

Modernising Consumer Markets - Communications Consumer Panel response

1. Overview

Communications services are integral to the everyday lives of consumers, citizens and micro businesses. The rapid rate of change in this sector and the significance of its role to people's lives and the UK economy mean that it is vital that the perspectives of consumers and micro businesses are at the heart of the debate.

Treating all consumers fairly, including facilitating improvements in broadband and mobile coverage and quality of service continue to be at the forefront of the Communications Consumer Panel's and ACOD's agenda.

Highlighting the interests of those who may not always be heard by the industry (for example, consumers in vulnerable circumstances) is an important part of the Panel's and ACOD's role, as is working with Communications Providers (CPs), Ofcom and other policy and industry stakeholders.

The sector presents different challenges to those in utility sectors such as energy and water; in many ways it is closest to financial services in its complexity. Infrastructure issues and the allocation of spectrum have wide ranging implications for consumers and citizens - affecting not only mobile coverage and broadband provision but also Freeview, radio and a panoply of white space devices. There are a large number of smaller providers in the telecommunications sector - in the order of 1,500 brands of which 20 larger providers are required to provide information to the regulator.

An appreciation of the complexities of the market is vital if progress on consumer service is to be made - different services within the sector present different challenges. As Ofcom's recent research has found¹, while overall satisfaction among mobile customers was in line with that among current account customers, and above gas, electricity, post and landline customers, satisfaction among broadband customers was below all of these other sectors. An accurate and informed assessment of the issues is vital to addressing their resolution.

This is a wide, complex landscape with regional and national variations. Collaboration, constructive challenge, facilitation of discussion informed by robust evidence and clarity of purpose must remain central to the approach to ensure that the interests of consumers, citizens

¹ https://www.ofcom.org.uk/_data/assets/pdf_file/0023/113639/full-report.pdf
https://www.ofcom.org.uk/_data/assets/pdf_file/0020/111692/Residential-Postal-Tracker-Q1-Q4-2017-tables.pdf

and micro businesses are protected and promoted, so that the opportunities offered by existing and emerging communications services are inclusive and fair, and so that the market succeeds in meeting the needs of us all.

2. Data Portability

The consultation asks questions about making the most effective and responsible use of data portability and smart data, to improve the situation for consumers without inadvertently causing them harm.

Consumers do not exist solely in one, single regulated market and some of their interactions cross regulatory boundaries, so in terms of which regulated markets could offer the most potential for positive consumer outcomes from data portability and for what reasons, the Panel considers that a holistic approach is needed when considering the use of data. The consultation also asks how best vulnerable and disengaged consumers can benefit from data portability. Data portability presents benefits and risks to consumers in all regulated markets and should not be ringfenced. It must be handled in a way that puts the consumer in control and does not compromise the security of their personal information but makes it easily transferable.

Improvements in usage data in telecoms

An improvement that we believe can easily be made by CPs, with very little implementation time needed, is to provide better information on usage. Particularly for those without easy access via an app, an annual reminder of usage and usage information on demand from CPs would provide a host of benefits. This has been used to great effect in the financial services sector.

Learning from Open Banking

In Open Banking, banks make their customers aware, via terms and conditions, that they, the consumers, are responsible for verifying the third parties that their money is being sent to, and not the banks. A register is held by the FCA to enable consumers to do so. In a complex sector such as telecoms, consumers may be referred to any number of smaller providers that they have never heard of, by a Price Comparison website (PCW) or Digital Comparison Tool (DCT), for example. We consider it vital that consumers know that the provider is a genuine business and is able to safeguard their data. Government will need to consider how this is coordinated and who is responsible for keeping the data updated. A cross-sector register or similar may be necessary, along with a comprehensive, cross-sector, communications strategy.

It will also be necessary to find a unified way of making the impartiality or otherwise of an intermediary clear to consumers - for example, whether the results provided to inform a

consumer which provider they could switch to are based on the whole of the market and whether the intermediary receives a fee to promote some providers over others. The challenges of multiple sector convergence, for example energy companies providing broadband, need to be considered.

The use of artificial intelligence in the UK is gaining momentum. The Artificial Intelligence Committee recommended in its report '*AI in the UK: ready, willing and able?*' (2017)² "that the Centre for Data Ethics and Innovation investigate the Open Banking model, and other data portability initiatives, as a matter of urgency, with a view to establishing similar standardised frameworks for the secure sharing of personal data beyond finance." They added: "They should also work to create, and incentivise the creation of, alternative tools and frameworks for data sharing, control and privacy for use in a wide variety of situations and contexts."

Data portability and smart use of data to benefit consumers in vulnerable circumstances

To ensure consumers in vulnerable circumstances benefit from data portability, it will be vital to use a variety of media that will reach consumers on low incomes; people who do not or cannot confidently use the internet; people with sensory disabilities; people with low literacy; and people with cognitive or learning disabilities. Trusted intermediaries may be able to help extend the message to disengaged audiences. A labelling scheme may also be helpful, so that smaller companies can show that they are trusted.

Turning to the smart use of data to help people in vulnerable circumstances, Priority Service Registers are useful and necessary, because the consumers of a particular service can have their needs recorded and receive the specific support they need to access a particular service or set of services. We believe that providers should promote the benefits of their Priority Service Registers - and promote them widely, to all consumers - so that friends and relatives of people who are eligible, as well as the people themselves, are aware of and can discuss the benefits and the way to sign up (if they choose to). However, we also believe it is vital that consumers are able to retain control and choice over the way their personal data is used.

A key issue will be about the need to standardise the way data is collected and to understand what level of detail is actually required by the provider, so that the consumer knows exactly what will be processed. The current process varies between providers. Some basic standards regarding baseline data would be beneficial for portability to achieve the desired outcomes. The other issue

² <https://www.parliament.uk/business/committees/committees-a-z/lords-select/ai-committee/news-parliament-2017/ai-report-published/>

is the marked lack of customers who choose to register even if they do have a need or can have a specific support service.

We are conscious that the needs of a consumer of services in one sector may not be the same as their needs in another sector, so it is paramount that providers do not collect or share more than is necessary and that they are able to safeguard sensitive personal data that would make consumers more vulnerable if it fell into the wrong hands. As the consultation recognises, mishandling of data portability could make those consumers more vulnerable. The information needed to supply a consumer with energy and water may not be needed by the consumer's bank or telecoms provider. The risk of scams and nuisance calls is a live and real one, so it will be essential that good practice is established and applied consistently. A central database of consumers in more vulnerable circumstances could pose serious privacy and security challenges. Good practice from each of the Nations on tackling scams and protecting people in vulnerable circumstances should be sought and shared.

Good practice from the Digital Switchover Help Scheme

A good example of the handling of data protection issues in respect of consumers in vulnerable situations is the Digital Switchover Help Scheme which, while not directly comparable to a Priority Services Register, was a scheme that required sensitive handling of data and proactive pre-emption of scams and nuisance behaviour. We would also draw attention to the [report by Ofgem](#) in 2014 that sought the views of energy consumers on the use of Priority Services Registers.

Consumers' understanding of their rights

Those who stand to benefit most from data portability are perhaps also at the most risk of harm. The benefits of data portability will not outweigh the risk of harm to consumers in vulnerable circumstances unless the Government can offer a safeguard against the potential risk of this data being used for commercial advantage or fraudulently. Good governance will be essential and require the input of regulators and those with statutory responsibility for the welfare of people in more vulnerable circumstances. Consumers need to be able to make informed choices, including the ability to choose not to partake in data portability arrangements, with no negative impact as a result of that decision. Data portability is an 'opt-in' and consumers who prefer to keep track of their data in their own way must still be able to do so and must not be disadvantaged by making the choice not to opt in. Consumers who, for example, do not regularly and/or confidently use the internet, may struggle to see the benefit of being able to access their data in a 'machine-readable format'. It will also be necessary for companies to train their staff on what the various legal terms mean, and to be able to convey that information clearly and simply to consumers.

