

Communications Consumer Panel and ACOD response to BIS' call for evidence on the protection of micro and small businesses in purchasing products and services

Introduction

The Communications Consumer Panel (the Panel) and the Advisory Committee for Older and Disabled People (ACOD) welcome the opportunity to respond to BIS' call for evidence on the protection of micro and small businesses in purchasing products and services.

The Panel works to protect and promote people's interests in the communications sector. We are an independent statutory body set up under the Communications Act 2003. The Panel carries out research, provides advice and encourages Ofcom, governments, the EU, industry and others to look at issues through the eyes of consumers, citizens and micro businesses. The Panel pays particular attention to the needs of older people and people with disabilities, the needs of people in rural areas and people on low incomes, and the needs of micro businesses, which have many of the same problems as individual consumers. 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 and input these perspectives to the Panel's consideration of issues.

There is also cross-membership with Ofcom's Advisory Committee on Older and Disabled People. This means that Members, in their ACOD capacity, provide advice to Ofcom on issues relating to older and disabled people including television, radio and other content on services regulated by Ofcom as well as about issues concerning the postal sector.

Response

We welcome the focus that the micro and small business (MSB) market sector is receiving. The fact that small businesses make up 99% of all businesses in the UK (5.2 million businesses) and that of these, 96% are micro businesses, means that decisions which help or hinder their growth may also have wide-reaching consequences for the UK economy as a whole.

Our response is limited to those MSBs that fall within our remit (micro businesses employing nine or fewer people), which have needs that are often more acute than larger businesses.

Our research has highlighted the fact that for the people running these enterprises time is often at a premium. Seeking out the best deals needs to be a simple and straightforward process, allowing micro business owners to make informed choices. Protection needs to be given with micro business' particular circumstances in mind - including appropriate rights and remedies relevant to this size of business.

Challenges faced by businesses in their procurement of communications services

Communications services provide a gateway to other services and are therefore a vital tool for micro businesses, connecting micro business owners with their customers, employees and suppliers. Communications services are thus crucial to the stability, growth and even survival of micro businesses.

In 2013 we commissioned Jigsaw to carry out independent, qualitative research¹ with 115 micro businesses from across the UK. The core areas we wished the research to answer/address were:

- To understand which communications technologies and services micro businesses use and their importance to the business.
- What are their experiences of the communications sectors and services?
- What are the barriers and challenges, and what are the opportunities?
- What, if anything, should or could be done to improve communications experiences to contribute to greater growth?

The research highlighted the critical role that communications services play in the success of micro businesses.

The micro business owners we interviewed faced considerable difficulties in terms of being able to optimally procure, manage and develop communications within their businesses. Also apparent was the need for remedies to poor fault repair processes and quality of service - beyond the solutions currently available through the current arrangements - to be made available and accessible to micro businesses (e.g. accelerated fault repair times).

The Panel's report² highlighted issues in the following areas and we provided recommendations to address needs in each of them:

1. Improved Speeds and Coverage

¹ <http://www.communicationsconsumerpanel.org.uk/downloads/micro-business-qualitative-research-written-report-final.pdf>

² <http://www.communicationsconsumerpanel.org.uk/downloads/panel-micro-business-report-final.pdf>

"We have a website, use email a lot and make calls on our mobiles but you are hampered by the fact the broadband speeds are diabolical here and the mobile is very patchy."
(Rural equestrian centre, Wales)

"So I need to be somewhere that I have got phone signal on my phone and it is a kind of worry that if I have not got a signal a panic sets in."
(IT support company, urban Northern Ireland)

The vast majority of respondents in this research felt that communications played a critical role in sustaining their business. Micro businesses are reliant on services and technologies that allow them to stay in touch with their customers - they are considered essential and indispensable services.

Impaired or poor service can therefore significantly impact on a micro business's performance - or even its ability to function at all. This can be both detrimental and highly disruptive, as micro businesses are often less likely to be able to absorb the resulting loss of business compared to larger companies with greater flexibility around resources.

