



Memorandum of Understanding  
between the Office of  
Communications (Ofcom) and the  
Independent Committee for the  
Supervision of Standards of  
Telephone Information Services  
(ICSTIS)

**Consultation**

# Contents

Annex		Page
1	Key Performance Indicators (KPI)	8
2	Plan, Budget and Levy	10

## Premium Rate Services

1. Premium rate services (PRS) offer information and entertainment via phone, fax, PC (e-mail, Internet, bulletin board), mobile (SMS/WAP) or interactive digital TV. Services range from sports, voting and adult chat lines to ringtones and logos, competition, directory enquiry, and business information services. The cost of time-charged calls ranges from 10p-£1.50 per minute or per call. Premium rate charging for mobile content is generally on a per text message or per transaction basis. The money paid for a premium rate service is shared between the telephone company carrying the service and the organisation providing the content.
2. UK-based landline premium rate services are normally carried on '090' dialling codes and Directory Enquiry (DQ) services on 118xxx codes. Certain premium rate mobile services use short access codes – typically four or five digit numbers and will usually be shown on phone bills as 'premium rate call' or 'high premium rate service'.
3. It is possible to pay for an increasing range of entertainment, information and other forms of content through PRS charging mechanisms and the public values the ease of use and access to this form of micro-payment.

## The need for effective regulation

4. This ease of access to and payment for services has to be supported by arrangements to ensure consumers know the price of content and that these services are not misleading, deceptive or otherwise problematic when bought across phone networks. Effective regulation has been critical to consumer confidence in PRS as a trustworthy payment mechanism, and in creating a framework in which businesses can innovate, invest and expand the range of services they offer. It is key to this situation continuing that the regulatory regime affords protection to the public and honest businesses alike, by ensuring that any examples of dishonest behaviour are minimised and appropriately dealt with. The effectiveness of the regulatory regime depends on the actions of the Office of Communications (Ofcom) and Independent Committee for the Supervision of Standards of Telephone Information Services (ICSTIS) ("the Parties").

## The regulatory authorities

5. Ofcom is the body set up under the Communications Act 2003 ("the Act"), with a primary duty to:
  - further the interests of citizens in relation to communications matters; and
  - further the interests of consumers in relevant markets, where appropriate by promoting competition.
6. The Act gives Ofcom the power to set Conditions to apply to those that provide PRS. However, in keeping with the principles of co-regulation and with the arrangements in existence before the enactment of the Act and the creation of Ofcom, Ofcom may approve a code for premium rate services. Ofcom will only approve a code if it is satisfied, amongst other things, that there is a person who has the function of administering and enforcing the code. It follows, therefore, that approval of a code effectively signals the approval of an "enforcement authority" to regulate PRS. The ICSTIS Code of Practice (10th Edition) (the Code) was approved on 23 December 2003 and came into effect on 29 December 2003. As such, ICSTIS is effectively approved as the "enforcement authority" for the regulation of PRS.

7. ICSTIS will continue to take all steps necessary to satisfy Ofcom that ICSTIS has the capability to ensure successful regulation of PRS. The intention is that Ofcom will not involve itself in the operational work of ICSTIS or in relation to specific duties unless ICSTIS is failing to comply with undertakings, agreed processes or KPIs in circumstances where that is leading to a material negative impact on the adequacy of regulation.
8. Ofcom's duties will be focused on:
  - approving the ICSTIS Code and the ICSTIS budget, where it is satisfied that these enable Ofcom to meet its obligations under the Act;
  - using its powers to ensure compliance with ICSTIS Directions; and
  - carrying out sufficient oversight, and using its backstop powers where necessary, to make sure that regulation of PRS is effective.

