

## **1. INTRODUCTION**

### **1.1 About ICSTIS**

The Independent Committee for the Supervision of Standards of Telephone Information Services (ICSTIS) is the regulatory body for premium rate services. The Committee consists normally of nine members, all appointed in their individual capacities. ICSTIS is a non-profit making limited company which is financed by the industry. The Committee is supported by a full time Secretariat (“the Secretariat”).

### **1.2 Terms of Reference**

The role of ICSTIS is to supervise both the content of and promotional material for premium rate services and, with the support of the network operators, to enforce this Code of Practice. ICSTIS undertakes the following tasks:

- a** setting and maintaining standards and, as appropriate, requirements for the content and promotion of premium rate services, and keeping these standards under review,
- b** consulting the industry and other stakeholders before changing these standards,
- c** monitoring premium rate services to ensure that both the content and promotional material comply with these standards,
- d** determining any categories of premium rate service which may only be provided on the basis of prior written permission from ICSTIS, identifying conditions which should be attached to the grant of such prior permission, keeping such categories and conditions under review, and receiving, considering and determining applications for prior written permission,
- e** investigating and adjudicating upon complaints relating to the content and promotion of premium rate services and recommending action designed to achieve compliance with the Code where that has been breached, which may include the imposition of sanctions; all of these, together with decisions relating to the refusal, or grant upon conditions, of prior permission, are subject to an independent appeals procedure,
- f** administering a system for the payment of claims for compensation for unauthorised use of Live Services, and providing a system for adjudications where such claims are disputed,
- g** publishing reports on its work at regular intervals and generally publicising its role.

### **1.3 The Scope of this Code**

**1.3.1** This Code covers the provision of premium rate services by means of an electronic communications network.

**1.3.2** This Code has been recognised for the purposes of the relevant Conditions in network operator licences on ..... by the Director General of Telecommunications (‘the Director General’) in so far as it relates to Controlled Premium Rate Services (‘CPRS’).

This Code supersedes all previous Codes and is effective from .....

Network operators can only carry CPRS on the basis that there is a recognised Code of Practice in place and accordingly, as a result of recognition of the Code by the Director General, network operators are obliged to support ICSTIS’ regulation of CPRS.

As can be seen from the definitions set out below, CPRS are more narrowly defined than premium rate services. In particular, CPRS do not include services which cost less than a certain amount which is determined by the Director General (at the time of publication of this Code, less than [10 pence]) other than chatlines which are automatically included. Nor

does it include services which are terminated outside the United Kingdom, even though calls are made to those services from within the United Kingdom. Accordingly, while ICSTIS continues to regulate all premium rate services, support by network operators for regulation of premium rate services which fall outside the definition of CPRS remains voluntary.

- 1.3.3** In respect of premium rate services (but not necessarily CPRS), this Code applies to all premium rate services which are accessed by a customer in the United Kingdom, whether those services are provided from within the United Kingdom or from abroad and whether the service provider is situated within the United Kingdom or abroad.
- 1.3.4** This Code may be amended by ICSTIS from time to time following consultation with network operators and other interested parties, but (unless the Director General has given his written consent to such an amendment, in which case the amended Code shall have effect from the date of such consent) no amendment to this Code of Practice shall come into effect for the purposes of any licence condition applicable to any network operator until two months have elapsed from the date on which ICSTIS has provided the final text of such amendment to the Director General.

## **1.4 Definitions**

- 1.4.1** The term ‘premium rate services’ (‘services’) are services where part of the overall charge paid by a customer to the network operator for the service, being payment for the content of the call or other product or service delivered in the course of, or as a direct consequence of, the call, is passed on by the network operator, directly or indirectly, to the service provider.
- 1.4.2** A ‘call’ means any communication through an electronic communications network, whether initiated by a customer or service provider.
- 1.4.3** ‘Controlled premium rate services’ (‘CPRS’) are defined in network operators’ licences as follows:

“A CPRS is one in respect of which:

- (i) the person responsible for paying the charges for the Call by means of which the Service is obtained is billed by means of his telephone bill for any amount in respect of the provision of the Service;
- (ii) part of the overall charge paid by that person to the Licensee for the Service, being payment for the content of the Call or other product or service delivered in the course of, or as a direct consequence of, the Call, is passed on by the Licensee, directly or indirectly, to the person providing the Service (or, where that person is the Licensee himself, to that part of the Licensee’s business which provides the Service and is credited with revenue from that part of its business which conveys the Messages comprised in, or resulting from the provision of, the Service); and
- (iii) either:
  - (A) the charge for the Call by means of which the Service is obtained or the rate according to which the Call is charged is a charge or rate which exceeds any amount determined by the Director General in a determination made pursuant to paragraph 22.9<sup>1</sup> of this Condition; or

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<sup>1</sup> This provision enables the Director General to determine the amount charged for a call or rate of charge or both which, when exceeded, means that this sub-paragraph is satisfied.

(B) the Service is a Chatline Service.”

- 1.4.4** ‘Live Services’ are premium rate services which involve two-way or multi-way live conversation.
- 1.4.5** An ‘online service’ is a premium rate service which allows data to be transferred to and/or from customers, and which may or may not have a visual element, and to which the caller is connected through a computer, mobile phone, television or similar device, using a modem or similar device.
- 1.4.6** A ‘network operator’ means any company recognised as such by ICSTIS. ICSTIS may recognise as a network operator (a) any company which runs an electronic communications network over which premium rate services are conveyed, or (b) any company associated with a company which runs such a network. ICSTIS shall publish at least annually a list of “network operators” recognised by ICSTIS for the purposes of this Code of Practice. ICSTIS may amend this list as it sees fit and will publish any such amended list from time to time. Companies are associated for this purpose if one is the parent of the other or another company is the parent of both.
- 1.4.7** A ‘service provider’ is an individual, organisation or company that contracts with network operators for facilities enabling the provision of premium rate services.
- 1.4.8** Where a network operator provides premium rate services directly, then that part of the network operator’s organisation responsible for the provision of premium rate services will be treated as the service provider for the purposes of this Code.
- 1.4.9** An ‘associated individual’ is any partner in or director or senior manager of a service provider, any manager having day-to-day responsibility for the conduct of its relevant business and any individual in accordance with whose directions or instructions such persons are accustomed to act or any member of a class of individuals designated by ICSTIS and notified to the service provider in writing.
- 1.4.10** An ‘information provider’ is an individual, organisation or company on whose behalf service providers may provide services.
- 1.4.11** The term ‘promotion’ means anything where the intent or effect is, either directly or indirectly, to encourage the use of premium rate services and the term promotional material shall be construed accordingly.
- 1.4.12** ‘Chatline Service’ is defined in network operators’ licences as follows:

“a service which consists of or includes the enabling of more than two persons (‘the participants’) simultaneously to conduct a telephone conversation with one another without either:

- (i) each of them having agreed with each other; or
- (ii) one or more of them having agreed with the person enabling such a telephone conversation to be conducted,

in advance of making the Call enabling them to engage in the conversation, the respective identities of the other intended participants or the telephone numbers on which they can be called. For the avoidance of doubt, a service by which one or more additional persons who are known (by name or telephone number) to one or more of the parties conducting an established telephone conversation can be added to that conversation by means of being called by one or more of such parties is not on that account a Chatline Service, if it would

not otherwise be regarded as such a service.

- 1.4.13** The ‘Adjudicator’ is the person, independent of ICSTIS, service providers and network operators, who adjudicates upon claims for compensation in respect of unauthorised calls to Live Services.
- 1.4.14** The ‘Independent Appeals Body’ is a body of persons independent of ICSTIS appointed to provide tribunals to hear appeals against adjudications made by ICSTIS pursuant to ICSTIS oral hearings, and to hear appeals against refusals by ICSTIS of applications for permission to provide services or against conditions imposed by ICSTIS upon such permission.
- 1.4.15** The ‘Chairman of the Independent Appeals Body’ is the person, being a qualified solicitor or barrister of not less than 10 years’ standing, appointed to be Chairman of the Independent Appeals Body.
- 1.4.16** ‘Of tel’ is the Office of Telecommunications; references to Of tel and to any statutory authority or other regulatory body include any replacement or successor bodies.
- 1.4.17** Any written notice required to be provided in accordance with any of the rules or procedures in this Code shall be delivered by hand or sent by ordinary prepaid post. Where there is proof of posting, delivery is presumed to have taken place on the working day following posting.

