS' Committee membership has therefore been made up of independent members only and it is currently a condition of appointment that they can have no direct interest in the provision of PRS whilst serving as Committee members.

Since 1986 there have been several key developments in technology leading to PRS now being used across a range of platforms including mobile SMS, the Internet and interactive TV. PRS is less an "industry" and more a "payment mechanism" used by a wide variety of organisations to either generate profit or cover some costs. Services can include all forms of advice/information services, TV-participation voting, directory enquiry services, charitable donation services, competitions and quizzes, ringtones, logos, sexual entertainment services and computer helplines. The diversity and scale of this activity makes the UK PRS market probably the largest in the world. That this has happened in the UK is not, we believe, coincidental to the success of a regulatory regime and a Code of Practice which commands wide trust and support. Recently there have been key changes in the nature of the Code of Practice and the relationship that ICSTIS had with OfTel and more recently, with the passage of the Communications Act 2003, with Ofcom. This latter development has had quite far reaching consequences for ICSTIS and its relationships with commercial stakeholders insofar as this led to the development of a new Code which binds networks directly and with funding which now comes from service providers via a levy collected and passed on by networks.

To a certain extent we have anticipated some of this change by creating arrangements such as the ICSTIS Forum, which is open to all stakeholders to attend. We have also instituted discussions with INOC (ICSTIS Network Operator Committee), which comprises all network operators who provide access to PRS, about its future role in an environment where it alone no longer determines ICSTIS' budget, whilst recognising that networks clearly have a continuing important part to play in the provision and regulation of PRS.

All of this change, along with the increasing complexity of what it is that we now need to regulate in an ever increasing digital and global environment, has led us to conclude that now would be the right time to review the overall governance arrangements of ICSTIS. This is coupled with a strong desire to remain well informed, efficient, effective, transparent and proportionate in the ways we operate and maintain accountability to all our stakeholders. We believe now is therefore the right time to consider again how to engage with stakeholders in ways that best benefit all parties and which establishes a shared commitment to a regime which achieves ICSTIS' vision and mission (attached at Appendix One) through a Code of Practice which sets a clear framework for compliance as the norm, and enforcement as the exception. The decision to conduct such a Review has the support of Ofcom and some trade bodies are known to welcome it. We have an open mind on the outcome and have made no assumptions on what change, if any, will follow as this will be determined by an overall assessment of the current robustness of the arrangements in place. Whatever the governance arrangements, however, they should be flexible and adaptable enough to accommodate a fast changing environment going forward.

### **What aspect of governance are we reviewing?**

We are looking at all structures, responsibilities and processes through which we make and implement the key decisions needed to deliver our vision and mission, including budgeting and resources. As part of this we are also looking at the varied lines of accountability we have with all our stakeholders. We are also considering the quality and range of our stakeholder relationships and asking whether we get the best input from those relationships so that we are as well informed as we should be on all matters material to our decision-making. Finally, we are also looking at how we get the best “buy-in” from stakeholders while maintaining public credibility. Our internal management arrangements are also being considered as part of this review and are not focused on in this consultation paper but will be considered in light of the conclusion of this consultation. We are not limiting ourselves to questions about Committee membership, as that is too narrow. Rather we think we should look at all the responsibilities we have and need to exercise in order to deliver our vision and mission. From this come questions about how these might best be organised to secure the right degree and type of stakeholder input in ways which are most appropriate to a regulatory body charged with certain public and consumer responsibilities.

Equally our starting point is not that ICSTIS’ governance arrangements must change. We have a highly effective co-regulatory regime underpinned by Ofcom and widely supported by industry and consumer bodies. We would not want to undermine this by change for change’s sake alone. Any changes that arise from this Review must in the Committee’s view strengthen, not diminish, that regime.

### **What is the “industry context” to this review?**

Premium rate charging is a payment mechanism used across a wide range of information and entertainment services using (new) media and technology in dynamic ways. Many of those business people associated with it are young, entrepreneurial, innovative and increasingly global based. Others, most obviously in broadcasting, make use of the premium rate mechanism but have other business and regulatory interests of higher priority. Relatively few join the myriad of trade bodies with whom ICSTIS engages. The ability for “industry” to therefore speak with one common voice is limited.

We are not proposing to “strip away” the co-regulatory fundamentals of a regime that has served the UK market so well and allowed it to become one of the largest in the world. We suspect there will be no or little support for this. Rather we are trying to take account of the change in our external environment and to find new ways to accommodate these in ways that secure greater stakeholder “buy in” and improve the quality of regulation. Equally in doing this, we are keen not to lose the best elements of our current governing arrangements that have, and continue, to serve stakeholders well.

### **What assumptions have we made and what have we excluded from the Governance Review?**

In reviewing our governance arrangements we have assumed:

- We shall remain a co-regulatory body with Ofcom backing and Code of Practice recognition.
- Independent members will continue to play at least a majority part in the governing body of ICSTIS and that body will need to maintain effective relationships with all stakeholders.
- That a statutory (and European) context will remain to the role we perform and the way we perform it as a Public Body which is subject to challenge through the Courts.
- That we will continue to need to meet a wide range of stakeholder interests and demonstrate to each that we are credible within our area of remit.

- That PRS is a payment mechanism which embraces a wide range of entrepreneurial business people in a variety of contexts but not in ways that are easily identifiable as an “industry” around which opinions and thoughts might easily find common agreement.

The aspects of governance that we are not proposing to review on this occasion are those which relate to our remit for the regulation of “Premium Rate Services” as laid down in the Communications Act 2003. The Act, and the new Code of Practice which supports this, have only just taken effect and we believe it would be premature to undertake such a review at this time, albeit a review of the Code is currently under way as a separate exercise and will be the subject of a separate consultation paper in due course. We are also not looking at a possible name change as part of this review. However, once our review is complete we will then re-consider how far the name “ICSTIS” remains fit for purpose in the context of our vision and mission and alter it if necessary.

*Q1. Do you have any comments about the background and context to this Review in light of the changes in the market and statutory framework that are outlined?*

**Do we have any external constraints on our review?**

In undertaking this review we are conscious that, at the same time Ofcom are reviewing arrangements for effective self-regulation and that this affects us. As a Public Body, we also need to pay close attention to guidance issued by the Committee for Standards in Public Life and to the Better Regulation Task Force. Finally, whilst ICSTIS is not a public limited company, we also wish to take account, where appropriate, of governance best practice emanating from the business world as put forward by Derek Higgs in the review of the role and effectiveness of non-executive directors. Relevant documents from all of these bodies have been considered by ICSTIS’ Committee as we have undertaken this review.

