



DEPARTMENT FOR CULTURE, MEDIA AND SPORT

Government Response to the Culture, Media and
Sport Select Committee Inquiry into
Call TV quiz shows

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the Secretary of State for Culture, Media and Sport
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Government Response to the Culture, Media and Sport Select Committee Inquiry into Call TV quiz shows

Introduction

1. The Government welcomes the Culture, Media and Sport Select Committee's report on Call TV quiz shows. We are pleased to be able to respond to the Committee's report on this issue which is both timely and important, particularly given the current problems experienced by this sector.

2. The Government remains extremely concerned about recent reports that have highlighted continued failures in the operation of premium rate services (PRS) across a range of interactive programmes. Failures of this kind risk damaging the public's trust and confidence in both broadcasters and premium rate services and raise concerns about consumer protection.

3. The Government recognises that interactive programming is popular but it is essential that broadcasters ensure that such services can be trusted, that consumers are clear about the rules governing such programmes and that service providers are able to respond in a timely and effective way when problems arise. The tradition of broadcasting in this country is founded on the high degree of trust between broadcasters and their audiences and it is vital that broadcasters do not lose this.

4. The Government therefore expects the highest levels of probity in the operation of premium rate services and has looked to the regulators, Ofcom and ICSTIS, to take swift action. In response Ofcom and ICSTIS, following extensive review and investigation, will be announcing significantly strengthened regulation of these services imminently.

5. ICSTIS has also set out a range of further actions to address the concerns raised. This has included asking all broadcasters to carry out a review of their current and forthcoming participation TV programming to ensure there is no risk of consumer harm. In addition, ICSTIS is introducing systematic monitoring and inspections to ensure services are being run as they should be. It is also proposing a licensing regime for premium rate service providers which will be introduced within 3 months.

6. Furthermore, Ofcom has announced that, in addition to investigating specific cases, it will be undertaking an inquiry into the apparent systematic failures of compliance in this area. We understand that the inquiry will look into:-

- Consumer protection issues and audiences' attitudes to the use of premium rate services in television programmes;
- The benefits and risks to broadcasters in the use of premium rate services in programmes;
- The respective compliance and editorial responsibilities of broadcasters, producers and telecoms network operators and others involved in those programmes;
- The effectiveness of broadcasters' and telecoms operators' internal compliance procedures, guidelines and arrangements to ensure compliance with Ofcom and ICSTIS codes.

The inquiry will also propose recommendations on actions necessary to restore confidence and trust.

7. The Government will continue to work closely with the regulators and we await the outcome of these new measures with the expectation that they will provide effective regulation of this sector – ensuring that the highest standards are operated for all premium rate services and that consumers are fully protected. However, these services remain under close scrutiny and the Government is prepared to take further action if it believes that the regulators do not have sufficient powers in this area.

- **(1) We understand that ICSTIS's conclusions [from its review of the sector] are imminent, and we urge the Gambling Commission to publish its own findings as soon as possible. (Paragraph 25)**

8. ICSTIS published the results of its recent research into Call TV quiz shows on 29 January 2007. ICSTIS also launched a public consultation addressing many of the concerns raised in the Committee's report and aimed at strengthening the rules across the sector. The consultation closed on 12 March 2007 and we now await ICSTIS's proposals for action.

9. In response to a number of complaints¹ recently received by ICSTIS concerning the use of premium rate services in all participation programming, not just Call TV quiz shows, ICSTIS held a meeting with broadcasters on 8 March 2007. As a result of that meeting ICSTIS set out a range of actions aimed at restoring public trust and confidence in these services. These included:-

- Asking all broadcasters and their partners to carry out a review of their current and forthcoming participation TV programming to ensure there is no risk of consumer harm;
- The introduction of systematic monitoring by ICSTIS and inspections to ensure services are being run as they should;
- An expectation that service providers would publish complete, accurate and easily understood rules for all competition services; and
- The introduction of a licensing regime for all premium rate service providers operating participation TV services within three months. Such a licensing system will define where responsibility for compliance with the ICSTIS Code of Practice lies so that viewers can have absolute confidence in services. As part of establishing a licensing regime, ICSTIS will explore with the industry the benefit of introducing a trust mark or quality standard to build long-term public confidence in services.

10. We share ICSTIS's concern that the highest standards are operated for Call TV programmes. We welcomed ITV's announcement on 5 March 2007 that it had appointed Deloitte as independent auditors to conduct a complete review of all premium rate interactive services in ITV programmes including a retrospective review of premium interactive services on ITV programmes over the past two years. We understand that ITV will make the findings of the review public.