## **2. ADMINISTRATIVE PROVISIONS**

### **2.1 Responsibility**

Service providers are responsible for ensuring that the content and promotion of all of their premium rate services (whether produced by themselves or by their information providers) comply with all relevant provisions of this Code.

### **2.2 Setting up a Service**

**2.2.1** Before providing services, a service provider must ensure that ICSTIS is notified of the following:

- a** any telephone number ranges (including dialling codes) or other connection arrangements allocated to it by the network operator,
- b** the name, address, e-mail address, telephone and fax number of the person representing the service provider who is nominated to receive all communications in connection with the application of the Code.

Any changes or additions to the above must be notified in writing to ICSTIS immediately.

**2.2.2** Where certain codes or number ranges have been designated by either Of tel or a network operator for the provision of particular service categories, services within these categories must use those codes or number ranges. Of tel’s designations will have precedence over any issued by a network operator.

**2.2.3** Before promoting or providing services, the service provider must have readily available all documentary and other evidence necessary to substantiate any factual claims made. This material, together with a statement outlining its relevance, must be provided without delay if requested by ICSTIS.

**2.2.4** Service providers must use all reasonable endeavours to ensure that all of their services are

of an adequate technical quality.

- 2.2.5** There are guideline documents (“ICSTIS Guidelines<sup>2</sup>”) giving detailed advice on certain areas of the Code which are available from the Secretariat. Further guidance on any matters relating to the Code is also available from the Secretariat.

## **2.3 Prior Permission**

- 2.3.1** ICSTIS may require that particular categories of service must not be provided unless ICSTIS has given its prior written permission for any service within that category. ICSTIS will give reasonable notice of such a requirement and the category of service to which it applies and will publish a full list of such service categories from time to time. Prior permission may be granted subject to the imposition of additional conditions. Such permission may be withdrawn or varied upon reasonable grounds and with notice in writing. The decision to refuse an application for prior permission, or to impose particular conditions upon the grant of it, or to withdraw or vary it, is subject to appeal, after an oral hearing, to the Independent Appeals Body under the procedures set out in Section 6.11.

- 2.3.2** Where a service provider can demonstrate for a particular service that any requirement of the Code can be adequately satisfied by alternative means, ICSTIS may give prior written permission subject to conditions for the service to be provided incorporating such alternative means. Such permission may be withdrawn or varied upon reasonable grounds and with notice in writing.

## **2.4 Data Protection**

- 2.4.1** Service providers must make a notification to the Office of the Information Commissioner under the Data Protection Act 1998, and must, in their notification:

- a** disclose ICSTIS as a potential recipient of personal data,
- b** state that data collected from callers may be used by ICSTIS for regulatory purposes.

- 2.4.2** Service providers must not give any undertaking to callers, suppliers, information providers or others which could preclude any information being given to ICSTIS in confidence. Callers must, where necessary under the Data Protection Act 1998, be warned that data collected may be passed to ICSTIS.

- 2.4.3** Services which involve the collection of personal information, such as names, addresses and telephone numbers (which includes the collection of Calling Line Identification (CLI) or caller display information), must make clear to callers the purpose for which the information is required. The service must also identify the data controller (if different from the service provider or information provider) and any different use to which the personal information might be put, and give the caller an opportunity to prevent such usage.

## **2.5 Other Regulators and Codes of Practice**

Attention is drawn to the fact that there are other codes of practice which apply to promotions in print media, television and radio, such as the British Codes of Advertising and Sales Promotion which are supervised by the Advertising Standards Authority and those published by the Independent Television Commission and the Radio Authority. Service providers should take account of these other codes of practice and those published by any successor bodies.

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<sup>2</sup> Following the Guidelines may help service providers to avoid breaching the Code and should answer commonly asked questions. The Guidelines can be found on the ICSTIS website at [www.icstis.org.uk](http://www.icstis.org.uk).

## **2.6 Number Re-use**

A service must not be replaced on the same number by another service which might give offence to or might be inappropriate for callers reasonably expecting the original service.

## **2.7 Engagement of Associated Individuals**

Service providers must not knowingly engage or permit the involvement as an associated individual of anyone who is subject to a recommendation made by ICSTIS under paragraph 6.7.2, contrary to the terms of the recommendation.

## **2.8 Promotion by Non-Premium Rate Services**

Wherever a premium rate service promotes, or is promoted by, a non-premium rate electronic communications service, both services will be considered as one where, in the opinion of ICSTIS, it is reasonable to do so.

# **3. GENERAL PROVISIONS**

## **3.1 Legality**

Services and promotional material must comply with the law: they must not contain anything which is in breach of the law, nor omit anything which the law requires. Furthermore, services and promotional material must not facilitate or encourage anything which is in any way unlawful.

## **3.2 Decency**

### **3.2.1 Services and promotional material must not:**

- a** contain material indicating violence, sadism or cruelty, or be of a repulsive or horrible nature,
- b** involve the use of foul language.

### **3.2.2 Services and promotional material must not, or must not be likely to:**

- a** result in any unreasonable invasion of privacy,
- b** induce an unacceptable sense of fear or anxiety,
- c** encourage or incite any person to engage in dangerous practices or to use harmful substances,
- d** induce or promote racial disharmony,
- e** cause grave or widespread offence,
- f** debase, degrade or demean,
- g** promote or facilitate prostitution.

## **3.3 Honesty**

### **3.3.1 Services and promotional material must not:**

- a** mislead, or be likely to mislead, by inaccuracy, ambiguity, exaggeration, omission or otherwise,
- b** be such as to seek to take unfair advantage of any characteristic or circumstance which may make consumers vulnerable.

### **3.4 Pricing Information**

- 3.4.1** The service provider must state clearly in all promotional material the likely charge for calls to each service. Prices must be noted in the form of a numerical price per minute, or the total maximum cost to the consumer of the complete message or service, both of which must be inclusive of VAT. When applicable, promotional material must make clear that calls from some networks may cost more than the likely charge shown.
- 3.4.2** Textual pricing information must be easily legible, prominent, horizontal and presented in a way that does not require close examination. Where services fall within the ambit of the Distance Selling Regulations (published by and available from the Department of Trade and Industry), service providers must comply with their requirements on pricing prominence.
- 3.4.3** In the case of promotions transmitted in television programme time, the pricing information must be spoken as well as being visually displayed if the maximum call cost can exceed £2.00.
- 3.4.4** Direct-dialled services which cost 50 pence or less and are terminated by forced release are exempt from all ICSTIS requirements concerning pricing information.
- 3.4.5** In cases where it is unlikely that a consumer will have seen or heard any promotion containing pricing information, the service provider must place a short, distinct pricing message at the beginning of the service.

### **3.5 Address Information**

For any promotion the identity and contact details of either the service provider or information provider, where not otherwise obvious, must be clearly stated so that customers can contact them directly.

The identity means the name of the company, partnership or sole trader and the contact details must consist of one of the following:

- a** a full postal address including postcode, or
- b** a PO Box number including postcode (PO Box numbers cannot be used in the case of employment, employment information and business opportunity services), or
- c** a telephone helpline number (to be charged at no more than UK national rate).

### **3.6 Service Identification**

- 3.6.1** In all promotional material, the code, prefix or short access number must be presented in such a way that it can be readily identified as a premium rate code or an international prefix.
- 3.6.2** If the service operates on an international number, it must be made clear in the promotional material that an international call is required.

### **3.7 Promotions with Long Shelf-Lives**

In the case of services which are promoted in publications or other media which are likely to have a shelf-life of three months or more, a statement must be included in the promotion to the effect that the information given is correct as at the date of publication and that date must also be stated. If the call charges increase during the life of the promotion, such services must be prefaced with a short message informing callers of the new rate(s).

### **3.8 Use of the Word 'Free'**

No premium rate service may be promoted as being free. No product or service may be promoted as being free, or described in a way that implies it is free (for example, a gift), if the most obvious or practical way of obtaining it is by using a premium rate service except in cases where the cost to the consumer does not exceed the delivery costs of the product and the promotional material states the maximum cost of the call.

