

Communications Consumer Panel response to BIS consultation:

Empowering and Protecting Consumers

Introduction

1. The Communications Consumer Panel (CCP) welcomes this opportunity to respond to the BIS consultation: *Empowering and Protecting Consumers*. The last ten years have been a period of significant transition for consumers and their use of communications services. For an increasing number of people, life has been transformed by easy, almost instantaneous access to information and services on a scale previously unimagined. Online communication in particular has become integral to modern life. However challenges remain - some services and opportunities are still not universally available and some elements of inequality are increasing. The rapid pace of change in the communications sector presents both new benefits and challenges. For these reasons, particularly in the light of discussion about a new Communications Act, it is crucial that consumers and citizens continue to have a strong advocate.

The Communications Consumer Panel

2. The Communications Consumer Panel was established in early 2004 under section 16 of the Communications Act 2003. It is a group of 7 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 older people, those in urban and rural areas, the disadvantaged, people on low incomes or with disabilities, and small businesses.
3. One of the Panel's main tasks is to advise 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

¹<http://www.communicationsconsumerpanel.org.uk/smartweb/panel-members/our-panel>

in the telecommunications, broadcasting and spectrum markets. Its role is to act as an advocate for consumers, campaigning on their behalf and ensuring that their interests, including those of small businesses, are central to regulatory decisions. The Panel also provides advice to Government and champions consumers' communications interests with industry and others. The Panel has a memorandum of understanding with Ofcom which defines the relationship between the two bodies. Details about how the Panel operates, what its priorities are and how it is resourced are set out in Annexes 1 and 2.

4. The Panel is making public its response as a contribution to the important debate which this consultation has launched.

The active consumer

5. The consultation implies that the majority of consumers are inclined to be active in the comparison of products and services. However recent research² indicates that consumers in the communications sector are far less likely to switch services than in the utility sectors. Research does highlight instances of particular demographic groups who are less likely to engage in certain aspects of switching behaviour, but this is not borne out across the communications sector - it is therefore not only the 'most vulnerable' who are not active in this market.
6. The research found *"The main reason given for not switching, among consumers of mobile and bundled services, is the perceived lack of difference in cost, while the most common reason in the fixed-line and broadband markets is the hassle involved in switching (twenty-five per cent of fixed-line and 27% of broadband consumers said they were 'too busy/ do not have time to research the options')."*
7. *For multichannel TV, the most common reason for not switching was a combination of hassle (30%) and 'no perceived cost advantage' (29%)."*
8. *One barrier to switching supplier, mentioned by at least one in ten consumers who had considered switching in each market but did not do so, was the 'terms and conditions', or being tied into a contract. It is likely that technical literacy and the related problem of speed of innovation may raise particular barriers to switching in the communications sector."*

² The Consumer Experience 2010 Ofcom

9. Whilst it is of paramount importance that the ‘most vulnerable’ are represented, it would be a retrograde step to restrict advocacy and representation to only represent those considered to be ‘most vulnerable’ as it risks excluding the justified concerns and undermining the rights of other consumers.

Practical decision-making by consumers - the limits of information

10. 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 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.
11. The ESRC funded study *Do Consumers Switch to the Best Supplier?* by Chris Wilson and Catherine Waddams Price³ found that “the inaccuracy of consumers’ switching decisions remains substantial”. Even among people who said they had switched purely for price reasons, only 8-19% of consumers switched to the firm offering the highest level of financial gain - furthermore, 20-32% of switching consumers appeared to have switched to a more expensive option, losing an average £14- 35 per year in increased bills, apart from any other switching costs. The paper concluded “Such a failure of consumers to compare accurately between alternative suppliers can damage their welfare, both directly in lost savings, and indirectly by delivering firms with a source of market power. Indeed, together with the well established effects of switching costs in reducing the willingness of consumers to switch suppliers, such behaviour may seriously impede the competitive process, even after a market has been liberalised or made subject to standard competition policy...”
12. The consultation rightly notes that public money should not be spent generating consumer information where such materials are already freely available from an authoritative source. The CCP does not produce consumer information material. We regard this as the responsibility of operators, Ofcom and accredited comparison sites. The issue here is consumer awareness of what constitutes an authoritative source. Both the FSA and Which? have issued consumer information in relation to the use of price comparison sites.

³ Do Consumers Switch to the BestSupplier? Chris Wilson and Catherine Waddams Price, July 2007

General principles of consumer advocacy

13. The consultation proposes that the existing consumer advocacy functions in a limited number of different sectors should be brought together under Citizens Advice, possibly in a Regulated Industries Unit (RIU). The benefits that the proposal indicates might flow from this reorganisation include being able to draw upon Citizens Advice's local network, to identify issues emerging from consumer complaints and the ability to look across sectors at common issues, such as switching, poverty and disadvantage. We believe that effective consumer advocacy in the communications sector needs to be founded on the following principles.
14. The consumer advocacy body should have:

- the right to be consulted by regulators at an early stage before policy options are hard-baked;
- the capacity to look at emerging issues and research in order to shape policy with regulators and Government and to forestall citizen and consumer problems before they arise;
- strong links with consumer advocacy bodies in the Nations, which we understand might adopt different models depending on their specific circumstances and the existing institutional arrangements;
- the powers to call for information and initiate 'super complaints' that Consumer Focus currently have;
- sector-specific expertise and involvement, especially in a complex sector like communications;
- adequate resources/secure funding; and
- a focus on efficiency - demonstrating real value for money.