11. In addition, we understand that the BBC is reviewing the process for conducting live competitions on CBBC television and editorial control in live studios. There will also be intensive staff training on these issues. Furthermore, there will be an independent review of the circumstances surrounding the problem with a competition on Blue Peter last year and the actions arising from it.

¹ ICSTIS is currently formally investigating Channel 4's Richard and Judy Show, the BBC's Saturday Kitchen and ITV1's X Factor.

12. We recognise the popularity of these services and regard it of paramount importance that broadcasters are seen to be trustworthy, that consumers are clear about the rules governing such services and that broadcasters are able to respond in a timely and effective way when problems arise.

13. The Gambling Commission has received over fifty responses to its consultation on prize competitions and will be issuing its findings in late spring.

- **(2) It is intensely frustrating that uncertainty about whether programmes should or should not be regulated as lotteries under current law is unlikely to be resolved and that shows' status under current law will not be determined. (Paragraph 26)**

14. The Government recognises this frustration. We strengthened the definition of a lottery in the Gambling Act 2005 to reduce the scope for uncertainty and the new arrangements are due to come into force on 1 September 2007.

- **(3) With some regret, we agree with the Gambling Commission that there is little point in pursuing in the courts cases concerning the status of Call TV quiz shows under legislation which is soon to expire. (Paragraph 26)**

15. We agree with the Committee's assessment of the Gambling Commission's view. The strengthened definition of a lottery that we have included in the Gambling Act 2005, and the strengthened powers of the Gambling Commission to investigate and prosecute illegal lotteries once the new law comes into force, are intended to address this difficulty.

- **(4) We hope that the Gambling Act 2005 will prove to be a more useful tool than current legislation in clarifying the status of Call TV quiz shows. We do not take this for granted, as the new Act was drafted before Call TV quiz shows – very much a hybrid creation – became established in broadcasting schedules. We believe that fresh uncertainties in relation to Call TV quiz shows will arise under the new law and will be dispelled only once case law has been established. (Paragraph 27)**

16. Ultimately, only the courts can determine what is or is not an illegal lottery. However, the Gambling Commission has already consulted on its view that the way in which a number of TV quizzes currently operate could be caught by the new definition and that, if this is the case, they would have to change the way they operate in order to comply with the new rules.

- **(5) We believe that Call TV quiz shows generally look and feel like gambling, whether or not they will fall within the definition of gambling under the Gambling Act 2005. The chance element, in whether or not a caller gets beyond the first stage, is an integral part of the format: it generates repeat calls and further revenue. Without it, we doubt that the format would be as attractive to broadcasters. We do not see why, just because a free entry route might exist, those who pay a premium rate to enter a game in which the first element is entirely one of chance are doing anything other than gambling. Had the Call TV quiz show format been widespread when the Gambling Bill was being drafted and debated, we would have recommended that the definition of gambling be drawn so as to cover viewers who pay to participate in such shows. (Paragraph 28)**

17. We agree that some TV quizzes share many of the characteristics of gambling.

18. However, it is central to the definition of a lottery under the Gambling Act that you must pay to take part. If you are not required to pay to enter, or have an option to enter which is publicised just as prominently and is no less convenient than the paid entry route, that is not classified as a lottery under existing law or the new Gambling Act. It has never been policy to require the alternative entry route to be entirely free: it is reasonable to require someone to pay the cost of communicating their entry under the alternative route. This should not amount to another payment to enter. Under the new Act, the cost of the alternative route must be either the cost of an ordinary 1st or 2nd class letter, or be no more expensive or less convenient than the paid route (sending a letter). It must also be well publicised. There has been concern that the opportunity to participate in Call TV quiz shows through alternative routes has not been adequately publicised and so has been under used. The Gambling Commission is looking at the alternative entry routes used by TV quizzes, in light of these new requirements.

19. If a requirement to pay was not part of the definition of a lottery, a free draw, like a lucky dip at a child's birthday party, would constitute gambling.

- **(6) It seems to us that Call TV quiz shows should constitute gaming under the Gambling Act 2005, and DCMS and the Gambling Commission should consider this as a matter of urgency. (Paragraph 29)**

20. There is a long-standing distinction in law between "games" and "prize competitions". In the Department's view the sort of arrangements offered by Call TV quiz shows constitute competitions and not gaming. If they constitute gambling at all, they are lotteries, or sometimes betting (but not games of chance).

