

Communications Consumer Panel response to *A Communications Review for the Digital Age* open letter of 16 May 2011

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, 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 the opportunity to respond to *A Communications Review for the Digital Age*. 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 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 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. telemedicine, 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 pertinent in the devolved Nations. Examples of these existing challenges include mobile coverage, the availability of superfast broadband and the need to encourage non-users online - as well as emerging challenges, e.g. the nature of privacy and personal data in an online world, copyright protection and traffic management. There needs to be provision for intervention in those cases where, for understandable economic reasons, the market does not provide the services that consumers need. Government is already intervening to provide universal broadband; it needs to intervene to provide a more comprehensive mobile voice and data service and it needs to continue to encourage the wide range of interventions 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. Given that small businesses face many of the same challenges encountered by consumers, there is also the question of whether they too should be protected under consumer regulation. As this process 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 answering the questions below, we address these concepts in more detail.

Q1. What could a healthier communications market look like? How can the right balance be achieved between investment, competition and services in a changing technological environment?

A healthier communications market - and a sustainable marketplace - would embody a culture in which consumer protection/satisfaction were embedded in companies' strategic approach to their business and their measurement of success.

Consumer Protection

Protecting consumers from rogue service providers or providers whose processes fail is vital for a healthy market, and since 2004, the Panel has campaigned successfully and worked with Ofcom and others to ensure that consumer protection is achieved where possible. But the role of industry is fundamental - taking a responsible and proactive approach to protecting consumers - before the regulator has to step in to defend their rights.

Consumer Empowerment

Consumers become more empowered if they have easy access to clear, relevant information that helps them make better decisions. The Panel wants to help consumers, particularly those who are disadvantaged, to get the most out of communications products/services and be able to make informed choices. The Panel has adopted a number of consistent approaches over the last three years in representing the interests of consumers and citizens in the communications sector:

- Start with consumers irrespective of regulatory and policy boundaries;
- Look out for the unidentified issues or unmet needs that don't feature in complaints data or general surveys;
- Focus as much, if not more, on forward looking and strategic issues as fixing current problems;
- Remember that consumers live in the real world - not necessarily behaving as rationally as classical economic theory suggests;
- Work with others to deliver practical consumer benefits;
- In recommending improved policies and processes, working with industry as the first remedy rather than advocating additional regulation; and
- Don't forget that spectrum policy, and indeed all Ofcom's work, is ultimately about consumer and citizen benefits.

With regard to specific areas of consumer interest:

Complaints Handling, Alternative Dispute Resolution and Quality of Service

Good, responsive, and easily accessible customer services are an essential part of a smooth operating market. The Panel is concerned that too often complaints have not been registered as complaints unless they were escalated, which meant that many were not resolved properly. This is likely to have a particular impact on vulnerable consumers, who may not have the skills or confidence to pursue their complaints, or may not know that they can escalate a complaint, or know how to escalate a complaint. The Panel believes that escalation of complaints should not have to be prompted by consumers; for example, if a line fault is not resolved within a specific period of time, it should automatically be escalated by the provider's internal processes rather than as a result of the consumer's persistence and patience. The objective of

providers should be to ensure that escalation of a complaint is linked to the harm that a consumer has suffered rather than a consumer's ability to pursue the complaint proactively.

The Panel hopes that the Ofcom code will help to raise the standard of complaints handling across the communications sector and welcomes Ofcom's definition of a complaint, which includes issues that are not escalated.

The Panel would also welcome consideration of any detrimental effects on consumers of having two ADR schemes; to consider any economic effects of two schemes undertaking the same role; and to analyse the quality of outcomes for consumers from each of the two bodies to ensure equality of justice.

Behavioural Economics

More vulnerable consumers, particularly low income consumers and, to a lesser degree, older consumers, are more likely to display the biases identified by behavioural economics. This can put them at a particular disadvantage in complex markets such as communications. It is crucial therefore that regulators and policy makers understand the differences in behaviour, identify where these may lead to different outcomes, identify where the market and/or current regulator interventions are failing to address this disadvantage and adapt policies and interventions to respond to these differences in behaviour; and are cautious about relying solely on providing information as a way of responding to differences in behaviour or addressing differential outcomes. Some evidence suggests that too much information or information that is too complex can lead to poorer consumer decisions and may thus have a detrimental effect on consumer welfare.

