Statement on the provision of refunds to consumers and the development of industry best practice for customer service

Issued by ICSTIS on 3rd October 2006

Contents

		Page
1.	Executive summary	3
2.	Dealing with refunds	6
3.	ICSTIS' use of sanctions powers to order a refund	15
4.	Live Entertainment Services compensation arrangements	17
5.	Developing industry best practice for customer service	18
6.	Next steps	20
7.	List of respondents to the consultation	21

Section One
Executive Summary

Many businesses involved in the value chain for delivering premium rate services (PRS) recognise the value in providing good customer care, including making refunds where a service is not adequate and does not fulfil its promise. These companies recognise the value in providing this care to the highest standard and making good where they occasionally fail. This is not from fear of regulation from ICSTIS but because they recognise this as a way to build confidence in a service that consumers will use again. Unfortunately not all businesses in PRS act in this way. Regulatory tools are thus required to ensure that customer service and refund issues are addressed when not provided voluntarily. The stimulus to our consultation on refunds and developing industry best practice for customer care was Ofcom's Review of PRS, published in December 2004. Specifically Recommendations 7-9 stated:

- *Recommendation 7: Redress should continue as a possible ICSTIS sanction against SPs for breach of the CoP. ICSTIS should codify and publish the circumstances in which it will use this sanction, essentially where there has been a serious breach of the CoP leading to significant harm to consumers and/or where an intent to mislead or defraud has been demonstrated.*

- *Recommendation 8: Where redress is ordered as a sanction against the SP and when directed to do so by ICSTIS, TCPs should make funds withheld by them available for consumers to claim redress for three months after an adjudication under the CoP.*

- *Recommendation 9: SPs should be required in the CoP to have adequate customer service and redress mechanisms, including a UK customer service telephone number. ICSTIS should monitor compliance with these obligations, including a programme of 'mystery shopping', and work with the industry to develop best practice guidance on customer service.*

In respect of Recommendation 7, we have now agreed the circumstances in which we will use our power of ordering refunds as a sanction following breaches of the Code of Practice. These follow from proposals on which we consulted and which earned nearly unanimous support. The possible combinations of circumstances which are likely to order the trigger of an order for refunds are where:

- there was an identifiable (and possibly excessive) financial detriment to individual consumers arising directly from a Code breach or breaches, and a consequential gain to the service provider;
- there was a wilful intent by the service provider to deceive the consumer or engage in other forms of unconscionable conduct;
- the product or service was not being supplied or was of a manifestly unsatisfactory quality;
- the marketing or promotional material was in some way fundamentally misleading and, as consequence, misled consumers into purchasing a service that they would not otherwise have wanted;
- the product was inappropriately priced to disguise the true cost to consumers so as to impact significantly on their decision to purchase. One example here is to describe the PRS as "free" when it clearly is not.

Further details about this are set out in Section Three of this statement. Furthermore, we recognise the need to respect the differences that exist in the value chain between fixed and mobile PRS. We are willing to work with the mobile operators to achieve, where possible,

refunds direct to consumers' telephone accounts, with recovery by the mobile operator from the parties below them in the value chain. This will be in circumstances where the mobile operator believes this will be in their customers' best interest and can easily be done.

Having determined when a refund may be ordered we also considered related issues about what is meant by a refund and the issues about evidence that can reasonably be sought to validate a claim.

Our conclusions are set out below. They are covered in Section One of this statement in some detail:

- A refund is the full cost of the service as borne by the consumer made payable to the complainant unless otherwise specified. This applies even where the consumer paid a higher price than may be charged by some networks for the same service;

- A refund should normally be in the form of a cheque or postal order. Alternative forms of refund, such as vouchers or books of stamps or a complementary repeat use of the service, may be offered to consumers, who should then a have a right to refuse that form of refund payment. We also take the view that requests for the necessary refund from the relevant complainants should not unreasonably be resisted. We expect service providers to act in good faith when handling such requests and in particular in requiring evidence that the payment has been made or is requested by the consumer's telephone company. Where there is doubt or disagreement, the burden of proof in such cases should be with the service provider to demonstrate that the charges were not made or that the consumer's case is not covered by the relevant ruling from ICSTIS;

- We accept that service providers have a right to satisfy themselves, in a remote transaction environment, as to the validity of the refund request and to protect themselves against fraud or abuse. To that end we think it is reasonable, if seen as necessary, to request a copy of the relevant phone bill from the consumer with the itemised charge appearing as a mean of validation. As a consequence any refund can be directed to bill-payers at their address and be made payable to them;

- In respect of mobile services the issue can arise, given the preponderance of pre-pay phones, that there is no bill as such. Given the other means of authentication identified by the Mobile Broadband Group (MBG), along with the mobile industry's desire to see refunds made at the network level where possible, issues about the absence of mobile telephone bills should diminish in respect of refund sanctions.