21. Gaming has long been understood in law to refer to games, which could include recognised gambling games like roulette, poker and bingo, but equally could apply to board and other games like Scrabble, Monopoly and snap, all of which involve a degree of chance.

22. There is a qualitative difference between games like this and competitions which involve a test of skill (e.g. answering a question in a quiz, completing a crossword puzzle), and which may then be determined by chance (by selecting the winning entry from a hat) or complete guesswork (e.g. guessing how many sweets there are in a jar).

23. People calling a television station to enter a competition are not playing a game of chance merely because it is a matter of chance whether or not their telephone call is answered (whether they get the opportunity to answer the question). It is merely the first stage in the competition, and a pre-requisite to them entering. They are paying for the opportunity to participate. In some circumstances, the payment for this opportunity will amount to a lottery.

- **(7) We commend the operators who have voluntarily introduced practices intended to help viewers who make repeated premium rate calls appreciate how much they are spending. We recommend that ICSTIS commission or carry out research into the effectiveness of alerts and limits on the number of calls, particularly (in co-operation with consumer bodies) among individuals who have got into debt. ICSTIS should consider making it a requirement for quiz show operators to take steps to ensure that callers are aware of how much they are spending. (Paragraph 38)**

24. The ICSTIS review, published on 29 January 2007, included details of recent research and monitoring undertaken into the operation of Call TV quiz services. As a result of this review ICSTIS has consulted on proposals to impose a requirement on operators to provide announcements to callers at each £10 step they spend to ensure that they are aware of their overall level of expenditure. We welcome the ICSTIS consultation on this proposal.

- **(8) Work should be undertaken to assess the scale of addiction to participation in Call TV quiz shows. Given the Gambling Commission's responsibility under the Gambling Act 2005 for protecting vulnerable persons from being harmed or exploited by gambling, we believe that this would be an exercise appropriate to the Gambling Commission. We also recommend that broadcasters should display the telephone number for GamCare at regular intervals. (Paragraph 40)**

25. The Gambling Commission has powers to advise on issues relating to problem gambling only, and not on prize competitions which may be causing problems. In view of the obvious parallels with problem gambling, we have asked the Gambling Commission to use its expertise in this area to assist the broadcasting and premium rate regulators in developing their own monitoring arrangements and protections.

26. However, where the arrangements being offered do amount to lotteries, rather than competitions, then the Commission has full powers to prosecute and shut down anyone who does not have the required licences or permission to run the lottery, and who acts in breach of the rules applying to lotteries.

- **(9) We welcome Ofcom's finding, in response to a complaint, that ITV had conducted a competition unfairly and had been in breach of Rule 2.11 of the Broadcasting Code. (Paragraph 43)**

27. We agree with the Committee and welcome this example of effective regulatory intervention.

- **(10) Some methodologies used for puzzles on Call TV quiz shows are not obvious. We believe that this is tolerable as long as viewers are made aware there is a cryptic element: but this is currently not made clear. Guidance from Ofcom on the issue is sound but does not go far enough. We recommend that Ofcom should require broadcasters to inform viewers that puzzle solutions may not be as simple as they seem. We believe that checks by an independent third party on proposals for new puzzle types and on each puzzle for conformity with agreed rules are valuable in building confidence in the propriety of the games. They are also in the industry's own interests. If there is continued evidence of abuse and significant numbers of complaints about games methodologies, Ofcom should consider making it obligatory for all broadcasters of Call TV quiz shows to verify games with a third party and lodge solutions with them to prevent underhand changes being made while the show is on air. We recommend that Ofcom should consider carefully whether operators should be required to broadcast not just the solutions but also a brief explanation as to how they are arrived at. (Paragraph 48)**

28. Ofcom currently requires broadcasters not to mislead viewers about the difficulty or cryptic nature of a competition.

29. In applying the general standards set out in the Communications Act, Ofcom's focus is primarily aimed at outcomes – what is broadcast – rather than process. For instance, there is a requirement for news programmes to report with “due accuracy” – but Ofcom does not stipulate how that should be achieved, e.g. by consulting a third party.

30. The Committee have recommended that Ofcom require broadcasters to inform the audience when a competition is cryptic. We have discussed this possibility with Ofcom, but its view is that this would be an impossible regulatory task since there is no clear consensus on what would constitute a particularly cryptic or difficult solution.

