



## **ICSTIS Consultation Paper**

### **Statement on the Provision of Refunds to Consumers And the development of Industry Best Practice For Customer Service**

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### **NOC Response**

The Network for Online Commerce (NOC) is a not for profit trade association that exists to promote and facilitate profitable enterprise in Telemedia markets around the world and, as the leading representative body for Premium Rate Services (PRS) in the UK, we welcome the opportunity to comment constructively on the captioned ICSTIS Consultation.

#### **1. Introduction**

The availability of a reasonable and sensible refunds policy is an important feature of the UK PRS industry and is a feature that has long been practised by responsible Service Providers. While it is important that any refund policy be linked to the Ofcom approved Code of Practice (COP) for PRS it is equally important that it should remain available and flexible and not be overly prescribed by regulation.

It is disturbing that the review of Consumer Redress is immediately linked to the exceptional circumstances that surrounded the irresponsible use of Dialler technology during 2003/4. As we have previously commented it is not good business practice to base important decisions on exceptional conditions which are unlikely to be repeated.

The NOC is also mindful that the ICSTIS remit is confined to the Ofcom approved COP for PRS and that any sanctions applied by ICSTIS, including redress, should only result from properly adjudicated violations of the PRS COP.

As the Consultation Document rightly points out, customers of all telecommunications services have access to the dispute resolution facilities of the Telecommunications Ombudsman, Otelo, and it would not be sensible if ICSTIS were to inadvertently duplicate or interfere with any of these established facilities.

## **2. Dealing With Refunds**

We would regard consumer law to be the primary protection for PRS customers and consumers ultimately have civil remedies available to enforce their rights. We would not wish to see ICSTIS become embroiled in subjective debate over whether or not goods supplied were in fact 'fit for purpose' and ICSTIS should remain focussed on the key elements of the approved Code viz.

- Legal
- Not misleading
- Not deceptive
- Not exploitive of Minors or the Vulnerable

Where the Code has been violated then we are in support of a speedy, consumer friendly method of providing redress for individual complainants. We are also mindful that situations may arise where consumers may be considered to be abusing the providers of PRS.

Where the Code has not been violated and customers may be seeking redress then Otelo is available in the unlikely event that the appropriate Service Provider and/or the Network Operator are unable to reach settlement with the customer.

### ***Question 1***

***Do you agree that a refund should equate to the full cost of the service that the consumer actually paid for the service? If not, why not and what alternative would you suggest?***

### **Answer 1**

Yes we agree.

### ***Question 2***

***Do you agree that a refunds arrangement should have no formal lower cost threshold and that ICSTIS may vary from this in case specific situations where not to do so would be disproportionate?***

### **Answer 2**

Yes we agree.

***Question 3***

***We would welcome feedback and examples of how customer service refunds can be made in ways that meet the needs of both the consumer and the Service Provider who has to facilitate and administer the refund.***

**Answer 3**

We do not see it as ICSTIS's role to prescribe precisely how refunds must be passed to customers and we would suggest that this is left to be arranged between consumer and Service Provider and/or Network Provider. This is essentially the existing arrangement which has worked very well to date as methods may well vary according to circumstances.

***Question 4***

***Do you agree that refunds may be made in a number of ways as long as the customers are in general agreement to accept an alternative to a monetary refund offered by the Service Provider or other party involved in the provision of the service?***

**Answer 4**

As with the previous answer we believe ICSTIS should not attempt to be prescriptive over this and the matter should be left to an arrangement between consumer and Service Provider.

***Question 5***

***We would welcome information about how Service Providers manage these issues (supporting evidence to justify a refund) today in order to benchmark various practices.***

**Answer 5**

We are pleased that ICSTIS recognises the fact that Service Providers have a right to protect themselves against fraud or abuse and we have yet to meet a Service Provider who is not well equipped to identify unreasonable claims. We do not believe it is within the remit of ICSTIS to register or examine these methods, particularly given the past good record of Service Providers in refunding genuine complaints.