Turning to Recommendation 8 of Ofcom's Review, this is currently being taken forward as part of the consultation on the 11th Edition of the ICSTIS Code of Practice – paragraphs 8.6.6 (c), (d) and (e) of that consultation refer. We should make clear, however, that the scope of this statement is aimed at service providers and their responsibilities. This statement makes no reference to some of the new provisions in the draft 11th Code of Practice about the new responsibilities that network operators will have in this area.

With respect to Recommendation 9, we conclude from the consultation that there is sufficient industry appetite to establish a Working Group, as a sub-group of the Industry Liaison Panel (ILP) to take forward this issue. We expect to be involved in that Working Group but we do not expect to chair or lead it. We envisage that it will contain members who are practitioners with experience of handling customer care issues. They should be able to develop meaningful best practice requirements that the service provider community will understand as being best in class while still practical and achievable. Details are set out in Section Five of this statement.

Section Four of this statement deals with issues around the current compensation schemes for Live Entertainment Services. There was no appetite to change these arrangements and we agree.

Section Two
Dealing with refunds

Section Two of the consultation document identified several areas where comments were sought. These related to:

- What is meant by a refund to consumers;
- Issues on whether there is any minimal amount below which a refund can reasonably be denied;
- Matters relating to the form that refunds should take in terms of money or equivalent in non-monetary terms; and
- The evidence that it is reasonable for a service provider to seek in order to ensure that the consumer's claim is valid.

The responses to each of the above are outlined using the questions posed in the consultation as a basis.

What is meant by a refund to consumers?

Q1. Do you agree that a refund should equate to the full cost of the service that the consumer actually paid for the service? If not, why not and what alternative would you suggest?

There was near unanimous agreement by respondents that any refund should equate to the full cost that the consumer actually paid for the service. One respondent (Intext Media) felt that it would be "wildly disproportionate" to make a service provider refund the full cost of the call, especially as there are communication providers operating carrier pre-select services who charge consumers considerably more than the BT rates for 09 calls. Intext Media's point is that in such circumstances a requirement to make general refunds in such situations could lead to a service provider paying out more money than was generated in revenue, and thus could render a service provider technically insolvent.

LACORS, by contrast, argued in their response that a refund should cover both the full cost paid by the consumer for the service *plus* any costs in pursuing a complaint. LACORS also suggested that it should be made clear that consumers can also take legal action against the service provider.

ICSTIS' response: We agree that for a consumer refund to be meaningful, and for there to be trust and confidence in premium rate services, consumer refunds must equate to the full cost of the service, including VAT, that the consumer incurred as charged by their Originating Communication Provider (OCP). This may differ from the normal BT price. This is analogous to the treatment consumers receive in many recognised national high street stores. Whilst we appreciate the point made by LACORS that consumers may incur costs in recovering a refund, there is no practical regulatory mechanism for quantifying these. This must be a matter of goodwill to be considered by service providers where customers do quantify such costs.

With respect to the points made by Intext Media, subject to our response to Q11 below, we think the risks identified are in reality minimal as rarely do more than a small percentage of consumers make a complaint. Where refunds have been ordered by ICSTIS they have usually been limited to people who complained to ICSTIS or a relevant third party, such as another regulator who referred the case to us. Clearly, if that were to change then the risks identified would increase, but for the foreseeable future this remains theoretical only.

The minimal amount below which a refund can reasonably be denied

Q2. Do you agree that a refunds arrangement should have no formal lower cost threshold and that ICSTIS may vary this in case specific situations where to not do so would be disproportionate?

Most respondents agreed that refund arrangements should have no formal low cost threshold and that ICSTIS might vary this in case-specific situations. One service provider – The Number – commented that their experience of providing consumer refunds by cheque shows that typically only one third of the refund cheques are cashed by consumers. This is largely because the amount in question is so small and having regard to "modern banking methods". A small number of respondents made the point that the cost of administering very low transaction refunds – at 50p or below – is disproportionate to the loss of the consumer and, depending on the form of refund, may not be valued in reality. By contrast, LACORS made the point that service providers operating in a micro-payment environment and accepting micro-payments, need to accept that they will need from time to time make refunds of the same nature. They also did not agree that ICSTIS should decline from awarding a refund depending on any low cost threshold.