Responsibilities and roles of consumer advocacy bodies and the regulators

15. The Panel welcomes that the consultation proposes enhancing consumer representation in communications. We are however disappointed that the document gives little detail on the relationship and responsibilities between the regulators and the advocacy bodies, which is a key element of our principles listed above. We consider that this is an area that needs more development. We think that it is worth considering exactly where the benefits of scale occur in the organisation of consumer bodies. The consultation gives little detail on how the RIU/CA would interface with regulators. The Panel has been able to champion consumers' interests and influence Ofcom's policy development successfully due to a) its early

involvement in policy development and b) use of robust evidence - be that research or complaints data. A further factor is the Panel's independence; although it sits within Ofcom and thus has unique and expert insight it is wholly and objectively a powerful consumer advocate with the capability to take an inquisitorial approach and hold Ofcom to account. A robust, mutually respected and trusting relationship also allows the regulator to share information early - and in confidence - with the advocacy body. It is this early involvement which also allows the proactive identification of potential areas of detriment on the horizon, rather than waiting until harm has been experienced and complaints received.

The capacity to look at emerging issues

16. The CCP has benefitted from our previous relationship with Citizens Advice - for example CA intelligence informed our work in relation to consumers' difficulties in cancelling their mobile contracts due to poor coverage. There is no reason why that relationship should not continue and indeed, be strengthened whatever the final structure for consumer advocacy. However whilst the consultation rightly refers to the local intelligence that can be gained from contacts received by Citizens Advice, this is potentially only a partial view of consumers' concerns and it is always 'after the event'. In the area of communications, a large number of complaints are also routed directly to the regulator, in addition to those received by the Alternative Dispute Resolution schemes. This allows both the advocate and the regulator to identify, and the regulator to act upon, any immediate issues of concern in addition to those trends which become more problematic due to their persistent nature over time.
17. Because of its working relationship with the regulator, the Panel is also able to look at cross-cutting emerging issues and research - e.g. consumer information in relation to mobile coverage, broadband speeds and traffic management, rather than only in relation to a specific issue.

Consumer representation in the Nations

18. It is vital that there are strong links between consumer advocacy bodies in the Nations, which we understand might adopt different models depending on their specific circumstances and the existing institutional arrangements. The consultation rightly notes that consumer policy is a devolved power in Northern Ireland. If consumers are to be given greater clarity about who is championing their rights, have access to a one-stop-shop and the duplication of research is to be avoided, it is essential that these issues are carefully

addressed and that the rights of consumers in Northern Ireland are not diminished by the existence of two separate systems. Strong links between consumer advocacy bodies in NI and GB will be essential, especially on issues such as communications policy which is a reserved power.

The powers to call for information and initiate ‘super complaints’

19. The consumer experience is an integral element of any healthy market. As such, the role of the consumer advocate must be clearly established and the advocate suitably equipped to represent consumers in the relevant sector. In order to inform and direct its work, and to avoid unnecessary expenditure on research, it is vital that a consumer advocate has the statutory power to call for information which is available to the regulator and complaint handling bodies. Moreover, it requires the ability to initiate ‘super complaints’ in areas where it considers that consumers’ interests appear to be suffering significant detriment.

Sector-specific expertise

20. Like financial services, which is excluded from the review, the communications market is characterised by rapidly changing, complex products delivered in a competitive market with many varied players. To be effective the consumer advocacy body for communications needs to maintain a high level of sector specific expertise. It is not clear from the consultation document how this will be achieved in Citizens Advice.
21. We are puzzled as to why the scope of the consultation identifies as within scope the diverse sectors of water, rail, legal services, energy, postal services and electronic communications but excludes others e.g. financial services. To isolate advocacy for a small number of sectors risks leaving consumer representation for those sectors adrift from the core development of regulation.
22. The Panel would welcome further information about:
 - Without being comprehensive, how Citizens Advice would avoid being dominated by the issues arising in the energy, postal services, water, rail, legal services and telecommunications sectors to the exclusion of others?
 - How it will deal with the many similar issues raised in other sectors - e.g. transport (excluding rail), health and education?

- How will Citizens Advice ensure that it has sufficiently deep and continuous sectoral knowledge to be able to influence the work of those regulators - such as Ofcom - which are regulating fast-changing and highly competitive industries?