### **3.9 Inappropriate Promotion**

Service providers must use all reasonable endeavours to ensure that promotional material does not reach those for whom it, or the service which it promotes, is likely to be inappropriate. Service providers must use all reasonable endeavours to ensure that their services are not promoted in an inappropriate way.

### **3.10 Promotions in Non-Print Media**

Promotions transmitted by radio, television, teletext, telephone, facsimile, Internet, short message service, e-mail or any other form of non-print communication must observe the provisions of this Code in the manner most reasonable and appropriate to the technology employed.

### **3.11 Editorial Promotions**

In the case of promotions that appear in editorial material, service providers must use all reasonable endeavours to ensure compliance with the provisions of this Code.

### **3.12 Delay**

Services must not be unreasonably prolonged or delayed.

### **3.13 Undue Encouragement of Unauthorised Use**

Services and promotional material must not be of a nature which unduly encourages unauthorised calls.

### **3.14 Incorrect Information**

Services must not contain incorrect information and it must be made clear to consumers when time-sensitive information was last updated.

## **4. PROVISIONS RELATING SPECIFICALLY TO LIVE SERVICES**

### **4.1 Prior Permission**

#### **4.1.1**

- a** A service provider must not provide any Live Service without first obtaining a certificate from ICSTIS giving the service provider permission to provide that service<sup>3</sup>. Service providers must not continue operating a Live Service in the event

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<sup>3</sup> All Live Services in operation on the date on which this Code comes into effect and which:

- (i) are operated by service providers which are members in good standing with the Live Service Providers' Compensation Fund and have lodged a Compensation Scheme Bond with ICSTIS in accordance with paragraph 4.10, or
- (ii) were in operation on 19 January 1998 and held an Ofcom exemption in respect of that service, are deemed to have been granted permission by ICSTIS under paragraph 2.3.1 of this Code, such permission being subject to conditions requiring, in the case of members of the Live Service Providers' Compensation Fund, continued membership of the Fund and the application of the provisions of Section 4.10 of this Code of Practice and in the case of service providers who obtained

that no certificate is in force. Such permission may be withdrawn or varied upon reasonable grounds and with notice in writing. The decision to refuse an application for prior permission, or to impose particular conditions upon the grant of it, or to withdraw or vary it, is subject to appeal, after an oral hearing, to the Independent Appeals Body.

- b** Such permission may be subject to any conditions that ICSTIS may consider appropriate to ensure that the particular service does not cause consumer harm. Guideline No. 1 gives further information on the conditions which may be imposed.
- c** In what ICSTIS considers to be appropriate cases, it will not issue a certificate unless it is satisfied that compensation arrangements exist (as set out in Section 4.10 of this Code) for the prompt and effective provision of compensation to any person whose connection to the electronic communications network has been the subject of unauthorised use involving calls to the relevant Live Service(s), and in respect of which the Adjudicator has made an award under Section 4.10 of this Code.

## **4.2 Monitoring**

**4.2.1** ICSTIS may set down such conditions as it sees fit in the granting of a certificate under paragraph 2.3.1. Without prejudice to that general power, ICSTIS may require that service providers:

- a** ensure that all calls are effectively monitored by an operator (who is the person acting on behalf of the service provider and to whom a caller may speak when accessing the Live Service),
- b** ensure that all calls are continuously recorded to allow investigation of complaints.

**4.2.2** Where recording of calls has been required, such conditions as ICSTIS may think appropriate will apply but, in particular, service providers will normally be required:

- a** to use recording equipment compatible with ICSTIS replay facilities which enables the time, date and content of Live Services to be accurately identified from the recording; such recordings must enable ICSTIS monitoring at all times;
- b** to disconnect such services immediately if recording should cease at any time for any reason;
- c** to retain such recordings for a period of at least one year and deliver them to ICSTIS and the Adjudicator, intact, within three working days of request;
- d** before starting to operate any service, to supply to ICSTIS the following:
  - i** a statement from the installer of the recording equipment, detailing the type of recording equipment and the total number of simultaneous conversations which the recording equipment can support as configured;
  - ii** a statement from the network operator(s) detailing the total number of lines, and the number ranges associated with them, provided to the service provider;
  - iii** completed copies of declaration forms prescribed and issued by ICSTIS.Any change to the above must be notified to ICSTIS within one month of the change.
- e** to permit representatives of ICSTIS to visit any premises at which any part of their operations in connection with the provision of the Live Service is conducted with or without notice at any time to investigate whether this Code is being complied with in all respects and to inspect the recording equipment;
- f** to give such information and co-operation as ICSTIS may reasonably request which pertains to compliance with this Code.

### **4.3 Employment and Training**

- 4.3.1** Before commencing employment, operators must be given adequate training in the relevant requirements of this Code. A record of training must be kept at the service provider's offices.
- 4.3.2** No such operator shall be under the age of 18. ICSTIS may, however, vary this requirement for individual services.

### **4.4 Introductory Messages**

- 4.4.1** All providers of Live Services must ensure that on connection each caller receives a brief introductory message giving details of all of the call costs and the name of the service provider providing the Live Service.
- 4.4.2** Callers to Live Services where recording of calls has been required by ICSTIS must be warned that rules apply governing disallowable conversation. They must also be informed that a recording of the conversation may be made available to the regulatory body and the Adjudicator.

### **4.5 Promotional Material**

- a** Unless the Live Service is available 24 hours a day or permission not to provide such information has been granted by ICSTIS, hours of operation must be stated on the promotional material.
- b** Unless ICSTIS has granted permission to do so, no promotion may be directed primarily at persons under 18 years of age or encourage such persons to call the service.
- c** The promotional material must state clearly that conversations are being constantly recorded where there is such a requirement.

### **4.6 The Conduct of Live Services**

Guideline No. 13 gives advice on how these provisions will be interpreted.

- 4.6.1** Service providers must actively discourage callers from seeking or giving out surnames, places of work, addresses or telephone numbers, or arranging or attempting to arrange any meeting while connected to a Live Service. ICSTIS may grant an exemption in respect of this requirement for services where the giving of such information is a necessary part of the service.
- 4.6.2** Unless ICSTIS grants permission to do otherwise:
- a** Service providers must ensure that operators use reasonable endeavours to prevent persons under 18 years of age from taking part in any Live Service.
- b** If an operator has reasonable grounds, upon questioning a caller, to suspect that the caller is under 18, the service provider must end the call.
- 4.6.3** The service provider shall take reasonable steps to identify and cut off calls made without the permission of the person who pays for the connection to the electronic communications network.
- 4.6.4** If a caller has been connected to the Live Service for a significant amount of time without speaking, he must be prompted to speak and, if he does not then speak, he must be cut off.

**4.6.5** ICSTIS will engage in random monitoring of conversations to check that the conditions of this Code are being complied with. ICSTIS will, in cases where conversations are required to be recorded, also call for random samples of those recordings for the same purpose.

#### **4.7 Sexual Entertainment Live Services**

**4.7.1** Sexual entertainment Live Services are services of a clearly sexual nature or any services for which the associated promotional material is of a clearly sexual nature, or indicates directly, or implies, that the service is of a sexual nature. See also Section 5.7. Chatlines may not operate as sexual entertainment services.

**4.7.2** Services which are pay for product Live Services, where the product is of a clearly sexual nature, are sexual entertainment Live Services. Such services must operate on the designated code for sexual entertainment Live Services (which, at the date of publication of this Code, is 0909).

#### **4.8 Live Services offering Counselling**

Guideline No. 12 gives advice on how various provisions of this Code will be interpreted.

In addition:

- a** Operators of Live Counselling Services must hold qualifications, or be of a status, appropriate to the type of service offered.
- b** Service providers must provide adequate safeguards for vulnerable callers.

#### **4.9 Chatline Services**

**4.9.1** Before a caller may participate in a Chatline Service, the service provider must obtain the caller's name, address and date of birth and confirmation that he has the permission of the bill-payer to make the call.

**4.9.2** Chatline Services must not be promoted as sexual entertainment services and operators must use all reasonable endeavours to prevent conversation which is primarily of such a nature.