ICSTIS' response: Like the clear majority of respondents, we agree, for the reasons outlined by LACORS that there should be no formal low threshold for refunds. We also note that at least one respondent made the point that, if we did, this might encourage some unscrupulous service providers to operate fraudulent services at this or a lower threshold precisely to avoid refund orders. We also agree that there may be certain limited case-specific circumstances where ICSTIS adjudications would vary from this, especially where the service itself was provided but where the complaints relate to some aspect of misleadingness as to how it was promoted rather than where the consumer paid for the PRS and got no service whatsoever.

The form that refunds should take

Q3. We would welcome feedback and example of how customer service refunds can be made in ways that meet the needs of both the consumer and the service provider who has to facilitate and administer the refund.

Many respondents agreed that the ideal means by which consumers are refunded is by an appropriate credit to their telephone bill or top-up on their pre-pay mobile phone. In this area of responses there is a divergence of views broadly between those who predominantly operate in the fixed line and mobile areas. This is because in the mobile area the value chain operates differently. The mobile operators occupy a position in the value chain broadly equivalent to OCP and Terminating Communication Provider (TCP) in the fixed line area, where typically these functions and business types are separated and linked via Interconnect Agreements. These agreements cover many issues and can complicate matters, especially in relation to Artificial Inflation of Traffic (AIT) provisions. These are designed to stop money flowing where fraudulent activity is reasonably suspected and requires investigation by the networks concerned. The issue of AIT can also be a complicating factor for ICSTIS in awarding consumer refunds. Circumstances can arise where the ability of ICSTIS to enforce this has been inadvertently undermined because the funds that need to be utilised by the service provider to make the refunds are being held by a network under the AIT provisions in the Interconnect Agreement. This situation, from an ICSTIS perspective, is not satisfactory and we will engaging in further dialogue with OCPs and TCPs about how this issue can best be resolved so that consumers are not prevented from receiving refunds when awarded.

In respect of the mobile area, forceful arguments are made by the MDA and the MEF that, given the position the mobile operators have in the value chain, combined with the revenue share

stake they have in PRS, it is they who should be held accountable for making refunds. The mobile operators would then apportion back the refund costs in the value chain in a way that represented the risk and responsibility and "follows the money". The MBG's response also agreed that it can be more efficient and convenient for the operator to effect the refund through the operator's billing system.

In the fixed line area, BT argued for a radical alternative to the refunds proposals made in our consultation statement. BT argue for the establishment of an industry-wide compensation fund, centrally administered by ICSTIS, which would deal with all requests for refunds from consumers, presumably linked to identified Code breaches upheld by ICSTIS.

Many other respondents who predominately operate in the fixed line area agreed that refunds should be handled by the service provider in the first instance.

ICSTIS' response: We agree that it can be appropriate to recognise the differences that exist in the value chains for PRS in the mobile and fixed line areas. Where possible under our Code and its application, we should be ready to recognise this in order to ensure that our regulation remains proportionate and effective, as well as addressing the issues of consumer confidence and protection, which is at the heart of this particular statement.

In respect of mobile services, we support any arrangements that can complement the responsibility placed on service providers under the Code of Practice to deliver refunds directly to consumers via the mobile operator. We believe that some modifications to our adjudicatory processes could, with the co-operation of the mobile operators, deliver this whilst not diminishing the primary responsibility for the service provider to make good any refund sanction imposed by ICSTIS.

In respect of fixed line services, we do not agree that it is an appropriate time to consider and evaluate the option of establishing an industry-wide compensation scheme as BT suggests. Our reasons for this are:

- As is clear from the responses, the value chain for PRS in the fixed and mobile areas is different and has differing consequences for those in it. Trying to create an industry-wide solution in the form of a compensation scheme would therefore be extremely difficult and would need to take account of the differing aspects of the value chains in the mobile and fixed line areas

- The 11th Code of Practice will come into effect this year and should strengthen considerably ICSTIS' powers in this area. It should, if effective, reduce the incentives for the unscrupulous minority of service providers or other parties who seek to run "scams". This should therefore be a targeted set of arrangements aimed at wrong-doers. By contrast, an industry-wide compensation fund will need to be paid for by those who run legitimate services in order to compensate consumers harmed by those who are unscrupulous.

- The analogy with the Live Services Compensation Fund is not quite true as in that case there are also bonds put in place by each service provider and these are called upon first before any common fund is utilised. This helps ensure that the "polluter pays" but it is not clear to ICSTIS, and neither was it clear to Ofcom, that such a model would be proportionate to the harms that are being considered here.

- Given the imminent review of ICSTIS' remit by Ofcom following its announcement of a review of the scope of PRS regulation, it seems appropriate to defer this matter for consideration as part of that review. This will almost certainly consider how regulation of PRS should most effectively be delivered as well as what should be regulated.