***Question 6***

***We would welcome views on what is a reasonable degree of evidence in such situations for a Service Provider to demand given the risks of fraud.***

**Answer 6**

Service Providers are well able to identify fraudulent claims and each case is likely to be judged on its merits. Where a Code violation exists it will be clear that complainants are entitled to be refunded but where a customer takes issue over content being 'fit for purpose' then we do not believe this is a regulatory matter. Such cases should, as a last resort, be referred to the Telecommunications Ombudsman Otelio on the rare occasions when accommodation cannot be reached between customer and Service Provider. We believe Otelio is also the correct authority to address complaints which question the original authority to place the call to the premium service.

***Question 7***

***What suggestions do you have for how best to manage the authentication of consumer requests whilst minimising the barriers to consumers when seeking refunds? How can this be kept under review?***

**Answer 7**

ICSTIS should only be involved in redress resulting from a Code violation so it is not difficult to identify and deal with any associated complainants. Customers seeking redress for anything other than a Code violation will properly be dealt with by the Service Provider and /or the Network Operator and, as a last resort, the Telecommunications Ombudsman Otelio.

***Question 8***

***What evidence is it reasonable to ask of a consumer to evidence their disputed PRS transaction where their Network Provider does not provide bills or where they are not itemised?***

**Answer 8**

If there is no identifiable billing record then it is very difficult for a consumer to prove that a call was made and any claim would be assessed on a case by case basis. It is understood however that call records may be available for mobile data services but this would need to be researched.

We would assume that ICSTIS would have a record of original complaints which could be utilised for claims resulting from Code violations and ICSTIS would have to be prepared to make this information available.

***Question 9***

***We would welcome views about how matters of refund authentication can best operate in an environment where consumers do not ordinarily receive a telephone bill such as the majority of mobile phone users who have pre-pay arrangements.***

**Answer 9**

As stated in the previous answer it is possible that call records may be available in a mobile environment but this would need to be researched.

***Question 10***

***We would welcome any other views on customer authentication and fraud management which might aid the development of an appropriate refunds framework.***

**Answer 10**

We are concerned that efforts to construct an ‘appropriate refunds framework’ might well be a bureaucratic and disproportionate response to an unquantified problem in addition to duplicating customer dispute resolution facilities already provided by Otelio.

***Question 11***

***Do you think that industry or ICSTIS has a responsibility to notify all affected consumers of their rights to claim a refund when this has been made the subject of a sanction by ICSTIS? If you do, where does this responsibility lie and why?***

**Answer 11**

We do not consider it reasonable to expect ICSTIS or Industry to proactively notify consumers of their rights to claim refunds and the Ofcom Review takes the commonsense approach of requiring reimbursement to consumers who have complained to ICSTIS. It would not be practical or proportionate to attempt to do anything more than this.

***Question 12***

***What views do you have on how affected consumers, whether they complain or not, can be advised of their rights to a refund where that has been demanded by ICSTIS as a sanction?***

**Answer 12**

As answer 11.

***Question 13***

***What further potential is there in the ICSTIS adjudication information being shared with the customer contact staff of the OCPs who may be able to alert future complainants about services to their right to a refund (where sanctioned by ICSTIS)?***

**Answer 13**

It would not be practical or proportionate to do other than what is recommended in the Ofcom Review i.e. 'require reimbursement to consumers who have complained to ICSTIS'. We would also be cautious about the sharing of adjudication information given current uncertainty over the accuracy of that information.

It is highly likely that any serious case inflicting widespread and serious consumer harm would receive sufficient exposure and publicity in the national press.

**3. ICSTIS' Proposals on the use of its Sanctions Powers to order a Refund by a Service Provider.**

We would like to see the summary include an initial opportunity for the Service Provider to correct any apparent minor contravention of the COP.

Only if the Service Provider fails to respond in a satisfactory manner should the investigation procedure be initiated.

ICSTIS needs to be aware that the process of effecting refunds is complex and costly and this cost should be taken into consideration when assessing the proportionality of a sanction.

While it is useful to review the criteria used to adjudicate sanctions it is clear that each case has to be judged on its merits and that the system needs to retain flexibility.

***Question 14***

***Do you have any views on this approach to considering how refund sanctions will be determined by ICSTIS?***

**Answer 14**

While the criteria and process appear reasonable it is clear that all cases will vary and a deal of flexibility will be required. There will also be a requirement for transparency and any refund sanction should be accompanied by a clear summary of the critical factors applied to the adjudication.