**4.9.3** Service providers must ensure that there is a minimum of one operator monitoring up to 20 callers. Operators may take part in chatline conversations.

**4.9.4** Calls to Chatline Services are subject to a maximum charge to the caller per minute at a rate which ICSTIS may vary from time to time but which, at the date of publication of this Code, is 60 pence per minute.

**4.9.5** Service providers must give callers call cost warnings automatically after the caller has spent £10.00 and £20.00 on the call. All calls must be terminated by forced release at £30.00 call spend.

**4.9.6** Service providers must ensure that Chatline Services are only accessible to callers when the service is called directly. Callers may not be connected to Chatline Services through other premium rate services; nor may callers to Chatline Services be connected through those services to other premium rate services.

#### **4.10 Claims For Compensation**

Guideline No. 11 gives further information about the procedures and background to the ICSTIS Compensation Scheme, including the role of the Adjudicator. The Scheme exists to provide compensation to individuals whose connections to the electronic communications network are used without their permission to access Live Services.

- 4.10.1** Under the ICSTIS Compensation Scheme, providers of certain Live Conversation Message Services are required to contribute to the Live Conversation Service Providers' Compensation Fund ("the LCSP Compensation Fund") and providers of certain Chatline Services are required to contribute to the Chatline Services Compensation Fund ('the CS Compensation Fund'). Such service providers must also enter into a contract with the Trustees of the relevant Compensation Fund in a form agreed by ICSTIS and lodge a Bond with ICSTIS as security against meeting compensation claims (a "Compensation Scheme Bond").
- 4.10.2** The Compensation Scheme Bond is a legally binding document by which a third party (such as a bank) guarantees the service provider's ability to pay sums awarded to a claimant by the Adjudicator. The body providing the bond must be approved by ICSTIS; the bond must be in a form, and must guarantee the amount, required by ICSTIS. This bond must remain in place while the relevant Live Services are being operated, and for a period of one year thereafter.
- 4.10.3** Claims for compensation may be made by any person whose connection to the electronic communications network has been the subject of unauthorised use. When claims are received by ICSTIS, the relevant service provider(s) will be given an opportunity to settle them to the satisfaction of the claimant.
- 4.10.4** Service providers must, within one month, investigate all claims put to them.
- 4.10.5** Service providers must promptly pay all claims which are valid under the terms of the Compensation Scheme. Guideline No. 11 sets out how service providers may determine the validity or otherwise of a claim.
- 4.10.6** If a claim is not met in full, the service provider must, if requested by the Secretariat, notify ICSTIS of the reasons and must provide details of any investigations carried out into a claim.
- 4.10.7** If the service provider does not settle the claim to the satisfaction of the claimant within such time as the Adjudicator considers reasonable (and which will be notified to the service provider), the Secretariat will investigate the claim and prepare a report on each case which will be promptly passed to the Adjudicator for adjudication. A copy of the report will be made available to the service provider for comment and representation. The Adjudicator will make an adjudication, after such investigation as he considers appropriate, on the basis of the material in front of him.
- 4.10.8** An oral hearing may be held at the instigation of the Adjudicator, the claimant or the service provider in question.
- 4.10.9** The Adjudicator will provide his adjudication promptly in writing.
- 4.10.10** If the Adjudicator directs that an award should be made, the service provider must make immediate payment of the award and of any administrative charges relating to the award.

**4.10.11** If the service provider in question does not make immediate payment of any such award, and ICSTIS consequently takes steps to enforce the service provider's Bond, the service provider concerned must forthwith cease to provide any Live Services.

**4.10.12** Service providers, ICSTIS and the Adjudicator must provide the Director General with such information as he may reasonably require regarding the operation of the Compensation Scheme.

## **5. ADDITIONAL PROVISIONS RELATING TO SPECIFIC CATEGORIES OF SERVICE**

Section 5 supplements, but does not replace, the general provisions in Section 3.

### **5.1 Children's Services**

**5.1.1** Children's services are those which, either wholly or in part, are aimed at or would reasonably be expected to be particularly attractive to persons under 16 years of age and references to children in this part of the Code are to persons under 16 years of age.

**5.1.2** Promotional material for children's services must clearly state:

- a** the maximum possible cost of the service, and
- b** that the service should only be used with the agreement of the person responsible for paying the telephone bill.

**5.1.3** Children's services, and any associated promotional material, must not:

- a** contain anything which is likely to result in harm to children or which exploits their credulity, lack of experience or sense of loyalty,
- b** include anything which a reasonable parent would not wish their child to hear or learn about in this way,
- c** involve an invasion of privacy of any child,
- d** make direct appeals to children to buy, unless the product or service is one which they could reasonably be expected to afford for themselves,
- e** encourage children to ring other premium rate services or the same service again.

**5.1.4** Children's services must:

- a** cost no more than £3.00,
- b** be terminated by forced release,
- c** if the service generally costs more than 50 pence, be prefaced by a short statement that the services should only be used with the permission of the person who pays the bill.

### **5.2 Competitions and Other Games with Prizes**

**5.2.1** Services in this sector ('competition services') fall into five basic categories:

- lotteries,
- competitions,
- other games with prizes,
- an entry mechanism into a draw,
- information about prizes and how to claim them.

Most of these are subject to legal restrictions. In the light of paragraph 3.1, before setting up such services, service providers are strongly advised to seek advice on legal and excise duty implications.

- 5.2.2** Promotional material for competition services which generally cost more than £1.00 must clearly display:
- a** the cost per minute and likely playing time, or the full cost of the call,
  - b** details of how the competition operates and an indication of any tie-breakers.
- 5.2.3** Interactive competition services which generally cost more than £5.00 must, as soon as is reasonably possible after the caller has spent £2.50, and after each £2.50 of call spend thereafter, require an active confirmation that the caller wishes to continue with the call. Failure to provide the correct responses must, after the provision of any necessary prize claim information, cause the service to be terminated immediately by forced release.
- 5.2.4** Competition services which are aimed at or would reasonably be expected to be particularly attractive to persons under 16 years of age must not:
- a** offer cash, or anything which can be readily exchanged for cash, as a prize,
  - b** feature long or complex rules.
- 5.2.5** Promotional material must clearly state any information which is likely to affect a decision to participate, in particular:
- a** any closing date,
  - b** any significant terms and conditions, including any restriction on the number of entries or prizes which may be won,
  - c** an adequate description of prizes, and other items offered to all or a substantial majority of participants, including the number of major prizes,
  - d** any significant age, geographical or other eligibility restrictions,
  - e** any significant costs which a reasonable consumer might not expect to pay in connection with collection, delivery or use of the prize or item.
- 5.2.6** The following additional information must also be made readily available on request, if not contained in the original promotional material:
- a** how and when prizewinners will be informed,
  - b** how prize-winner information may be obtained,
  - c** any criteria for judging entries,
  - d** any alternative prize that is available,
  - e** the details of any intended post-event publicity,
  - f** any supplementary rules which may apply.
- 5.2.7** Competition services must have a closing date, except where there are instant prizewinners. An insufficient number of entries or entries of inadequate quality are not acceptable reasons for changing the closing date of a competition or withholding prizes.
- 5.2.8** Competition services and promotional material must not:
- a** use words such as 'win' or 'prize' to describe items offered to all or a substantial majority of participants,
  - b** exaggerate the chance of winning a prize,

- c suggest that winning a prize is a certainty,
- d suggest that consumers must dial a premium rate number in order to participate if an alternative postal entry route is available.

**5.2.9** Service providers must ensure that:

- a prizes are awarded within 28 days of the closing date, unless a longer period is clearly stated in the promotional material,
- b all correct entries have the same chances of winning,
- c if there is any subjective assessment in the selection of the winning entries (for example, tie-breakers) in a competition open to the general public, then judging is by a person or persons independent of the service provider and any intermediaries involved, or by a judging panel including at least one independent member.

### **5.3 Employment, Employment Information and Business Opportunity Services**

Guideline No. 3 gives advice on how various provisions of the Code will be interpreted in respect of employment, employment information and business opportunity services. Service providers should be aware that the scope of such services is limited by the Employment Agencies Act 1973.