We therefore take the view that in the fixed line arena responsibility for processing refunds should continue to rest with the service provider as the party contracted with a network operator. This is where regulatory responsibility rests given their responsibility for providing the service either directly or through a contracted partner (Information Provider).

Given the points made above about AIT, as well as other situations which can arise where there is a disconnect between the sanction of a refund and its actual provision, we plan to work with the industry to develop a number of scenarios for such cases. This is so that parties in the value chain with an existing relationship with the customer can agree on what advice, support and help may be provided to the consumer if a refund sanction is ordered but not actually provided. Work on this commenced at a well attended industry workshop on 19th July.

Q4. Do you agree that refunds may be made in a number of ways as long as the customers are in general agreement to accept an alternative to a monetary refund being offered by the service provider or other party involved in the provision of the service?

Most respondents agreed with our proposal. Telewest made the point that if vouchers are to be offered then they should relate to shops that are generally found in most high streets and not specialist outlets and that a choice of shops should be offered in such circumstances. The NOC observed that ICSTIS should refrain from being overly prescriptive in this area and that it should be left to arrangements between the service provider and consumer.

ICSTIS' response: We have no desire to be prescriptive in this area. We believe that the form of refund should be consumer-led and with their consent. We would expect that in normal circumstances a refund will, where not made direct to the telephone bill or pre-paid mobile, be in the form of a cheque or postal order payable to the complainant unless otherwise specified. Alternative forms of refunds, such as vouchers or books of stamps or a complementary repeat use of the service, may be offered to consumers, who should then a have a right to refuse that form of refund payment. We support such innovative alternatives, especially for very low level refunds provided they bring value to the consumer and are acceptable to them as an alternative to cheques.

The evidence that it is reasonable for a service provider to seek in order to ensure that the consumer's claim is valid.

This section raised issues about what information service providers may reasonably request in order to authenticate that a refund claim is genuine whilst at the same time not requesting so much information as to act as a barrier to making refunds. Q5 to Q10 covered the various aspects of the issue. The responses are set out below and our summary response follows Q10.

Q5. We would welcome information about how service providers manage these issues today in order to benchmark various practices.
One service provider gave us specific details as to how it administers refunds, which was very helpful. However, in the absence of a wider range of information, we are unable to benchmark current practices.

Q6. We would welcome views on what is a reasonable degree of evidence in such situations for a service provider to demand given the risks of fraud.
Answers to this question varied as whether the respondent was primarily engaged in the mobile or fixed line sector.

The MBG observed that if customers make complaints, especially in waves, about a service then the probability of the complaint being genuine is reasonably high. They also observed that the vast majority of people do not make claims, let alone fraudulent claims for losses suffered for

low-value services such as a £3 ringtone. The MEF confirmed that most content providers have straightforward means for verifying that the consumer was charged for the service in dispute. The MEF also outlined its concerns about how far service providers – aggregators in the mobile context – can confirm whether the consumer actually received the service. They also outlined a number of concerns that placing the burden of proof on the service provider for non-charging is too simplistic and hence why the burden of proof best rests with the mobile operators.

In the fixed line area, BT also stated that in their experience the risk of fraud from false claims is minimal as BT's service providers can authenticate refund claims by checking their CLI (where a number is not withheld) and call records and match them with the customer complaint and telephone number. Telewest observed that it is appropriate for service providers to be able to request reasonable evidence to satisfy themselves of the validity of a refund request. However, any such request must only be made where the service provider is unable to satisfy itself as to the authenticity of the request from its own records, for example by checking records of user log-ins where they exist, or CLI records where they are captured. Telewest went on to argue that where evidence is required from the customer this could be in the form of a copy of the telephone bill or a communication from the customer's telephony provider confirming the charge has been invoiced and paid. ntl largely endorsed these views and added that where the amount in dispute would create hardship to the customer and as such has not been paid, the refund should be provided direct to the customer's telephony provider so that credit can be applied and to prevent customers from taking the refund and not paying the outstanding bill.

UKCTA and the PRA both supported the view that some of form of evidence, in the form of a bill or information supplied by the OCP in the form of mobile pre-pay, should be provided to validate the cost of the calls made.

Q7. What suggestions do you have for how best to manage the authentication of consumer requests whilst minimising the barriers to consumers when seeking refunds? How can this be kept under review?

In respect of fixed line, Telewest suggested a copy of the customer's telephone bill should be sufficient to authenticate the request. Telewest went on to outline concerns about the difficulties of dealing with situations where the consumer is disputing the bill charge, has not paid it and the monies have been released from the OCP to the TCP with or without invoking the AIT process. LACORS agreed that a copy of the bill or a record of the CLI is probably the best evidence and went on to suggest that a signed statement from the consumer (which is consistent with the other evidence) might be given some weight.