## Section 3 ICSTIS’ stakeholders

### Who are our stakeholders?

ICSTIS has a complex range of stakeholders with which it needs to engage at different levels and in different ways. We would identify them, in no particular order, as:

<p><b>Commercial</b></p> <ul style="list-style-type: none"> <li>- Service providers by which we include service/content providers, broadcasters, aggregators, gateways, directory enquiry providers, information providers etc</li> <li>- Terminating fixed line operators</li> <li>- Originating fixed line operators</li> <li>- Mobile operators</li> <li>- Trade bodies</li> </ul>	<p><b>Consumer/Citizen</b></p> <ul style="list-style-type: none"> <li>- Consumers/Citizens In an individual capacity</li> <li>- Consumer Bodies</li> <li>- Ofcom Consumer Panel</li> <li>- Child Protection bodies</li> <li>- Gamcare</li> <li>- Community groups and citizens organisations</li> </ul>
<p><b>Government/Regulatory</b></p> <ul style="list-style-type: none"> <li>- DTI/DCMS/Home Office</li> <li>- Ofcom</li> <li>- ASA, Information Commissioner, Financial Services Authority (FSA), The Gaming Board for Great Britain, IWF and crime prevention/Police forces</li> <li>- Trading Standards Departments</li> <li>- Otelco</li> <li>- Parliamentarians; Select Committees</li> <li>- EU Commission</li> <li>- Other European regulators</li> </ul>	<p><b>Media</b></p> <ul style="list-style-type: none"> <li>- Print, broadcast and online (national and regional)</li> </ul>

Each of these four groups, or elements within the sub-groups, will have interests in various aspects of ICSTIS’ work in different ways at different times. It should be noted that where, later in this consultation paper, we refer to “commercial stakeholders” we have in mind all of those parties referred to in the box above marked “Commercial”.

### To which of these stakeholders are we accountable?

It is our view that we have accountabilities to all of our stakeholders albeit in different ways. Formally there are clear lines of accountability to Ofcom. Under the Communications Act 2003, Ofcom has a responsibility for ensuring that there is a Code of Practice in place for the effective regulation of PRS. In ensuring that they are able to recognise a Code of Practice, Ofcom will need to satisfy itself that ICSTIS operates in a way that is deemed effective. Ofcom is currently consulting on the criteria that will determine the self or co-regulatory bodies that they will recognise. This aspect of accountability extends to our responsibilities to Parliament and the European Union where we also have responsibilities as a Public Body to ensure we act in a responsible, reasonable and proportionate manner and follow UK and EU laws.

We are also accountable to commercial stakeholders and consumers (and their representative bodies). In the case of the former we have responsibilities to ensure we are efficient and effective in the use of the funding provided, that we produce a Code of Practice which is clear and proportionate and implemented firmly, fairly and with integrity. In the case of consumers, we

have responsibilities to ensure that we handle all enquiries and complaints in a way that provides trust and confidence in us as a regulator. We have a duty to understand consumers' concerns and to try to assist them in ensuring that problems with PRS do not happen in the first place. Our responsibilities to the consumer sometimes also become "citizen" type issues where our responsibilities extend to societal concerns about matters such as child protection and crime prevention generally. For all these reasons, we dedicate a small proportion of resources to consumer research – in order to inform Code of Practice development on an evidence-based approach - and to consumer literature and other materials to try to build trust and confidence in PRS, thus reducing complaints which may arise, which will, as a bi-product, also reduce the costs of the complaints function of ICSTIS.

### **Why do we need to keep engaging stakeholders?**

We need to ensure that we have a shared commitment to a regime which achieves ICSTIS' vision and mission through a Code of Practice which sets a clear framework for compliance as the norm and enforcement as the exception. Whilst we have a regime which has "teeth" and power, its success does still depend to a considerable degree on the support and good will of all of those who share in the benefits of the provision of PRS, whether that be commercial stakeholders making a living in whole or in part from PRS or consumer bodies concerned to ensure that consumers are not misled by the operation of some form of PRS. It follows that the more support there is forthcoming from stakeholders, and the more they are engaged in the most appropriate ways with ICSTIS, the easier ICSTIS will be able to do its job, the more consumers will have confidence in PRS (and thus use it more) and the cheaper the cost of regulation will be to commercial stakeholders.

### **What possible ways are there to engage stakeholders?**

In order to try to offer some views about this question we have firstly undertaken a full review of our current governance arrangements both internally as they exist between the Secretariat and the Committee and externally by trying to identify what types of stakeholder input would be most useful and where this might best sit within the governance arrangements. Only after considering all of this have we then turned our attention to our current governance structure and to possible variations, which we address in section 5 of this paper.

In undertaking a review of the current governance arrangements we looked again at our remit and responsibilities and concluded that these, along with all the supporting functions which deliver the remit, can be separated into seven discrete areas. These are set out in section 4, along with our assessment of how we believe stakeholders should be engaged either in an "advisory" or "decision-making" capacity: It should be noted that these areas do not specifically refer to the role played by the Adjudicator of the Live Entertainment Services Compensation Scheme nor to the role played by the Independent Appeals Body, neither of which we believe, are in any way affected by any suggestions or thoughts put forward in this paper. No reference is therefore made to them in section 5 under possible options for governance structures.

## Section 4

# The functional areas of the Governance Review

Set out below are the seven functional areas that currently form or contribute to the delivery of ICSTIS' remit and which are the subject of this review. We describe, in *italics*, the nature of the activity followed by the nature of the review and the detailed questions on which we seek your comments. The next section set out some structural options that may flow from this functional review.

### **Strategy, Accountability and constitutional matters**

*To determine ICSTIS' mission, strategy and to be accountable to stakeholders for how all aspects of the remit are delivered.*

The current ICSTIS Committee is made up of independent members. As has been said in section 2, we recognise that we are operating in an environment which is faster changing and more complex than was hitherto the case. In determining the mission, strategy and business plans for ICSTIS we believe there would be merit in finding ways to draw more widely than in the past on the expertise that commercial stakeholders could offer to this process. In doing this, however, we believe that the principle of independence, which has served ICSTIS so well, should be preserved. This could be achieved through a number of options. One would be to not alter the current Committee composition but to provide it with widened access to expertise, say through an "Expert Panel" of industry advisers. An alternative might be to alter the composition of the Committee completely and bring into it those with a range of commercial expertise. The former would be a modest change to the arrangements we have now. The latter, whilst entirely conceivable, raises wider governance issues which are explored below.