**5.3.1** Promotional material for such services must clearly state:

- a the maximum total cost of the call,
- b the type of work to be done and the geographical location,
- c the basis and level of remuneration, and the level of earnings that may realistically be expected, which must be capable of substantiation,
- d any additional expense including any investment that may be required over and above the cost of the telephone call.

**5.3.2** As soon as is reasonably possible after the caller has spent £2.50, and after each subsequent £2.50 of call spend, the service provider must inform the caller of the cost of the call.

### **5.4 Advice Services**

**5.4.1** All advice services must:

- a be conveyed in a responsible manner,
- b indicate clearly in the promotional material, or at the beginning of the service, the identity, the current status and any relevant professional qualifications and experience of the person(s) or organisation supplying the information or advice. If the advice is given by a person with no relevant qualifications, the service must explain the source of the information.
- c be prefaced with a statement that the caller should not act upon advice which needs individual interpretation without first consulting a suitably qualified practitioner.

**5.4.2** To avoid being classified as sexual entertainment services, the content of advice services must not be presented in a sexually titillating manner. There are further restrictions in respect of sexual entertainment services (see Section 5.7). Guideline No. 4 gives further advice on how various provisions of the Code will be interpreted in respect of such services. Guideline No. 16 gives further advice specifically in respect of services offering legal advice.

## **5.5 Online Services (defined at paragraph 1.4.5)**

Guideline No. 5 gives advice on how various provisions of the Code will be interpreted in respect of online services.

**5.5.1** Unless permission to do otherwise is specifically granted by ICSTIS, online services must:

- a** not cost more than £20.00, or such other amount as may be published by ICSTIS from time to time in relation to all or any types of online service,
- b** terminate by forced release,
- c** not allow any further access via the service to the worldwide web until the caller has disconnected from the premium rate service.

**5.5.2** In addition to complying with the provisions of paragraph 5.5.1, providers of online services which can be accessed, and/or the promotions for which can be accessed, by means of electronic devices which provide on-screen display must ensure that:

- a** prior to the connection to the premium rate service, the screen displays prominent pricing information together with the premium rate number through which the call will be connected, and
- b** an on-screen clock is displayed throughout the duration of the call showing the cumulative cost.

**5.5.3** Online sexual entertainment services must comply with the provisions of Section 5.7. They must also, prior to connection of the call to the service:

- a** provide the caller with the facility to set a PIN (which must not be published) or similar access restriction,
- b** require confirmation that the caller is the bill-payer and is 18 years of age or over,
- c** inform the caller that most personal computers and similar access devices contain programmes which enable access to sexual or similar subject matter to be restricted,
- d** display call cost information in a separate box shown on screen.

## **5.6 Pay for Product Services**

Guideline No. 6 gives advice on how various provisions of the Code will be interpreted in respect of pay for product services.

**5.6.1** Pay for product services are those, costing more than £1.00, in which the benefit to the customer is either the delivery during or consequent to the call of a product or service paid for wholly or in part by the customer through a network operator, or is the provision during the call of electronic data which the customer is able to receive and store. Such services are required to conform to the requirements of the Distance Selling Regulations 2000.

**5.6.2** Unless permission to do otherwise is specifically granted by ICSTIS, pay for product services must:

- a** not cost more than £20.00, or such other amount as may be published by ICSTIS from time to time in relation to any or all types of pay for product service,
- b** include an introductory message, giving the likely total cost of the call and a statement to say that the caller will need to complete the entire call in order to obtain the product or service,
- c** take one call only to enable delivery of the item in question,

**d** terminate by forced release.

**5.6.3** The promotional material for pay for product services must clearly state :

- a** and give prominence to the likely total cost of the product or service,
- b** that the caller will need to complete the entire call in order to obtain the product or service, including the number of minutes the caller will need to stay online in order to complete the purchase,
- c** any significant information which is likely to affect a decision to participate, including the main characteristics of the product or service,
- d** any additional costs relating to delivery charges (where applicable),
- e** any details about the arrangements for delivery and/or performance.

**5.6.4** If a pay for product service can cost more than £5.00 and involves the delivery of tangible goods to a geographical address:

- a** the service provider must keep records of the names and dispatch addresses of callers for a minimum of 6 months, and,
- b** the service must require an active confirmation from the caller that they accept that their personal details and delivery address will be retained and made available in the case of a claim for unauthorised use.

**5.6.5** Service providers must:

- a** have in place, and implement in appropriate circumstances, a reasonable complaints handling procedure,
- b** pay reasonable and valid claims for compensation.

## **5.7 Sexual Entertainment Services**

**5.7.1** Sexual entertainment services are services of a clearly sexual nature or any services for which the associated promotional material is of a clearly sexual nature, or indicates directly, or implies, that the service is of a sexual nature. See also paragraph 5.5.3.

**5.7.2** Services which are pay for product services, where the product is of a clearly sexual nature, are sexual entertainment services. Such services must operate on the designated code for sexual entertainment services (which, at the date of publication of this Code, is 0909).

**5.7.3** Sexual entertainment services, and promotions for them, must not contain references which suggest or imply the involvement of persons under 18 years of age.

**5.7.4** Promotions for sexual entertainment services must not appear in any generally available publication (other than ‘top shelf’ publications<sup>4</sup>) or in any publication or communication which is unsolicited. In the case of promotions in other media, equivalent measures reasonable and appropriate to the media employed must be applied.

**5.7.5** Promotions for sexual entertainment services, and the services themselves, must be compatible with access control and rating arrangements available for and appropriate to the medium through which they are available.

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<sup>4</sup> For the purposes of this provision, ‘top shelf publications’ are publications which, by reason of their erotic, indecent or sexually entertaining or explicit content, are normally placed on the top shelf by newsagents.

**5.7.6** All non-live sexual entertainment services must:

- a** cost no more than £20.00,
- b** terminate by forced release.

## **5.8 Fundraising and Charitable Promotions**

Guideline No. 7 gives advice on how various provisions of the Code will be interpreted in respect of fundraising and charitable promotions. Service providers should be aware that the scope of such services is limited by the Charities Act 1992 and the regulations issued under it.

**5.8.1** Promotional material for charitable and fundraising promotions must make clear:

- a** either the total sum per call, or the amount per minute which will be paid to the beneficiary,
- b** the identity of the beneficiary,
- c** any restrictions or conditions attached to the contribution to be made to the beneficiary.

## **5.9 Consumer Credit Services**

Guideline No. 8 gives advice on how various provisions of the Code will be interpreted in respect of consumer credit services.

## **5.10 Betting Tipster Services**

Guideline No. 9 gives advice on how various provisions of the Code will be interpreted in respect of betting tipster services.

## **5.11 Virtual Chat and Contact and Dating Services**

Guideline No. 10 gives further details of how ICSTIS will interpret these provisions and other various provisions of the Code in relation to virtual chat services.

**5.11.1 a** Definition of Virtual Chat Services

Virtual chat services enable two or more callers to exchange separate recorded messages while connected to the service. These services do not involve live conversation. Virtual chat services may also enable contact details to be exchanged between callers in the course of exchanging messages.

**b** Definition of Contact and Dating Services

Contact and dating services enable people previously unacquainted with each other to make initial contact and arrange to meet in person. They do not enable callers to exchange separate recorded messages while connected to the service. In the context of contact and dating services, the 'advertiser' is the person featured in the initial message.

**5.11.2 a** Service providers must use reasonable endeavours to ensure that the caller is an authorised user and that nobody under the age of 18 uses virtual chat or contact and dating services.

**b** Service providers must use reasonable endeavours to discourage sexually explicit virtual chat on services which are advertised in generally available

publications.

**5.11.3** All virtual chat and contact and dating services must, as soon as is reasonably possible after the caller has spent £10.00, and after each £10.00 of call spend thereafter:

- a** inform the caller of the price per minute of the call,
- b** require callers to provide a positive response to confirm that they wish to continue the call. If no such confirmation is given, the service must be terminated.