In respect of mobile services, the MDA suggested that the mobile operators should advise the service provider of the ICSTIS notification of refund and ask it to collect the necessary data. The service provider, along with any information provider, should then collate the necessary data for the mobile operators to process the refunds, the cost of which will be deducted from the service provider under relevant contracts.

In respect of verification, the MEF observed that it is important to verify that the consumer owns the telephone number through copies of the contract together with some evidence to identify and avoid mis-representation. Secondly, it needs to be established whether the consumer was charged for the service. The third test is whether the consumer actually failed to receive a satisfactory service. Here the MEF takes the view that applying the burden of proof to the service provider in the context of mobile services is incorrect. This is because the party that can establish whether the consumer received the service or not can only be the mobile operator for a range of technical reasons.

WIN – a service provider specialist in mobile services - stated that service providers and information providers should operate customer support facilities capable of examining Mobile

Origination and Mobile Termination logs, verifying correct price points and assessing Code compliance.

Q8. What evidence is it reasonable to ask of a consumer to evidence their disputed PRS transaction where their network provider does not provide bills or where they are not itemised?

Both Telewest and ntl observed that all communication providers have access to itemised call records irrespective of what bill is offered to the consumer so the information is theoretically available, albeit possibly at a cost to the OCP.

iTouch, a service provider, made the point that the telephone companies must have responsibility to retain a record and that service providers should not be disadvantaged or be put at risk from invalid claims and additional administrative burden if the customer or OCP cannot provide an itemised bill.

LACORS stated that where a customer has to pay for an itemised bill to verify a refund request this charge should be added to the value of the refund claim.

Q9. We would welcome views about how matters of refund authentication can best operate in an environment where consumers do not ordinarily receive a telephone bill such as the majority of mobile users who have pre-pay arrangements.

The MBG stated that a greater burden of proof may be required from customers who have chosen not to register personal details when purchasing a pre-pay mobile device. If they want to claim a refund then, in the view of the MBG, they will need to demonstrate that they are the person who has suffered the loss. They suggest this may be achieved by having some knowledge of recent transactions on the account. The MBG also stated that service providers have call logs of the Mobile Station International ISDN Number (MSISDN). This is the standard international telephone number used to identify a given subscriber, against which it should be possible to verify whether a customer had accessed and was charged for a service.

Telewest recognised the problem associated with pre-pay. They suggested that where the service provider is not prepared to accept the word of the customer then a copy of the bill may need to be requested. This may, however, lead to a cost to the consumer as some OCPs may interpret this as a subject access request under the Data Protection Act 1998. In such cases Telewest took the view that any additional charge incurred by the consumer to seek such records should be included in any refund claim to the service provider.

Intext Media observed that in their experience they are not aware of any mobile operator that will not issue a retrospective bill on request.

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

The MBG observed that issues which involve AIT can complicate refunds. They observed that ICSTIS should take account of any AIT amounts withheld when considering refunds. In their view it would be nonsensical for any retained monies to be passed from OCP to a service provider that is the subject of an ICSTIS adjudication. The OCP will have details about which customers are due a refund.

ICSTIS' response: We take the view that nothing in the responses to these questions challenged the principles we outlined in the consultation for service providers to adhere to. These are:

- In cases where ICSTIS has ordered a refund as part of a sanction following a breach of the Code of Practice, requests for the necessary refund from the relevant complainants should not unreasonably be resisted;

- We expect service providers to act in good faith when handling such requests and, in particular, in requiring evidence that the payment has been made or is requested by the consumer's telephone company;

- Where there is doubt or disagreement, the burden of proof in such cases should be with the service provider to demonstrate that the charges were not made or that the consumer's case is not covered by the relevant ruling from ICSTIS.

We accept that service providers have a right to satisfy themselves, in a remote transaction environment, as to the validity of the refund request and to protect themselves against fraud or abuse. To that end we think it is reasonable, if seen as necessary, to request from the consumer for validation a copy of the relevant phone bill showing the itemised charge. As a consequence, any refund can be directed to the bill-payers at their address and made payable to them.

In respect of mobile services the issue can arise, given the preponderance of pre-pay phones, that there is no bill as such. Given the other means of authentication identified by the MBG, along with the mobile industry's desire to see refunds actioned at the network level, issues about the absence of a telephone bill in the mobile environment should diminish in respect of refund sanctions.

How to communicate refund availability

Q11. Do you think that ICSTIS or industry has a responsibility to notify all affected consumers of their rights to claim a refund when this has been made the subject of a sanction by ICSTIS? If you do, where does responsibility lie and why?

