

CONSUMER
PANEL

Ofcom
OFFICE OF COMMUNICATIONS

DTI consultation on consumer representation and redress

Response from the Ofcom Consumer Panel

April 2006

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Introduction

1. This note responds to the DTI's consultation paper issued in January 2006.
2. It covers the following points:
 - A brief description of the Ofcom Consumer Panel and its work
 - Some general points about effective models of consumer representation
 - Consumer Direct
 - Ombudsman Schemes
 - Consumer Voice
 - The Panel's preferred model going forward
3. The Panel is making public its response as a contribution to the important debate which this DTI consultation has launched.

The Ofcom Consumer Panel

4. The Ofcom Consumer Panel was established in early 2004 under section 16 of the Communications Act 2003. It is a group of 12 individuals, appointed by Ofcom with the approval of the Secretary of State, who have substantial knowledge of and expertise in consumer issues in the electronic communications sector. The Panel's remit covers the UK and, by statute, it has amongst its members representatives of the interests of consumers in Scotland, Wales, Northern Ireland and England¹. Panel members are also expected, between them, to be able to provide informed advice on the interests of people in, respectively, urban and rural areas, the elderly, the disadvantaged, those on low incomes or with disabilities, and small businesses.
5. The Panel's primary task is to advise the board of Ofcom on consumer (domestic and small business) issues in the communications sector, excluding issues related to the content of electronic communications. Under the Communications Act 2003, it also has a responsibility to advise other relevant persons and bodies in the telecommunications, broadcasting and spectrum markets. The Panel has a memorandum of understanding with Ofcom which defines the relationship between the two bodies.
6. Details about how the Panel operates, what its priorities are and how it is resourced are set out in Annexe 1. The main points to note about the Consumer Panel are:
 - It was set up in 2004 as part of the "better regulation" agenda. The Panel aims to operate according to the five principles of good regulation from the Better Regulation Task Force. These are: proportionality, accountability, consistency, transparency and targeting.
 - Its remit is to focus on the work of a single large regulator, regulating a fast-developing highly competitive industry. This single focus gives it a depth of knowledge which is important to enable it to influence the work of a well resourced industry regulator
 - It is evidence-based

¹ <http://www.ofcomconsumerpanel.org.uk/members.htm>

- It does not handle complaints but has access to the complaints-handling and dispute resolution work carried out by regulators and the ombudsman schemes in its sector.
- The Panel has 4 staff, seconded to it from Ofcom and in 2005/6 spent £856,000. A significant proportion of this budget is devoted to research (see Annexe 1 for details). In addition, the Panel can, and does, call on the resources of Ofcom to assist in projects and research
- The Panel's focussed work programme (published annually) enables it both to critique and to influence the work of Ofcom and to provide a degree of assurance to the Board of Ofcom about the regulator's performance in the protection of the consumer interest.

Some general points on effective consumer representation

7. Section 1 of the DTI's consultation paper poses some important general questions and sets out some key principles for the reform of consumer representation. The Panel has the following general comments.

Consumer complaints (paragraphs 1.7 – 1.9)

8. The Panel fully endorses the general proposition that the volume of complaints referred to complaints-handling bodies is a matter of concern. The inference that we draw is that there is a strong need for clear complaint-handling requirements – including enforceable standards for the timeliness and quality of complaints handling – to be placed on firms as part of their regulatory contract, and for regulators to have both the resources and the powers to enforce these standards and to penalise regulated firms who fail to meet them.

Consumer awareness (paragraphs 1.10 – 1.12)

9. There is, as the consultation paper notes, an issue about consumer awareness of the various bodies currently operating in the complaints-handling area. However, for the reasons just noted, we believe that even the most effective and efficient consumer advisory bodies are no substitute for enforcing improvement in the front line of consumer concerns – the performance in complaint handling of regulated firms themselves.

Effective, coherent representation (paragraphs 1.13 – 1.14)

10. We think that it is worth considering exactly where the benefits of scale occur in the organisation of consumer bodies. As the paper notes, there are a number of distinct activities under consideration here: advocacy, complaints handling and dispute resolution. The Panel's experience suggests that while both complaints handling and dispute resolution are important sources of information about consumer issues (although of course they must, for a complete picture, be supplemented by other sources of evidence), the skills needed to carry out these activities effectively are distinct from the skills of policy formation and advocacy. We also think that there is an important distinction to be drawn between cross-sectoral advocacy and the ability to get traction with a sectoral regulator on consumer issues – which requires sustained focus and in-depth knowledge and experience.