It will also be important that the investigative, cross-sectoral piece of work on mental health minimum standards referred to in this consultation links with this work on data portability.

3. Performance scorecards

Transparent performance data helps simplify consumer choices in the complex telecommunications sector

As we outlined in our [response](#) to BIS' 2016 consultation on the consumer landscape, consumers need accurate, accessible and easily comparable information that does not overwhelm them with detail. We recently fed into the design of Ofcom's latest Comparing Service Quality report, to help make the information as meaningful, transparent and usable as possible and which we believe offers an example of good practice that is transferable across other markets.

The provision of information about providers' quality of performance is vital to informing consumers' decision making, to encourage providers to maintain or improve performance and to improve transparency and trust within the sector. Ofcom has a key role in helping consumers to assess their options by providing information in easily digestible and accessible formats which can be picked up and widely promoted by the press and online sources. The 'leader-board' graphic employed in Ofcom's quarterly complaints publication (see latest published graphic below: Q4, 2017) and related interactive data³ is a tangible example of how to make this area more engaging and transparent for consumers. We know, too, that providers pay heed to this data and it is an incentive to improve.

³ <https://www.ofcom.org.uk/research-and-data/multi-sector-research/telecoms-complaints-data>



(Ofcom's complaints 'leaderboard' graphic)

Ofcom has a number of opportunities for this kind of information dissemination and it must ensure that it continues to utilise the platforms available - including social media - and provides journalists, bloggers, consumers and citizens with the tools to help everyone engage with, use and understand the data it publishes. The use of this information by DCTs is also vital.

We have been pleased to see that Ofcom has taken our advice and has made and promoted videos and infographics to help extend the reach of its work to consumers and their representatives. As we highlighted in our response to BIS, referred to above, a theme that recurs across our work is the vital need to increase the transparency of the panoply of information about communications service provision. We have encouraged CPs to improve the information available online and by other means. We consider that prominent "plain English" information about contract length and early termination charges (ETCs) should be available to all customers - on bills, by phone and online. We believe that clear information about service level expectations, pricing and customer service standards should be readily available to consumers without the need for undue searching.

What more can be done to improve clarity in the sector and encourage consumer engagement?

Price comparison websites/Digital comparison tools

PCWs and DCTs can offer tangible benefits to consumers. Ofcom has the power to accredit these providers, but the PCWs/DCTs are not obliged to join the accreditation scheme. This leaves a gap in consumer protection. Moreover, we don't consider that it is clear to consumers that Ofcom's remit does not extend beyond voluntary accreditation.

We recently revisited with Ofcom its accreditation of these sites, highlighting the need to make sure that the services offered by those that do apply for accreditation by Ofcom are fully accessible to all who want to use them.

The Panel's next research project will evaluate the digital presence of the key players in the communications sector to assess its accessibility and usability and to assess whether it meets the requirements of those users who might have access needs.

Alternative dispute resolution data

We have urged Ofcom and the Alternative Dispute Resolution (ADR) Schemes in the communications sector to work together to provide consumers with clear, accessible, comparable information on the complaints journey including through to ADR. This relates to both the KPIs of the Schemes themselves, in addition to the outcomes of complaints about CPs the ADR Schemes handle. Ofcom currently publishes the KPIs of the ADR services and each of the services publish its own performance data. The services publish a limited amount of outcomes data. We believe it would be useful for consumers to be able to locate all the information in one place and for it to be sufficiently detailed to enable consumers to make an informed decision about their service provider; i.e. numbers of complaints considered and upheld against x provider, rather than simply percentages of an unknown base. We have urged Ofcom to add ADR complaints data to its website and to consider adding the same to its quarterly complaints bulletin.

Advice and performance information for providers, and enforcement

When seeking to improve advice and information for consumers, advice and information for providers also needs to be improved - and needs to be reinforced by measures that build trust in markets. This may require greater penalties, actions or powers for enforcement agencies. It is vital that CPs - especially smaller businesses - are fully aware of consumer rights themselves and understand the obligations imposed on them along with enforcement measures that may be taken.

Poor performance

Improving industry performance is a key concern of the Panel. We have worked closely with Ofcom to ensure that people are compensated for unacceptable performance through the forthcoming auto-compensation scheme. Similarly, our work on the revised [Broadband Speeds Codes of Practice](#) should ensure that consumers are not trapped into poorly performing services. However, there are situations where people do not have the option to switch i.e. there is no other provider in their area. We believe that in these circumstances, consumers should be proportionally billed by their providers for sub-optimal performance.

4. Consumer Advocacy

Learning from the Essential Services Access Network (ESAN)

ESAN brings together regulators, ombudsmen and consumer and voluntary organisations to promote the consumer interest in four regulated sectors: water, energy, communications and financial services. In November 2016, ESAN organised an event “How can the consumer voice be better heard in the regulation of essential services?” to discuss the different models for consumer representation in regulated sectors and the different methodologies for learning what consumers think and want. The conference report notes that:

“All models and methods (of consumer representation) pursue the same goal: to improve the lot of consumers of essential regulated services. As such, a number of speakers remarked on the fact that there is no single solution; no one model or methodology that should stand without the rest. In terms of the ‘consumer voice’ approaches, at a high level, both the panel within the regulator and the standalone consumer watchdog have their strengths and weaknesses, depending on the type of market, the sector, and the wider consumer landscape. In all cases, where potential limitations are identified, care must be taken to mitigate concerns.”

One delegate questioned whether consumer interests would be better served by representatives coordinating their positions to speak with a single, clear voice. But by and large this was not considered beneficial. Citizens Advice’s Stew Horne said a multitude of voices was a valuable thing and that the challenge fell on government and regulators to engage with the complexity.

The Communications Consumer Panel

We ensure the citizen and consumer voice is represented in communications policy development. The Communications Consumer 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. The Panel is a statutory body, established under the Communications Act 2003. It is a group of eight experts, appointed by Ofcom with the approval of the Secretary of State, who have substantial knowledge and experience of consumer issues in the electronic communications sector and beyond. The Panel's remit covers the UK and, by statute, it has members who represent the interests of consumers in Scotland, Wales, Northern Ireland and England. 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. Cross-membership of the Panel with Ofcom's Advisory Committee on Older and Disabled People (ACOD) was established in 2012 to improve effectiveness and efficiency.

Panel members are recruited in an open process and selected through interview. They have expertise in IT and technology; business and SMEs; mobile and mobile payments; customer service and complaint-handling; broadcasting; public services; disability issues; accessibility; the needs of older people; social exclusion and vulnerability.

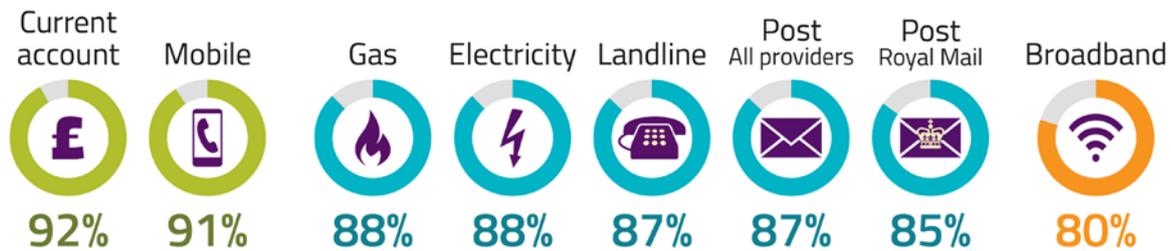
The communications sector is a complex and fast-moving market - and one that impacts across society and the economy. The Panel's and ACOD's work is therefore diverse and broad, covering not just all telecommunications services but also aspects of post and portrayal in broadcasting. By definition this embraces everything that impacts on consumers - for example, pricing; billing; customer service; complaints handling; mobile coverage; unfair policies; privacy; digital inclusion; treatment of consumers in vulnerable situations; and so on.

