

Response to ICSTIS statement on the provision of refunds and the development of industry best practice for customer service from the Mobile Broadband Group

Introduction

The MBG welcomes the opportunity to respond to ICSTIS' consultation on the provision of refunds and the development of industry best practice for customer service.

There is a significant difference in the way that information/content services operate between those on the traditional 09 number ranges and those operated through mobile networks. A call to a traditional premium rate service may be routed through many different operators between the Originating Communications Provider (OCP) who has the relationship with the customer, and the Service Provider (SP). The OCP may not have a direct relationship with the SP or with the network provider used by the SP to connect to the public switched telephony network – the Terminating Communications Provider (TCP). By contrast, each mobile operator connects directly to the SP who provides the premium rate text service. The SP may aggregate services from a number of different Information Providers but remains liable for compliance with the Code of Practice for each of these. The mobile network thus sits directly between its customer and the entity that is liable, under an ICSTIS direction, to pay a fine and to make refunds. In the traditional model, the OCP is at least one step removed from the service provider.

The problem that this consultation is trying to address is relatively much smaller in the mobile market, if indeed it exists at all. In the fixed market, there have been a number of instances where a service provider has breached the ICSTIS Code and disappeared without even attempting to defend the case brought against him. The resultant fine has gone unpaid and obligations to pay refunds gone unmet. In the mobile segment, the service providers are ongoing businesses who make sure that fines and refunds are paid either by them or their information provider. An SP operating in the mobile market will be aware that any action taken against it by ICSTIS could jeopardise its business and its ongoing relationship with mobile operators.

There may be occasion when, by arrangement between the service provider and the network operator (or even at the operator's insistence), it is more efficient and convenient to all parties for the operator to effect the refund through its billing system.

This can often be the case where the mobile operator has identified a breach that has affected a large number of customers. Likewise, if the situation ever arose that a service provider could not or would not pay a refund, then the mobile operator would use funds from the SP's outpayment, which has been withheld on the orders of ICSTIS (when it started the investigation). Indeed, under the terms of the 11th Code, the MNO must do this at the request of ICSTIS for a period of 3 months after the relevant adjudication.

We feel that this latter scenario, which is the focus of this consultation, is very unlikely in the mobile market, as all SPs are interested in their maintaining their continuing business. It may only arise in the event of a service provider experiencing severe financial difficulties or even bankruptcy.

The answers given in this response focus on the situation where refunds have to be made as a result of an ICSTIS order and the SP is not meeting its obligations. If the SP is unwilling or unable to co-operate in the refunds process, the mobile operator may occasionally have some practical difficulties in establishing the validity of claims, particularly where more than one service operates from a single short code. This is explained in more detail below.

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?

Yes. This is what the customer would expect and in line with that which occurs with refunds in other 'payment' environments.

The refund could be payable in the form in which it was originally paid, if the refund is being processed by the mobile operator (e.g. charged back to a pre-pay phone card or bill credit) or in cash (cheque, bank transfer), if being paid by directly by the service provider.

By arrangement between ICSTIS and relevant mobile operators, ICSTIS could specify that refunds should be effected by the mobile operator, using withheld outpayments. Some mobile operators may often prefer this approach to dealing with their customers and if large numbers of refunds are involved, it would be much more efficient and more convenient for customers.

It should be noted that, where refunds are payable by the OCP from retained funds because the SP is unable (possibly because it is bankrupt or has disappeared), then the total amount of refund will be limited to the retained funds. In these

circumstances, the MNO would have to pro-rate refunds to customers, rather than paying back the full cost of the service. It should also be noted that, for the same reason, it will not be possible to back date an order to pay refunds for services to before the date when a breach was identified and an order made to retain funds payable to SPs.

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

Yes to both parts of the question.

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

The refund could be payable in the form in which it was originally paid, if the refund is being processed by the mobile operator (e.g. charged back to a pre-pay phone card or bill credit) or in cash (cheque, bank transfer), if being paid by directly by the service provider.

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?

As previous answer.

If the customer wants to accept alternatives – a replacement ringtone or whatever – he or she should be free to do so but only at his own discretion. Service providers should not be able to force customers to accept alternatives.

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

Where mobile networks deal with customer complaints by making a payment, it is generally through a credit to the bill (for contract customers) or a top-up to the pre-paid card (for pay as you go customers) – money that can be spent on buying any network service – airtime, premium rate services, texting or GPRS.

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.

This is difficult to be specific about.

In the MBG's experience, however, it is generally practical to resolve these matters through common sense. As a rule complaints come in waves, as customers respond to a code breach that is fairly well known to the mobile networks. If customers make a complaint about the particular service, the probability of the complaint being genuine is reasonably high. The mobile networks will have been able to inform its front-line customer service staff about the issue and prepare an appropriate response to a complaint. Even though, in aggregate, the financial detriment could be large, the loss to each individual customer is usually quite low. The vast majority of people do not make claims, let alone fraudulent claims, for losses suffered from a £3.00 ring tone. It is not worth the MNO spending time investigating every case in order to weed out the few that try to make false claims.