The Panel recommended that:

- Government and Ofcom investigated the effectiveness of methods of increasing mobile coverage as a matter of urgency. Improved coverage must also address road and rail coverage.
- Government explored, as part of the Digital Communications Infrastructure Strategy, a revised minimum requirement for standard broadband connection which would enable micro businesses to support better their online requirements.
- Government raised awareness of, and stimulated demand for, its small business initiatives, including the rollout of superfast broadband e.g. ensuring micro businesses are aware of the possibility of aggregating vouchers and are enabled to use growth vouchers to good effect.

2. Tailored Services:

"There is not a problem with them (phones) if you are just working within the UK, that is absolutely fine, that is very straight forward but as soon as my business partner goes to Italy then the tariffs immediately change, it is far more expensive. It is very complicated as to what we are allowed to do and not allowed to do, and if you make a mistake and start downloading data you get charged five quid a megabyte and things like that. It is quite, quite unpleasant when you have missed it and the bill comes in and it is for £400-500." (IT support company, urban England)

A significant number of respondents in our research were dependent on the reliability and performance of residential grade communications services, particularly with respect to the internet. However, this means that when services are disrupted, there can be longer delays in rectifying issues or repairing faults than would normally be the case in a business environment as businesses are also reliant on residential grade

support services. Many micro businesses feel they lack negotiating power or leverage with their communications provider that larger companies enjoy.

The Panel recommended that communications providers:

- Consider the introduction of intermediate contracts which are essentially a residential supply but with enhanced support, as well as improved service levels and response times to service faults. It is vital that: information about such contracts is in unambiguous language; there is transparency about key contract terms and conditions, price and any penalty clauses; and that there is ease of contact to skilled customer service staff. There is also a need to ensure improved co-ordination between multiple providers in the value chain around a single customer - particularly customer-facing and wholesale providers.
- Better support this growing market sector and look to tailor tariffs and packages to introduce more flexible contractual terms that are currently only available to larger corporations. Additionally, contract terms should not unduly impair businesses' freedom to switch due to lengthy fixed terms or hefty termination penalties.
- Consider how these ancillary services can be included as standard as part of a competitively priced core package.

In terms of consumer protection, we strongly argued that micro businesses should be classed as consumers for the purposes of the Consumer Rights Bill.

3. Information and Advice:

"We don't embrace technology you could say, a website would be good but we can't do that or Facebook until we get broadband. There are so many products to put on it though; we're not sure how to do it. We did think about setting up a shop on Ebay but we don't know how to do it, there is no step by step guide."

(Craft shop, urban Scotland)

The Panel encourages:

- Local Enterprise Partnerships, Chambers of Commerce, local authorities and trade associations to consider how they can support micro businesses by the provision of an advice hub.
- Government, communications providers and business support organisations to review their current information and advice for businesses in relation to communications services and tailor it as appropriate for micro businesses.
- Price comparison websites to offer clear information on data and broadband packages that are relevant to micro businesses.
- Ofcom to use its resources to support micro businesses seeking information that enables them to assess and judge different providers' performance.

Other issues highlighted by our research:

Making optimum decisions and choices

As highlighted above, the research revealed that some businesses found it difficult to make decisions with respect to communications services and providers. For many, complex pricing and packages made it hard to compare information and to determine the potential return on investment.

Many micro businesses also expressed scepticism in relation to provider claims about internet speeds and mobile coverage - so there was some reluctance to switch providers. A micro business' communications services needed to be as flexible as possible to help overcome fluctuations in demand.

"When we came to cancel our service after finding it wasn't what we were promised, we found that we couldn't get out of our broadband contract for two years which left us sort of stuck and quite unhappy."

(Domestic Appliance Company, Urban England)

Micro business owners with a disability

Our research sample included a sub set of micro business owners with a disability. The levels of disability across the respondents ranged from relatively mild to more severe difficulties, although none had been prevented from working by their condition at the time of the research.

Overall responses to the topic of communications services and technology were very consistent with the broader sample of business owners. As micro business owners, these respondents by and large faced the same issues and challenges that other micro businesses faced in understanding and using communications within their particular business context.

However there were three differences that emerged from this element of the sample - these were:

Enhanced importance of mobile communications:

Mobile technology was seen as having enhanced importance to business owners with mobility constraints by allowing them to access work from any location via a mobile device.