Switching (including Mis-selling)

When consumers can switch between providers quickly and easily, consumers will benefit from enhanced competition in communications markets. Switching between communications providers is often complex, and involves steps that must be coordinated between different providers in ways that do not arise in other consumer markets. Markets are changing, with more bundled services offered, which means that switching between providers with a bundle of services is even more complex and could lead to reduced competition. We advised that Ofcom's Strategic Review of Consumer Switching should be founded on a clear understanding of how the market and consumer behaviour is developing. This should enable Ofcom to put in place a switching regime that will keep pace with changes in the sector and be fit for purpose well into the future. Mis-selling remains an issue of significant concern to the Panel.

Mobile coverage

Mobile has become central to UK citizens and consumers but the Panel has been concerned for some time that many UK consumers, including small businesses, continue to experience problems making and receiving mobile phone calls. Because mobile services are now so crucial to the life of people in the UK, it is essential that these services are reliable and accessible in the places where they are needed.

We do not believe that the current coverage on 2G, which has been static for a considerable period, meets the legitimate aspirations of consumers; and it is likely that the areas not currently covered by 2G will be not be covered by the rollout of 3G or 4G either. The harms rightly described in Ofcom's 4G Consultation Document need to be addressed. The current spectrum auction and repricing of existing spectrum allocations should be used to create an intervention to increase mobile coverage beyond the current 2G footprint. We believe that it would be unacceptable if consumers who currently do not receive 2G coverage were to be prevented forever from receiving the benefits of mobile technology. The Panel also considers it vital to accelerate the availability of reliable coverage on both London Underground and the

rail network, which would bring about benefits for both consumers and small businesses.

Mobile Usability

Usability is crucial for many older and disabled people, and without it many are unable to use mobile services at all. This does not mean it is a niche issue. The Panel's research shows that all users appreciate phones that are easy to use, and that simple changes could make them significantly easier for all users. This is important because it means that the business case for increasing usability is much larger than people might otherwise assume.

Universal Broadband

The Panel believes that everyone should have access to broadband so that consumers in all parts of the UK can carry out essential online activities in a reliable and consistent way. The implementation of the Universal Service Commitment must continue to be monitored in order to ensure it is implemented in a way that meets the needs of all consumers.

Q5. What further market and regulatory developments would lead to widespread take-up of superfast broadband? What regulatory action would government need to take to make superfast broadband more readily available in a) urban areas; and, b) rural areas?

Superfast Broadband

Next generation broadband (or superfast broadband) will deliver greater bandwidth, reliability and speed which means the development of a new telecommunications infrastructure, bringing with it new services and products for consumers, and therefore the potential for further growth and innovation.

However, the economic case for next generation access does not stack up in some areas, either because of sparse population density, topographical issues or socio-economic factors. These are often the areas that are also poorly served by other communications services, including current generation broadband access, mobile coverage and reception on TV or digital radio. It is important to continue to address these issues alongside commercial roll-out, not after it, to ensure these consumers and SME's, including farms (often the backbone of rural economies) do not get left further behind. Widespread consumer awareness of the benefits offered by superfast broadband is fundamental to its wider take-up - as are the provision of easily accessible and widely available government services online.

Q6. What are the competing demands for spectrum, how is the market changing and how can a regulatory framework best accommodate any rapidly changing demands on spectrum and market development?

The regulatory framework needs to be responsive to changing markets and technology and flexible enough to ensure best use of this scarce resource.

Mobile coverage - see Q1 above and Q7 below

Q7. How should spectrum be managed to deliver our growth objectives whilst also meeting our policy objectives of furthering the interests of citizens and consumers in relation to communications matters?

Mobile coverage

There remains a need for a significant improvement in mobile coverage, especially in rural areas and in the nations. "Coverage" is one of the main attributes of a mobile infrastructure

and one to which citizens, consumers and small businesses attach a high importance. A pure market oriented approach to delivering the coverage that citizens, consumers and small businesses need has proved inadequate. Basic voice coverage issues that existed 10 years ago still exist today; largely as a result of Mobile Operators switching their priorities to rolling out 3G in the more populated areas. There is significant detriment to SMEs, including farms, in rural communities caused by inadequate mobile coverage. Adequate mobile coverage is an essential prerequisite for growth of rural communities.