It is important to note our role in ensuring that the consumer voice is heard in relation to infrastructure. Infrastructure issues and the allocation of spectrum have wide ranging implications for consumers and citizens - affecting not only mobile coverage and broadband provision but also Freeview, radio and a panoply of white space devices. The Panel's understanding has enabled it to promote key changes, such as national roaming that would lead to significant benefits for consumers across the UK should it be introduced. We have ensured that the need to support and protect more vulnerable consumers on the Freeview platform when spectrum planning changes are made is understood and planned for.

The telecommunications sector presents different challenges to those in utility sectors such as energy and water; in many ways it is closest to financial services in its complexity. Overall indicators of consumer satisfaction with the market risk masking individual service variations. An appreciation of the complexities of the market is vital if progress on consumer service is to be made - different services within the sector present different challenges. As Ofcom's recent [Comparing Service Quality](#) report noted, while overall satisfaction among mobile customers (91%) was in line with that among current account customers (92%), and above gas (88%), electricity (88%) and landline customers (87%), satisfaction among broadband customers (80%) was below all

of these other sectors. [Ofcom’s residential postal tracker](#) notes that in 2017, consumers’ overall satisfaction with Royal Mail’s postal service stood at 85% and with all postal service providers at 87%. An accurate and informed assessment of the issues is vital to addressing their resolution.

Overall satisfaction compared with other sectors



Source: Ofcom [Comparing Service Quality 2017](#) and [Ofcom’s residential postal tracker 2017](#)

There is a similar picture in relation to consumers’ satisfaction with complaints handling.

Figure 41: Overall satisfaction with complaint handling in communications, energy, bank, non-food retail and rail sectors



Source for landline, mobile, broadband and pay TV: [Ofcom Quality of customer service – complaints research](#), online survey, fieldwork carried out by BDRC, December 2017/January 2018

Source: Ofcom [Comparing Service Quality 2017](#)

Citizen and consumer challenge and advocacy

The Panel’s main role is to challenge and advise Ofcom to ensure that the interests of consumers, including micro businesses, are central to regulatory decisions. We act as a “critical friend” to Ofcom, rather than a campaigning organisation. Our unique relationship with Ofcom, made possible by a Memorandum of Understanding, means we have early, confidential access to the regulator’s thinking and information and can proactively influence decisions by making early,

robust, high quality interventions. In this way, we ensure that consumer and citizen interests are at the heart of Ofcom's thinking throughout. The Panel also provides advice to Governments and champions consumers' interests with industry. We publicly consult on our workplan each year.

The Panel works to influence before, during and after policy development - through a variety of methods and channels. In 2016/17 we submitted 31 expert, detailed and evidence-based responses - an average of over one response every two weeks - inputting to a wide range of policy development and monitoring subsequent implementation. This is in addition to face to face meetings with CPs and stakeholders to discuss issues and offer advice on moving forward in the best interests of consumers. Alongside this, over the past five years we have published well-received research that has led to increased regulatory focus in a number of areas including

- [access to broadcast and on-demand content](#),
- [data privacy](#),
- [meeting the requirements of older and disabled telecoms consumers](#),
- [micro-businesses experience of communications services](#),
- [the consumer experience of problems with communications services](#) and
- [sustaining online engagement](#).

Our work results in significant policy changes. Our role is not to campaign publicly nor expend resources on seeking a significant public profile - we contribute expert advice to Ofcom and others based on a trusted relationship to ensure consumers' interests are high on the agenda and we do not shrink from airing issues more widely when necessary.

When we anticipate consumer detriment, or identify it occurring, we work with those who can make a difference - Ofcom, CPs and UK and National Governments. Two Panel Members advised on the Scottish Nuisance Calls Commission: *"The Scottish Government greatly appreciates the support of the Consumer Panel as we've worked to find solutions to the problem of nuisance calls. Their insights in the process have been invaluable, particularly around the complexities of supporting and protecting consumers whose circumstances may mean they are in need of extra help. We look forward to continuing to work with them as the project moves to its next phase."* Laura McGlynn, Policy Officer at Scottish Government.

Other initiatives involve engaging with the NI Government and civil service regarding broadband provision and membership of the Northern Ireland Telecoms stakeholder forum. Our sector specialism and expertise mean we can challenge in a constructive environment, offer comprehensive advice and influence the development of policy so it delivers for consumers and citizens.

How we work and what we have achieved

The level of trust we have fostered in the sector enables us to effectively influence CPs and the regulator, and to hold Ofcom to account where appropriate. The feedback we get from stakeholders tells us that what we do is significantly valued by Ofcom, industry and charities. Ofcom's former Chair, Dame Patricia Hodgson noted *"The unique expertise and insight provided by the Consumer Panel and ACOD remains essential to ensuring that Ofcom is held to account and that we maintain a strong focus on consumer outcomes across our diverse programme of work. In particular, we continue to benefit from the emphasis you place on access for citizens and consumers to good and affordable levels of service, honest information, decent terms and conditions and redress when things go wrong. These considerations are of special importance to the vulnerable in society."*

The Panel's wide remit enables it to identify sometimes diverse projects that are apparently unrelated but raise similar consumer issues and ensure that there are connections made between them. Its structure means that it can respond swiftly to emerging issues - it meets monthly but conducts much of its business electronically between meetings. Panel members work between three and four days per month (five for the Chair) and bring a UK-wide perspective. They are supported by fewer than two FTE advisers.

Like financial services, which is excluded from the review of advocacy arrangements, the communications market is characterised by rapidly changing complex products delivered in a competitive market with many varied players. To be effective, consumer advocacy for communications needs to maintain a high level of sector specific expertise.

Whilst cross-sectoral analysis provides a useful seam of best practice to mine and evaluate, niche expert experience and understanding allow us to robustly challenge telecoms policy development from a position of strength, supported by sound evidence and resulting in pragmatic actions based on real world solutions.

Our value has been recognised: Ofcom has updated its rules⁴ and from October 2018, Communications Providers will have a new, wider obligation to consult with the Panel with a particular emphasis on consumers in vulnerable circumstances. We engage with a range of stakeholders - including, for example, the Alternative Dispute Resolution (ADR) schemes and the main Communications Providers, where we challenge their assertions from an informed position. Communications Providers tell us that our input and the information we share with them

⁴ <https://www.ofcom.org.uk/consultations-and-statements/category-1/review-general-conditions>

(including our research and our expert views) help them scrutinise some of their own processes and can provide evidence for internal changes.

"The Panel's research is useful as it allows us to look at the accessibility issues behind the headlines and causes of complaints." EE

"Your clear and strong voices for the consumer interest are an invaluable part of the industry landscape..." Digital UK

"The Panel's research had been useful in allowing us to make a case to make changes within the business - where there is the desire to change, evidence provides a gateway" Talk Talk

"The Panel's research and recommendations are valuable as insights into real life issues, enabling changes to be made to processes" 3

"The Panel continues to play an important role in promoting the interests of consumers and protecting vulnerable consumers. BT is supportive of its work and appreciative of its independent expertise and research outputs." Consumer Affairs, BT Consumer

To help ensure that as wide a group of consumer and citizen stakeholders as possible can input into Ofcom policy development, in 2015 we reviewed how Ofcom consults. Many of our recommendations were adopted including for Ofcom to create a consultations mailing list. This makes formal regulatory processes more transparent to consumers and their representatives, enabling interested parties to be notified of the consultations underway and strengthening the impact of the consumer and citizen voice in Ofcom's deliberations.