**5.11.4** Service providers who operate virtual chat or contact and dating services which enable contact details to be exchanged, either in the course of exchanging messages or using voice-mail boxes, must:

- a** warn callers and advertisers of the risks involved when telephone numbers are given out to other individuals and give clear advice on sensible precautions to take when meeting people through such services,
- b** ensure that publicly available elements of the service do not contain telephone numbers, addresses or any other means of direct contact,
- c** when requested by the advertiser, ensure that their details are removed from the service at the earliest opportunity and in all cases within 24 hours,
- d** make clear in the promotional material any restrictions on the location, sex and age range of callers to the service,
- e** bar access to a voice-mail box where the advertiser has not collected responses for more than four weeks. If the service provider is unable to tell when responses are collected, no advertisement may be published for more than four weeks.

**5.11.5** Providers of virtual chat services must:

- a** have in place, and implement in appropriate circumstances, a reasonable complaints handling procedure,
- b** pay reasonable and valid claims for compensation.

**5.11.6** Before commencing employment, service provider employees who are involved in operating virtual chat services (whether or not for the purposes of monitoring) must be given adequate training in the relevant requirements of this Code. No such employee shall be under the age of 18.

## **6. PROCEDURES AND SANCTIONS**

### **6.1 Delegation of Powers**

The Committee may delegate its powers to sub-committees which will be formed of no fewer than two Committee members.

### **6.2 Complaint Investigation**

**6.2.1** ICSTIS will consider and, where appropriate, investigate all complaints which it receives, provided that the complaint is made within a reasonable period from the time when it arose.

**6.2.2** ICSTIS, through its Secretariat, monitors premium rate services. The Secretariat can itself initiate a complaint where there appears to be a breach of the Code.

- 6.2.3** During complaint investigations, or as part of the adjudication process, ICSTIS may require the service provider to disclose to the Secretariat, in confidence and within a reasonable time period, any additional relevant information or documents. This may include, for example, information about call volumes, patterns and revenues, details of the numbers allocated to an information provider, or details of services operating on particular premium rate numbers.

### **6.3 Informal Procedure**

If an apparent breach of the Code is of a minor nature, causing little consumer harm, the ‘informal procedure’ may be used. Factors including the seriousness of the breach and the service provider’s case history may be taken into account when deciding whether the informal procedure should be applied. In such cases:

- a** The service provider will be contacted and informed of the apparent breach.
- b** If the service provider agrees that a breach of the Code has taken place, the service provider will be required to remedy the breach. No other sanction will be imposed nor any administrative charge levied.
- c** The service provider will be sent a letter confirming what has been agreed.
- d** If the service provider disputes the breach, the standard procedure may be invoked.
- e** A record will be maintained in respect of breaches of the Code dealt with through the informal procedure.

### **6.4 Standard Procedure**

When the Secretariat receives or initiates a complaint, the ‘standard procedure’ will usually be used:

- a** The service provider will be given all the necessary information about the complaint, including details of the service or promotional material which gives rise to the apparent breach of the Code, and will be referred to the relevant provisions of the Code.
- b** The service provider will be given a reasonable time in which to respond and to provide any information requested. This response will normally be required within five full working days. In exceptional circumstances, a shorter time limit may be set – but this will not be less than 24 hours.
- c** If the service provider fails to respond within the required period, ICSTIS will proceed on the assumption that the service provider does not wish to respond.
- d** The Secretariat will prepare a report, together with relevant supporting evidence, which will be placed before a sub-committee of ICSTIS appointed to adjudicate upon the matter (an “adjudication panel”).
- e** The adjudication panel may invite the service provider to make informal representations to it in person in order to clarify any matter, or the service provider may request the opportunity to make such informal representations to the adjudication panel.

### **6.5 Emergency Procedure**

Where it appears to the Secretariat that a breach of the Code has taken place which is serious and requires urgent remedy, the ‘emergency procedure’ will be used:

- a** The Secretariat will undertake an immediate investigation of the complaint.
- b** On completion, the Secretariat will notify its findings to three members of the Committee.
- c** If all three members agree that there appears to be a serious breach of the Code requiring urgent remedy, the Secretariat will:

- (i) use reasonable endeavours to notify the service provider (by telephone, fax or e-mail) that the service appears to be in breach of the Code, that the emergency procedure has been invoked and that the service must be removed immediately,
  - (ii) advise the network operator of the breach and recommend that it withholds from the service provider any payments outstanding under the contract between it and the service provider,
  - (iii) if the service provider cannot be contacted, recommend also to the network operator to bar access to the relevant service(s) or number(s) forthwith.
- d** Once the service has been removed, the service provider will be provided with all the necessary information relating to the complaint and will be referred to the relevant provisions of the Code. The service provider will then be required to respond in writing within three working days.
- e** All relevant information will, in the absence of special circumstances, be laid before an adjudication panel within 10 working days from the date of the notification in **b** above.
- f** The adjudication panel may invite the service provider to make informal representations to it in person in order to clarify any matter or the service provider may request the opportunity to make such informal representations to the adjudication panel.
- G** The time limits set out in this Section may be extended at ICSTIS' discretion if it considers that their strict application might cause injustice.

## **6.6 Adjudication**

On the basis of the evidence presented, the adjudication panel will decide whether there has been a breach of the Code. Each case will be considered and decided on its own merits. Service providers will be notified of the adjudication in writing. Where the adjudication has been made on the papers alone, or following informal representations in person, the notification will include reference to the service provider's right to an oral hearing.

## **6.7 Sanctions**

**6.7.1** Once the adjudication panel has determined that there has been a breach of the Code, the Secretariat will put before it the service provider's details. These will include a list of any relevant breaches previously upheld and sanctions imposed, and the numbers of lines and numbers allocated to the service provider.

**6.7.2** ICSTIS has a range of sanctions which it may apply according to the degree of seriousness with which it regards the breach. Having taken all relevant circumstances into account, ICSTIS may:

- a** require the service provider to remedy the breach, and/or
- b** issue a formal reprimand, and/or
- c** require the service provider to submit certain or all categories of services and/or promotional material to ICSTIS for prior permission for a defined period, and/or
- d** impose an appropriate fine on the service provider to be collected by ICSTIS. ICSTIS may request any relevant network operator to withhold and pass over to ICSTIS the sum(s) due in terms of the fine from the payments outstanding under the contract between the network operator and the service provider, and/or
- e** recommend to the relevant network operator(s) that access to some or all of the numbers allocated to the service provider should be barred for a defined period, and/or
- f** recommend to any relevant network operator(s) that the service

provider and/or any associated individual found to have been involved knowingly in a serious breach of the Code by the service provider should be prohibited from providing, or contracting for the provision of, any premium rate services, or a particular type or category of service, for a defined period, and/or require, in appropriate circumstances, that service providers pay reasonable and valid claims for compensation.

**6.7.3** The failure of any service provider to comply with any sanction imposed upon it will itself amount to a breach of the Code and may result in further sanctions being imposed.

**6.7.4** If an adjudication panel considers that it may wish to make a recommendation under paragraph 6.7.2f in respect of any associated individual, it shall first make all reasonable attempts to so inform the individual concerned and the service provider in writing, and shall inform each of them that either of them may request an opportunity to make informal representations to the adjudication panel in person and of the right of either of them (or of ICSTIS itself) to require an oral hearing.

## **6.8 Oral Hearings**

**6.8.1** Any service provider, applicant for permission or associated individual (“the Applicant”) may, by notice in writing to the Secretariat, require that an oral hearing be held:

- a** in the event of a refusal by ICSTIS to grant prior permission to provide a service, or only to grant it upon condition;
- b** following receipt of any communication from the Secretariat alleging a breach or breaches of the Code of Practice;
- c** in respect of any adjudication made by ICSTIS without an oral hearing.

**6.8.2** The Applicant must, within such written notice, provide details of the allegation or decision in respect of which the oral hearing is required. Where no adjudication has been made, the Applicant must clearly identify the matter in respect of which the oral hearing is to be held.

**6.8.3** Such written notice may be provided to the Secretariat at any time up to 10 working days after receipt by the Applicant of written notification of a decision by ICSTIS or at any time prior to the adjudication being made where the oral hearing is required following an allegation of a breach of the Code of Practice.

