

## **UKCTA Response to ICSTIS Consultation**

# **Statement On The Provision Of Refunds To Consumers And The Development Of Industry Best Practice For Customer Service: A Consultation Paper**

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## **SUMMARY**

UKCTA welcomes the opportunity to comment on the issue of Consumer Refunds. Overall, we are supportive of the principle of providing refunds to consumers. However, this is a complex matter and raises a several significant issues including:

- the processes that operators and service providers would need to implement;
- the additional administrative burden, resource and costs these processes may impose;
- the identification of responsibilities between OCPs, TCPs and SPs;
- the extent to which refunds are paid;
- authentication of claims.

We appreciated the recent opportunity to meet with ICSTIS to raise and debate these issues and others in advance of the formal submission of our response to the Consultation.

As ICSTIS and Industry move forward together to implement the Recommendations of the Ofcom Report into PRS Regulation, UKCTA recognises the increased responsibility placed upon Network Operators to prevent fraud and scams happening in the first place in order to protect consumers from harm. We are fully prepared to accept our responsibilities in this respect and we agree change is necessary in order to protect the credibility of the PRS Industry. However, it should not be seen as a mechanism for ICSTIS regulating Service Providers through the Network Operators. We are concerned that some of the proposals from ICSTIS concerning the payment of refunds to consumers are in fact moving in this direction. ICSTIS has a responsibility to directly regulate Service Providers.

As ever with regulation, the key to its success is consistent enforcement to provide for a level playing field between TCPs. It is in this respect where we would like to see ICSTIS adopt a more pro-active approach rather than wait for complaints to be received from consumers that they have not received their refunds before taking reactive action. As we have commented and discussed on other occasions, we recognise the resource constraints within which ICSTIS works but nevertheless we believe changes can be made in the way that ICSTIS operates to introduce a greater pro-active approach to enforcement in a cost neutral manner. We believe that ICSTIS, by adopting an increased pro-active approach to regulatory enforcement will significantly improve its utilisation of resources and its effectiveness in the regulation of premium rate services.

As discussed at the ad-hoc operators meeting with ICSTIS on 20<sup>th</sup> January 2006, we would welcome the opportunity, in view of the complexity and impact of the issue of consumer refunds on industry, to discuss ICSTIS's conclusions from the Consultation before a 'final' Statement is published. The object would be to reach agreement between ICSTIS and industry on how the conclusions will be most effectively implemented. If appropriate, we would support the establishment of a working group to produce industry guidance.

## **PART 1 – GENERAL COMMENTS ON THE PROPOSALS**

UKCTA believes TCPs should not have any responsibility for the payment of refunds to consumers where Service Providers have committed a Code breach and been sanctioned by ICSTIS to refund consumers who have complained. A number of alternative proposals are examined below.

1. In the event that a Service Provider who has been sanctioned to refund consumers who have complained and the Service Provider has ‘disappeared’ leaving the TCP holding revenue, then the TCP should forward this revenue to ICSTIS for ICSTIS to refund the complainants. The TCP will not be in possession of any information concerning consumers who have complained. This information will be in the possession of ICSTIS who are therefore best placed to make the payments.
2. Alternatively, the TCP could forward the revenue being held back to the OCPs. This could be proportioned between the OCPs in accordance with whom the complainants are contracted.
3. Another option would be the establishment of a compensation fund to cover all PRS services. Service Providers would have to contribute an appropriate amount to this fund to cover any possible refunds to consumers following an ICSTIS direction. The amount that a service provider would have to contribute should be a percentage of the revenue that the service provider would be expected to receive during a year. The contribution to the fund would be put into escrow and be adjusted annually to reflect changes in the turnover of the service provider.

Where a Service Provider does not have the money to pay refunds because the TCP has been Directed by ICSTIS to withhold revenue, then it should remain the responsibility of the SP to verify the authentication of a consumer’s claim for a refund. The onus is on the consumer to demonstrate to the SP the claim is valid. The SP can then request ICSTIS to Direct the TCP to release the amount of the refund to the SP who will pay the consumer.

UKCTA does recognise there is one event that would require the TCP to pay refunds directly to consumers. That is when the TCP itself (as opposed to a Service Provider) has breached the Code and ICSTIS, after due investigation, has determined there has been sufficient consumer harm to warrant the TCP being sanctioned to pay consumer refunds. An example would be the failure of a TCP to implement Directions from ICSTIS under the Emergency Procedure such as the prompt termination of numbers or withhold of revenue.

