



## Communications Consumer Panel response to the DCMS' Communications Review

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The Communications Consumer Panel is an independent group of experts established under the Communications Act 2003. Its role is to provide advice to Ofcom to ensure that the interests of consumers and citizens, including small businesses, are central to regulatory decisions. The Panel also provides advice to Government and champions consumers' communications interests with industry. The Communications Consumer Panel welcomes this opportunity to input into the Communications Review.

In its response to the May 2011 open letter, *A Communications Review for the Digital Age*, the Panel noted that the communications market plays a pivotal role in the lives of UK consumers, citizens and small businesses. It has a social as well as an economic benefit. The internet specifically now plays a significant role in many people's lives on a variety of levels - from keeping in contact with friends/family, to saving money on goods and services or the convenience of locating information about services.

Developments in the market have already enabled applications unimagined at the time of the last Act. The drive to ensure that hardware is increasingly compatible with other devices can contribute towards making it easier for consumers to use the technology and lessening the environmental impact of the industry. Future advances will potentially bring additional societal benefits e.g. telehealth, enhanced educational opportunities and social interactions globally, which are particularly relevant in the support of an ageing UK population.

But there are persistent challenges - some for the UK as a whole and others, which are more acute in the devolved Nations. Examples of these existing challenges include mobile coverage, the availability of superfast broadband, straightforward and effective methods of redress for consumers, and the need to encourage non-users online. There are also emerging challenges, e.g. the nature of privacy and personal data in an online world, copyright protection, micropayments, traffic management and the increasing potential for overlap between platforms, devices and sectors.

Within the lifetime of the new Act, a reasonable goal or vision should be that virtually all citizens and consumers enjoy immediate access to high-speed broadband and ubiquitous mobile coverage. To achieve this, there needs to be provision for intervention in those cases where, for understandable economic reasons, the market does not provide the infrastructure and services that consumers and citizens need. Government is already intervening to go some distance towards near-universal broadband and to provide a more comprehensive mobile voice and data service - it now needs to redouble efforts to encourage, and support tangibly, the wide range of initiatives to improve digital participation. There needs to be a basis for ensuring that Government can continue to intervene when necessary on behalf of citizens in the future. A strong, independent consumer advocate is vital in ensuring that regulators and policy makers appreciate and address the issues that matter to consumers.

Within an agenda, which emphasises deregulation and growth, it is vital that any new legislation addresses these challenges flexibly in order to support a dynamic communications market in the years to come. Any new legislation also needs to reflect the rapid pace of change within this market, as technological advances often outpace our ability to judge their impact on consumers. Given that small businesses face many of the same challenges encountered by consumers, there is also the question of how they too can be protected under new consumer regulation. In rural areas and in the devolved Nations there is a disproportionate economic reliance on small businesses, especially food production and tourism, and it is essential to secure an environment, which enables these small businesses to thrive. As the development of the new Act progresses, we look forward to hearing more about the Government's policy intent and how this will link to potential legislation.

In order to grow successfully, the communications market must have satisfied consumers at its core. Two concepts are fundamental to ensuring this:

- Consumer Protection
- Consumer Empowerment

In debating the shape of the new legislation, it is vital that we make a clear distinction between issues that can - or could - be addressed by the current legislation and those issues that currently occur but cannot be dealt with under the existing legislation. A further category consists of those issues that we can foresee developing and which require a legislative response.

## Consumer advocacy

Recent years have seen a number of developments in areas fundamental to consumers' experience of the communications sector. The pace of change, the Government's review of the consumer landscape and the proposed new

Communications Bill all reinforce the need for consumers and citizens to retain a strong advocate. Using its expertise the Panel looks at a wide range of communications issues - including those of particular relevance to disabled people, older people and more vulnerable people - so that consumers' and citizens' interests are protected and promoted<sup>1</sup>.