Case studies

Our work on **mobile coverage** shows what an effective consumer advocacy body such as the Panel can achieve. The Panel used its research and its unique relationship with Ofcom to persuade the regulator to make tackling mobile not-spots one of its organisational priorities and the situation improved as a result. We also made the case for better consumer information, which is now available via Ofcom's website and its coverage checker app. We continue to press both Ofcom and government to consider national roaming as a rapid and cost-effective solution to the remaining persistent coverage issues which continue to be a cause of significant detriment to both consumers and micro-businesses.

Nuisance calls are a complex area. The Panel's sustained argument for free Caller Line Identification (CLI) gathered significant support and we were delighted by Ofcom's decision to mandate this requirement in its revised General Conditions. Our involvement in the Nuisance Calls and Texts Task Force on Consent and Lead Generation convened by Which? at the request of the Department of Culture, Media and Sport (DCMS), led to the consideration and introduction of new powers given to the Information Commissioner's Office (ICO), enabling it to hold company directors personally responsible and fined up to £500,000.

The Panel highlighted significant problems with **complaints handling** in the telecoms sector in its 2013 research Going Round in Circles. We pushed both Ofcom and Communications Providers to improve their performance in this area and it remains something that we monitor closely. Ofcom opened an Enforcement Programme into complaints handling in 2013 and now actively monitors CPs' compliance with complaints handling rules, including access to ADR and customer service more generally. Ofcom subsequently investigated and fined three Communications Providers for not complying with complaints handling rules including a £1 million fine for EE, £925K for Vodafone and £250K for H3G.

Resourcing and Funding

In order to robustly represent consumers' interests, it is vital that advocacy is adequately resourced – in terms of both headcount and appropriate levels of expertise. Funding must enable those representing consumers to act in the short-term as well as allowing it to plan longer term results.

The Panel is funded by Ofcom and its overheads are low because it is based at Ofcom and benefits from its support services and insights from Ofcom's extensive research. The Panel has access to Ofcom's research and data (and early unfettered access to its policy thinking) and helps shape Ofcom's consumer research work, so that both the Panel and Ofcom achieve maximum advantage from the research. Being able to share research and information confidentially in this way represents a significant cost-saving.

As such, the Panel is a cost-efficient advocacy body, capable of co-existing with and complementing any new arrangements. It is worth noting in this respect that consumer bodies in other industries (energy (£3,002,708), postal services (£2,345,602), water (£5,724,000), rail and bus transport (£5,039,000) cost over six to fourteen times as much as the Panel's budget⁵.

⁵ Budget 2015/16 information from <https://www.esan.org.uk/wp-content/uploads/Final-ESAN-event-paper-23-Dec-2016.pdf>

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 some other regulated industries, whilst at the same time carrying the risks outlined earlier of a potential diminution of sector specific representation.

Models of consumer advocacy and representation

As noted above, the Essential Services Access Network conference held in November 2016 examined a variety of models used across different sectors and compared the merits of three models of consumer representation: a consumer body within the regulator, a standalone consumer body and a consumer voice within the company. It concluded that there was no one solution - rather a variety of models working in tandem achieved impact at different intersections in policy development. For this to work there must be collaboration but independence in an environment where advice can be given without fear or favour. The current landscape has a number of different points that all allow for interventions on behalf of consumers:

- Statutory Panels: ours and the other statutory consumer panels that exist to challenge regulators ex ante;
- Regulators who act in the consumer interest;
- Consumer bodies like Transport Focus, Which?, Citizens Advice, Citizens Advice Scotland, the General Consumer Council for Northern Ireland and the Consumer Forum for Communications. Some are statutory, some are 3rd sector;
- Consumer challenge within individual industry players;
- Enforcement - Trading Standards, GB, Scotland and Northern Ireland who act in enforcement; and
- ADR Schemes and Ombudsman (differences in public service arrangements across the Nations).

Effective consumer advocacy needs to work across the spectrum of policy development - both before and after the fact. Ex-ante, early intervention in policy design is useful in avoiding unintended consequences, stopping or reducing likely detriment and working to ensure that a potential problem doesn't occur. Ex-post provides a framework to support consumers when things have gone wrong.

Much of the Panel's work is ex-ante. A key part of the Panel's role is to identify potential market failures and make the case for changes so that consumer detriment is reduced or eliminated.

The Panel can also use its expertise to advise on the issues that might affect consumers in the future, where evidence from experience is unavailable. Equally important is anticipating potential areas of detriment as Ofcom develops consumer policies, so that detriment is prevented in the first place. Such areas include the revision of General Conditions; auto-compensation; solus landline pricing; Caller Line Identification; the Future of Voice.

Consumer bodies, including Citizens Advice's local network, provide valuable support for individual consumers who have experienced a problem. Local intelligence based on those reported problems is extremely valuable, but there is a risk that it could under-represent the issues experienced by harder to reach consumers. It is always 'after the event' - with detriment already experienced - when our ambition should be to prevent detriment, by ensuring policy design that has the consumer interest at its centre.

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. A holistic overview of these sources of evidence both allows advocates 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 and to look at cross-cutting issues as well as specific issues.

The Panel has welcomed the work carried out by Citizens Advice and Which? in the telecoms sector and we continue to engage with both organisations. Both approaches bring a useful adjunct to the ability to look across sectors at common issues, such as switching, and poverty and disadvantage. *"Speaking with the panel on the changes E.ON have made to provide greater support to vulnerable customers, highlighted that the challenges we face as different industries, are very similar. It was highly valuable to share what we have done, and understand from the Panel the Communications sector perspective."* **Vanessa Northam, UK Vulnerable Customer Manager, Residential Operations, E.ON UK**

In considering advocacy arrangements in the telecommunications sector, we believe the Government should reinforce the unique benefits of the Panel model within any new framework that may emerge - if indeed that is the outcome of the review. Panels often have sight of commercial information, or government policy information that is unlikely to be shared with other campaigning consumer bodies. Retaining the ex-ante work of a panel challenging regulation is an accepted and valued part of the work of Financial Services regulator, CCA, and IPSO the press regulator. It should be retained in the telecoms, broadcasting and postal sector.

Each complementary model of consumer representation has its merits in working to ensure that the consumer voice is heard. In communications, we have encouraged providers to work directly with their consumers across their services to ensure needs are baked in from the start.

Although some have established consumer challenge groups within their organisations, this is far from widespread.

The future of advocacy

It is vital that consumer representation is underpinned by statute, and adequately resourced, if it is to be effective. [*Championing Consumers: The story of consumer advocacy in Scotland from 1975 to 2014*](#) notes that the final report published by Consumer Futures in 2014, *Consumer Protection, Representation and Constitutional Change in Scotland* set out a number of key principles for a consumer-focused consumer protection and representation framework. This framework has four pillars: consumer advocacy; consumer advice and education; consumer enforcement; and consumer redress. The principles were largely based on the work and experience of Consumer Futures and its predecessors. They stated that an effective consumer advocacy body should:

- be independent and seen to be independent;
- be secure and sustainable;
- have statutory powers to protect consumers;
- be accountable to funders, the Scottish Parliament and the public;
- be sufficiently well-funded to carry out its role effectively;
- cover all sectors which affect consumers;
- represent the interests of all consumers in Scotland, with a particular responsibility for those who are most vulnerable or disadvantaged;
- be focused on prevention;
- have a strong research focus to support robust consumer policy conclusions; and
- retain an outward focus, representing the consumer interest at appropriate national and international policy levels, and in doing so maintain effective links with consumer bodies elsewhere in the UK and overseas.