The responses to this question vary, to a certain degree, between the fixed and mobile sectors.

The MBG took the view that in general a greater level of proactivity should be encouraged by service providers in notifying customers who are entitled to a refund. The MBG also identified in its response the differences which may arise from breaches which are quite minor and where it may not be appropriate to refund all consumers through to cases involving fraud, where the service provider has a greater responsibility to contact all customers and notify them of their right to a refund.

The MDA observed the risks and costs that can be associated with the introduction of what could be tantamount to regulatory class actions. However, it also observed that there may be specific cases where the breaches were deliberate and the consequential harm significant enough to warrant ICSTIS notifying all affected consumers as to their rights to a refund. In such circumstances it proposed that it would be for ICSTIS to make a ruling as to this effect and then for the contracted parties to notify all affected customers, with the refund payment being made by the MNO.

The MEF shared the MDA's concerns about the potential to create a regulatory class action in premium rate and suggested that it invites abuse from consumers and is likely to be disproportionate to the harm caused. The MEF does, however, believe that it is the role of the service provider/information provider to notify affected consumers of their rights – those "affected" being those who complained to ICSTIS or to the service provider or information provider.

WIN observed that the mode of ICSTIS' adjudication is critical to consumers being able to identify the entity which promoted the service to them. WIN takes the view that ICSTIS' adjudication reporting mechanisms fail in their duty to protect consumers by reason of who is identified as the service provider.

In respect of fixed line, BT, Telewest and ntl all identified the practical problems in identifying and tracking affected customers as expensive and possibly beyond the systems capabilities of some OCPs. All suggested pragmatic alternatives built around a priority of refunding customers who complain to ICSTIS or the OCP. The mechanism for publicity could include ICSTIS' website, the websites of other OCPs and in response to customer enquiries to OCPs' customer services.

Finally, UKCTA made the point that if consumers have not complained until the point they have paid the bill then they must be deemed to have found the service acceptable.

ICSTIS' response: We believe that "affected consumers" are those who have complained to us directly or indirectly by the time we adjudicate. We take the view that we have, as a regulatory body, a responsibility to publish and make known to affected consumers their rights to claim a refund and the circumstances and means by which this can be done. Whilst noting the point about "regulatory class actions" we believe this is overdone, and in reality only ever takes place where hundreds or thousands of consumers have suffered a considerable financial loss.

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

The MDA suggested that where it would be appropriate to contact all users of a mobile service then the best way to advise them as to their rights is via a text message which should be in an agreed form and refer them to ICSTIS' website for further details. The MEF agreed but stressed the need for ICSTIS to be involved in the process to ensure the message is appropriate. The MEF also held strongly that such messages should not be charged to the service provider by the mobile operators or, if they are, that they be at a cost-based tariff to the information provider.

UKCTA and the PRA agreed that refunds should be directed at those who complained to ICSTIS and that ICSTIS should contact those complainants advising them of the adjudication and of their right to claim a refund, providing them with the service provider details.

LACORS suggested that all affected customers should be contacted by telephone and advised as to their right to claim refunds. LACORS acknowledge, however, that this might raise problems, especially where the bill-payer was not the service user. LACORS also recognised that notifying every user may be costly and suggest that ICSTIS could factor this into any fine set.

ICSTIS' response: We would welcome any industry initiatives designed to make consumers better aware of their rights to claim a refund when this has been ordered by ICSTIS. Voluntary arrangements that service providers have put in place to contact all affected consumers about their right to a refund is something that ICSTIS will consider as a mitigating factor when considering sanctions on service providers found in breach of the ICSTIS Code of Practice.

Q13. What further potential is there in the ICSTIS adjudication information being shared with the customer contact staff of the OCPs who may be able to alert future complainants about services to their right to a refund (where sanctioned by ICSTIS)?

Responses from the major OCPs – BT, the MBG, Telewest and ntl supported the proposition of sharing ICSTIS adjudication information with the OCPs so that they could make this available to their customers in an appropriate manner consistent with their customer care arrangements.

However, the MDA, MEF and NOC raised some objections to the proposal as they have a concern that the customer contact centres of OCPs already show some confusion about PRS issues and may hinder the customer experience by providing inaccurate information to consumers. UKCTA also disagreed on the basis that it may lead to more customers than those who originally complained to ICSTIS being in a position to complain and thus obtain a refund.

ICSTIS response: ICSTIS' adjudications are published and placed in the public domain. Given therefore that consumers can in theory access adjudications that we make, it seems reasonable to share all relevant adjudications with OCPs so that they can determine what further information they may wish to make available to their customers, on what basis and in what manner. Whilst we understand the concerns raised by the MDA, MEF and NOC about the potential for confusion, we nevertheless take the view that this is a matter for OCPs and if they provide a poor quality service or inaccurate information then this a matter that consumers can take up with them though the normal complaints processes.