We do not believe that the current coverage on 2G meets the legitimate aspirations of consumers or the needs of small businesses. Harms which affect both consumers and small businesses need to be addressed. We believe that it would be unacceptable if consumers and small businesses who currently do not receive 2G coverage were to be prevented forever from receiving the benefits of mobile technology. In our consultations with mobile operators and others they have said that current 2G coverage is at its commercially economic limit and is unlikely to be significantly extended. 3G and 4G services may not reach, and are certainly unlikely to extend significantly beyond, the current 2G footprint without some intervention to impose more stringent coverage conditions or to fund increased coverage in commercially unattractive areas.

Regulatory approach

All regulation, be it rules, principles, outcomes or risk-based, should ultimately benefit consumers. Improving consumer benefit, or avoiding consumer harm does not automatically lead to regulation. Often the best answer is for consumers to act as regulators and protect themselves. Sometimes deregulation is not in the interests of consumers - but in those cases where regulation is the best answer, the consumer benefit must be clear.

Regulators have a tendency to focus on the means; that is promoting competition or promoting investment, rather than the end, the benefit or protection of consumers. They assume that the means will benefit consumers, and often they will, but not always. The Panel believes it is always important to be clear about how regulatory action would benefit consumers. Four key principles that make a difference to a consumer-focused approach to regulation are:

- knowing what the consumer risks and opportunities are so they can be explored and if necessary addressed;
- predicting or modelling what the likely outcomes of alternative approaches will be for consumers;
- supporting a consumer-focused organisational culture; and
- establishing external sources of challenge and support.

Q12. What barriers are there to innovation in new digital media sectors, including video games, telemedicine, local television and education?

The main barrier to innovation in these sectors is the complete dependency of the innovator on having access to high quality, high speed communications facilities. Without superfast broadband being universally available, those excluded will have no opportunity to contribute to innovative developments. The same is true for mobile coverage - innovation is likely to be in the field of 3G and 4G services - not available in great swathes of the devolved Nations and rural England, and not likely to be available to people in these areas if we rely completely on the commercially attractive rollout footprint.

Access and Inclusion (including TV Access Services)

As noted above, the Panel believes that there should be a focus on promoting the availability of easy-to-use and accessible equipment and services, particularly (but not only) for older

people and those with disabilities.

Digital Participation and Inclusion

Digital participation has become increasingly important; as public services become digitally delivered by default and other vital services move online only, or are delivered offline in a way that penalises users through higher cost or lower quality. Those who aren't online risk getting left behind. It is essential that people have the support, confidence, skills and equipment to get online and get the most from the internet. Without this, many will be unable to access the public services, information and entertainment the rest of us take for granted. The Panel wants policy makers and service deliverers to put consumers first, giving consideration to:

- the particular needs of different groups;
- identifying the gaps and overlaps in current provision;
- targeting new provision; and
- assessing progress.

Privacy and use of personal data online

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. For them, providing personal data can have significant benefits in the form of services and applications that are more tailored to their needs, or that they might otherwise have to pay for. 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, and the benefits for consumers that they bring. It is important to understand how much consumers really know about how their data is used and the Panel draws attention to the need for further research, and encourages Government to ensure that consumer views and experiences are at the heart of policy making and regulation in this area.

Net-Neutrality

While traffic management potentially offers some benefits to consumers there are also concerns that consumers do not understand these practices and so are unable to exert proper consumer choice, and 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. There are also some concerns that 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.

There should therefore be active monitoring of the development of this market to identify any emerging consumer or citizen issues and take early action to mitigate these issues. Action could take the form of some kind of minimum quality of service or universal 'must-carry' obligation if developments in the market threaten important citizen goals, such as access to online public services.

Annex 1

Mobile coverage

[Relevant links...](#)

[Improving mobile coverage cancellation policies: update, Nov 2010](#)

[Can I cancel? Mobile coverage and contract cancellation - main report, July 2010](#)

[Can I cancel? Mobile coverage and contract cancellation - annexes, July 2010](#)

[Response to Ofcom's Mobile Sector Assessment 2 Consultation, Oct 2009](#)

[Mobile coverage: the consumer perspective - Research report, Oct 2009](#)

[Mobile coverage: the consumer perspective - Appendix, Oct 2009](#)

[Mobile coverage: the small business perspective - Research report, Oct 2009](#)

[Mobile coverage: the small business perspective - Appendix, Oct 2009](#)

Mobile Usability

[Relevant links...](#)

[Usability report, Jan 2011](#)