Whether advocacy arrangements achieve their full potential depends on several factors. These include:

- sector-specific expertise and involvement, especially in a complex sector like communications;
- the statutory obligation for the regulator to consult with the advocacy body, in confidence, at an early stage before policy options are finalised;
- the capacity to undertake independent research;
- the capacity to anticipate and explore emerging issues and research in order to shape policy with regulators and Government and to forestall citizen and consumer problems before they arise;

- the capacity to meet with and hold Communications Providers to account;
- credibility and trust;
- having a strong consumer voice across the UK with links with consumer advocacy bodies in the Nations, which might adopt different models depending on their specific circumstances and the existing institutional arrangements;
- the powers to call for information and initiate 'super complaints';
- adequate resources/secure funding;
- a focus on efficiency - demonstrating real value for money.

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. Consumer policy is a devolved power in Northern Ireland with the exception of some reserved matters such as telecoms and broadcasting. Strong links between consumer advocacy bodies in NI and GB are essential, especially on issues such as communications policy which is a reserved power. There are also new powers around consumer advice and consumer advocacy devolved under the 2016 Scotland Act. The complexities of the situation in Scotland are an illustration that that no one size will fit all:

- Scotland has new advice and advocacy powers under the Scotland Act and has been developing its policy and strategy;
- A new consumer body has been consulted on and a bill is expected shortly;
- A consumer first policy approach has been adopted;
- Scottish Government has set up a Consumers and Markets Taskforce - its purpose being to take action on the most detrimental consumer issues affecting people and businesses in Scotland; and
- It has also initiated the Nuisance Calls Commission and the Taskforce will be picking up on other projects.

The benefits of early independent consumer advice to Ofcom and interested bodies

Under current legislation, Ofcom has a statutory obligation to establish and maintain a Consumer Panel. That aside, in order to continue to perform its primary duty of furthering the interests of consumers and citizens in the communications sector, Ofcom will continue to need independent advice and input from the Panel or a body that performs the same role on an independent basis that is solely focussed on consumer and citizen interests. There are a number of reasons for this:

- Ofcom staff are lobbied heavily by industry representatives. This is an important part of the consultative process, but an articulate consumer voice is needed as a counterweight and to embed the consumer voice at an early stage of policy development.

- Ofcom staff members have different levels of understanding of consumers' interests and how to take them into account. This is particularly the case in relation to competition- and spectrum-related issues, where the implications of different options for consumers are often unclear and long-term.
- All organisations are susceptible to 'group think' and therefore structured input from outside the organisation is an essential part of mitigating this risk.

The Panel's focussed work programme (published annually) 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.

The pace of convergence and innovation in the communications sector means that new issues of importance to consumers will continue to emerge and policy needs to address these new opportunities - and challenges. It is important for there to be a strong, informed consumer voice in this debate.

The Panel values its relationships across the consumer landscape and we have worked previously with a range of bodies including Citizens Advice in relation to post and debt, and Which? on the nuisance calls taskforce. We will continue to work to develop strong relationships with relevant bodies including Citizens Advice, Citizens Advice Scotland and GCCNI.

Recommendations

We see four main areas where relatively modest investment could yield significant improvement:

- To strengthen the consumer voice across the UK we believe there needs to be greater collaboration between appropriate consumer bodies. We propose that consideration is given to establishing a regular forum for consumer bodies together with organisations such as MoneySavingExpert, relevant charities and NGOs, to ensure the voices of more vulnerable consumers are clearly heard by the regulator, accompanied by the FSB to represent the interests of micro-businesses. To further reinforce these linkages, we propose that MOUs are established or renewed between the relevant bodies in the way previously established with Consumer Focus. These should also include consumer advocacy bodies across the UK Nations such as GCCNI and Citizens Advice Scotland.
- We also propose that the Panel establishes a number of focussed, issues-based expert sub-groups and focus groups:
 - A research group would serve to evaluate the most effective methods of informing consumers - particularly those who are in more vulnerable circumstances - and scrutinise relevant research, commissioning only when there are clearly identified

gaps and assessing campaign approaches to inform its advice. Together with the Panel, the group would raise the profile of issues that need to be addressed and ensure that action is taken when consumers are at risk of detriment.

- The second sub-group would again strengthen the consumer voice across the UK by ensuring input from across the devolved nations into telecommunications advocacy. Panel Members representing the devolved Nations are ideally placed to convene a wide range of stakeholder representatives in their Nation to inform the development of Panel advice to Governments, Ofcom and providers.
- We would also like to be able to expand on our current undertaking of small-scale roundtables held in the Nations. Expert policy roundtables with published reports of the debate would serve to highlight the profile of issues facing consumers and bring about a level of thought leadership and informed discussion hitherto unseen in the sector.
- In order to improve practice in industry, we propose a further group of Communications Providers to highlight issues, debate solutions and disseminate successful approaches and best practice. We have utilised this method previously in relation to accessibility of communications services and found Communications Providers to be willing participants, keen to explore new approaches and not reinvent the wheel.

These initiatives would require additional resource. But by making the most of existing specialist understanding within the Panel and consolidating linkages with external expertise they would deliver much greater impact, and stimulate and facilitate a level of constructive debate far in excess of the relatively modest financial backing required.

5. Power of Attorney

Occasionally, people in vulnerable circumstances may ask a third party (a friend or family member) to act on their behalf. This could be informally, or in more serious cases through the instrument of a Power of Attorney. It would be useful to include within the proposed guidance that providers should be sensitive to such circumstances and have procedures to enable the appropriate handling of such situations. If providers don't allow this form of contact, detriment may well result. The Panel would welcome involvement in the development of the guidance.

6. Ensuring vulnerable consumers are treated fairly

The Panel is especially concerned about consumers in vulnerable circumstances whose interests may not always be taken account of by the industry - for example, people who have specific

additional needs because they are unable to use mainstream services; landline only consumers; certain postal services users; people who are not confident internet users; those on low incomes or in debt; people with Power of Attorney; and consumers, citizens and micro businesses in rural areas. Children can also experience vulnerability as consumers in a similar way to older consumers.

Highlighting these interests is an important part of the Panel's role, as is working with CPs, Ofcom and other policy and industry stakeholders. In response to Ofcom's recent review of its General Conditions, the Panel supported the more holistic view of 'vulnerability' and Ofcom's strengthening of consumer protection in the review of Ofcom's General Conditions, especially for consumers who have additional needs compared to the 'average' consumer. We believe the new requirement on CPs to establish, publish and implement clear and effective processes and procedures in relation to consumers whose circumstances make them more vulnerable will increase focus on removing barriers that these consumers currently face.

Ofcom also strengthened the requirement that CPs engage with the Panel in relation to their support of consumers in vulnerable circumstances. Issues of particular concern to the Panel in respect of vulnerable consumers in the communications industry include:

- **Nuisance calls and texts:** As mentioned earlier, we believe nuisance calls remain a blight on all consumers who receive them; but they pose a higher threat to vulnerable consumers. The risk of harm is especially acute for those who are reliant on receiving calls to their landline, ranging from those who live alone, are house-bound and do not have access to the internet, to those running a micro business, who cannot afford to ignore a call but may end up paying to receive nuisance calls if they divert their line. With the deadline for PPI claims approaching in 2019, we believe there is a heightened risk of activity.
- **Future of voice calls (migration from the public switched telephone network (PSTN) to voice-over internet protocol (VOIP)):** We are engaging closely with Ofcom to promote and protect the rights of people who are likely to be the most vulnerable at the point of switch-off. It is likely that this group will include voice-only consumers. Ofcom's standalone landline review revealed that there are approximately 1.5 million consumers that only use a landline and that these people are more likely to be older, disabled and on a lower income. We have raised concerns on behalf of this group of consumers in regard to the installation of new equipment and the need to provide trustworthy support services. It is vital that intrusion is minimised and support and security measures are in place.
- **Access services (subtitling, audio description and signing) on broadcast and on demand content:** The availability and quality of access services remain of high importance to the Panel. While disabled consumers are not necessarily vulnerable by default, they may be made vulnerable by a lack of equivalent services. We support Ofcom's aim to make communications work for everyone.