**6.8.4** ICSTIS may require at any stage of its processes that an oral hearing be held.

**6.8.5** Oral hearings shall take place before no fewer than two members of the ICSTIS Committee (“the hearing panel”).

**6.8.6** The Applicant is entitled to appear at the oral hearing in person or to be represented. The Secretariat will attend the oral hearing in order to put the case against the applicant and may instruct a representative to act on its behalf.

**6.8.7** The enforcement of sanctions imposed pursuant to an adjudication is not automatically suspended by written notice requiring an oral hearing. The Applicant may apply in writing to the Chairman of the hearing panel (“the Chairman”), setting out the grounds on which the sanction should be suspended. The Chairman will grant the application only if he is satisfied that not to do so would give rise to undue hardship, and that to do so would not give rise to a significant risk of public harm.

## **6.8.8 Procedures for Hearing**

### **6.8.8.1 Pre-hearing Process**

- a** The Chairman may, at his own discretion, or upon the application of either party (the Applicant or the Secretariat) to the oral hearing, convene a conference of the parties at which he may give such directions as he considers necessary for the fair and speedy hearing of the oral hearing. Such directions may include, for example, directions for:
- the admission of facts before the hearing,
  - the disclosure of documents,
  - the provision of expert reports,
  - the exchange of written statements,
  - the preparation of agreed bundles of documents,
  - the submission and exchange of outline arguments.
- Directions may be given as to the date by which such actions shall be taken.
- b** Not less than 10 working days before the date of the oral hearing, the Applicant shall be notified in writing (at the address of the Applicant last made known to ICSTIS) of the day, time and place of the oral hearing.
- c** Within 5 working days of receipt of the notice specifying the date of the hearing, the Applicant shall inform the Secretariat in writing of whether he intends to appear in person at the hearing and the name of any person who will be representing him at the hearing.
- d** Neither party shall, without the consent of the other party or permission of the Chairman, call any witnesses or present any written statements or other documents unless written notice has been given to the other side at least 5 working days before the hearing, together with a summary of what such witnesses are expected to say and a copy of the statements or other documents.

**6.8.8.2** If the Applicant is neither present nor represented at the hearing, and the hearing panel has no cause to believe there is a good reason for the Applicant's absence, the matter shall be determined by the hearing panel as it sees fit in the absence of the Applicant.

### **6.8.8.3 The Hearing**

In respect of alleged breaches of the Code of Practice:

- a** The Secretariat shall outline the grounds of the case and call such witnesses and refer to such documents as it is entitled to do.
- b** The Applicant shall then be entitled to respond to the case put by the Secretariat and to call such witnesses or present any written statements or other documents as he is entitled to do.
- c** The Secretariat shall then be entitled to address the hearing panel.
- d** The Applicant shall be entitled to reply.
- e** A witness in person may be cross-examined. A witness who has been cross-examined may be re-examined.
- f** The Chairman of the hearing panel may question any witness at any time.

In respect of a case concerning an application for permission the Chairman shall adopt such procedures as he shall deem to be most convenient.

The Chairman of the hearing panel shall have the power to vary any of these procedures at any time and to adjourn the hearing if satisfied that it is in the interests of justice to do so.

#### **6.8.8.4 Confidential Information**

The hearing panel shall be entitled to consider and act upon confidential information without directly or indirectly disclosing to the Applicant (or the Secretariat as the case may be) the source of that information provided that the Applicant (or the Secretariat) is given a reasonable opportunity to rebut its substance.

#### **6.8.8.5 Recording**

A sound recording shall be made of the oral hearing. Recordings will be made available to the Secretariat and the Applicant.

#### **6.8.9 Public Hearing**

An oral hearing shall be conducted in private, unless the Applicant or the Secretariat otherwise requires. If an oral hearing is in public, either party may request that any part of the hearing be conducted in private and any such application shall itself be heard in private.

#### **6.8.10 Powers of the Hearing Panel**

The hearing panel shall decide the matter entirely afresh. For the avoidance of doubt, the hearing panel may:

- a** impose a greater or lesser sanction than that previously imposed by an adjudication panel,
- b** reverse a decision to issue or refuse a permission,
- c** set such conditions on a permission as it sees fit,
- d** agree to impose such sanctions, permissions and/or conditions, and administrative charges as may be jointly proposed by the Secretariat and the Applicant ('adjudication by consent').

#### **6.8.11 Decision and Publication**

The hearing panel shall, as soon as is practicable after the hearing, provide a reasoned written decision. This written decision shall be published by ICSTIS.

#### **6.9 Reviews**

**6.9.1** On reasonable grounds, ICSTIS may, at its discretion, review determinations made in respect of applications for permission and adjudications and/or sanctions in the light of new material.

**6.9.2** A service provider or applicant for prior permission may request a review by setting out in writing the case for such a review.

#### **6.9.3 Review Procedure**

Having received a written request setting out the reason why a determination made in respect of an application for prior permission or an adjudication and/or sanction should be reviewed, ICSTIS will decide whether the review is merited and may proceed with the review forthwith or set a later date for such a review.

**6.9.4** Following such written request, one or more nominated Committee members may suspend any sanction imposed, pending a review by the Committee.

## **6.10 Administrative Charge**

All service providers found to be in breach of the Code may be invoiced for the administrative and legal costs of the work undertaken by ICSTIS. Non-payment within the period laid down by ICSTIS will also be considered to be a breach of the Code and may result in further sanctions being imposed. ICSTIS may request that the relevant network operator withholds and passes over to ICSTIS the sum(s) due from the payments outstanding under the contract between the network operator and the service provider.

## **6.11 Appeals**

**6.11.1** Applicants may, after an oral hearing at which the Applicant or his representative has appeared, appeal against ICSTIS' decisions and adjudications (other than any adjudication by consent) to the Independent Appeals Body ("IAB") on the following grounds:

- the disputed decision was based on error of fact,
- the disputed decision was wrong in law, or
- ICSTIS exercised its discretion incorrectly in reaching its decision.

**6.11.2** In order to institute an appeal, the Applicant must provide a written notice of appeal setting out the grounds upon which the appeal is made and the facts and matters upon which it is based, to be received by the clerk to the IAB ("the Clerk") within 20 working days of the issue of the ICSTIS adjudication or determination which is the subject of the appeal.

**6.11.3** The notice of appeal must be accompanied by:

- the written adjudication,
- the case bundle used at the ICSTIS oral hearing,
- a security deposit of £5,000 or an application (to be determined by the Chairman of the IAB) to waive or reduce such a security deposit setting out the grounds for such waiver or reduction,
- a description of any new evidence upon which the Applicant intends to rely and which, for good reason, was previously unavailable,
- if the notice of appeal and/or any necessary accompanying documents are being provided to the Clerk more than 20 working days after the issue of the ICSTIS adjudication, then the Applicant must also provide an application (to be determined by the Chairman of the IAB) for the appeal to proceed, setting out the reasons for the delay and the grounds for such application.

**6.11.4** If an Applicant or his representative failed to appear in person at an oral hearing for good reason, but the oral hearing proceeded in his absence and ICSTIS has refused to permit a further oral hearing, the Applicant may apply to the Chairman of the IAB to request him to require that ICSTIS holds a further oral hearing.

**THE PROCEDURES  
OF THE  
INDEPENDENT APPEALS BODY**

# THE PROCEDURES OF THE INDEPENDENT APPEALS BODY

## 1. APPEALS AGAINST ICSTIS ADJUDICATIONS

The ICSTIS Code of Practice (Ninth Edition) provides a right of appeal for service providers, applicants for permission or associated individuals (as defined in the Code) who are aggrieved by an ICSTIS decision or determination. The relevant provisions in the ICSTIS Code of Practice (Ninth Edition) are as follows:

### **“6.11 Appeals**

**6.11.1** Applicants may, after an oral hearing at which the Applicant or his representative appeared, appeal against ICSTIS’ decisions and adjudications (other than any adjudication by consent) to the Independent Appeals Body (“IAB”) on the following grounds:

- the disputed decision was based on error of fact,
- the disputed decision was wrong in law, or
- ICSTIS exercised its discretion incorrectly in reaching its decision.