Increased reliance on residential services:

Business owners who experienced mobility constraints also placed greater importance on their reliance on residential services and being able to work at home as and when required. At certain times it was particularly challenging for them to journey to their work premises or a business meeting and therefore being able to conduct their business entirely from home was of particular value.

Strong interest in adapting technology to their needs:

An additional difference that emerged from business owners with a disability was around being able to access and procure technology that was adapted to their specific

needs. This was particularly with respect to respondents who experienced difficulties in manipulating keyboards and key-pads, a task that could become more challenging when using mobile devices. Respondents expressed a strong interest in exploring technology that provided easier to use key-pads, voice control technology, and advanced headsets that would allow them to work more easily. There was some awareness that such technology was available on the market, however few have directly experienced such devices. Respondents welcomed the idea of being provided with access to such technology either through providers or independent sources.

This particularly highlights the need to give micro business owners who have a disability the same protection as consumers, especially when purchasing products that are outside of their core business function - and especially, where goods and services are purchased by micro business owners for the purpose of making reasonable adjustments to allow themselves or their employees to perform their jobs as someone without a disability would.

We would also recommend extending the remit of the Consumer Contracts Regulations (CCRs), so that the distance selling regulations are extended to give micro businesses the same rights as consumers.

Resilience of micro business owners

Any micro business owner may become subject to a life event that may make them less resilient - more vulnerable - to harm to their business.

Events could range from bereavement, redundancy of a partner, divorce, illness, etc. and each of these can make a person less resilient in dealing with the everyday tasks involved in running a business. The effect can be compounded in a small family business, where other members of the business may also be affected. Or, in the case of a sole trader, there may be no-one at all to step in at short notice and carry on.

It is essential that micro businesses in vulnerable circumstances are not put out of business by a lack of sufficient protection in the law.

Regulators of essential services have begun to recognise the more dynamic and unpredictable nature of consumer vulnerability, as highlighted in a recent report commissioned by Citizens Advice³. As explained above, micro businesses can be impacted in similar ways as consumers.

Micro businesses that are better legally protected will be in a stronger position to negotiate appropriate alternative terms with suppliers to cover unexpected events.

“Being a small business just means being trampled over not only by the big businesses but by the legislation which allows them to trample over you.” (Restaurant, Urban England)

³ https://www.citizensadvice.org.uk/Global/Migrated_Documents/corporate/tackling-consumer-vulnerability.pdf

Do the current arrangements go far enough to protect micro businesses?

We believe that the current arrangements do not provide sufficient protection for micro businesses - further examples are below:

Awareness of the current arrangements

It is vital that micro businesses understand their right to challenge poor service where communications and/or other services and products are not delivered with reasonable care and skill, in a reasonable time, for a reasonable charge. The current arrangements broadly allow for this, but it is important that micro businesses are aware of and understand their rights. However, without access to a permanent source of legal advice it is unlikely that the majority of micro businesses fully understand their rights, so they cannot benefit from them.

As highlighted in paragraph 3.2 of this Call for Evidence, the Consumer Rights Act has not been designed to provide for micro businesses. Micro businesses will still be covered by protections designed for businesses overall, including larger businesses with the legal, administrative and accounting support that enables those larger businesses to make full use of the arrangements in place. However, when a micro business purchases goods and services from a larger business, the micro business is in the same position as a consumer and acts as a consumer would. So in the new regime, there will be gap in legislative protection.

A solution to this would be to bring micro business' rights in line with those of consumers. If this could be achieved, the impending roll-out of the communications campaign regarding the impending Consumer Rights Act offers an ideal opportunity to gain maximum impact, for reduced expenditure.

Pre-contract information and protection against unfair terms

It is also crucial that micro businesses are given the right to receive clear, intelligible pre-contract information in order to negotiate fair terms and challenge unfair terms; that they are aware of suppliers' attempts to limit liability and/or that such attempts are void by law; and that they can avoid being tied into 'rollover' contracts and having hidden charges applied, such as early termination fees. With effect from December 2011, Ofcom prohibited 'rollover' contracts in the fixed voice and broadband sectors under amendment to General Condition 9⁴, which applies to residential consumers and business customers with 10 employees or fewer. Other Ofcom General Conditions that apply to micro businesses can be found on their website⁵.