- **Protection from scams, including cyber security:** We have welcomed Ofcom's commitment to network resilience in its Annual Plan. Our research 'Digital Footprints: A question of Trust' investigated the perceptions of consumers with high and low levels of digital confidence. It highlighted consumers' lack of trust in their mobile and broadband providers' care of their data, when compared to the likes of banks. We would like to see this improved and have encouraged CPs to offer a basic, but robust level of security protection for free and to take steps to help their customers protect their own data, so that consumers can feel confident online.

Communicating with consumers

We have been pleased to notice changes made to the way Ofcom has communicated with consumers. It has taken into account recommendations from the Panel, such as making the titles of some of its consultations more consumer-friendly; allowing for more transparent methods of presenting the key issues and proposed remedies - and of receiving responses; and introducing a mailing list that consumers and stakeholders can sign up to in order to receive notifications. These are all important ways of encouraging engagement from a diverse range of consumers and stakeholders, to help ensure that Ofcom's policy-making is inclusive.

It is vital that consumers are able to use their preferred methods of communication, so that they are not immediately put at a disadvantage. This includes the ability to use text and video relay services - and to know that they can be used. We have urged Ofcom to reinforce the requirement to promote widely services for disabled consumers (including Priority Fault Repair) and to make it mandatory to promote them to all consumers. We will continue to encourage CPs to do so, so that all consumers, including friends and family, know that services are available. We would be very pleased if Ofcom would do likewise - perhaps by issuing guidance. It would be a simple analysis to compare the percentages of consumers who are likely to be in more vulnerable circumstances in the sector by comparing the levels of sign-up to the Priority Fault Repair registers in telecommunications with those in other sectors. This worked to good effect in Northern Ireland where identification of an asymmetry enabled further work to be carried out by the water industry to highlight its support services to consumers.

Rural consumers

While the list of vulnerable circumstances set out in the consultation document is not intended to be exhaustive, we are surprised to find that rural consumers are not highlighted as a group of consumers that are potentially subject to vulnerability. Throughout the UK, issues of concern to telecommunications consumers can be significantly magnified when experienced in a rural context. Moreover, these issues can affect significant numbers of consumers - for example, 35% of Northern Ireland's population live in rural locations.

Micro businesses

The Panel protects and promotes the rights of micro businesses (with 10 or fewer employees) in the communications sector - and while they are not referred to explicitly in the consultation, we would highlight that they face many of the same challenges as domestic customers in regulated markets across the UK. We would therefore like to draw attention to the negative impact of lengthy contracts, unclear or unfair terms and conditions and the fact that a lack of digital skill or confidence can have a disproportionately heavy impact on micro businesses, which may need to complete the same types of transactions as larger businesses, but may not have the choices, resources or bargaining power of their larger competitors. We would strongly recommend that the Government considers including micro businesses within the scope of this consultation.

Consumers with mental ill health

The consultation proposes that the UK Regulators' Network (UKRN) should identify whether there are benefits from introducing a set of minimum standards that consumers with mental ill health, cognitive impairments and dementia should expect to receive across sectors, and agree principles for improving services to these consumers.

From our research in this area, [Inclusive Communications: We're Not All the Same \(2015\)](#), we are very aware that the effects of each of the above conditions may result in different needs. In ensuring that the minimum standards are relevant, we would urge UKRN to seek input from people living with those needs and conditions and those representing them. However, rather than running the risk of imposing tick-box regulation, if businesses were encouraged to adopt an inclusive approach - changing their culture to one that is flexible and treats *all* customers fairly - specific minimum standards would not be necessary. Rather it is a question of providers being aware of requirements and building on shared best practice, as is our preference. We would be interested in being involved in discussions relating to minimum standards in the communications industry and would facilitate discussions with Communications Providers to understand any barriers and any examples of good or best practice that can be shared.

Double/multiple detriment

We also highlight the fact that some consumers fall into several categories that would make them 'at risk'/'potentially at risk' in the market. It is vital that the Government and regulators consider the impact of two or more layers of harm disempowering and marginalising consumers. For example, consumers living alone may be at higher risk than consumers who live with friends or family.

7. Consumers who are loyal to their provider

The Panel has long argued that consumers who are loyal to their provider should not be penalised. We welcome the Government's intention to safeguard consumers who, for whatever reason, choose not to switch (and we would add that some consumers are not able to switch - for example, those in rural areas with coverage only available through one provider).

Those customers who can use on-line shopping often get a better deal than those who don't have access to it. This disproportionately impacts on vulnerable customers and there might be a need to ensure that for essential basic services this is not the case. Also, where this is the case the sites themselves should be fully accessible and usable to ensure there are no barriers to those who have on-line access needs.

8. Consumers outside of regulated markets/purchasing across sectors

The accountability for consumer law should, we agree, be strengthened, within an effectively-resourced framework to protect consumers.

The Panel supports setting minimum standards across sectors and ensuring sector regulators and Government work well together for the benefit of not only individual consumers, but also micro businesses.

Consumers may not recognise that different elements of their product and service are regulated separately. For example, a consumer purchasing a mobile subscription will not necessarily appreciate that Ofcom does not have powers to regulate the mobile handset and other equipment, so may find their complaint journey frustrating. The same situation applies with smart TVs and OTT devices, where again, Ofcom has not been given the power to regulate. We consider it important that a minimum standard across purchases is put into place, so that consumers know what to expect. In respect of consumer-to-consumer sales, this may provide a vital income for some consumers. However, the legal boundaries should be made clear to consumer sellers.

9. Terms and conditions

We believe that providers should be encouraged to make all terms and conditions as short, clear and transparent as possible and to present them in a way that is meaningful and useful to every consumer. Given that one in six UK adults struggles with literacy, in line with best practice, we believe that companies should use a readability test such as Flesch-Kincaid and aim for a maximum readability age of 12 years old. Far too often companies' terms and conditions are a

“poor relation” compared to the transparent nature of their marketing information. Whilst we understand the reasons for this, we would encourage consideration of a ‘key facts’ section of essential contractual information. We have welcomed the use of behavioural science to understand the best way of helping consumers to engage with the terms and conditions they are signing up to. <https://www.communicationsconsumerpanel.org.uk/downloads/ccp-acod-gcs-14-march-2017.pdf>

Consumers’ views on terms and conditions also featured in our [Digital Footprints research](#).

Transparent, accurate and digestible information for consumers is key. The Panel’s Going Round in Circles research found that provision of clear information about contract terms, dates and penalty clauses for consumers and robust switching processes are vital – and consumers need to be assured that they will not incur excessive cost, time or disruption as a result of a decision to switch. Only then can consumers make informed choices, understand what is going to happen next, not be misled and be able to resolve any problems quickly and easily.