**6.11.2** In order to institute an appeal, the Applicant must provide a written notice of appeal setting out the grounds upon which the appeal is made and the facts and matters upon which it is based, to be received by the clerk to the IAB (“the Clerk”) within 20 working days of the issue of the ICSTIS adjudication or determination which is the subject of the appeal.

**6.11.3** The notice of appeal must be accompanied by:

- the written adjudication,
- the case bundle used at the ICSTIS oral hearing,
- a security deposit of £5,000 or an application (to be determined by the Chairman of the IAB) to waive or reduce such a security deposit setting out the grounds for such waiver or reduction,
- a description of any new evidence upon which the Applicant intends to rely and which, for good reason, was previously unavailable,
- if the notice of appeal and/or any necessary accompanying documents are being provided to the Clerk more than 20 working days after the issue of the ICSTIS adjudication, then the Applicant must also provide an application (to be determined by the Chairman of the IAB) for the appeal to proceed, setting out the reasons for the delay and the grounds for such application.

**6.11.4** If an Applicant or his representative failed to appear in person at an oral hearing for good reason, but the oral hearing proceeded in his absence and ICSTIS has refused to permit a further oral hearing, the Applicant may apply to the Chairman of the IAB to request him to require that ICSTIS holds a further oral hearing.”

The procedures which follow are those laid down by the Independent Appeals Body (“IAB”) and are under its control.

The IAB is a body of persons independent of ICSTIS appointed to provide tribunals to hear appeals.

## **2. THE PROCEDURES OF THE INDEPENDENT APPEALS BODY**

The (“IAB”) is able to hear any appeal lodged with the clerk to the IAB (“the Clerk”) in accordance with the provisions of Section 6.11 of the ICSTIS Code of Practice (Ninth Edition).

The Clerk shall forthwith, upon receipt of the notice of appeal, provide a copy of it and of the accompanying documents to the Chairman of the Independent Appeals Body (“the Chairman”) and to ICSTIS.

In the event that an Applicant was, for good reason, unable to attend an oral hearing but the oral hearing proceeded in his absence, then the Applicant may apply to the Chairman of the IAB. The Chairman shall obtain the views of the Chairman of the hearing panel in writing, or in a hearing at which the Applicant may also attend. The Chairman may require that ICSTIS provides a further oral hearing. The Chairman shall have the discretion to award the costs of the application.

## **3. THE APPEAL TRIBUNAL**

Upon receipt of a notice of appeal, the Chairman shall appoint an Appeal Tribunal, consisting of three members, to deal with the appeal. The Chairman or Deputy Chairman (if any) shall be the Chairman of the Tribunal (“The Tribunal Chairman”).

If the Appellant has applied for a waiver or reduction in respect of the provision of the required security deposit and/or for the appeal to proceed despite having been made late, then as soon as reasonably practicable, the Tribunal Chairman shall convene a hearing at which any such application shall be considered and at which ICSTIS may be heard.

In respect of an application for a waiver of the requirement to provide the security deposit, the Tribunal Chairman shall waive the deposit (or reduce the required level of security) if he determines that there appears to be plain merit in the grounds of appeal and that exceptional hardship will result from the requirement that the security be provided.

In respect of an application for an appeal to proceed despite having been made late, the Tribunal Chairman shall grant such application if he is satisfied that in all the circumstances it is fair to do so and he may impose such conditions as he sees fit as to the further conduct of the appeal or as to lodgement of security for costs.

## **4. ENFORCEMENT OF SANCTIONS**

The enforcement of sanctions imposed by ICSTIS is not automatically suspended by the provision of a notice of appeal. An Appellant may apply to the Tribunal Chairman, by written application to the Clerk, setting out the grounds upon which the sanction should be suspended. The Clerk will forthwith provide a copy to the Tribunal Chairman. The Tribunal Chairman will grant the application only if he is satisfied that not to do so would give rise to undue hardship, and that to do so would not give rise to a significant risk of public harm. He shall seek the views of ICSTIS on those matters prior to making a decision and may convene a hearing to deal with such applications.

## **5. REPRESENTATION**

The Appellant shall be entitled to appear before the Appeal Tribunal in person and be represented.

ICSTIS shall attend as respondent to any appeal before the Appeal Tribunal and may instruct a representative to act on its behalf.

## **6. PRE-HEARING PROCESS**

The Tribunal Chairman may, at his own discretion, or upon the application of either party to the appeal, convene a conference of the parties at which he may give such directions as he considers necessary for the fair and speedy hearing of the appeal. Such directions may include, for example, include directions for:

- the admission of facts before the hearing,
- the disclosure of documents,
- the provision of expert reports,
- the exchange of written statements,
- the preparation of agreed bundles of documents,
- the submission and exchange of outline arguments.

Directions may be given as to the date by which such actions shall be taken.

Not less than 10 working days before the date of the hearing of the appeal, the Clerk shall send written notice of the day, time and place of the hearing of the appeal to the last known address of the Appellant and to ICSTIS.

Within 5 working days of receipt of the notice specifying the date of the hearing, both the Appellant and ICSTIS shall each inform the Clerk in writing of whether they intend to appear at the hearing and the name of any person who will be representing them at the hearing.

Neither party shall, without the consent of the other party or permission of the Tribunal Chairman, call any witnesses or present any written statements or other documents unless written notice has been given to the other side at least 5 working days before the hearing, together with a summary of what such witnesses are expected to say and a copy of the statements or other documents.

## **7. THE HEARING**

The Appellant shall outline the grounds of his appeal and call such witnesses and refer to such documents as he is entitled to do.

ICSTIS shall then be entitled to respond to the case put by the Appellant and to call such witnesses or present any written statements or other documents.

The Appellant shall then be entitled to address the Appeal Tribunal.

A witness in person may be cross-examined by the other party in the appeal. A witness who has been cross-examined may be re-examined.

The Tribunal Chairman may question any witness at any time.

The Tribunal Chairman shall have the power to vary these procedures and at any time to adjourn the hearing if satisfied that it is in the interests of justice to do so.

If the Appellant is neither present nor represented at the hearing and the Appeal Tribunal has no cause to believe there is a good reason for the Appellant's absence, the appeal may be dismissed.

## **8. CONFIDENTIAL INFORMATION**

The Appeal Tribunal shall be entitled to consider and act upon confidential information without directly or indirectly disclosing to the Appellant (or ICSTIS as the case may be) the source of that

information provided that the Appellant (or ICSTIS) is given a reasonable opportunity to rebut its substance.

## **9. RECORDING**

A sound recording shall be made of the proceedings before the Appeal Tribunal. Recordings will be made available to ICSTIS and the Appellant.

## **10. PUBLIC HEARING**

An appeal hearing shall be conducted in private, unless the Appellant or ICSTIS otherwise requires. If an appeal hearing is in public, either party may request that any part of the hearing be conducted in private and any such application shall itself be heard in private.

## **11. COSTS OF HEARING**

The Appeal Tribunal shall make such award for costs of the parties as it shall see fit, subject to a maximum of £10,000 (inclusive of disbursements and VAT). In addition, the Appeal Tribunal shall award the costs of the provision of the Tribunal as it sees fit, subject to a maximum of £5,000 (inclusive of VAT).

## **12. POWERS OF THE APPEAL TRIBUNAL**

The Appeal Tribunal shall consider all documentation and evidence produced at the ICSTIS oral hearing and may, at its discretion, rehear any witness called before the ICSTIS oral hearing and hear new evidence which for good reason was not available at the ICSTIS oral hearing.

The Appeal Tribunal may:

- confirm, vary or rescind an adjudication or determination or any part of it made by ICSTIS and substitute such other finding as it considers appropriate,
- confirm, vary or rescind any sanction imposed by ICSTIS pursuant to its adjudication made following the oral hearing. For the avoidance of doubt, the Appeal Tribunal may impose a greater sanction than that imposed by ICSTIS provided that such a sanction could have been imposed by ICSTIS.
- confirm, vary or rescind the imposition of an administrative charge made by ICSTIS.

## **13. DECISION AND PUBLICATION**

The Appeal Tribunal shall, as soon as is practicable after the hearing, provide a reasoned written decision. This written decision shall be published by ICSTIS.

## **14. FURTHER APPEAL**

There is no further appeal through ICSTIS' procedures or those of the IAB.