Complaint Handling

[Relevant links...](#)

[Advice note on complaints handling and ADR, Feb 2008](#)

[Response from Ofcom on ADR, Jul 2008](#)

[Advice to Ofcom: Quality of Service Consultation, Oct 2008](#)

[Response to Ofcom's Review of Consumer Complaints Procedures, Mar 2010](#)

Behavioural Economics

[Relevant links...](#)

[Behavioural economics and vulnerable consumers: Panel introduction](#)

[Behavioural economics and vulnerable consumers: summary of evidence](#)

Switching

[Relevant links...](#)

[Response to Ofcom strategic review of consumer switching, Nov 2010](#)

[Response to BEREC consultation on best practice for switching processes, Jul 2010](#)

[Mobile Number Portability response, Sept 2009](#)

[Response to consultation on 'Protecting consumers from mis-selling of fixed-line telecommunications services' June 2009](#)

Universal Broadband

[Relevant links...](#)

[Consumer Panel response to the final Digital Britain report, September 2009](#)

[Anna Bradley's speech at the January 2010 Oxford Media Convention](#)

[Universal Service Commitment - Consumer Principles March 2010](#)

Superfast Broadband

[Relevant links...](#)

[Beyond Pipe Dreams? Webpage for June 2008 conference co-hosted with the BSG](#)
[A framework for evaluating the value of next generation broadband, Plum Consulting, June 2008](#)

[Across the generations: contrasting experiences of broadband, Consumer Panel video, June 2008](#)

[Position Paper: Why NGA is important for UK citizens and Consumers, Sept 2008](#)
[4/11/08 Next Gen 08 Conference - Roger Darlington's speaking notes \(pdf\)](#)

[Local initiatives on next generation access in the UK, Jan 2009](#)

[NGA Background Paper, Mar 2009](#)

[Local initiatives on next generation access in the UK: Update, Oct 2009](#)

[26/11/09 Westminster eForum Seminar - Future of Broadband in the UK, speech by Anna Bradley, Communications Consumer Panel Chair \(pdf\)](#)

[Response to HM Treasury consultation 'Implementing a landline duty', Feb 2010](#)

[Response to BIS Consultation on proposals for a next generation fund, Apr 2010](#)

Regulatory approach

[Relevant links...](#)

[Panel Chair speech at Ofcom's Consumer Experience event, Dec 2010](#)

Access and Inclusion

[Relevant links...](#)

[Response to Ofcom's consultation on Access and Inclusion, July 2009](#)

[Communications Consumer Panel response to Ofcom's Consultation on TV Access Services, Nov 2009](#)

Digital participation

[Relevant links...](#)

[Inside Government presentation, Jun 2010](#)

[Delivering Digital Participation: the Consumer Perspective, May 2010](#)

[The Journey to Digital Participation: a consumer research report, May 2010](#)

[Digital Participation Research Review, May 2010](#)

[Oxford Media Convention speech, Jan 2010](#)

[Inside Government speech, Dec 2009](#)

[Response to the Digital Britain final report, Sept 2009](#)

[Report of the Panel and Consumer Focus Scotland seminar on the implications for Digital Britain in Scotland, Nov 2009](#)

[Speech at the Westminster eForum - Broadband for all? Access and inclusion and media literacy, by Panel Chair, July 2009](#)

[Speech at the Westminster eForum - priorities for Digital Britain, by Panel Chair, July 2009](#)

[Letter to Lord Carter, April 2009](#)

[Response to Digital Britain: The Interim Report, Mar 2009](#)

No one should miss out: consumers say what they want from the digital future, Feb 2009

No one should miss out: appendix, Feb 2009

Response to the Department of Communities and Local Government's Delivering Digital Inclusion: An Action Plan, Jan 2009

Switched on Consumers, March 2008

Privacy and use of personal data online

[Relevant links...](#)

Online Personal Data: the Consumer Perspective May 2011

Do you know what you're signing up to online? Panel calls on companies to make small print clearer May 2011

Net neutrality

[Relevant links...](#)

Response to Ofcom discussion paper *Traffic management and 'net neutrality'*, Sept 2010

Response to EC consultation on the open internet and net neutrality in Europe, Sept 2010

Summary of the discussion at the Panel/Polis Net Neutrality Seminar, Sept 2010

Speech by Anna Bradley at the Westminster eForum Seminar - Net Neutrality in the UK, Sept 2010