Rapid developments in the communications sector and the growing importance of communications technologies in people's lives mean that it will be even more important in future for consumers to have a strong voice. Working together with other consumer bodies, the Panel will work to help inform and shape future policy - and continue to achieve the best possible outcomes for communications consumers. It is vital that any new legislation in this area complements existing/developing consumer legislation.

### Online Privacy/security

Three-quarters of the UK population now have broadband at home, using the internet to share their thoughts, ideas and information; and UK consumers conduct more transactions online, and are spending more, than consumers in any other major European country. The internet and mobile apps offer consumers and citizens a host of benefits - for example 69% of those with internet access at home use it to purchase goods/services/tickets etc. The market in consumers' personal data is growing rapidly and, properly applied, has the potential to produce many benefits for consumers.

But there are also risks - that consumers disclose personal information without understanding how it is used or by whom, that data are misused, and that the law does not keep pace with industry developments or consumers' expectations. A lack of trust and understanding among users could become a barrier to the continued development of innovative services and applications, to economic growth, and the benefits for consumers. The Panel believes that it is vital that consumers are aware of how their personal data is collected and used, how they can access and edit it, and feel confident about entering it online. There is a disturbing lack of understanding about how personal data is gathered and used, and the Panel believes that there should be a concerted effort to improve consumer awareness and understanding of these processes.

The Panel-commissioned research, *Online personal data: the consumer perspective*<sup>2</sup>, found that while nearly four in five people surveyed said they are highly concerned that their online data might be sold on by a company to a

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<sup>1</sup> <http://www.communicationsconsumerpanel.org.uk/CCP%20AR%202011-12.pdf>

<sup>2</sup> <http://www.communicationsconsumerpanel.org.uk/smartweb/research/online-personal-data>

third party, just 50% of people said they regularly read companies' privacy policies. The study also found that consumers said that they are more comfortable sharing information when they are aware of, and have control over, what they are disclosing.

The Panel considers that consumers will only be genuinely empowered if they have:

- information to allow them to make an informed decision about the implications of releasing their data
- control over the use of their data
- confidence that companies will follow the rules and manage personal data
- reassurance that companies will always minimise the amount of data that they collect, and will retain it for no longer than is necessary.

Going forward, it is vital to understand how much people really know about how their data is used; the extent to which they take measures to inform themselves or protect their data; the trade-offs people are prepared to make between privacy and protection of data; information about free or tailored content, services, advertisements and pricing; and whether people believe the current regulatory framework offers appropriate protection, and - if not - where action is required and from whom.

### **Consumer information and decision making**

The proliferation of communications services, options and tariffs has brought an increasing level of choice for the consumer. But comparing the different options available in this complex market is not straightforward. The Panel's work on behavioural economics and vulnerable consumers found that some evidence suggests that too much information, or information that is too complex, can lead to poorer consumer decisions and therefore have a detrimental effect on consumer welfare. In addition to working with other stakeholders on the midata initiative, and providers giving consumers clear and reliable information generally, the Panel is interested in the provision of greater information for consumers about both the potential benefits and risks of apps, and the potential provision of key contractual facts, presented in plain English, similar to those used in the financial services market.

### **Digital Participation**

Digital participation has become increasingly important as more vital services (both public and commercial) move online only, or are delivered offline in a way that penalises users through higher cost or lower quality. In 2010, the

Panel developed a Consumer Framework for Digital Participation<sup>3</sup> to help government and others increase the number of people using the internet.

The Panel's most recent report, *Bridging the gap: Sustaining Online Engagement*<sup>4</sup> notes that there is a serious risk that public policy underestimates the challenge of supporting people to get and stay online. In 2012, 22% of the UK adult population - eleven million people - still do not use the internet at home. Those who aren't online risk getting left behind. In the Panel's view:

- the challenge to increase participation is underestimated;
- meeting the challenge is underfunded; and
- people who remain unable to access online services will suffer increasing detriment if the challenge isn't met.