**4. The Live Entertainment Services Compensation Arrangements**

The ICSTIS Compensation Scheme for Live Services, set up in 1989, would benefit from a review, particularly since it appears to be an area of overlap with the responsibilities of the Telecommunications Ombudsman, Otelo. We would also like to see, as part of the review, accounts detailing the management of the fund and payments made in order to take a view on whether or not it is still relevant.

We do not consider that ‘unauthorised calls’ should fall within the ICSTIS remit, particularly since that remit is clearly placed with Otelo. Service Providers can have no influence over unauthorised calls which are purely a matter of consumers’ responsibility for their own utility and such calls are matters of poor supervision or, at an extreme, theft. For this reason it is particularly disturbing that the Adjudicator is also in a position to award ‘costs’ against a Service Provider for such calls. This is an unjust situation.

***Question 15***

***Do you agree that the arrangements for the ICSTIS Compensation Schemes for Live Services and Multi-Party Chat Lines should remain as they are and should not be affected by proposals in this consultation paper? If not, why not?***

**Answer 15**

We do not agree and we would like to see an early review of these schemes. We raise the following concerns:

- Unauthorised calls are within the jurisdiction of Otelo
- Service Providers can have no influence over unauthorised calls
- Unauthorised calls are matters of poor consumer supervision of their service or of theft.
- It is unjust that Service Providers may additionally be penalised with costs
- An unauthorised call does not place a Service Provider in violation any of the core Code items of Legality, Deception, Misleading or Exploitative.

**5. Developing Industry Best Practices for Customer Service.**

The Telecommunications Industry is well versed in the development and application of best practice in the arena of customer services and it should be a simple matter to provide a Guidance or Help Note for distribution to Service Providers for the support of UK PRS.

The development of best practice is not an area where ICSTIS could be expected to possess the required skill sets and is not within the current remit granted to ICSTIS by Ofcom. This is a commercial matter best left to industry. The Ofcom review stated that ICSTIS should work with industry to develop best practice 'Guidance' and we would welcome working with ICSTIS to achieve this, perhaps through the newly formed Industry Liaison Panel (ILP).

***Question 16***

***Do you agree that ICSTIS should take forward the development of best practice guidance for customer service in the way outlined above? Can you identify any organisations from which a representative should join this working group?***

**Answer 16**

We do not agree that ICSTIS should become overly involved in the development of best practice guidance for the PRS industry but we would welcome cooperation with ICSTIS on the preparation and distribution of suitable guidance notes.

We note in the Introduction to this consultation that the 11<sup>th</sup> Code will contain a provision obliging Service Providers to 'have adequate customer service' which implies the service must be provided by the Service Provider. In practice this customer service facility is likely to be contracted out to a third party specialist and it would be more accurate to use the term 'have adequate customer service in place'.

We do not see the need for a separate working group to achieve the necessary and desirable ICSTIS/Industry cooperation when the newly formed ILP will be well placed to handle this responsibility.

***Question 17***

***Are there other aspects of customer satisfaction that you believe a Working Group ought to consider when developing best practice guidance for customer service?***

**Answer 17**

We do not see any need for a separate working group and we believe the development of best practices is a matter better left to industry but certainly with ICSTIS alongside through the ILP.

***Question 18***

***Do you have any views about the make-up and structure of a Working Group, including who should chair it?***

**Answer 18**

We can see no requirement for a separate Working Group.

**6. Close**

The NOC is fully aware of the importance and value of a responsible and responsive refund policy towards PRS consumers and our Members have been functioning very well in this area for many years without the application of prescriptive regulation. It is our sincere hope that we can continue in a similar fashion for many years to come.

We agree that there could be value in producing Guidelines or Help notes to assist in this process and we are willing to co-operate with ICSTIS in such a project within the scope of the ICSTIS PRS Regulatory remit. However, we would not wish to see ICSTIS duplicating or otherwise interfering with the important and successful role of the Telecommunications Ombudsman Otelo.

The purpose of the Compensation Schemes for Live Services and Multi-Party Chat have not, as far as we are aware, been critically reviewed since they were established in 1989 and we believe such a review is long overdue.

We look forward to receiving or discussing your response to our submission and if we can be of any further help in the meantime please do not hesitate to contact us.

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