31. Ofcom does not mandate that broadcasters lodge their quiz answers with a third party. Ofcom does, however, require that broadcasters are able to demonstrate that a) the answer has not been changed; and b) that the methodology is fair. Nevertheless, Ofcom has agreed that, as the Committee has proposed, if there is systematic abuse in this area, it would consider creating new rules.

32. Ofcom currently requires the solution to quizzes to be broadcast, but not the methodology. Nevertheless, when Ofcom receives a complaint concerning this issue, it does insist that the broadcaster provide it with the methodology, so it can, as an independent regulator, verify the answer and validation process. Consideration would be given to the need to offer additional guidance on the methodology used should that be deemed necessary at a later date.

- **(11) We are surprised that there have been so few complaints in Ofcom's Broadcast Bulletins about games methodology or about the obscurity of answers. On balance, unless there is a significant drop in confidence in the integrity of Call TV quiz programmes, we accept that Ofcom's role in ensuring fairness should continue to be primarily one of responding to complaints rather than taking a proactive stance. We recommend, however, that Ofcom should publish periodic reports on the findings of its exercises in monitoring Call TV quiz programmes. Ofcom should in particular watch for any sign that top prizes are consistently going unclaimed because they are associated with puzzles which are so obscure that no viewers solve them. (Paragraph 50)**

33. As part of its recent research ICSTIS undertook extensive monitoring of the way Call TV quiz shows operate; ICSTIS also necessarily undertakes monitoring as part of its general regulatory process.

34. Any complaints about the difficulty or obscurity of a quiz answer are investigated by Ofcom and the adjudications published, an approach the Committee endorses. Ofcom has stated that the process of investigating complaints does lead to many hours of programming being examined.

35. The regulators have no evidence of top prizes consistently going unclaimed, but they have said that if any such suggestion should arise they would investigate.

- **(12) We signal our strong view that any practice of misleading viewers about call volumes or of blocking calls would be more than unfair: it would be fraudulent and should be punished under criminal law. It would also be a disgrace to the Call TV quiz industry. (Paragraph 52)**

36. The ICSTIS review, published on 29 January 2007, did not find any evidence of unlawful practices. However, the review did uncover evidence which highlighted the need for consumers to be given more information about the cost of taking part and the element of chance involved. The ICSTIS consultation therefore proposed to refine the existing rules to ensure greater transparency for consumers and to encourage best practice in the sector. If Ofcom or ICSTIS find any evidence of misleading practice they can act.

37. ICSTIS has made clear, publicly, that where evidence of fraud or other criminal practice comes to light, it will not hesitate to pass on that information to the police. The City of London Police have already investigated one case of alleged fraud by a Call TV quiz service. It was decided by the CPS that there were insufficient grounds on which to bring charges.

- **(13) We accept the statement by ITV that the number of callers being charged for calls made after they have exceeded call limits set by broadcasters and who therefore cannot participate is very small. Nonetheless, it is unacceptable in principle that such callers should continue to be charged, particularly when they do not understand the futility of such calls. We welcome the undertaking by ICSTIS that it will investigate the practice of continuing to charge. We find it difficult to believe that there is no suitable way of preventing such calls from being charged, and we urge BT to assist in finding a solution. In the meantime, customers should be refunded the cost of any calls made which have been blocked from entering the competition. (Paragraph 56)**

38. The ICSTIS consultation on Call TV quiz services identified the technological problems associated with resolving this issue. ICSTIS has therefore sought more information about the extent of the problem and how best to resolve it. ICSTIS is committed to keeping this issue under review, but recognises that the technical solutions may not be straightforward. However, both Ofcom and ICSTIS have agreed with the Committee that it is unacceptable for callers who have been barred from entering a competition, because they have spent too much money, to be charged.

- **(14) We believe that there is scope for raising the standards which broadcasters should meet in presenting information on the cost of participation on-screen, possibly by prescribing the balance to be maintained between that information and the premium rate number. (Paragraph 62)**

39. The current ICSTIS Statement of Expectations sets out rules requiring operators to provide spoken and on-screen information about the cost of participation. However, the ICSTIS consultation has proposed to strengthen these rules by making it a requirement for operators to provide cost information at intervals of no more than 10 minutes to ensure viewers fully understand the cost of participating in a Call TV quiz show. We welcome the ICSTIS consultation on this proposal.