Section Three
ICSTIS' use of sanctions powers to order a refund

Section Three of the consultation document outlined the proposed approach to how ICSTIS would be likely to consider determining that the sanction of a refund should be applied to a service where the Code had been breached. The characteristics of the service, or its failure, where a refund will be ordered, are likely to be where:

- there was an identifiable (and possibly excessive) financial detriment to individual consumers arising directly from a Code breach or breaches, and a consequential gain to the service provider;
- there was a wilful intent by the service provider to deceive the consumer or engage in other forms of unconscionable conduct;
- the product or service was not supplied or was of a manifestly unsatisfactory quality;
- the marketing or promotional material was in some way fundamentally misleading and as consequence consumers were misled into purchasing a service that they would not otherwise have wanted to purchase;
- the product was inappropriately priced to disguise the true cost to the consumer which, had they been aware of it prior to purchase, would have significantly impacted on their decision to purchase. One example here is to describe the PRS as "free" when it clearly is not.

Following this, the consultation asked:

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

There was broad support for the approach from the MBG, Telewest, ntl, UKCTA, PRA, NOC and WIN. The latter two organisations made the point that there needs to be flexibility about the use of any such criteria when determining the level of sanction set.

The MBG went further, however, in arguing that as a general principle a refund should be applied wherever a customer has not requested the service in question.

The MDA argued that the use of a refund process should be separated from a sanctions regime altogether and should not be used as part of ICSTIS' punitive powers against wrong-doers. Instead the MDA argued that ICSTIS should look to impose an obligation to issue consumer refunds in specific cases. They also argued that the network operator should be the first port of call for refunds and that restitution for the refund should be passed down the value chain. The MEF made a similar point and in particular is concerned that the punitive consequence of imposing a fine and an order for redress could be disproportionate to the breach(es) raised and harm caused by the service. Qualifying which consumers are "affected" is critical to proportionality in the MEF's view and it believes that those affected should be limited to people who complained to ICSTIS and/or some other pre-determined bodies.

Finally, LACORS took the view that, where there is demonstrable consumer detriment, refunds should be considered as the first sanction and "topped up" with other sanctions as necessary.

ICSTIS' response: We take the view that whilst each case will need to be determined on its merits, the characteristics identified in the consultation document, and reproduced above, are relevant guides to the likely situations where any combination would be likely to lead to an order of sanctions being made. In doing this, ICSTIS notes and is aware of the points made by a number of respondents that in doing this the sanction will need to remain proportionate and must not be unreasonably punitive. Finally, when making decisions about the application of

refunds, the Committee will also need to consider in each case whether there should be a de minimis amount below which refunds are not to be reasonably claimed and the scope of the application of that sanction in terms of the number of consumers who have complained to ICSTIS, other regulatory bodies or other outlets, including the media. ICSTIS does feel that it can easily determine in advance the criteria for these decisions, that each case will need to be judged on its merits and with regard at all times to proportionate sanctions related to the nature and types of harm generated by the service in question.

Section Four
Live Entertainment Services compensation arrangements

This section of the consultation paper outlined in summary the arrangements for the compensation schemes for Live Entertainment Services and multi-party chatlines. We explained that in ICSTIS' view these arrangements had worked well for the industry and consumers over many years and that accordingly these arrangements should not be affected by the proposals in the consultation document.

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

There was broad support for the Compensation Scheme arrangements for Live Entertainment Services and multi-party chatlines from the MBG, MDA, WIN, BT, Telewest, ntl and UKCTA. Some of those respondents also suggested that the success of the Schemes and their approach might provide valuable learning for a wider common compensation approach to apply to all PRS. The PRA questioned, however, whether the low number of claim to the adjudicator was a sign of success and thus should be extended to all PRS or whether it is overly draconian. NOC asked for an early review of the scheme and iTouch argued that a bond should not be required in all cases.

ICSTIS' response: Given the broad level of support for the current arrangements, combined with no substantive evidence that the Schemes are failing either consumers or industry, we are not minded to review the arrangements now, although there will be merit in ensuring that they remain fit for purpose in the medium term and will want to keep them under review. Whilst we also understand the sentiments expressed by some that such arrangements could possibly be considered for all PRS, this was an issue that was considered by Ofcom as part of its review of PRS in 2004. It concluded at the time, and we agree, that to apply such a scheme to all PRS may be disproportionate to the overall harm and to the fact that most services and service providers comply with the Code of Practice without the burden of such arrangements. These arrangements were put in place to deal with service types that are known to have a higher risk of consumer harm and potential unauthorised use.