Scope of these proposals

11. We understand why the very newly-formed Consumer Council for Water has been excluded from this consultation. But we are puzzled as to why the scope of the consultation appears to be limited to energy, postal services, electronic communications and financial services. These sectors are not all 'utilities' as the word is usually employed in a regulatory context. In contrast to the position in 'traditional' utilities such as gas, electricity and water, electronic communications and financial services are industries characterised by a multiplicity of suppliers and – at least for some products and services - ferocious competition and a high rate of innovation. And yet other sectors where there would seem to be very similar issues about consumer complaints handling, dispute resolution, or the lack of it, and the need for strong advocacy – e.g. rail and air transport – are not included.

Consumer Direct

12. The thrust of this section of the consultation paper is to place front line responsibility for dealing initially with consumer complaints firmly at the door of firms. We believe this is right. No firm should be able to evade its responsibilities to its customers because of the existence of a publicly-funded consumer body.

13. But we are unclear about where exactly this will leave consumers. Our questions are:

- Is it definitively proposed that the complaints handling functions of Postwatch and Energywatch should be dismantled?
- If so, how is it proposed to make the complaints-handling responsibilities of individual regulated firms in these sectors subject to enforceable standards?
- What exactly will be the role of Consumer Direct in complaints handling more broadly? The paper refers (paragraph 5.9) to "helping the consumer resolve simple complaints". Will this take place only after the individual firm's complaints handling procedures have been exhausted?
- How will Consumer Direct relate to alternative dispute resolution schemes? The rules of such schemes normally require them to come into play only when customers have exhausted the complaints handling procedures of an individual firm and remain dissatisfied. How will Consumer Direct satisfy itself that this point has been reached before directing consumers to such schemes?
- How will Consumer Direct be financed in future? If it is to play a role in complaints handling in substitution of some existing complaints handling bodies – which is what seems to be proposed for energy and postal services – is it right for it to continue to be financed by the general taxpayer rather than by industry?

Ombudsman schemes

14. The Panel agrees with the thrust of section 6 of the DTI paper, about the desirability of extending ombudsmen arrangements into the energy and postal services sectors.

15. The Panel also suggest that consideration should be given to extending the principle of ombudsmen arrangements to other sectors not covered by the present consultation.

16. The Panel:

- Supports the view that the model of ADR schemes available in the electronic communications sector is the most attractive for the reasons set out at paragraph 6.10 – 6.12².
- Observes that an approach which contemplates the existence of more than one ombudsman scheme per sector places a responsibility on the regulator to ensure that multiple ombudsmen schemes are performing to equivalent standards in respect of consumer protection.
- Does not agree that separate ombudsmen for each sector would lead to inefficiency (paragraph 6.8 of the DTI document). The Panel is not aware of any evidence to support this contention.

² Two members of the Panel, Colette Bowe and Jeremy Mitchell, declare an interest here as founder members of the Council of Otelo.

“Consumer Voice”

17. The Panel agrees that there is a case for a strengthened cross-sectoral consumer advocacy body for the UK, with sufficient (both in quality and quantity) human and financial resources available to it to make it a powerful body that has an automatic seat at the public policy table.
18. It agrees broadly with the roles set out at paragraph 7.8 for Consumer Voice, and welcomes the emphasis rightly placed on the need for the UK to have a well-resourced consumer body capable of performing strongly in European and other international contexts.
19. The Panel notes that arrangements proposed at paragraph 7.12 for leaving unchanged the present arrangements for Northern Ireland. The Panel would emphasise the need to ensure the closest possible liaison between the General Consumer Council for Northern Ireland and Consumer Voice.
20. The Panel's main general point is to question what exactly will be the remit of Consumer Voice? The paper refers for example at paragraph 7.15 to Consumer Voice speaking for “all consumers”. The proposals in the paper envisage various models for addressing the issues in energy, postal services, electronic communications and financial services sectors. But what else will Consumer Voice cover? If the answer is: everything the NCC does now but with special attention being paid to these four sectors, the questions raised are:
 - How will Consumer Voice avoid being dominated by the issues arising in these four sectors to the exclusion of others?
 - How will it deal with the many similar issues raised in other sectors – e.g., transport, health and education?
 - How will Consumer Voice ensure that it has sufficiently deep and continuous knowledge to be able to influence the work of those regulators – such as the Financial Services Authority and Ofcom – which are regulating but fast-changing highly competitive industries?
 - How will Consumer Voice be funded? We believe that it is important that Consumer Voice is free to address whatever issues emerge as being important for consumers, whichever sector they may arise in. In our view this points towards government rather than industry funding in order to give Consumer Voice the necessary freedom of action and avoid confusion in its funding arrangements.