While involving stakeholders in this process through Committee membership could have many potential benefits, we recognise that it is not without its difficulties and that there are many detailed issues which would need to be resolved. We would need to be clear that any such member's first duty, as an ICSTIS Committee member, would be to ICSTIS, not to any permanent employer. There would also need to be in place strict conflict management procedures for dealing with a host of issues including the fact that such members, if playing a full role, would be exposed to commercially sensitive information which remains confidential to ICSTIS, its employees and Directors. It would go without saying that such members would have to absent themselves from any discussions which involved any company with which they had an interest and which would need to be declared and publicised. Such members would also be expected to abide by collective responsibility for ICSTIS' decisions even if such decisions were ones which they were not content with. ICSTIS' Committee also has available to it sensitive market and commercial information which, if shared, could undermine a business or the sector as a whole. Any Committee member with other interests would clearly need to understand that any such information should not be used to advance their other business interests. Any suggestion that this was not clearly guarded against could undermine our ability to collect and receive such information in the first place.

Some stakeholders have suggested to us that the Committee would benefit from the direct input and membership of commercial stakeholders – in a minority limited to 25% - but have also suggested that such members should not be involved in any adjudicatory decisions made by the Committee. This, it is suggested, would retain the benefits of complete independence in the adjudicatory process whilst providing the Committee with the expertise that commercial stakeholders could offer. This approach has obvious attractions. Its potential downsides are that those commercial stakeholders would not have available to them the direct knowledge of the valuable learning that arises from adjudications and which is crucial to informing and formulating

policy and the Code of Practice. It could also be construed as suggesting that such members are not really to be trusted to act in a way that is independent, fair and impartial.

Beyond these issues, are further practical ones about how such people would be recruited. There is no one trade body which can claim to legitimately speak for all commercial stakeholders so it is not clear that trade association nomination could be effective. Indeed, there are so many trade bodies focused on different sections of the industry that not all would be able to make nominations. And if ICSTIS undertook the recruitment there could be a concern that those selected may not have the support of commercial stakeholders. General open appointments and recruitment, under “Nolan” principles would, however, be consistent with the current ICSTIS Committee appointment process which currently also allows Dti and Ofcom to comment before decisions on all individual appointments are made. We are aware that in other self-regulatory regimes the industry members are appointed by the Chairman of the regulatory body. Some have suggested to us that Ofcom might be prevailed upon to make the appointments, a suggestion which we think runs counter to Ofcom’s philosophy of approach as outlined in their recent consultation paper on effective self-regulation.

And finally, a typical Committee member, if involved in all aspects of ICSTIS’ work, will usually expect to commit 25 hours, i.e., about 6 half-days per month to ICSTIS activities, including attending meetings, most of which are evening events. It would be very important to attract the right calibre of people to join the Committee with the time to give. For all of these reasons, this option, i.e., of full Committee membership, and others are explored in this paper. None of this should be taken as reasons to avoid change, but rather to highlight the complexity of the issues involved.

*Q2. How strongly do you feel that there is a case for change to the current arrangements for the structure and composition of ICSTIS’ Committee?*

*Q3. What are your thoughts on the analysis we set out in terms of the options for engaging stakeholders further in the strategic work of ICSTIS and how far should we alter the governing arrangements as they currently exist and in what way?*

*Q4. Where and why is independence thought critical to the effectiveness of ICSTIS? What benefits does it bring?*

*Q5. Depending on your answer to Q2, how should we go about securing the input of stakeholders, and specifically commercial stakeholders, whether in an advisory or decision-making capacity?*

*Q6. Can we have the best of both worlds - the benefits of independence and arrangements that maximise our understanding, efficiency and effectiveness?*

*Q7. What are the barriers to this in an area where commercial players are very numerous and may have little in common or can be direct competitors, and where representative groups are limited in membership and scope?*

## **Determining a Code of Practice**

*To set appropriate Standards for the promotion and content of PRS*

At present the Standards are set through a Code of Practice and related Guidelines. These are drafted by an ad hoc sub-Committee of ICSTIS advised by the Secretariat and with legal support, and approved for consultation by the full Committee. The outcome of the consultation will be considered by the full Committee and on this basis a final revised Code of Practice will be agreed and submitted to Ofcom for approval, after it has been laid before the European Commission and Member States for the requisite period in line with the Technical Standards

Directive. We use every endeavour through formal and informal channels with stakeholders to ensure the Code of Practice remains relevant and we would not propose to bring forward any proposal which undermined these channels. We are conscious of the fact, however, that in a fast changing technological and commercial environment we do not always have directly to hand all the expertise that might sometimes be desirable to draw on to advise and input into the drafting and agreement of the Code of Practice.

*Q8. What benefits (and/or downsides) would you see in involving wider stakeholder expertise in Code making?*

*Q9. Depending on your answer to Q8, how should that input best be provided? Should it be through direct involvement of stakeholders, including commercial stakeholders, in the governing body, should it be through the creation of an “expert panel” of stakeholders created with the aim of advising ICSTIS on Code and policy issues, should it be both of these or something else?*

### **Prevention and Enforcement**

*To ensure adequate arrangements are in place to enforce the Standards and that adequate arrangements exist to prevent consumer harm, through, for example a targeted prior permission regime. And to provide consumers with information and advice about PRS through public information and the Helpline.*

The enforcement regime through complaint investigations, along with the prior permission regime, are some of the core activities that we perform. The arrangements presently for discharging this function are based on Panels. Each week the full Committee receives from the Secretariat a bundle of cases on which the Committee are invited to adjudicate on complaints or consider applications for prior permission. A rotating panel of at least two members, (and usually three) chaired by one of us is then delegated to sit and make adjudications or grant/refuse permissions. In doing this the Panel will have before it written comments from all Committee members on each case. The decisions of the Panel are then reported by the Panel Chair to the next full Committee meeting. Just as we consider that there can be a case for utilising the expertise of stakeholders in determining the Code of Practice, so we think there can sometimes be advantages for some commercial stakeholder input here. However, we are aware of the risks and problems with this, especially as they relate to dealing with conflicts and handling commercially sensitive information. At present one of the key benefits of being an “independent” body is that conflict issues of a substantive nature do not arise. Any change to this, whilst potentially beneficial, could be perceived or could in reality “taint” that independence. Indeed anxieties about this have been voiced to us already.