Section Five
Developing Industry best practice for customer service

This section outlined proposals, following a recommendation from Ofcom, that ICSTIS work with the industry to develop best practice guidance for customer service in PRS and build on some very good practice that some businesses in this area have developed over many years. The consultation paper outlined some thoughts on the creation of a Working Group made up of ICSTIS and industry practitioners in order to develop this best practice which would focus on service provider customer service in the value chain.

We suggested in the consultation paper that any Working Group will want to identify best practice in delivering total customer satisfaction taking account of the many aspects for which a business needs to plan in order to deliver satisfaction, such as:

- Quality products or service including fulfilment
- Accuracy of service
- Promptness of response
- Staff attitudes and training with respect to dealing with customers
- Complaints, disputes and refunds handling

Q16. Do you agree that ICSTIS should take forward the development of best practice guidance for customer service in the way outlined above? Can you identify any organisations from which a representative should join the working group?

There was a mixed response to these questions. There was some support for the development of customer best practice and some respondents agreed that we should set up the Working Group as suggested. However, a number of other respondents felt that this is a commercial matter and certainly not one for ICSTIS as a regulator. UKCTA and ntl made the suggestion that the ILP could be a vehicle to develop such best practice in a way that engages ICSTIS but is not ICSTIS-led.

ICSTIS' response: There is a considerable degree of support to develop best practice for customer service. As a body which aims to improve trust and confidence in PRS, we think that best practice customer service can only aid a developing and growing sector and encourage take-up of services. We recognise, however, that we are not a specialist in customer service best practice. We, like UKCTA and ntl, believe there is merit in encouraging such a development and that now we have created the ILP this could be a vehicle for bringing together the key commercial players in the value chain to develop this area further. We therefore propose that a sub-group of the ILP, which will include some industry members known to have developed some best practice in customer care, be created and tasked with taking forward this project with ICSTIS.

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

There were few further suggestions made beyond those in the consultation paper. The MEF suggested that one other area worth considering was the call-handling processes between value chain players and the consequent end-to-end experience of the customer.

ICSTIS' response: We will relay these views back to the ILP Working Group as per our response to Q16 above and our suggestion that an ILP sub-group lead on this activity with ICSTIS input.

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

There was a limited and diverse range of response to this question. The MDA and MEF did not think that the initiative should be driven by ICSTIS and a number of respondents felt that ICSTIS should not chair it, but rather someone from industry who could secure buy-in to the process. However, BT did support ICSTIS chairing any such group. UKCTA, by contrast, suggested that if the vehicle for the working group would be the ILP, then the ILP should determine who chairs it going forward.

ICSTIS' response: In the absence of a consensus in this area, and in keeping with our responses to Q16 and Q17 above, we think this should be a matter for the ILP to discuss and consider, with their taking responsibility for the final make-up of the body and its terms of reference in the context of the recommendation made by Ofcom in its Review of PRS. We believe we should play a key part and provide appropriate services to facilitate such a Working Group and would be content to chair such a group if that were seen as desirable.

Section Six
Next steps

A number of actions arise for us following publication of this statement. We recognise that our success in delivering any of these actions will in part rest on the support of the PRS industry. We trust that this support will be forthcoming. These actions are:

- To agree a help note to accompany the 11th Code of Practice on refunds which draws on the issues identified in this paper. This may include scenarios for refunds aimed at identifying who in the value chain will handle customers when issues arise and refunds are not forthcoming;

- To discuss the creation of a sub-group of the ILP, with wide industry participation, to take forward a remit to consider developing best practice for customer service, complaints and refunds;

- To work with the UK mobile operators on taking forward their and our interest in finding better ways to handle customer refunds direct to bills where opportunities to do this present themselves and can be effectively managed with all parties in the value chain;

- To amend and update our Sanction Guide to reflect the criteria that we will use for considering when to award a refund as part of a sanction or a breach of the ICSTIS Code of Practice by a service provider.

Section Seven
List of respondents to the consultation

Listed below are the names of all individuals or organisations that responded to the consultation. Their responses have been published on the ICSTIS website – www.icstis.org.uk

Those that are marked with an * are confidential to ICSTIS.

BT
Grumbletext
Intext Media *
iTouch
LACORS
Mobile Broadband Group (MBG)
Mobile Entertainment Forum (MEF)
Mobile Data Association (MDA)
Network for Online Commerce (NOC)
Ntl *
Premium Rate Association (PRA)
Telewest Broadband
The Number
UK Competitive Telecommunications Association (UKCTA)
WIN