The Panel's preferred model going forward

21. The Panel has reviewed the three models proposed in section 7 of the paper and has noted the references to the Panel at paragraphs 8.2 to 8.4. As the paper notes at paragraphs 8.2 and 8.3;

"The Ofcom Consumer Panel and the Financial Services Consumer Panel differ from the other bodies being considered as part of Consumer Voice in that they are currently part of sectoral regulators. This may raise particular questions about whether it would be appropriate to include either or both of them in Consumer Voice, and if so, how duties and responsibilities of the panels would be transferred into the new body. The Ofcom Panel has a number of features that distinguish it from other bodies, which may reduce the scope for benefits from including it in Consumer Voice. The Ofcom Panel does not handle consumer complaints, and it does not have a regional office network or staff of its own. It has been established since February 2004, and is structurally closely integrated into Ofcom, whilst retaining full independence of operation (which it derives directly from statute)."

"As with other sectoral consumer bodies, the Ofcom Consumer Panel has important statutory obligations in respect of participation in the wider regulatory regime for the relevant sector, including the representation of consumer interests to the sectoral regulator."

22. The Panel is pleased to note that the role and contribution of the Ofcom Consumer Panel to the regulation of a particular sector is understood, and would agree that the special features of this relatively new body – with no complaints handling role- set it somewhat aside from other bodies discussed in the DTI paper. The Panel would particularly draw attention to its work on:

- Identifying and responding to the needs of vulnerable consumers in the digital switchover process
- Creating a longitudinal research study of the experience of the real needs and issues for consumers in the communications market place
- How Ofcom should reorganise itself to give more priority to consumer and citizen issues
- How any economic regulator – not just Ofcom – can be held to account for its handling of consumer issues in a framework akin to an "audit"

23. However, the Panel also, as we have said at paragraph 17, supports the proposal to create a powerful new voice for UK consumers, and would want to be able to assist Consumer Voice in its work – without losing the focus that the Panel has developed on the consumer issues in the communications sector.

24. Accordingly, the Panel would support Model 3, which (paragraph 7.18) envisages a permissive statutory power for sectoral regulators to establish and maintain (which we take to mean finance) expert consumer panels to provide them with advice, while providing for links to be developed by cross-membership between Consumer Voice and such a panel. This model seems to us to meet the twin objectives of enabling a sectoral panel to continue to be able to focus intensely on a particular sector, while providing a way for Consumer Voice to benefit from its expertise and vice versa.

25. The Panel would envisage close working with Consumer Voice in order to ensure that both sectoral and cross sectoral issues were identified and handled efficiently. The Panel would envisage the arrangements for future collaborative working between Consumer Voice and the Panel being set out in a Memorandum of Understanding between Ofcom, the Panel and Consumer Voice.

Summary of the Panel's response to the DTI's questions

26. We are responding only to those questions where we feel we have something to contribute.

Q1 Do you agree that companies who provide services should have complete responsibility towards their customers, including the resolution of complaints? To what extent do you consider that companies currently fail to do this?

27. We agree that regulated firms should have, as part of their regulatory obligations, responsibility for complying with standards set and monitored by their regulator for handling consumer complaints.

Q3 Do you agree that it would be beneficial to extend complaint resolution through ombudsman schemes to electricity, gas, and postal services?

28. Yes – the evidence from the communications sector is that this provides a spur to regulated companies and a valued level of additional protection to consumers.

Q4 Do you agree that the electronic communications model is to be preferred, with service providers being obliged to belong to an ombudsman scheme, but leaving it to the companies to come up with their own scheme (or join an existing scheme) subject to regulatory approval?

29. We agree.

Q5 Which of the strategic models do you prefer, and why?

30. We prefer Model 3 for the reasons sets out at paragraphs 22-25.

Q7 Do you agree that Consumer Voice should have a UK-wide role, but with restricted scope in some areas?

31. We think that the scope of Consumer Voice should be UK wide and that the case for EXCLUDING particular sectors such as transport from the scope of Consumer Voice in specific areas has not been made in this document.

Q8 Do you agree that offices should be restricted to one in each of Scotland, England, and Wales? Should Consumer Voice have the powers to appoint regional committees?

32. The experience of the Ofcom Consumer Panel is that the voice of consumers in Wales, Scotland Northern Ireland AND England are distinctive. But we would advise against the

creation of an elaborate regional OFFICE structure in favour of a regional COMMITTEE structure.

Q9 Do you agree that funding should be made partly from Government and partly from those industries that contribute to the funding of sectoral consumer bodies at present?

33. A mixed funding model would be very complex to operate.

Q10 Which duties and obligations on the sectoral consumer bodies should be transferred to Consumer Voice? Please give reasons.

34. See paragraphs 17-20 above.

Q11 Which of the interactions between the consumer body, regulator, and Government should be preserved and transferred to Consumer Voice? Please give reasons.

35. See paragraph 17-25 above.

Q12 Do you agree with the initial estimates of the benefits of the proposed options? Please provide quantifiable evidence where possible to support your view.

Q13 Do you agree with the initial estimates of the costs of the proposed options? Please provide quantifiable evidence where possible to support your view.