*Q10. What benefits and/or problems would you see with involving stakeholders, especially commercial stakeholders, directly in the prevention and enforcement role of ICSTIS?*

*Q11. If there is a role for stakeholders in making an input to the prevention and enforcement role, should this be at the level of “advice” or active involvement in “decision-making”?*

### **Funding/Budgeting**

*To ensure we have in place a budget which has consensus, with stakeholders, and Ofcom agreement.*

Prior to the passing of the Communications Act 2003, ICSTIS had been funded since its inception by terminating network operators. The mechanism for operating this was through the ICSTIS Network Operator Committee (INOC). The Communications Act led to a change to this arrangement, with funding now based on a levy upon service providers which is collected by terminating network operators, and passed over to us. The precise working of these arrangements is set out in Annexe 3 (Funding Arrangements) to the ICSTIS Code of Practice (10<sup>th</sup> Edition) and we do not, as part of this review, propose to alter the details of those

arrangements at this stage. That same annexe also sets out the annual timetable and arrangements necessary for ICSTIS to draw up a budget and activity plan for Ofcom approval. In light of this, the role of INOC is under review by INOC. Whilst we take the view that INOC still will perform necessary and important functions increasing the overall effectiveness of the regulatory regime, any new role will need defining and agreeing.

The budget setting arrangements are new and have only been used once so far. Whilst they appeared to operate effectively, it is clear to us that not all stakeholders are satisfied by the degree of “accountability” involved in the process in order to establish the budget. We believe it therefore necessary, in light of these views, to review again the arrangements so that the process can command the support of all stakeholders, with Ofcom’s role being limited, where possible, to endorsement of a consensus based approach, rather than agreement to something on which there has been only limited consensus. Ultimately we would want Ofcom to have confidence in the outcome as well as the process for budget making such that they are not drawn into “brokering” solutions between various parties.

Three options, all of which would be supplemental to the arrangements we have in place to formally consult all stakeholders about the details of the budget, are set out below. It should be noted that these options are all tied to structural options for the governance arrangements which are covered in section 5 of this paper and are not necessarily mutually exclusive.

**Option 1:** A Funding Council comprising representatives of all key stakeholder groups would meet with ICSTIS annually around the time of the issuing of the budget consultation. It would be invited to offer thoughts, comments and suggestions on the consultation paper, without prejudice to any written submissions made by individual attendees. It would also consider all non-confidential responses to the budget consultation made to ICSTIS and it would try to reach a consensus with ICSTIS on the final shape and size of the budget and activity plan. The final consensus, or any areas of disagreement with ICSTIS, would then be conveyed to Ofcom in order that it may finalise its agreement of the ICSTIS budget.

**Option 2:** A Resources Council be formed and institutionalised within the governance arrangements of ICSTIS whose responsibility it would be, after considering all consultation comments, to agree a recommendation to Ofcom on the budget and activity plan for the next year. The Resources Council might comprise ICSTIS Committee members and commercial stakeholders representatives in the ratio of say 60% (ICSTIS): 40% (Commercial stakeholders).

**Option 3:** To leave any decision in the hands of the ICSTIS Committee especially if it were to include commercial stakeholder members amongst its membership, subject to appropriate consultation methods.

As was said above, these options need to be considered within the context of the overall governance structure options which are outlined in the next section.

*Q12. Would any of these options, in your view, provide you with greater comfort about the arrangements for accountability in the budget setting process?*

*Q13. Do you have any other suggestions for how accountability in the budget setting process could be strengthened?*

*Q14. What are your thoughts on the future role that INOC could play and how do these fit with your thoughts and comments on Options 1, 2 and 3 posed above?*

## Resources

*To manage efficiently and effectively the resources of ICSTIS such as money and property, and to ensure fines and administrative charges are collected.*

Like all organisations, ICSTIS needs to ensure that it manages its resources in a prudent, efficient and effective way. At present, many of the resource management issues, especially as they relate to financial matters, are delegated to a sub-Committee of the ICSTIS Committee (Finance & General Purposes Committee). This comprises three members and is chaired by a Committee member other than ICSTIS Chairman.

Resource management issues have undoubtedly become a more complex matter for ICSTIS over the last few years. The primary reasons for this are:

- The budget setting process has become more complex involving as it does now the need for extensive consultation with a wider range of interested parties.
- Funding issues, with the move to a Service Provider levy, are more complex.
- Issues such as staff pensions are increasingly complex financial matters to deal with.

We have also recognised as part of this review that we need to provide more focus on how far we are measuring, reporting, monitoring and acting upon key performance indicator information about our efficiency levels especially in core prevention and enforcement activities such as complaints handling. We believe this is an area that Ofcom will also expect to see developed as we move forward.

We believe there are two ways forward here, which again relate to the overall governing structure covered in section 5:

**Option 1:** We expand the remit and role of the Finance & General Purposes (F&GP) Committee to cover all resource matters, including the target setting and action. This would become a Resource & Personnel Sub-Committee. It would meet more frequently in order to perform greater scrutiny over the resource and performance activities of ICSTIS.

**Option 2:** The majority of these functions be taken on by the “Resources Council” referred to under “Funding/Budgeting” above with the remaining functions sitting with F&GP. This Council would need to meet on a regular basis, say about 6 times a year.

*Q15. What are your views on Option 1 and 2 and which would be your preference?*

*Q16. What other thoughts, if any, do you have on the need for improvement in financial resource management within ICSTIS and on how this need might be met?*

## Reporting

*To ensure that ICSTIS reports in a transparent manner on its work.*

This function deals with the way we communicate, through a variety of channels, with all our stakeholders. It covers our website, the way we present adjudications, our literature and our consumer information.

We recognise this is not always an area without contention and we do sometimes receive criticism for the way we report cases and events, especially to the media. Notwithstanding this, we think that the governance structures we have in place to manage these arrangements do not in themselves warrant a further change. This is separate from thoughts about how we might present certain key facts to the public and media.

*Q17. Do you agree with our assessment? If not, what alternative governance arrangements for this function would you propose and why?*

**Staff**

*To manage the efficient and effective use of the Secretariat*

The people management aspects of ICSTIS' business are in practice dealt with in two key ways:

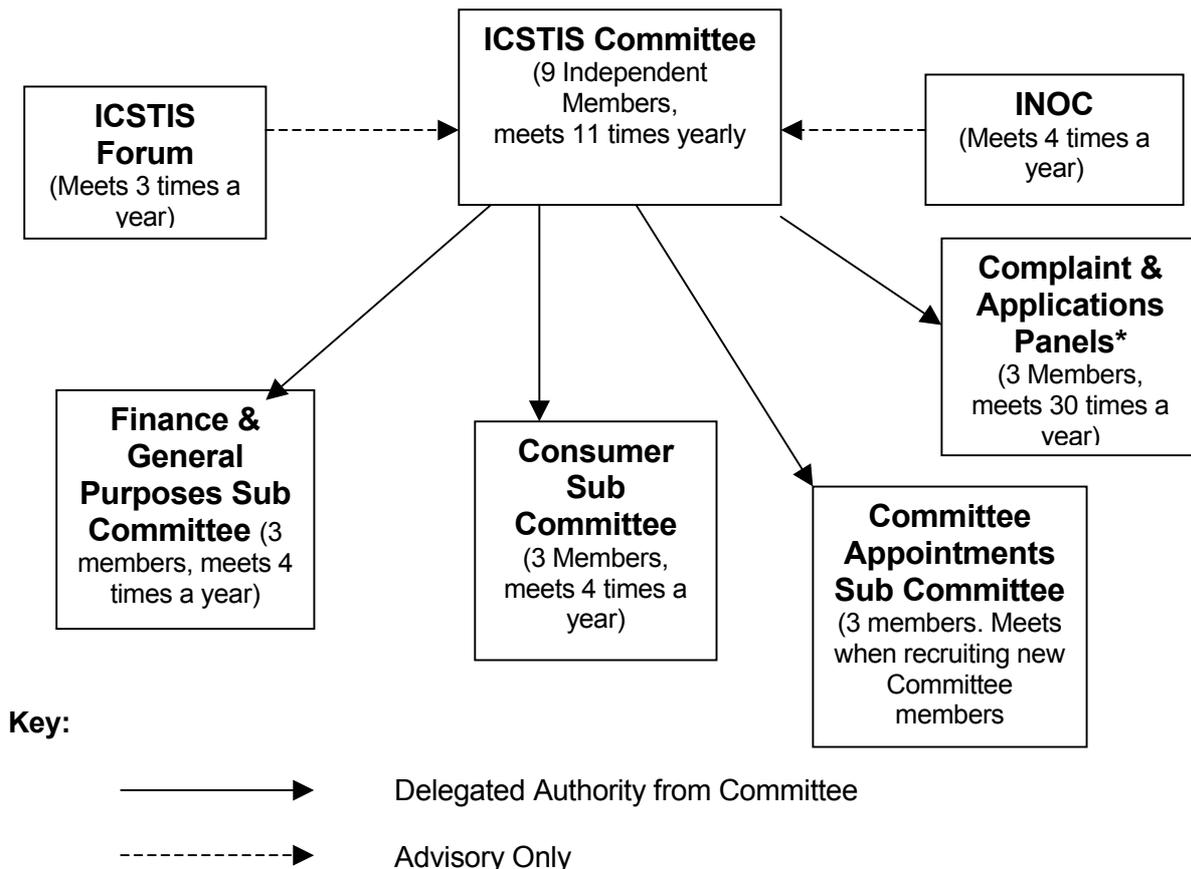
- Through formal delegation of the personnel function to the Director who in turn has a Management Team, one of whom doubles as a Personnel Adviser;
- Through delegation of certain decisions taken by F&GP in relation to staff matters insofar as they affect budgetary issues such as pay, pensions and other benefits matters.

People management is becoming a more complex issue for the organisation as we grow and have employed more staff. This has led us to commence re-examining the staffing structures and management controls as well as the performance management systems. This process has been aided by external consultants looking at our Performance & Enforcement areas. And, as has already been recognised elsewhere in this paper, performance management will become an increasingly important issue. Given that so much of day to day performance is delivered through staff and managers it would seem a good time to ensure that effective governing body controls are in place to scrutinise this and direct/agree areas for necessary change, in conjunction with the Director and Management Team. Given these are internal matters to ICSTIS, they are not the subject of this consultation but will be considered in light of the conclusion to this consultation.

*Q18. Do you have any other points or suggestions about staffing issues?*

## Section 5 Options for governance structures for ICSTIS

Having outlined some areas of governance where changes might be considered, and having in section 4, outlined some thoughts on some options to consider around this, we turn now to what optional governance structures this could present. These options do not provide a full range of possibilities and some of the elements might be combined. Views are sought on the possible permutations as well as the options presented including the current governance structure which is set out below:



\* The Complaints and Applications Panel has three members who meet on a rotating basis, drawn from the Committee of 9 members.

The budgeted costs of the Committee in 2004 are projected to be:

**Committee payments:** £218,400 (This includes an allowance for the recruitment of one new member)

**Committee Expenses:** £ 11,000

Committee payments and expenses represent **8.2%** of the ICSTIS budget for 2004.

*Q19. How far is this structure still fit for purpose in your view?*

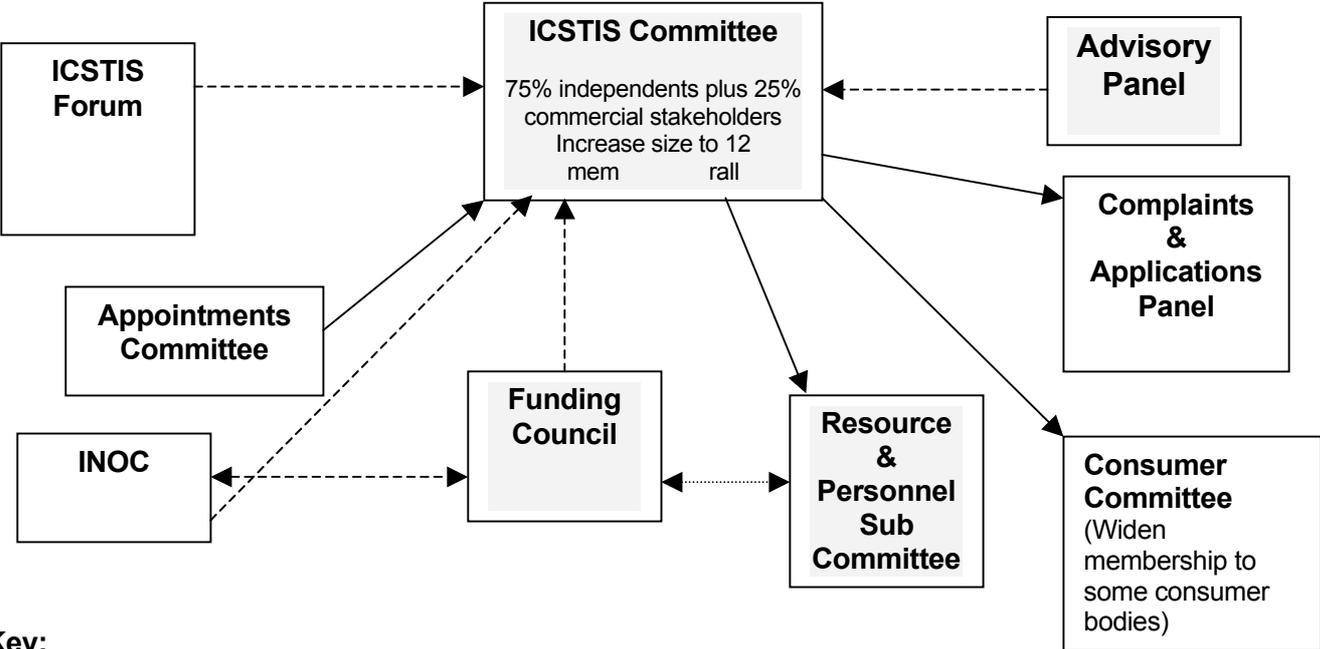
### Alternative options for governance structures

Taking account of the suggestions made in section 4 to this paper for potential areas of reform to the governance arrangements for ICSTIS, we have identified three possible variations to the

governance structure, beyond that which we have described above, which could potentially incorporate a range of changes, and on which we seek comments.