## **Background and Context**

9. ICSTIS was set up by the premium rate industry in 1986. It is the co-regulatory body responsible for regulation of PRS through its Code and has the primary consumer protection role in this area. ICSTIS will have the role of administering and enforcing the Code, subject to the need to refer cases to Ofcom when network operators have failed to comply with an ICSTIS Direction.
10. ICSTIS has operated as an independent body since its creation. ICSTIS has always been funded by industry, initially through a levy agreed and paid by network operators and, since 2004, by an equivalent levy paid by the service providers contracting with these network operators. ICSTIS is established as a public body in law. It is not the extension of an industry association or self-regulatory arrangement but recognises the critical importance of stakeholder support for its work as a non-statutory regulator of all PRS activity in the UK.
11. The ICSTIS vision is that anyone should be able to use premium rate services with absolute confidence. The Mission and Values statement which underpins this vision appears in the ICSTIS Code of Practice.
12. The Parties will have regard to the Criteria laid out in Ofcom's "Criteria for promoting effective co- and self-regulation". In summary the criteria are:
  - Beneficial to consumers;
  - Clear division of responsibility between co-regulatory body and Ofcom;
  - Accessible to members of the public;
  - Independence from interference by interested parties;
  - Achieve and maintain near universal participation;
  - Adequate funding and staff;
  - Effective and credible sanctions;
  - Auditing and review by Ofcom (including key performance indicators);
  - Transparency and accountability;
  - Consistent, proportionate and targeted regulation;
  - Appropriate appeals mechanism;
  - Ability to diverge from the above criteria where appropriate.

ICSTIS notes that some of these criteria are established in the statutory framework and in the Act and will take particular account of these expectations.

### **The need for a Memorandum of Understanding (MoU)**

13. This Memorandum of Understanding (MoU) establishes the framework and the shared principles the Parties will follow as the criteria in paragraph 12 are applied, thus ensuring efficient and effective regulation by ICSTIS based on providing value for money and operating in accordance with the principles of good governance.
14. Both the Parties must work together if they are to ensure that the co-regulatory regime adopted for PRS is effectively enforced, and that a culture of compliance is maintained amongst all stakeholders. ICSTIS has responsibility for the operational arrangements for the regulation of the industry, through publication and enforcement of its Code. Ofcom creates the framework through its role in recognising the Code, approving ICSTIS' Budget and supporting Activity Plan and by continuing to provide backstop powers for the enforcement regime through the PRS Condition.
15. This MoU between Ofcom and ICSTIS seeks to reflect the scope, nature and operation of the co-regulatory relationship between the Parties. In particular, the document is intended to clarify:
  - the respective roles and duties of the Parties in the regulation of PRS;
  - the activities to be carried out by the Parties to support each other in respect of each Party's role in the regulation of PRS;
  - the framework for effective communications between the Parties, and with third party stakeholders; and
  - measures required to ensure good value, effective regulation and good governance.
16. The Parties do not intend this document to be legally binding, and this document shall not create any legally binding duties or obligations between the Parties.

### **Mutual Support**

17. There are important areas in which mutual support is critical to delivery of effective regulation and a regime which Ofcom can continue to approve under its statutory obligations.
18. The development and enforcement of a Code is central to the regime. ICSTIS has primary responsibility for reviewing and updating its Code and, where it is satisfied that the Code will fulfil its obligations under the Act, Ofcom may approve the Code. It is important that Code reviews and revisions and the subsequent approvals process are conducted in a timely manner. Both the Parties commit to working in ways that avoid delay, maximise clarity of stakeholder understanding of the processes and their shared assumptions regarding the Code, particularly insofar as it relates to matters of interpretation of the Act and Ofcom Conditions, Directions and numbering policy.
19. Enforcement of the Code is primarily an ICSTIS responsibility and ICSTIS is committed to setting and meeting expectations in relation to enforcement work. Ofcom has a responsibility to address network non-compliance with the Code by enforcing Directions made under the Code through the PRS Condition. Ofcom is committed to working with ICSTIS to develop and maintain processes under which it supports ICSTIS when regulatory action at Ofcom level is required. These processes will be clear and appropriate to the nature of problems and will ensure that action is taken in a timely and effective way.

20. In their respective and shared areas of interest ICSTIS and Ofcom attach importance to evidence-based decision taking and to the value of research as part of this process. The Parties commit to regular dialogue regarding areas of research interest and to working together where such support would benefit their shared interest in the effective regulation of premium rate services.
21. ICSTIS and Ofcom's shared interest extends to the work of Government Departments, other agencies, the European Commission and international bodies. Wherever possible the Parties will liaise to identify shared interests and concerns and to address these through mutually supportive activity.
22. ICSTIS and Ofcom are committed to clear and timely public communication and to following and, if necessary, developing established practices in their consultations. The Parties commit to ensuring consultations, published material and web-sites and web-based services make all the appropriate links between their organisations and ensure industry, public and other stakeholders get information that is helpful regarding their respective roles and that there is clear sign-posting between the two organisations.
23. Ofcom has wide ranging responsibilities to ensure consumer protection and to promote consumer information and consumer empowerment. Ofcom's responsibilities in this area are wider than the regulation of PRS. Ofcom's strategy is to ensure that its entire consumer policy is effective and consistent. ICSTIS will work closely with Ofcom to ensure that shared consumer policy objectives are pursued.