In any circumstances in which refunds to consumers are sanctioned by ICSTIS and regardless of the process for effecting the payment, careful consideration must be given to the status of the consumers account with the OCP to ensure consumers, who have not paid their bill full to the OCP, don’t receive a refund and then refuse to pay their bill to the OCP.

## **PART 2 – RESPONSE TO QUESTIONS**

*Q1. 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?*

We agree that the refund should equate to the full cost of the service that the consumer actually paid for the service. This does seem to make sense, how could you argue that having paid the full cost including VAT, that the consumer should lose out. After all, this is refund for where a SP has breached the rules. If they incur some loss however small, then that is arguably part of the punishment!

*Q2. 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 to not do so would be disproportionate?*

This does make sense from the consumer viewpoint but if it is very, very small then it could end up being a real burden and perhaps will help reduce services available. The flip side is what is identified in Q3; they might just be so small that consumers can't be bothered cashing the cheque!

*Q3. 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.*

We believe there are strong arguments in favour of the service provider being required to offer a range of options for refunding consumers including bank transfer, cheque, stamps or even shop vouchers.

*Q4. 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 being offered by the service provider or other party involved in the provision of the service?*

Yes. We should be as flexible as possible since new methods will perhaps emerge allowing us to refund more efficiently.

*Q5. We would welcome information about how service providers manage these issues today in order to benchmark various practices.*

We do not believe UKCTA is in a position to comment as this question seems to be directed at Service Providers.

*Q6. 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.*

The minimum has to be proof that payment was made (i.e. a loss has been suffered) tying it to a Direction by ICSTIS (i.e. not just any PRS payment on the bill!) and some sort of proof that the person claiming is the bill payer.

UKCTA believes that the onus must be placed entirely on the consumer to prove loss has been incurred. How that is done is up to the consumer.

*Q7. 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?*

See response to Q6.

*Q8. 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?*

This isn't just mobiles, what about SKYPE etc? If consumers do not have a bill, then they would have no idea what they've paid and therefore how would they know that they've been ripped off? Are ICSTIS worrying about a problem that just cannot arise? If consumers don't know, they can't complain and ask for a refund! However, communications providers do have an obligation to provide itemised bills when asked to do so by their customers.

See also response to Q6.

*Q9. 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.*

See response to Q8. This is the same issue.

*Q10. We would welcome any other views on customer authentication and fraud management which might aid the development of an appropriate refunds framework.*

There must be communication between the OCP and SP where the consumer has not paid the bill but has been informed by ICSTIS they are entitled to a refund.

*Q11. 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 responsibility lie and why?*

No, we do not believe that this is a reasonable way forward. When a consumer has not complained either before or at the time of paying the bill, then the consumer must be deemed to have found the services provided acceptable.

*Q12. What views do you have on how affected consumers, whether they complained or not, can be advised of their rights to a refund where that has been demanded by ICSTIS as a sanction?*

It is only those consumers who complained to ICSTIS before the adjudication and where the adjudication includes a sanction for refunds who should be entitled to a refund. ICSTIS should write to the complainants individually to inform them that they can claim a refund and provide them with the name and contact details of the Service Provider concerned.

*Q13. 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)?*

If we are accepting that it is only consumers who complained prior to the adjudication who are entitled to a refund (provided refunds are sanctioned) then we should not be deliberately making this information available to OCP customer contact staff as it may result in the receipt of further complaints after the adjudication.

*Q14. Do you have any views on this approach to considering how refund sanctions will be determined by ICSTIS?*

Looks like a relatively sensible approach (and fair).

*Q15. Do you agree that the arrangements for the ICSTIS Compensation Schemes for Live Services and multi-party chatlines should remain as they are and should not be affected by proposals in this consultation paper? If not, why not?*

Yes. If it's not broke, don't fix it! However we do believe that the model could actually be transferred to apply to all PRS services requiring service providers to lodge an amount in an escrow account prior to offering service.

*Q16. 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?*

The new Industry Liaison Panel should take responsibility for the development of best practice guidance for customer service. A working group established by the ILP maybe the most appropriate way of achieving the objective but precisely how it is done, is best left to the Panel to determine. However, it should involve input from industry, consumer organisations and ICSTIS.

Also, the Draft 11<sup>th</sup> Code of Practice includes a responsibility on Network Operators to ensure that a Service Provider has adequate customer service and refund mechanism – a guideline on what ICSTIS considers to be adequate would be useful.

*Q17. Are there other aspects of customer satisfaction that you believe a Working Group ought to consider when developing best practice guidance for customer service?*

This should be considered by the ILP.

*Q18. Do you have any views about the make-up and structure of a Working Group, including who should chair it?*

See answer to Q16. In event that a working group is established, the ILP would determine the chair of the group.