10. Privacy

Consumer confidence and trust in their provider, Governments and others were subjects of focus in the Panel’s November 2016 report – [Digital Footprints](#). One of the recommendations made by the Panel was for all Communications Providers to provide a basic, but robust level of security protection and we have been pleased to see that BT has enhanced its free security software. The Panel also recommended that Government, with Regulators, produced a Code of Practice on the safe handling of consumers’ personal data by providers, particularly in a connected, Internet of Things world. We have since been pleased to contribute in a number of ways to the DCMS’ Secure by Design policy and Code of Practice – our most recent response is here: <https://www.communicationsconsumerpanel.org.uk/downloads/ccp-acod-response-to-secure-by-design-may-2018.pdf>

11. Customer service and complaints handling

Following on from our research and recommendations in [‘Going Round in Circles’](#) and [‘Inclusive Communications: We’re not all the Same!’](#) the Panel has undertaken new research to gain in-depth insights into the experiences of consumers who have recently been through Communications Providers’ complaints processes, including some who have given up and others who have persevered and taken their complaint through ADR. We will publish the results shortly. We also hope the research will provide good practice examples of complaint-handling, which we can encourage providers to adopt, for the benefit of all consumers.

We have welcomed the introduction of automatic compensation; this is an important step in helping consumers to access redress without the hassle of going through a formal process. We look forward to seeing the process implemented as soon as possible; we hope also to see the amounts of compensation offered reviewed on a regular basis by Ofcom to ensure that they are fair and meaningful to consumers.

However, some consumers will need to use providers' complaints processes and one of the most important factors in customer service and complaints handling is being able to get through to the right person or team easily. Ofcom's [Comparing Service Quality report](#) recently revealed that 62% of landline consumers found it easy to locate their provider's contact details and only 49% of landline consumers found it easy to get through to the right person on the phone. While 58% of landline customers said that the adviser they spoke to did what they said they would do, that leaves 42% with unfulfilled promises.

For broadband the result was even worse on this measure at 55%. We find this completely unacceptable. Consumers must be able to trust their providers to get these basic elements of good service right and to a consistent high standard.

Our view is that there remains much room for improvement. While Ofcom has enforcement powers regarding complaints handling, it does not have the same powers in relation to customer service. It therefore has to rely on its soft powers to improve customer service.

These are not indicators of a market that is functioning well for consumers in terms of quality of customer service. We would also highlight the possibility that a poor experience may deter consumers from complaining again and so the level of service may be masking the true scale of the dissatisfaction. Complaint handling can become part of the problem if it is not an effective part of the solution.

Evidence of the detriment suffered by consumers who have had cause to complain to their CP is clearly set out in research by the Panel (['Going Round in Circles'](#), [Inclusive Communications - 'We're Not All the Same'](#), ['Realising the Potential - micro businesses' experiences of communications services'](#)) and Ofcom. Participants in our [2015 research](#) had made few formal complaints, but those who had, said that they appreciated not only information in specific accessible formats, such as braille, or by specific communications methods, such as text relay - but also the flexibility of CPs' complaint-handlers to give extra time to look into their concerns.

It is in this context that ADR becomes ever more important. If a consumer is not happy with a CP's response to a complaint he or she should be proactively signposted to ADR and supported in that process - which should be easy, hassle free and not involve an undue wait once the ADR service has taken the case. The importance of easy and free access to an independent, effective

and fair ADR service cannot be underestimated, as this provides a safety net for consumers who feel they have been let down by their CP. We have been particularly concerned about CPs' poor record of referring complaints to the ADR services and [have called for](#):

- greater publicity of the services
- improved accessibility
- the shortening of the eight-week referral period, and
- publication of information about the cases that the ADR services receive.

Raising awareness

Raising awareness of the existence of the ADR services and their purpose amongst telecoms consumers is a vital first step and we have encouraged Ofcom, CPs and the ADR services to explore methods by which this can be achieved.

Referral to the ADR services and consideration times

We have long argued that it is not acceptable for consumers who may have waited for an outcome to a complaint with their CP for anything up to eight weeks to then have to wait a long time for a decision from the ADR scheme, especially if their service is not restored during that time or they are paying for a sub-standard service.

Consumers ability to take their complaints to ADR is restricted to the complaint still being outstanding eight weeks after they have complained, or sooner if their complaint reaches 'deadlock' - although this relies on the CP's willingness to issue a "deadlock letter". We are not convinced that consumers as a whole are aware that they can ask for a deadlock letter - which leaves the balance of power with the CPs and leaves many complainants still suffering in silence, having perceived the process as too time-consuming, or giving up once they have started.

We believe that eight weeks is far too long and have encouraged CPs to reduce this timescale to four weeks. In short, if a consumer's complaint is not resolved or "deadlocked" we cannot see why that consumer should have to wait two months before the next step (that is, ADR) can be taken. Four weeks (or even arguably two weeks) should be ample time for CPs to handle a complaint, unless there are very exceptional circumstances. As MoneySavingExpert notes in its report [Sharper Teeth: the Consumer Need for Ombudsman Reform](#), the eight week rule was created in a non-digital age, but in this digital age with instant credit-scoring and decisions, eight weeks is simply too long and should be reduced.

Accessibility

We believe there are two issues here. First, the way in which the services themselves are accessible to all consumers and micro businesses – especially those who may be in vulnerable circumstances, or needful of extra support. So the services should have very easy access routes (for enquiries and assistance as well as actual complaints), which enable consumers to use their preferred method of contact (for example, e-mail, telephone, text and video relay). Second, the Schemes have a role to play in influencing and holding to account CPs in respect of how those CPs facilitate access to ADR for those who need it.

It is vital that the ADR services encourage CPs to develop a culture that promotes flexibility to adapt to the needs of their customers. This in turn can help customers to feel more empowered and valued in the market. Through our engagement with CPs we have learned that many seek advice from charities and consultancies on adapting their services to their customers' specific communications needs and we welcome and encourage this. We have also encouraged CPs and ADR services to ensure that their complaints processes are accessible to consumers who do not have access to the internet – either permanently, or temporarily, due to this being the source of their complaint. The proposed changes to the methods by which complaints can be made set out in Ofcom's Review of the General Conditions should help in this respect.

Transparency

It is vital that decision-making processes are clear to consumers. This is important as any information asymmetry risks placing greater power in the hands of the CPs to the detriment of affected consumers.

While it is important that the complainant is able to provide their own evidence of harm, we believe it is also fair, as stated above, that the burden of proof in providing evidence for/against wrong-doing lies with the CP, as opposed to the complainant, especially in cases where the opportunities for input available to the complainant are restricted (for example, by not being able to get online).

The CP should have easy access to complaint records and should therefore share them in a straightforward and timely manner (if not live) with the complainant and we believe the ADR services should do the same. We would also encourage the services to give feedback to CPs and Ofcom on root causes of complaints even where the complainant chooses not to progress with their complaint and would urge the services to ask complainants why they have chosen not to follow the case through to conclusion.

As well as being transparent, all information should be plain and simple to understand – thus

achieving an “equality of arms” between the consumer and the CP. Transparency is paramount in redressing this imbalance and empowering consumers.

Fairness, consistency and review

It is important that fairness is taken into account at every stage. This is not only within a service but, when there are two ADR providers (as in telecoms), between the services. From the Panel's point of view, if there are two ADR schemes, they should have the same powers otherwise the consumer is subject to harm - and the consumer is not in control of which Scheme they use. One way of looking at this is by a review of the Schemes' terms of reference and also the consistency of the handling and outcome of similar types of case.

We also support the possibility of having a case independently reviewed if there is a complaint about a Scheme's performance. However, we believe it is already confusing for consumers that there are two ADR services (over which they have no choice). For consistency, and to facilitate shared learning, we would suggest that instead of separate independent reviewers at each scheme, an independent reviewer/team is used to review cases from both services.