These are presented in the following pages, along with our initial assessment of the potential benefits and risks associated with each, and the potential cost implications for Committee payments which would arise.

**Option One: The Unitary Approach**



**Key:**

- > Delegated Authority from Board
- - - - -> Advisory Only

**What are the key changes indicated here?**

- The Committee would expand its membership from the current 9 independent members to include 3 commercial stakeholder members drawn from different aspects of the commercial environments with interests in PRS. As a variation, the Committee could be retained at the current size of nine members and through a process of transition over time, two members could be incorporated with stakeholder expertise.
- The creation of an Advisory Panel comprising a small number of stakeholders with different ranges of expertise who could meet with ICSTIS on an ad hoc basis and advise ICSTIS on key policy issues such as the development of the Code of Practice and other policies. Such a group would probably have 12 stakeholder members on it and would meet with ICSTIS 4 times yearly, and more frequently in sub-groups where required.
- Resources & Personnel Sub-Committee would be a replacement for the Finance & General Purposes Sub-Committee. It would have a wider remit, a membership of 4 members and would meet 6 times a year.
- A Funding Council comprising a range of stakeholders would meet with ICSTIS annually to consider the Budget and Activity Plan consultation paper and attempt, following consultation, to reach consensus with ICSTIS on a final budget figure that should be presented to Ofcom for approval.
- The Consumer Sub-Committee would be widened to include co-opted members nominated by consumer bodies such as the NCC and Consumers’ Association if they wished to make proposals.

The likely increase in Committee member payments resulting from this option would be in the order of **£35K** and Board expenses would be projected to increase by **£5K**. This would be reduced if the overall size of the Committee did not increase as described.

### **What are the potential benefits of this option?**

As we see them they are:

- There is more potential for wider stakeholder input in both an advisory capacity on funding and policy, and with decision-making, through commercial stakeholder input on the main Committee.
- This structure has some sense of “continuity” about it insofar as it is not radically different from the governance structure ICSTIS has at present and which has served us well.

*Q20. Are there other benefits you can see?*

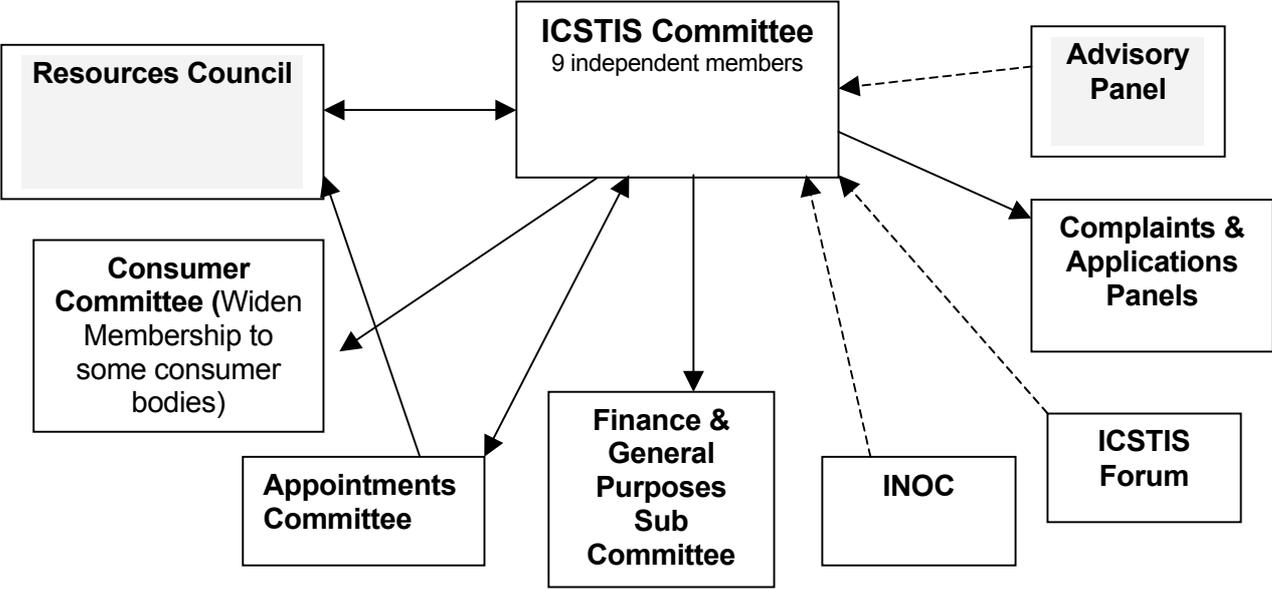
### **What risks are associated with this option?**

- Commercial stakeholders in this model would have access to all Committee member information, some of which can be commercially sensitive as it relates to investigations and new service concepts being proposed for prior permission to ICSTIS. Conflict issues will need tight management and all Committee members will need to be aware that when sitting as an ICSTIS Committee member, that their first duty is then to ICSTIS.
- It is debatable as to whether three members on the Committee could properly reflect the views of such a fragmented range of stakeholder interests, especially commercial stakeholder interest.
- There may be problems with finding commercial stakeholders with 25 hours per month to make available to the role of being an ICSTIS Committee member.
- Any disagreement over proposals for determining ICSTIS’ budget might not be settled through the Funding Council which means that Ofcom will be left with a range of views on which there will be limited consensus when trying to determine ICSTIS’ budget.