Resourcing and funding

23. In order to robustly represent consumers' interests, it is vital that the advocate is adequately resourced - in terms of both headcount and appropriate levels of expertise. Funding must enable the advocate to represent consumers in the short-term as well as allowing it to plan longer term results. It would be a sub-optimal outcome if those sectors which have historically received lower levels of funding were to be marginalised.
24. For regulated industries, the prime responsibility for advice, consumer education etc, should be with the regulator and/or the operators. An independent consumer advocate is vital in ensuring that regulators and policy makers appreciate and address the issues that matter to consumers - but the advocate does not exist to replicate the function of the regulator. That leads to waste and blurred accountability. The same applies to Ombudsman services.

The roles of industry players, the regulator and the consumer advocacy bodies and value for money

25. The consultation gives little detail about how the Panel's principles would be delivered by the RIU/CA and so it is difficult to reach a conclusion at this stage.
26. As noted above, we are disappointed that the consultation does not make clearer its proposals for the respective roles of the industry players, the regulator and the consumer advocacy bodies. These differ significantly from sector to sector and result in very different costs for the industry and the consumer advocacy bodies. Ofcom and the CCP are able to exchange confidential material, including research, relevant to regulatory development. Being able to share research and information in this way represents a significant cost-saving for the advocacy body.
27. The CCP has reduced its budget by nearly 60% over the last year. It is the most economical of all sectoral advocacy bodies other than the Legal Services Panel. In particular, consumer bodies in electricity, gas, postal services and water and transport are each around ten times as expensive as the CCP.

Ultimately consumers bear the cost of these bodies. We would not want to see reform increase the advocacy costs in communications to the same level as in other regulated industries, whilst at the same time carrying the risks outlined earlier of a potential diminution of sector specific representation.

28. We have recently become aware of proposals submitted by Which?, Citizens Advice and Citizens Advice Scotland. We note that these are currently high level proposals and anticipate receiving more details, which we hope will have the potential to address some of our concerns about how our principles will be delivered. Therefore while we look forward to further discussions, currently there is insufficient detail to be able to make a judgment in relation to how effectively it might work.

Conclusion

29. Ofcom will assume responsibility for the regulation of postal services in Autumn 2011. In the long term it would be sub-optimal to have a bifurcated system of advocacy, with post and communications being represented by separate advocacy bodies. However the Panel notes that this situation is complicated by: the likelihood that complaints about communications and postal services will be handled by different bodies; that the Post Office network itself is not regulated; and different arrangements are likely to occur in Northern Ireland. Ofcom will need to consider this in forming its response to the consultation.
30. As previously noted, the Panel welcomes that the consultation proposes enhancing consumer representation in communications and notes that bringing together consumer advocacy functions could have the benefit of being able to look across sectors at common issues, such as switching, poverty and disadvantage. For that reason, we question why the proposal includes a limited number of sectors, particularly as, in contrast to the 'traditional' utilities such as gas, electricity and water, electronic communications have more in common with financial services - both sectors which are characterised by a multiplicity of suppliers and - at least for some products and services - ferocious competition and a high rate of innovation.
31. We believe that effective consumer advocacy in the communications sector must be founded on the principles we have outlined above. The consultation does not provide evidence of how those principles would be delivered in the RIU/CA model - particularly in relation to:

- early intervention with the regulator
- identification of issues at the policy/strategic stage
- efficiencies from sharing data and research
- maintaining sector specific expertise
- maintaining a low cost but effective consumer voice

For these reasons we believe that, as currently presented, the case for change has not been made and that, at least in the short to medium term, the interests of consumers would be better served by the continuation of the current arrangements which are working well at low cost.

Annex 1

The Communications Consumer Panel

The main points to note about the Communications Consumer Panel are:

- The Panel aims to protect and promote the interests of consumers in the communications sector by giving advice to Ofcom, Government, industry and others and to ensure that regulators and policy makers appreciate and address the issues that matter to consumers.
- 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 includes focussing on the work of a single large regulator, which regulates a fast developing highly competitive industry. This focus gives it a depth of knowledge which is important to enable it to influence the work of a well-resourced industry regulator.
- The Panel has seven members. They have experience in many different fields: consumer advocacy, the telecoms and content industries, regulation, the third sector, trade unions and market research. There are four members of the Panel who represent the interests of consumers in England, Northern Ireland, Scotland and Wales respectively. They liaise with the key stakeholders in the Nations to understand the perspectives of consumers in all parts of the UK. These Members also attend the Ofcom Advisory Committee for each Nation and seek to ensure a two-way communication of ideas.
- The Panel engages with stakeholders to inform the advice that it gives to Ofcom and helps to keep the interests of consumers on the agenda across the sector. The Panel also engages on a regular basis with other consumer organisations, such as Consumer Focus, Consumer Focus - Scotland, Consumer Focus - Wales, Citizens Advice, Citizens Advice - Scotland, the Consumer Expert Group, the Consumer Forum for Communications, Which?, the Federation of Small Businesses,

RNIB, RNID, Age UK and Ofcom's Advisory Committee on Older and Disabled People.

- It is evidence-based.
- 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 a staff of 1 FTE, seconded to it from Ofcom and in 2011/12 has a budget of £303K. A significant proportion of this budget is devoted to research. 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 and attached at Annex 2) 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.