In any event, with premium SMS services, there can be practical difficulties for the MNO to establish the audit trail for the amount lost by a customer on the relevant service. The MNO will have data about the flow of messages to and from particular short codes and the amount of money being spent by the customer. However, as multiple services can hang off a single code, the MNO will be unsighted as to whether the loss claimed was suffered at the hands of the particular service that has been found in breach. This data would have to come from the SP. If the SP is unable or unwilling to supply such data, then validating claims will be difficult.

There are two possible approaches to get round this.

1. The SP should be given an obligation (as part of ICSTIS ruling) to co-operate with the mobile operator in supplying information that would be needed to validate a claim. This obligation could extend to providing the OCP with the details of all the customer accounts who are due a refund, and making a bulk payment to cover those refunds. It would be appropriate and proportionate for an SP to do this on those occasions where ICSTIS has ordered the SP to pay refunds. Where the MNO has retained outpayments to the SP on ICSTIS' instruction, ICSTIS could order those retained funds to be set against the value of refunds due.

If the SP is in bankruptcy, the obligation should, if legally possible, apply to the liquidator/administrator.

2. The customer would need to provide more substantive evidence for higher claims – say more than £30 (approximately aligned with 50 Euro cap on micropayments).

For larger sums, it should be possible for the customer to give a reasonably full account of how the loss arose, which the MNO could then check for consistency with its own call data. Below the cap, minimal evidence should be required.

NOTE: It would be very useful if ICSTIS, when registering complaints from customers that lead to investigations, could record the estimated amount of loss. This could later provide very useful back-up evidence. Collection of such data is also essential, if ICSTIS is to be in a position to gauge accurately the level of consumer harm arising and the appropriate level of fine.

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

See answer to Q6.

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

See answer to Q6.

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

As described in previous answers, it is quite likely that a customer will not have a bill which he can show to the SP. See answer for Q6, for registered users. A greater burden of proof may be required from a customer that has chosen not to register personal details when he has purchased a pre-pay phone. If he wants to claim a refund, he will need to demonstrate that he is the person that has suffered the loss. This would require some knowledge of recent transactions on the account. Service providers have call logs of the MSISDNs against which it should be possible to verify whether a customer had accessed and was charged for a service.

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

This consultation has failed to consider the impact of AIT upon the chain of payments. Where an OCP has retained payments on its own initiative because of suspected illegal activity, then it is duty bound to retain that money and make it available for refunds to customers. We would expect ICSTIS to take account of AIT when considering refunds, as it would be nonsensical for any retained funds to be passed from OCP to SP that was subject to an adjudication. The OCP will have information about which of its customers are due a refund.

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

This is a difficult question to answer without knowing fully the circumstances in which ICSTIS will use this sanction. The range of Code breaches ranges from the relatively minor to outright fraud. Where the code breach is minor, the impact on customers will vary. Some may feel that a Code breach has resulted in them being misled and entitled to a refund, others may be quite satisfied with the service they have received, despite the Code breach. In such circumstances it may not be appropriate for the service provider to be mandated to contact all customers and tell them that they are entitled to a refund, but it would certainly be good practice customer service on their behalf for them to do so. In general the network operators would encourage a greater level of proactivity by the service providers in notifying customers who are entitled to a refund, as we feel that this is an important step in maintaining consumer confidence in premium rate services.. Presumably the ICSTIS public adjudication will state that the SP has to pay refunds to complainants and the complainants can take it from there, if they so wish.

In the more extreme cases, where the breach amounts to out and out fraud, the SP should have greater responsibility for contacting customers and informing them that they are entitled to a refund.

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?

As above.

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)?

ICSTIS can inform OCPs of such occurrences. This would be quite straightforward.

Operators' customer contact staff are constantly briefed by and in regular communication with operators 3rd party/PRS staff (and regulatory staff). Therefore, existing contacts with ICSTIS should be maintained and OCPs can ensure that relevant information is passed to customer contact staff in an appropriate format.

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

The criteria set out on page 12 – the central theme of which is a clear intent on the part of the SP to deceive – would be sensible grounds on which to apply the sanction of a refund to customers who have complained about the service.

But, as a general principle, a refund should be applied wherever a customer has not requested the service in question. Although (as described above) there may be instances in which the customer does not realise that they have requested a chargeable service, that obviously cannot be the basis upon which refunds are provided, if no breach of the Code has taken place.

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

Yes

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

ICSTIS makes clear on page 14 that these suggestions are directed at the SP community but network operators would welcome visibility of these discussions and any guidance which is developed

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

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

Any correspondence relating to this response should be sent to Hamish MacLeod, mbg@mobilebroadbandgroup.com