- **(15) We accept that there may be practical difficulties for operators in displaying a figure purporting to show the odds of any viewer getting through to the studio by making a call at that particular moment, but we believe that they are not insurmountable. We are firmly of the view that there should be more transparency about the factual information on which a calculation of the odds would be based. (Paragraph 65)**

40. ICSTIS has stated that improved transparency to consumers about the chances involved in participating in Call TV quiz services is needed. The recent ICSTIS consultation therefore sought views on practical ways in which this might be achieved and we look forward to their proposals.

- **(16) We recommend that broadcasters should be required to display some recent historical information about volume of incoming calls, with an indication of the odds of being connected to the studio. The operators and regulators should together devise a model for prescribing what information should be provided and how often. We acknowledge that considerable care will need to be taken to ensure that the information given to viewers will indeed increase transparency. (Paragraph 68)**

41. As noted above, ICSTIS is considering the responses to its recent consultation on practical ways to increase transparency to consumers about the chances of getting through to the studio.

- **(17) While it is right and proper that operators should be able to ban participants caught cheating from further participation, we believe that any participant who has been banned should be given full information on the reasons why the ban has been imposed. (Paragraph 69)**

42. The problem in the case presented to the Committee showed the need for participants to be clear about the Terms and Conditions which apply, and specifically whether a large win would lead to a ban on participation. Ofcom has agreed that the Broadcasting Code, which covers all broadcast competitions, might be strengthened to require that the Terms and Conditions of any competition clearly state the grounds on which participants could be banned from further participation. ICSTIS has also made clear that all providers will review their Terms and Conditions to ensure they are complete, accurate and easily understood.

- **(18) We welcome the recognition by regulators that close co-operation is needed in the Call TV quiz sector. Given the distinct areas of expertise of each of the regulators, we believe there should continue to be a regulatory role for each. However, we recommend that there should be one regulator, in our view Ofcom, taking the lead and orchestrating oversight. We believe that members of the public have no clear idea which body they should complain to if they have concerns, and we recommend that a single body should take responsibility for registering all complaints and forwarding them, as necessary, to the appropriate body. This would allow regulators and broadcasters alike to gain a clearer picture of where concerns lie. (Paragraph 76)**

43. The current regulatory regime provides for the responsible regulators to act jointly, focusing action specifically where they have expertise. Ofcom has the formal lead, with responsibility for the oversight of ICSTIS (which includes approving the ICSTIS code of practice, budget, annual plan and setting the strategic direction for ICSTIS), while ICSTIS has the expertise in dealing with the operations of the premium rate telephone industry – setting and securing the standards and requirements under which premium rate service providers operate.

44. Since the advent of Call TV quiz services, Ofcom and ICSTIS have continued to work closely to maximize their enforcement efforts and to provide certainty for consumers and the industry about the operation of the regulatory regime. However, Ofcom and ICSTIS have stated that there may be a need to inform the public more extensively about their roles.

45. Both Ofcom and ICSTIS take the view that the current division of responsibilities works well and, in relation to complaints handling, that it would disadvantage the public to seek to limit their routes of complaint. Ofcom and ICSTIS have well organised and easily accessed procedures for the registration of complaints. Complainants to either body may write, call, e-mail or use web-based facilities. Both bodies' identities and contact details are widely publicised including, in ICSTIS's case, on the back of telephone bills and in many phone directories. This system of complaints handling is felt to be well tested and efficient.

46. In addition to leading on the response to recent concerns about the operation of Call TV quiz shows, Ofcom is also considering the regulatory structure for participation TV. A discussion paper has already been issued and a further consultation will take place in the near future. Since Call TV quiz programming is the largest and highest profile type of participation TV, a substantial part of the forthcoming consultation will be given over to it.

47. Furthermore, Ofcom is currently undertaking a broad review of the scope of regulation of premium rate services. The aim of the review is to consider whether current premium rate service regulation meets the needs of consumers while supporting an innovative and growing premium rate service industry. Both regulators are keen to ensure the most effective regulation of premium rate services in the converging media landscape.

48. Ofcom, ICSTIS and the Gambling Commission all recognise that there is a need for continued close co-operation as these and other similar services develop in the future - whether or not the operation of TV quizzes is caught by the new Gambling Act regime when it comes into force later this year.

49. Ofcom and ICSTIS will be providing a joint response to the Select Committee report.



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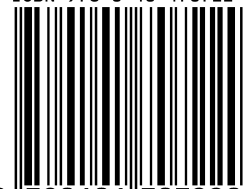
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