Publication of data

We have consistently argued that accurate complaints data from the ADR services is an important measure of service quality and should be published regularly in a form that is digestible and useful to consumers, so that all consumers and micro businesses can be aware of the performance of their providers and engage more with the market. The publication of such data could also incentivise CPs to improve; and/or be used to show how supportive they are of consumers who require access to independent redress. We believe the data should be in a common format across the ADR Schemes and should include:

- The number of complaints referred to ADR per CP (equalised to reflect market share or consumer numbers);
- The main types of complaint;
- The number of complaints upheld;
- The average financial award;
- The number of complaints accepted where a communications provider has failed to provide either a “deadlock letter”, or an “eight weeks” notification of the consumer's eligibility to use ADR.

This would in turn help people to make informed decisions about their choice of provider, switching and exercising their right to redress. It would also raise awareness of the ADR services and help improve transparency in their services. We are pleased to see that the two ADR services

are planning to expand this information - working with Ofcom - to give more details about cases on a provider-specific basis. We are however both surprised and disappointed that this has not been possible yet, given that the information is already in the hands of the ADR services.

Impact

To be impactful, we believe that the Scheme needs to know where the CP has failed - so, whether the CP's complaints processes have been effective. CPs should be learning from previous case adjudications, but additionally, we believe the ADR services could do more to set the standards in complaints handling, by publishing information on what is expected of the CPs. This would encourage a consistent high level of complaint handling, with no excuses for failure; and would make it easier for CPs to identify gaps in their processes and aim higher. The ADR services have the experience and data from past cases to be able to give guidance proactively to the CPs in addition to analysis that we hope they provide on each case.

Accountability

Any assessment of effectiveness of the schemes needs to begin from a point of accurate record-keeping, so that referral dates, investigations, conflicts of interest, and outcomes - and where relevant, reasons for referral to independent review - are well documented and can be learned from and trends can be identified.

We believe that ADR services need to be held more firmly to account when and if they under perform - particularly in terms of KPIs and accuracy of data. We urged the ADR services to publish their own KPIs for all to see including time to answer calls; speed of acknowledgement of e-mails and correspondence; volumes of cases; and speed of resolution. We have urged Ofcom to focus on this so that high standards can be achieved and maintained; and to consider what measures can be taken should the services fail to meet those standards. As explained above, having waited up to eight weeks to access the ADR service, it is unacceptable that a consumer should suffer further delays for reasons beyond that consumer's control, such as complaint volumes or operational issues that are part of the services' role to handle.

12. Government and Regulators' Consumer Forum

We welcome the Government's proposals to focus on improving the way regulators work together, sharing best practice to improve consumer outcomes for those in vulnerable circumstances. However, we would suggest a more holistic view, taking the needs of consumers in vulnerable circumstances into account when tackling each area of concern to consumers - as an inclusive model, rather than seeing vulnerability as a standalone item. We would suggest that the Forum

includes the Chairs of the relevant Consumer Panels, in sectors where a statutory consumer panel exists.

13. Summary

- Communications services are integral to the everyday lives of consumers, citizens and micro businesses. The rapid rate of change in this sector and the significance of its role to people's lives and the UK economy mean that it is vital that the perspectives of consumers and micro businesses are at the heart of the debate.
- The telecommunications sector presents different challenges to sectors such as energy and water; in many ways it is closest to financial services in its complexity. An appreciation of the complexities of the market is vital if progress on consumer service is to be made.
- **Data portability** presents benefits and risks to consumers in all regulated markets and should not be ringfenced. It must be handled in a way that puts the consumer in control, does not compromise the security of their personal information and is easily transferable. For those without easy access via an app, an improvement that we believe can easily be made by CPs is an annual reminder of usage and information on demand. Trusted intermediaries may be able to help extend the message to disenfranchised or disengaged audiences. A labelling scheme may also be helpful, so that smaller companies can show that they are trusted. Providers should promote the benefits of their Priority Service Registers widely, to all consumers. The way data is collected must be standardised. Providers should not collect or share more than is necessary and prove that they are able to safeguard sensitive personal data.
- The **provision of information** about providers' quality of performance is vital to informing consumers' decision making, to encourage providers to maintain or improve performance and to improve transparency and trust within the sector. Ofcom has the power to accredit PCWs/DCTs but these services are not obliged to join the accreditation scheme. This is not transparent to consumers and it leaves a gap in consumer protection.
- Improving industry performance is a key concern of the Panel. We have worked closely with Ofcom to ensure that **people are compensated for unacceptable performance** through the forthcoming auto-compensation scheme; similarly, our work on the revised Broadband Speeds Codes of Practice should ensure that consumers are not trapped into poorly performing services. However, when consumers are unable to switch we believe that they should be billed proportionally in cases of consistently sub-optimal performance.

- As highlighted by ESAN, **effective consumer advocacy** needs to work across the spectrum of policy development - both before and after the fact. 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; b) its sectoral expertise; c) its use of robust evidence and its own research; (d) its position of credibility and trust and its unique relationship with the regulator; and (e) its ability to act independently. It is vital that the unique position and characteristics of the Panel remain part of advocacy arrangements in the telecommunications sector.

- We see four main areas where relatively modest investment could yield significant improvement:
 1. We propose that consideration is given to establishing a regular forum for consumer bodies together with relevant charities and NGOs, to ensure the voices of more vulnerable consumers are clearly heard by the regulator, accompanied by the FSB to represent the interests of micro-businesses. We would suggest a rotating, independent Chair for this forum. To further reinforce these linkages, we propose that MOUs are established or renewed in the way previously established with Consumer Focus. These should also include consumer advocacy bodies across the UK Nations such as GCCNI and Citizens Advice Scotland.
 2. We also propose that the Panel establishes focussed, issues-based, expert sub-groups and focus groups:
 - a) A research group, which together with the Panel, would raise the profile of issues that need to be addressed and ensure that action is taken when consumers are at risk of detriment.
 - b) A second group to strengthen the consumer voice across the UK by ensuring devolved nations input into telecommunications advocacy.
 3. We would like to expand on our current undertaking of small-scale roundtables held in the Nations.
 4. In order to improve practice in industry, we propose a further group of Communications Providers to highlight issues, debate solutions and disseminate successful approaches and best practice.

- We urge UKRN to seek input from people living with **additional cognitive needs and conditions** and those representing them. Businesses should be encouraged to develop a culture that is flexible and treats *all* customers fairly so that specific minimum standards

per se would not be necessary; rather providers should be aware of the requirements and build on shared best practice.

- In respect of **consumer-to-consumer sales**, this may provide a vital income for some consumers. However, the legal boundaries should be made clear to consumer sellers.
- We believe that providers should be encouraged to make **all terms and conditions** as short, clear and transparent as possible and to present them in a way that is meaningful and useful to every consumer. Given that one in six UK adults struggles with literacy, we believe that companies should use a readability test such as Flesch-Kincaid and aim for a maximum readability age of 12 years old.
- The importance of easy and free access to an **independent, effective and fair ADR** service cannot be underestimated. We remain particularly concerned about CPs' poor record of referring complaints to the ADR services and have called for greater publicity of the services; improved accessibility; the shortening of the eight-week referral period, and publication of information about the cases that the ADR services receive.
- With regard to the proposed **Government and Regulators' Consumer Forum**, we welcome the proposals. However, we propose adopting a more holistic view, taking the needs of consumers in vulnerable circumstances into account as part of a wider inclusive model, rather than seeing vulnerability as a standalone item. We would suggest that the Forum includes the Chairs of the relevant Consumer Panels, in sectors where a statutory consumer panel exists.
- The Panel would welcome further involvement in a constructive conversation with other consumer and citizen representatives, industry, regulators and Government to ensure that the arrangements for consumer advocacy deliver the best possible outcomes for consumers and citizens. Consumers need advice and information to make informed choices, and we look forward to a debate about how this can best be achieved.