Communications Consumer Panel and ACOD's response to Ofcom's consultation on Open Communications: enabling people to share data with innovative services

The Communications Consumer Panel, established by the Communications Act 2003, is a group of independent experts with direct sectoral experience. We ensure the citizen and consumer voice is represented in communications policy development.

The Panel's job is to ensure that the sector works for consumers, citizens and micro businesses - and in particular people who may be in a more vulnerable position in society. We carry out research, provide advice and encourage 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.

Four members of the Panel also 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. Following the alignment of ACOD (the Advisory Committee for Older and Disabled people) with the Panel, the Panel is more alert than ever to the interests of older and disabled consumers and citizens.

Response

The Panel welcomes the opportunity to respond to Ofcom's consultation on Open Communications. We listen to the consumer voice in the communications sector by commissioning independent consumer research and meeting regularly with frontline consumer organisations: charities, not for profit organisations and consumer bodies, and advise those who have the power to directly affect change.

Over the past year we've held regular National Hub meetings in the four UK Nations and Consumer Stakeholder Hub meetings with the representatives from advocacy bodies across the UK. These have given us a range of insights into barriers faced by consumers – particularly vulnerable consumers – in this sector. The meetings have continued to take place online during the Covid-19 pandemic and have allowed us to raise issues promptly with Ofcom and industry. In parallel, we have been holding Industry Forum meetings, which have enabled us to work with communications providers to help raise standards across industry, learning from other sectors.

During the pandemic, we have been heartened to hear from industry examples of additional and surprising measures they have taken to support consumers – some of whom

may not have been considered 'vulnerable' prior to the crisis. We have urged communications providers to work together to develop a straightforward and effective way for consumers to let their provider know that they need additional support. While inclusive services by design are the Panel's aim, in the interim, we believe that providers should make it easy for people who are considered 'vulnerable' – whether that be on a permanent or transient basis – to highlight their needs so they can be responded to.

During the initial UK 'lockdown' it proved difficult for communications providers to identify and support vulnerable people, including those who were required to shield to protect their health, while also suffering financial vulnerability. We believe that if better data about vulnerability had been in place, facilitated by a more straightforward and dynamic process for recording this data, more people could have received support from their provider sooner.

We strongly believe that across the UK, communications services are now an essential service, in line with other utilities. Consumers genuinely fear disconnection - insights from charities and consumer bodies supported the findings of our 2019 independent consumer research *'Don't cut me off!'*. That research found that consumers were so reliant on staying connected to communications services that they prioritised paying their communications service bills over other necessities, because the protection from disconnection that exists in other sectors does not exist in this sector. During this period, many consumers – whether previously vulnerable or not – have found it extremely difficult to contact their provider, with waiting times reported of a couple of hours. This had a knock-on effect on consumers' ability to switch provider, negotiate a better deal, reduce the level of services they were paying for, report a fault, or negotiate a payment plan. The option to downscale services online did not always exist in the same way that the ability to upgrade did. At a time of particular financial hardship, it is vital that providers do more to facilitate consumers being able to take control of their spending.

The definition of 'vulnerability' is inconsistent across the sector. While supermarkets were able to identify quickly who was at most risk, consumers who were signed up to different communications providers received differing levels of service according to what arrangements their providers had in place.

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We urge Ofcom to ensure that any mechanism of data sharing is both secure and transparent from the view of consumers. Our 2016 research ['Digital Footprints: a question of trust'](#) looked at the views of consumers on a range of data privacy issues, including the sharing of their personal data and trust in their provider. The research found that there were three key factors in building consumer trust:

> **Being open and transparent about what data is being collected:** Most people felt that they can only find out what happens to their personal information if they are prepared to do some digging on a company's website. This reinforced a general belief that consumers are not being put first. Even the most confident internet users had issues with reading Terms and Conditions and cookie policies.

> **Providing the consumer with the opportunity to opt-out of any use of their data:** Internet users felt that "opt outs" could be as confusing as Terms and Conditions; for example it was not always clear whether a box should be ticked or unticked to opt out of receiving marketing information, and the full extent of what an opt out really means was unclear to some.

> **Organisations should keep consumers' information secure:** Consumers are not just concerned about protecting their own devices from hackers, but also worry about their data being protected once it is in the possession of companies. For some consumers, concerns have been heightened by newspaper coverage about sensitive data being lost or stolen. Trust in an organisation is particularly important given that consumers say they are more willing to share personal information with organisations they know and trust.

We made a list of recommendations, with the following being particularly relevant to Open Communications:

Companies:

- Proactively provide clear and consistent information about the consumer implications of people consenting to supply their personal data;

- All consent decisions to be "opt in" as the default position, putting the consumer in control of their data and giving them the choice to opt in or not, with no penalty for not opting in;

- To facilitate greater consumer control in terms of use of data – through clear information, options and choices;

- To always keep to a minimum the amount of data that they collect and store;

- To store data securely; use it only for the purpose intended; retain it for no longer than is necessary; and check with consumers periodically whether permission is still given to retain the data;

- To follow all relevant legislation and regulation;

- Privacy policies and terms and conditions should be informed by the ICO's 'privacy policy checklist'; contain an easily accessible 'key facts section' and be short, clearly written and avoid jargon;

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- Must be transparent about what information they collect about their consumers and how they will use this information – including whether they will pass it to any third party;

- Should clearly highlight on their websites how consumers can request that their personal information be amended or deleted from the company's records;

- Explore how best to serve and support low-confidence consumers in vulnerable situations in respect of privacy and security.

- Staff should be trained and/or have access to information so that they can accurately help consumers with enquires about use of personal data.

Governments, regulators and enforcement agencies:

- Act decisively in cases of non-compliance; and

- Consider producing a Code of Practice and/or good practice guidance

We also fed our recommendations into DCMS' 'Secure by Default' programme of work.

Protecting consumers' data

While data sharing can provide obvious benefits in identifying vulnerable consumers, enabling switching and enabling consumers to navigate a complicated market, there are risks to consumers which must be mitigated.

Among the risks highlighted by the Open Data Institute (ODI) in the report Ofcom has linked to this consultation is the potential for 'unacceptable price discrimination'. We agree that this is a risk, as is the risk of misleading recommendations to consumers where insufficient data is available. Data breaches or unethical treatment of data are a major concern for the Panel. We would agree with the ODI's recommendation that CPs sign up to a Code of Ethics, such as the one it provides links to in its report.