### **Effective Communications**

24. Ofcom and ICSTIS believe it is vital that all parties affected by the regulation of premium rate services are informed of developments in the sector and have the opportunity to contribute to ICSTIS, and where appropriate to Ofcom, in a timely and effective way.
25. The Parties recognise, in particular, the technical and commercial expertise that exists amongst stakeholders and jointly commit in their respective roles to getting the benefits of this expertise.
26. Ofcom undertakes to consult with ICSTIS, industry, other stakeholders and with consumers on matters that are likely to have a material impact on the provision and use of premium rate services.
27. ICSTIS undertakes to continue to consult with Ofcom, industry and consumers widely on matters relating to the regulation of premium rate services and to maintaining a consultation framework that will ensure this consultation remains at a high standard. In addition to its normal consultative activities, including, in particular, its annual Plan and Budget consultation, ICSTIS is committed to making best use of the knowledge and experience amongst stakeholders, in Ofcom and in other bodies.
28. Confidence in the co-regulatory model is, to a large extent, a function of the success of the process for consultation with stakeholders. Stakeholders need to feel that they have an opportunity to have their legitimate interests recognised and that policymakers will have regard to issues raised. To this end, ICSTIS will establish and maintain an extensive guide to how it consults. This guide will be published and will be used by stakeholders to set their expectations. The guide will be prepared in consultation with Ofcom and stakeholders.
29. Both the parties agree that the establishment and maintenance of an ICSTIS consultation guide is essential to a shared wish to maintain effective involvement of stakeholders.

30. Effective communication between ICSTIS and Ofcom is essential. The Parties want this communication to work across their respective organisations. The Parties commit to ensuring regular communication at Board and Chief Executive level and to having regular working level reviews covering, in particular, the effectiveness of arrangements for information sharing, for mutually supportive work in their respective Contact Centres and the supporting web-based services, in cases where ICSTIS has made network referrals to Ofcom and on matters of shared policy interest or legal analysis.
31. Both the Parties recognise the significance of external communication in developing public trust in PRS and in the regulatory arrangements. Ofcom and ICSTIS undertake to notify each other in advance of significant announcements and policy developments which affect the regulation of PRS. The Parties wish at all times to be clear and mutually supportive in dealing with media, parliamentary and other interest in the regulatory arrangements, making every effort to avoid commentary or criticism that may undermine consumer confidence.

### **Efficiency and good value**

32. As established ICSTIS has responsibility for carrying out its obligations as regulator, particularly in the administration of the Code. These responsibilities may change from time to time but include:
  - developing the Code;
  - administering the Code;
  - providing policy advice, copy advice and other assistance to industry stakeholders;
  - working with industry bodies and individual players on Code understanding and compliance;
  - providing the public with advice and information in relation to PRS;
  - carrying out media literacy work designed to build understanding and trust;
  - ensuring that its role in the regulation of PRS is understood by others as policy is developed and laws and Directives discussed where this policy or legislation has an impact on premium rate services; and
  - working with fellow UK regulators and international counterparts to ensure an holistic approach to PRS issues affecting UK consumers.
33. Ofcom has a duty to ensure that there is effective regulation of PRS and to have arrangements in place to satisfy itself ICSTIS is continuing to meet this need.
34. Ofcom and ICSTIS agree that the effectiveness of the co-regulatory system for PRS is and will continue to be judged by the degree to which consumers are protected adequately by the co-regulatory regime.
35. This MoU attaches particular importance to three aspects of efficiency and good value: the measurement of performance, Plan and budget setting and governance arrangements.

### **Performance management and reporting**

36. In order to demonstrate its management performance, ICSTIS will, annually, agree a set of Key Performance Indicators (KPIs) with Ofcom which will be published as Annex 1 to the MoU. ICSTIS' Annual Activity Report will include a section for

performance reporting where it will set out in detail how it has performed against the KPIs agreed in this MoU, Ofcom's co-regulatory criteria and against any other indicators defined and agreed by the Parties. ICSTIS will report fully on performance against its KPIs when consulting on its Plan and Budget for the coming year and in its Annual Report (i.e. bi-annually).