Q14 Do you agree with the assessment of the impact of the proposals on small firms? We would welcome, in particular, comments from small firms on the impact of the proposals.

Q15 Do you agree with the assessment of the impact of the proposals on competition?

36. Q12 – Q15. We do not have an evidence base to respond to these questions.

Annex 1

Organisation profile: the operation of the Panel, its priorities and resources

1. As part of this consultation exercise, the Ofcom Consumer Panel (OCP) was requested to supply information to KPMG to enable the completion of the Regulatory Impact Assessment. Our submission about the OCP's organisational profile can be found on our website. Our website www.ofcomconsumerpanel.org.uk also provides further details of the Panel's membership, main activities and outputs. Our response to KPMG, given in February 2006 is summarised below.
2. The Panel's criteria for determining which issues of the many that affect consumers in this sector it devotes attention to are:
 - **Relevance:** is this an issue which consumers have identified as a relevant concern (in the Panel's annual consumer survey), or which for other reasons the Panel believes is important for consumers?
 - **Detriment:** is there evidence of a real and significant risk of consumer detriment?
 - **Practicality:** is this a matter to which the Panel could add value (i.e. others are not already engaged on the consumer issue) and for which some practical solution can be found?
 - **Vulnerable groups:** would tackling an issue address the requirements and needs of those vulnerable consumer groups listed in the Communications Act?
 - **Communications Act themes:** The Act requires that the Panel are able to give advice on the interests of domestic and small business consumers in relation to the following matters:
 - the provision of electronic communications networks, services and facilities and relevant apparatus;
 - directories to enable their use;
 - the financial and other terms on which such services or facilities are provided;
 - service standards;
 - complaints-handling;
 - dispute resolution;
 - redress;
 - information about service standards and the rights of consumers; and
 - any other matters the Panel considers to be necessary for securing effective protection of communications consumers

3. The Panel bases its advice on evidence drawn primarily from research but also from representations made to it from: its strong network of links with smaller, specialised consumer advocacy bodies in the sector; from complaints data available to the regulators in the sector (Ofcom and ICSTIS); and from its contacts with the industry.
4. The Panel conducts a substantial programme of research, including a major annual exercise in “tracking” the experience of consumers in accessing and using electronic communications, right across the UK and across all age groups. It also conducts individual research exercises into single topics of major significance, such as how the roll out of the digital switchover might affect vulnerable people. (This report was the basis for advice on how to tackle these issues which the Panel gave to the Secretary of State for Culture, Media and Sport in November 2004³). All the Panel’s research is published⁴.
5. The Panel has set up a network of specialised consumer groups, the Consumer Forum on Communications, which meets regularly and which feeds into the Panel’s work.
6. The Panel has also undertaken some innovative work on how economic regulators can be held to account for the effectiveness with which they understand and incorporate “the consumer interest” into their regulatory policy making⁵.
7. The Panel is fully transparent in its operation, publishing agendas and minutes of its meetings on its website and reporting annually on its work.
8. The Panel employs 4 members of staff who are seconded to it from Ofcom. It does not, on efficiency grounds, have its own offices but is located in space made available by the regulator. It will cost approximately £860,000 in 2005/6. This money is channelled to the Panel via the Ofcom budget.

³ Ofcom Consumer Panel (November 2004), *Supporting the most vulnerable consumers through digital switchover*. This can be found at <http://www.ofcomconsumerpanel.org.uk/dso.htm>

⁴ <http://www.ofcomconsumerpanel.org.uk/publications.htm>

⁵ Capturing the Consumer Interest: A toolkit for regulators and government
http://www.ofcomconsumerpanel.org.uk/publications/Final_published_version_120257tx_for_web.pdf

Annex 2

Panel resources: budget and spend

As part of this consultation exercise, the OCP was requested to supply information to KPMG to enable the completion of the Regulatory Impact Assessment. Our submission about the OCP's resources can be found on our website. Our response to KPMG, given in February 2006 is summarised below.

	Forecast to 31/03/06 2005/06	Budget 2006/07
Costs		
Headcount costs	(£)	(£)
Staff headcount	4	4
Staff salary and member remuneration	337817	366081
Bonus	5451	5615
Expenses	28205	56080
Recruitment	15298	15000
Employer's National Insurance	43241	46857
Pensions	15555	16021
Accommodation costs	0	0
Admin		
Postage	257	500
Stationery	4186	5000
Sundry	2761	10000
Publishing	37,520	80,000
IT		
Hardware	0	800
Support	200	200
IT cost 1 (Website)	2644	10000
Outsource		
Service 1 (Consultancy)	117500	60000
Service 2 (Comms consultant)	11913	12000
Service 3 (Events)	15000	10000
Others		
Research	220000	230,000
Total	857548	924154