We believe that the Unfair Terms in Consumer Contracts Act 1977 (UCTA) and the Unfair Terms in Consumer Contracts Regulations 1999 (UTCCR) currently fail to offer

⁴ <http://stakeholders.ofcom.org.uk/consultations/arcs/statement>

⁵ <http://consumers.ofcom.org.uk/ofcom-for-business-consumers/knowning-your-rights/>

enough protection to micro businesses and that all of the 'Grey List' items that apply to consumers should also apply to transactions that micro businesses make, particularly those that are outside of their core business function. All terms of any contract that a micro business owner signs should be transparent, fair and easy to understand.

Enforcement

Applying for damages should be a last resort. There is a lack of information and advice for micro businesses on making a claim - most of the information available is aimed at consumers, with advice for businesses on defending themselves. Suppliers should be encouraged to resolve disputes about the quality of goods and services, faults and unfair terms before the need to go to court arises. Micro businesses should be encouraged to use a certified Alternative Dispute Resolution (ADR) scheme where appropriate. In the telecommunications sector the two ADR schemes take complaints from residential consumers and business consumers with up to 10 employees - so micro businesses have access to an independent redress service (for claims up to £10,000). As well as being an important provision, this seems to support the wider case for bringing micro business' rights in line with those of consumers.

Identifying micro businesses

Communications providers and other suppliers have advised us that it can be difficult to distinguish between a residential consumer and a micro business customer. Small businesses with a larger employee base or turnover are generally easier to identify by their consumption and choice of products and services.

If a micro business - making a purchase from a communications provider or other supplier - had the same rights in law as a consumer, it would be in the interests of the micro business to disclose what purpose the service or product was being procured for; and they would be more likely to be aware of this than the supplier. Their status as a consumer or a micro business would then be clearer to suppliers, which in turn would increase assurance that the contract that they were entering into offered valid protection and support levels. Any extra costs to the supplier would, we believe, be negligible.

We note that - as highlighted in paragraph 3.2 of this Call for Evidence - there is currently no provision for the protection of micro businesses under the Consumer Rights Act, which we feel leaves UK micro businesses in an avoidably vulnerable position.

We believe that there is a need for consistent and cross-sector protection of micro businesses, by law, which would increase the profile of micro businesses and reinforce the work that has been done by regulators such as Ofcom.

Costs of treating micro businesses as consumers

There is a lack of evidence on the costs of treating micro businesses as consumers.

In their paper '*Small Businesses as Consumers: Are They Sufficiently Well Protected?*'⁶ the Federation of Small Businesses, with the Centre for Competition Policy, recommended that the Government gives active consideration to the possibility of extending provisions for micro businesses and that the EU leaves the issue open, for domestic decision.

We agree with this view, based on our research and the evidence provided in the above-named report. We also note that the Law Commission proposed in 2009, that micro businesses are treated as consumers for the purposes of procuring insurance⁷.

Summary

- Providing micro businesses with better legal protection, in line with consumers, would support the stability and success of the businesses themselves and would have a positive knock-on effect on the local and national economy.
- The stability and growth of micro businesses provides choice for consumers as a whole and security for consumers of micro businesses' services.
- Communications services are vital to micro businesses - they need access to a reliable internet connection, meeting Government-backed coverage and speed targets, with the right to challenge providers where those targets are not met.
- Micro businesses are at a considerable disadvantage by not having access to the same specialist technical and legal support as larger counterparts and are already burdened by auxiliary tasks. Simplifying their rights to match those of their consumers would relieve some of the burden; it may also reinforce their knowledge of their consumers' rights.
- We strongly recommend that micro businesses are given access to the same level of protection as consumers under the Consumer Rights Act and Consumer Contracts Regulations, as well as access to Alternative Dispute Resolution services.

⁶ http://competitionpolicy.ac.uk/documents/8158338/8264594/fsb+project_small_businesses_as_consumers.pdf/f1ed4da5-14cf-4b80-a1d8-ff76a0781def

⁷ http://lawcommission.justice.gov.uk/docs/ICL5_Micro-businesses.pdf