37. Within its communications framework, and particularly in relation to planned industry Forum meetings and meetings of originating and terminating networks, ICSTIS is committed to reporting regularly on progress on its Activity Plan, on performance targets and on its expenditure forecasts.
38. Insofar as the effectiveness of arrangements depends, in part, on action taken by Ofcom in relation to network conduct, Ofcom undertakes to deal effectively and efficiently with referrals and investigations. It will report to ICSTIS and publicly on the outcome of cases.

### **Plan, Budget and Levy setting**

39. Regulation of the market for PRS undertaken by ICSTIS is funded by a levy on Service Providers which is collected from Network Operators (both as defined in the Code). In accordance with the co-regulatory criteria, Ofcom reaffirms its belief that ICSTIS should be funded adequately in order to secure the effective discharge of its functions. Staff resources should be such as to be sufficient to cope with the volume and type of work which is likely to arise. ICSTIS in turn undertakes to balance this objective with the need to keep its costs under proper control.
40. ICSTIS will prepare a budget and activity plan annually. ICSTIS will consult with industry, other stakeholders and consumers on its draft budget and activity plan. The budget and supporting plan will require approval by Ofcom. This is necessary so that Ofcom can be satisfied that adequate arrangements are in force for funding ICSTIS' activities, as required under the Act. The budgetary arrangements and the process to review and report on both funding and expenditure are set out in Annex 2 to this MoU.

### **Governance**

41. As an independent co-regulatory body, the governance arrangements for ICSTIS, including the constitution and membership of its Board, shall primarily be a matter for the members of the Board. As a co-regulatory body, ICSTIS will ensure that in all aspects of its governance and of its work it acts in accordance with Ofcom's co-regulatory criteria and consults with and takes into account the views of all of its stakeholders.
42. In order to ensure that the views of those who finance ICSTIS can be understood fully, ICSTIS will put in place adequate arrangements for consultation with Service Providers (who pay fees to ICSTIS) and Network Operators (who collect fees from Service Providers on behalf of ICSTIS). Such arrangements shall include the maintenance of formalised consultative mechanisms.
43. In accordance with the co-regulatory criteria, ICSTIS will ensure that it balances the need for independence with the desirability of being able to draw upon industry expertise. Under existing arrangements one quarter of the members of ICSTIS' governing body are participants actively involved in delivering premium rate services. ICSTIS will keep the effectiveness of these arrangements under review and will agree with Ofcom prior to implementing any structural changes in the balance of participation.
44. In so far as ICSTIS is exercising public functions, the Nolan Committee's Seven Principles of Public Life will apply. Where ICSTIS is not exercising public functions it



will adopt similar principles to ensure adequate levels of transparency and accountability.

45. The two bodies recognise Ofcom's interest in the governance of ICSTIS insofar as it is part of the under-pinning of the arrangements set out in the Act. The Parties agree this situation should be reflected in Ofcom's involvement in arrangements for the appointment of the Chair of ICSTIS and other members of the ICSTIS Board.

### **Review Arrangements**

46. Ofcom and ICSTIS aim to create and maintain positive and effective communications. In addition the two bodies commit to review the effective operation of this Memorandum of Understanding on an annual basis.

### **Signatories to this MOU:**

**Lord Currie – Chairman of Ofcom**

**Sir Peter North – Chairman of ICSTIS**

## Annex 1

# Key Performance Indicators (KPI)

A provisional period of two years shall operate from the date of signature of the MoU. There were exceptional developments in PRS regulation and casework in 2004 and there is a need to establish a reasonable benchmark for assessing performance. During the provisional period ICSTIS hopes to see complaint levels and the volume of casework stabilising and for the Parties to be able to assess better the likely future volume of regulatory activity and public service required.

During the provisional period the Parties will take a pragmatic view of performance requirements that may turn out to be unrealistic in light of market developments or other changes outside of their control. If factors emerge within or without the regulatory system that may unavoidably influence turnaround times in relation to Quantitative measures 1-4 below, ICSTIS and Ofcom will agree and publish revised targets.

In all cases the commencement date for performance against the KPIs will be three months from the date of signature of the MoU. Where transitional performance indicators are planned the transition period has been specified.