*Q21. Do you agree with these risks, are there others and can they be overcome?*

*Q22. Do you think this option has potential but only with modifications? If so, what would those modifications be?*

**Option Two: The Bilateral Approach**



**Key:**

- ▶ Delegated Authority from Committee
- - - - -▶ Advisory Only

**What are the key changes indicated here?**

- A Resources Council comprising some ICSTIS Committee Members (the members all being independent) and members drawn from amongst commercial stakeholders would be formed and take responsibility for the agreement of the financial resources that would be allocated to ICSTIS through the budget annually and for on-going resource management and scrutiny. Regardless of its overall composition, voting rights would be split 60% (ICSTIS) and 40% (Commercial stakeholders) and an ICSTIS member would chair it. Membership need not necessarily be created to reflect the suggested voting split.
- As per option one above, the creation of an Advisory Panel comprising a small number of stakeholders with different ranges of expertise who could meet with ICSTIS on an ad hoc basis and advise ICSTIS on key policy issues such as the development of the Code of Practice and other policies. Such a group would probably have 12 stakeholder members on it and would meet with ICSTIS 4 times yearly, and more frequently in sub-groups where required.
- The Consumer Sub-Committee would be widened to include co-opted members nominated by consumer bodies such as the NCC and Consumers’ Association if they wished to make proposals. .

The likely increase in Committee member payments resulting from this option would be in the order of **£12K** and Committee expenses would be projected to increase by **£2K**.

### **What are the potential benefits of this option?**

As we see them they are:

- Issues relating to conflicts and dealing with commercially sensitive information involving adjudications, applications for prior permission would not arise as these issues would rest with ICSTIS' independent members.
- The time commitment for commercial stakeholder members on the Resources Council should be lower than on the full Committee, which may attract more interest
- The Resources Council could contain a wide enough membership that it might be able to reasonably represent the many different commercial stakeholders with an interest in funding issues and ICSTIS.
- Budget issues would be determined through the Resources Council and once they were resolved Ofcom's role in determining the final budget should be more straightforward. This should therefore speed up the process which would be advantageous to all stakeholders.
- There is more potential for wider stakeholder input in an advisory capacity on policy making including formulating revisions to the Code of Practice.
- This structure has a considerable sense of "continuity" about it insofar as it is not radically different from the governance structure ICSTIS has at present and which has served us well.

*Q23. Are there other benefits you can see?*

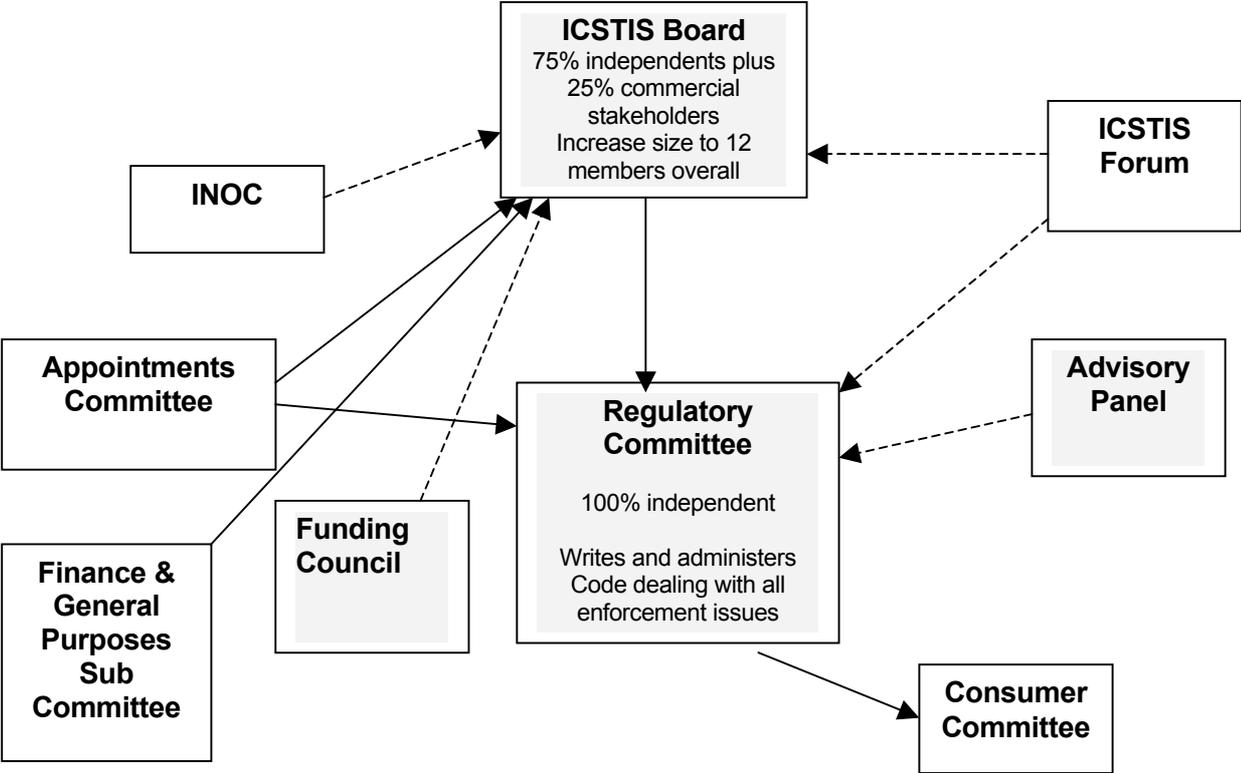
### **What are the risk associated with this option?**

- There would be no formal and direct commercial stakeholder input into policy decision-making at Board level. Rather ICSTIS would be reliant on the advice from the Advisory Panel.
- There is a risk that clarity of roles between the Advisory Panel and the main Committee might become blurred. Clear terms of reference for all the different bodies would need agreeing.
- There is a risk that the budget setting process does not fully reflect the views of those non-commercial stakeholders.
- There is a risk that INOC's role becomes marginalised or redundant in the model.
- The risk of "stalemate" each year between the Committee and the Resources Council over budget determination in order for ICSTIS to fulfil its regulatory duties under the Communications Act 2003

*Q24. Do you agree with these risks, are there others and can they be overcome?*

*Q25. Do you think this option has potential but only with modifications? If so, what would those modifications be?*

**Option Three: The Board/Regulatory Committee Approach**



**Key:**

- > Delegated Authority from Board/Regulatory Committee
- - - - -> Advisory Only

**What are the key changes indicated here?**

- The Board (previously the Committee) would expand its membership from the current 9 independent members to include 3 commercial stakeholder members drawn from different aspects of the commercial environments with interests in PRS. As a variation the Committee could be retained at the current size of nine members and through a process of transition over time, 2 members could be incorporated with stakeholder expertise.
- The Board would be responsible for the governance and overall strategy of ICSTIS. It would also be responsible for working with the Funding Council on trying to reach a consensus with all stakeholders on the annual budget. The Board would also have responsibility for all Resource, Reporting and Staff issues, albeit some of these would be delegated to Finance & General Purposes Committee.
- The creation of a separate Regulatory Committee which would be responsible for writing the Code of Practice and dealing with all enforcement issues as well as applications for prior permission.
- The creation of an Advisory Panel comprising a small number of stakeholders with different ranges of expertise who could meet with ICSTIS on an ad hoc basis and advise ICSTIS on key policy issues such as the development of the Code of Practice and other policies. Such

a group would probably have 12 stakeholder members on it and would meet with ICSTIS 4 times yearly, and more frequently in sub-groups where required.