To seek solutions to these challenges, the Panel commissioned research among people who are less digitally engaged, and has made clear recommendations to Government and others. We believe that, without action now to give people the skills and motivation to exploit the advantages of the internet, there is a risk that the digital divide will become a gulf, excluding a significant minority of people from online benefits and services. This has implications for funding, growth and policy. Moreover, sustainable growth for the future can only be achieved if broadband is used by most consumers and businesses.

The Panel is also concerned to ensure that provision is being made for offline alternatives to online public service delivery for those who are unlikely ever to get online.

## Micropayments

Online purchasing and payments via mobile devices and near field communications (NFC) can offer consumers significant benefit as a result of innovative new services. However, consumer confidence is key to a successful industry - which in turn relies on robust regulation and sturdy redress systems available when needed. The current system by which some micropayments fall under the auspices of Ofcom via PhonepayPlus and others under the Financial Services Authority is confusing for consumers and risks undermining confidence in this rapidly growing area.

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<sup>3</sup> <http://www.communicationsconsumerpanel.org.uk/smartweb/digital-participation/the-consumer-framework-for-digital-participation>

<sup>4</sup> <http://www.communicationsconsumerpanel.org.uk/smartweb/research/bridging-the-gap:-sustaining-online-engagement>

## Unwanted marketing contacts and internet/mobile scams

Unwanted marketing calls, texts and emails present a further area where regulatory asymmetry presents particular problems. Regulation of this area is complex, with involvement from Ofcom, the ICO and the Direct Marketing Association (DMA), who under contract from Ofcom have been maintaining the register of people who have opted out of live marketing calls.

Recent Ofcom data indicates that complaints to the Telephone Preference Scheme (TPS) have nearly tripled in the space of two years. Anecdotally, there are also suggestions that the TPS is being widely disregarded and that complaints are having little or no effect. A worryingly frequent feature is that recipients cannot identify the calling number or the business behind the call, and therefore cannot complain about them. The problem is greatly exacerbated by the high proportion of these calls that originate overseas. In addition, recorded voice messages and text messages are both outside the scope of the TPS; and there appears to be a growing volume of scam communications.

There needs to be a simple guide for consumers and citizens about how to report breaches of regulations or unlawful fraudulent activities. The Panel, together with a number of other consumer organisations, has recently called for a review of the adequacy of the current regulatory framework in this area, with particular reference to text messages<sup>5</sup>.

## Open internet/traffic management

As consumers are using more sophisticated high-bandwidth services on a variety of both fixed and mobile devices, this can result in congestion on networks, resulting in slow speeds and a frustrating experience for consumers. While traffic management potentially offers some benefits to consumers there are concerns that:

- consumers are unaware of and/or do not understand these practices and their impact and so are unable to exert proper consumer choice;
- that prioritising some services or types of traffic over others could reduce long term consumer choice and have a detrimental impact on those services that cannot afford to pay for prioritisation, including possibly some public services; and
- the technology used for traffic management could have implications for privacy and freedom of speech, as it involves analysis of internet traffic in order to decide how to manage that traffic.

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<sup>5</sup> <http://www.communicationsconsumerpanel.org.uk/TPS.pdf>

The Panel has been closely involved in both Ofcom's and the Broadband Stakeholders Group's work in this area over the last year. It has argued that ISPs must make consumers aware of what internet traffic management is and how it could affect them. Without this it will be difficult for consumers to make informed choices about the broadband service that suits them.

The Panel considered that Ofcom's statement on improving information about internet traffic management was a positive move to empower consumers, and welcomed the regulator's plans to consider using regulatory powers to compel ISPs to provide a minimum level of consumer information. It has also advised that Ofcom should continue to monitor the potential for harm to consumers and take early action to ensure consumers benefit from effective transparency.

The voluntary Code in support of the open internet recently facilitated by the BSG commits ISPs to the provision of full and open internet access products and confirms that traffic management practices will not be used to target and degrade the services of a competitor. The Panel believes that the code usefully supports open access to the internet and builds on previous commitments by ISPs to provide transparent information to consumers about their traffic management policies and looks forward to other operators also signing up to the code shortly.