## 1 Title of KPI: Complaint Resolution

- What is being measured: ICSTIS' efficiency in managing complaint investigation and adjudication work. This is measured in terms of the percentage of complaints (excluding e-commerce cases and cases which are the subject of an oral hearing or Independent Appeal Body process) investigated and closed within 12 weeks of the case being opened. The measure does not address the processes for recording complaints and assessing whether they merit investigation and allocation to a case officer. A case is closed when an adjudication has been made and the Service Provider and complainants informed of the outcome. ICSTIS has processes in place and management systems that ensure complaints are assessed and decisions taken on opening cases within 5 days of matters coming to the attention of ICSTIS.
- Transitional Target: 60% of complaints (as defined above) to be investigated and completed within 12 weeks of the case being opened. This target applies for the first three months of measurement against KPIs.
- Final Target: 80% of complaints (excluding e-commerce) to be investigated and completed within 12 weeks of the case being opened. This target applies after the transitional period – i.e. six months after the date of signature of the MoU.

## 2 Title of KPI : Handling of “out of remit” complaints correspondence

- What is being measured: ICSTIS efficiency in dealing with written correspondence – other than correspondence related to in-remit complaints accepted for investigation. This is measured in terms of the percentage of correspondence handled within specified periods.
- Transitional target: 80% of correspondence responded to within two weeks. This target applies for the first three months of measurement against KPIs.

- Final target: 95% of correspondence responded to within ten working days. This target applies after the transitional period – i.e. six months after the date of signature of the MoU.

### **3 Title of KPI: Customer Service**

- What is being measured: The response times on ICSTIS' helpline. This is measured in terms of the percentage of calls answered within 30 seconds of a dial-in.
- Transitional Target: 65% of calls handled in 30 seconds. This target applies for the first three months of measurement against KPIs.
- Final Target: 80% of calls are handled in 30 seconds. This target applies after the transitional period – i.e. six months after the date of signature of the MoU.

### **4 Title of KPI: Fine Invoicing**

- What is being measured: ICSTIS administrative efficiency in ensuring invoices are issued promptly following adjudications where fines and administrative charges have been imposed.
- Target: 95% of Invoices for fines to be sent within 10 working days of the date of the adjudication panel.

### **5 Title of KPI: Consumer Satisfaction**

- What is being measured: The level of satisfaction complainants express in the work of ICSTIS as reflected in the reported outcome of adjudications. ICSTIS sends surveys to all complainants at the closure of cases for feedback on performance. From October 2005 surveys will be conducted on-line as well as by correspondence.
- Target: 65% of consumers respond with satisfactory or better on customer satisfaction surveys.

### **6 Title of KPI: Industry Satisfaction**

- What is being measured: The satisfaction level amongst service providers who apply for prior permission to operate certain categories of services. ICSTIS sends surveys to all permissions applicants at the closure of applications for feedback on performance.

## Annex 2

# Plan, Budget and Levy

The details of the arrangements for the funding of ICSTIS, including the publication of and consultation on the activity plan and performance reporting, are set out in the Code.

The process for preparation and approval of the budget and activity plan can be summarised as follows:

- As provided in the Code, each year, at a time determined by ICSTIS, which may be varied after giving reasonable notice to and following consultation with interested persons, ICSTIS will publish a proposed budget and activity plan for consultation.
- The annual activity plan will include a section for performance reporting where it will set out in detail how it has performed against the KPIs agreed in this MoU, the co-regulatory criteria and against any other indicators defined and agreed by the Parties.
- Following consideration of comments on the draft budget and plan, ICSTIS will make any appropriate revisions and then submit the draft budget and plan to Ofcom for its consideration.
- On receipt of Ofcom's comments, ICSTIS will make such amendments to the activity plan and budget as are necessary to secure Ofcom approval. Having received such approval, ICSTIS will announce its budget for the forthcoming year.

In the event that agreement cannot be reached on the ICSTIS budget, the Parties will:

- give priority to agreeing a levy rate which will assure continuity of funding and certainty for those involved in the levy process. This levy would be without prejudice to the outcome of work on the Plan and budget; and
- agree to establish a working group, led by Ofcom, which will report to the Ofcom Executive on the options open to Ofcom to secure the continued protection of consumers in the PRS market.

During the year, ICSTIS and Ofcom will use planned review sessions to monitor budget as well as policy and operational issues of shared interest.

It is agreed that ICSTIS is under a duty to inform Ofcom in writing immediately if it is unable to provide adequate funding to meet its obligations. In this event, Ofcom will not make up, or contribute towards making up, any shortfall but will invite ICSTIS to submit a detailed proposal as to how it intends to remain solvent.

ICSTIS is committed to keeping Ofcom informed of any proposed use of contingency reserves in place to deal with exceptional demand or other changes in the PRS market which involve ICSTIS in significant changes in activities and expenditure.