The likely increase in Board/Committee member payments resulting from this option would be in the order of **£40K** and Committee expenses would be projected to increase by **£6K**. This would be reduced if the overall size of the Committee did not increase as described.

### **What are the potential benefits of this option?**

As we see them they are:

- Issues relating to conflicts involving adjudications, applications for prior permission would not arise as these issues would rest with ICSTIS' independent members.
- There is more potential for wider stakeholder input in an advisory capacity on funding and policy.

*Q26. Are there other benefits you can see?*

### **What are the risk associated with this option?**

- There is a real risk of confusion between the respective roles played by the main Board members and Regulatory Committee members.
- Commercial stakeholder input into policy decision-making would not be formalised. Rather ICSTIS would be reliant on the advice from the Advisory Panel.
- There may be difficulty in attracting commercial stakeholders who could give 25 hours per month to the role.
- The structure appears to be overly bureaucratic and may become cumbersome to operate.
- The workload (and costs) of the Secretariat could increase (and the costs are not quantifiable at this stage).
- It is not clear how any dispute or disagreement between the Board and the Regulatory Committee would be resolved.

*Q27. Do you agree with these risks, are there others and can they be overcome?*

*Q28. Do you think this option has potential but only with modifications? If so, what would those modifications be?*

## Section 6

### Questions for stakeholders

We are seeking answers to the following questions which appear through the body of this consultation document. These are:

*Q1. Do you have any comments about the background and context to this Review in light of the changes in the market and statutory framework that are outlined?*

*Q2. How strongly do you feel that there is a case for change to the current arrangements for the structure and composition of ICSTIS' Committee?*

*Q3. What are your thoughts on the analysis we set out in terms of the options for engaging stakeholders further in the strategic work of ICSTIS and how far should we alter the governing arrangements as they currently exist and in what way?*

*Q4. Where and why is independence thought critical to the effectiveness of ICSTIS? What benefits does it bring?*

*Q5. Depending on your answer to Q2, how should we go about securing the input of stakeholders, and specifically commercial stakeholders, whether in an advisory or decision-making capacity?*

*Q6. Can we have the best of both worlds - the benefits of independence and arrangements that maximise our understanding, efficiency and effectiveness?*

*Q7. What are the barriers to this in an area where commercial players are very numerous and may have little in common or can be direct competitors, and where representative groups are limited in membership and scope?*

*Q8. What benefits (and/or downsides) would you see in involving wider stakeholder expertise in Code making?*

*Q9. Depending on your answer to Q8, how should that input best be provided? Should it be through direct involvement of stakeholders, including commercial stakeholders, in the governing body, should it be through the creation of an "expert panel" of stakeholders created with the aim of advising ICSTIS on Code and policy issues, should it be both of these or something else?*

*Q10. What benefits and/or problems would you see with involving stakeholders, especially commercial stakeholders, directly in the prevention and enforcement role of ICSTIS?*

*Q11. If there is a role for stakeholders in making an input to the prevention and enforcement role, should this be at the level of "advice" or active involvement in "decision-making"?*

*Q12. Would any of these options, in your view, provide you with greater comfort about the arrangements for accountability in the budget setting process?*

*Q13. Do you have any other suggestions for how accountability in the budget setting process could be strengthened?*

*Q14. What are your thoughts on the future role that INOC could play and how do these fit with your thoughts and comments on Options 1, 2 and 3 posed above?*

*Q15. What are your views on Option 1 and 2 and which would be your preference?*

*Q16. What other thoughts, if any, do you have on the need for improvement in financial resource management within ICSTIS and on how this need might be met?*

*Q17. Do you agree with our assessment? If not, what alternative governance arrangements for this function would you propose and why?*

*Q18. Do you have any other points or suggestions about staffing issues?*

*Q19. How far is this structure still fit for purpose in your view?*

*Q20. Are there other benefits you can see?*

*Q21. Do you agree with these risks, are there others and can they be overcome?*

*Q22. Do you think this option has potential but only with modifications? If so, what would those modifications be?*

*Q23. Are there other benefits you can see?*

*Q24. Do you agree with these risks, are there others and can they be overcome?*

*Q25. Do you think this option has potential but only with modifications? If so, what would those modifications be?*

*Q26. Are there other benefits you can see?*

*Q27. Do you agree with these risks, are there others and can they be overcome?*

*Q28. Do you think this option has potential but only with modifications? If so, what would those modifications be?*

## Section 7 Consultation

We are seeking the views of all stakeholders on the proposals and questions contained in this paper by no later than **Friday 4<sup>th</sup> June 2004**.

Where possible comments should be submitted in writing and sent by e-mail to [pwhiteing@icstis.org.uk](mailto:pwhiteing@icstis.org.uk). Copies may also be sent by mail or fax to:

Paul Whiteing  
Deputy Director  
ICSTIS Ltd  
1<sup>st</sup> Floor, Clove Building  
4 Maguire Street  
London SE1 2NQ

Tel: 020 7940 7405  
Fax: 020 7940 7456

If you have any queries about this consultation please telephone or e-mail Paul Whiteing using the above contact details.

### **Confidentiality**

We plan to publish the outcome of this consultation and to make available all responses received. If you want all or part of your submission to remain confidential then you must make a specific request for this along with your reasons for making the request.

## **Section 8**

### **Conclusion and next steps**

We will assess all the responses we receive to this consultation by the closing date. Thereafter ICSTIS' Committee will determine how best it believes the governance arrangements and structures would be best altered to best accommodate the expressed views of all stakeholders. Unless it sees the need for a further consultation, the Committee aims to issue a statement within 3 months of the closing date for comments.

## The ICSTIS Mission Statement

## Appendix One

### **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 those who may be especially vulnerable, particularly children. We advise providers of premium rate services on compliance with our Code. If they do not comply, we promptly enforce its provisions to minimise any consumer harm caused.

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 when using premium rate services and striving to ensure that they receive the necessary protection;
- ❖ independence at all times from the sector, companies or individuals that we regulate or that fund our work;
- ❖ 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 non-compliance with our Code of Practice and having in place mechanisms to ensure that consistency;
- ❖ co-operative engagement with the constantly developing premium rate industry as the best means of securing 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, 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;
- ❖ acknowledging the important contribution made by all members of the organisation.