

## **17<sup>th</sup> Ofcom Consumer Panel meeting, 21 July 2005**

### **Note of the Seventeenth Meeting of the Ofcom Consumer Panel, held at Ofcom, London, 21 July 2005**

#### **Introduction**

1. The Chairman welcomed members to the seventeenth formal meeting of the Ofcom Consumer Panel. Flora Demetriou (Panel Executive Support), Julie Myers (Adviser to the Panel), Dominic Ridley (Policy Executive to the Panel) and Vicki Treherne (Ofcom Secretariat) were present throughout the meeting. Ofcom colleagues Gareth Davies, Clive Hillier and Anne Hoitink, Lucy Gradillas, the Panel's communications consultant, and Ed Humpherson, Director of Regulation, National Audit Office, attended for part of the meeting.

#### **Previous minutes and matters arising**

2. Minutes were agreed. The Panel agreed that, whilst a more informal approach had been the best means of interacting with Ofcom up to now, it was now appropriate to review this process and move to a more formal basis. The Chairman had in mind a project for Julie Myers' successor, about which she would say more later. The Chairman advised that, as part of this issue, she wished to revisit the Memorandum of Understanding with Ofcom. A member followed up on queries raised by the office of Andrew Davies, the Welsh Assembly Minister for Economic Development and Transport, in connection with the findings for Wales in the Panel's recent research report. At the request of the Minister's office, relevant post code information had been provided to it, but at high level bearing in mind confidentiality issues.

#### **Chairman's report**

3. The Chairman reported that Julie Myers would move to another role in Ofcom. She recorded the gratitude of the Panel for Julie Myers' sterling work in getting it off the ground, which would not have happened without her. Following an advertisement for a successor, applicants had been shortlisted, with interviews to be held the following Thursday. In the Deputy Chairman's absence, a Panel member would interview with the Chairman, and Ofcom's Helen Normoyle. It was hoped to be able to make an appointment soon, although there would then be the question of how quickly the new recruit could start. Julie Myers would move to her new post in August 2005, but had agreed to help out until her successor was in place.

4. The Chairman proposed that the first task to be given to Julie Myers' successor should be formalising the Panel's relationship with Ofcom. It was agreed that it would be helpful for the Panel and the new recruit to have sight of the record of issues on which the Panel had provided advice to Ofcom.

5. The Chairman reported that Nainish Bapna had resigned from the Panel due to other business commitments. After discussion with David Currie, the

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Chairman had agreed with Ofcom that in the Autumn two new members would be advertised for (whilst these would be Ofcom appointments, they would have to be agreed by the Secretary of State). She proposed that the Panel should explicitly recruit someone who was demonstrably in tune with issues for older people but such a person would not necessarily have to be an older person themselves; given the outcome of the Panel's 'stock-take', thought should also be given to whether recruitment for the second position should be targeted at someone familiar with issues affecting the other end of the age spectrum. Lucy Gradillas volunteered to assist with targeting of advertising.

6. A number of Panel members had been appointed for two years from February 2004, and had indicated to the Chairman that they were happy to extend their periods of office. The Chairman emphasised that, given the possibility that the Panel might get caught up in the debate about the reorganisation of consumer representation in respect of utilities, following the Hampton Review, any discussion about Panel members' terms of office could only be on the basis of the current structure, and that was the basis on which the Ofcom Board would agree the extensions; she noted that the extensions would in any event be subject to the agreement of the Secretary of State.

7. The Panel noted the recent reorganisation within Ofcom. It noted, in particular, that Ed Richards had been appointed as Chief Operating Officer, which gave him a wider spread of responsibilities.

### Members' updates

8. The Deputy Chairman advised that the seminar on low income consumers was planned for February 2006; it was hoped that this could be held with Ofcom. She reported on a discussion the previous evening with three peers, David Puttnam, Elspeth Howe and Tom McNally, and outlined some concerns which they had expressed. One issue raised had been Television Without Frontiers; Panel members had their own issues about this, namely, the interaction of content and the internet, and consumers' ability to regulate their own content. Finally, the Deputy Chairman reported that there had been good presentations from Ofcom on media literacy and its Section 10 duty to encourage the availability of easily usable apparatus at the previous day's Consumer Forum on Communications (CFC), and referred to related consumer research to be undertaken by Ofcom. The Chairman expressed a desire to hold bilateral meetings with all the consumer organisations in the Forum before the next CFC meeting, in order to discuss whether its dialogue required changing in any way.

9. A member commented that John Vickers' successor at the Office of Fair Trading (OFT) had been announced (John Fingleton), and that it might be worth the Panel having a discussion with the OFT about its current thinking on competition and consumer issues once John Fingleton had settled into his new role. The Deputy Chairman suggested that the Panel should also consider meeting Jim Murray, the Director of the Bureau of the European Federation of

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Consumer Organisations, based in Brussels; that organisation did a great deal of work with the former east European bloc and had a formidable record on liberalisation in telecoms. She added that there would be other groups with a similar role to the Panel in other parts of Europe, and that the Panel ought to start establishing links.

10. The Panel's member for England had been working on the submission to Europe on USO. He had also put together ideas on the BT undertakings, which the Chairman was happy with; the aim would be to finalise these the following week, after seeking input from other Panel members. He then reported on a Panel visit to OneTel; in view of the OneTel Chief Executive's offer to work out with other providers agreed metrics on service, Julie Myers would ascertain whether or not OneTel was engaged with the Ofcom project about performance indicators which had already been set up.

11. The Panel's member for Scotland had met with James Stuart, an academic from Edinburgh University; he was a strong proponent of the cascade effect, especially in relation to digital switchover (DSO), with consumers who were upgrading their equipment passing on the old equipment to others without. The Panel suggested putting SwitchCo in touch with him. There were concerns in Scotland that SwitchCo was not getting off the ground quickly enough, and it was agreed that this perception should be relayed to SwitchCo's Chief Executive. Ofcom had appointed a Chairman of its Advisory Committee for Scotland. Concern was expressed about mobile advertising; it was questioned whether or not the code of conduct for mobile advertising put together by the industry would benefit the consumer. Whilst the code had been praised by European Commissioner Viviane Reding, it was currently the only one in Europe and had not yet been tested.

12. The Panel's member for Wales reported on a recent meeting with Andrew Davies and with David Davies (MP and Welsh Assembly member) who had been receiving mail about DSO; David Davies had been referred to the Panel's DSO work and dialogue would continue. The member reported on the announcement that Newport, Cardiff and Swansea would be the testbeds for BT's 21<sup>st</sup> Century Network (21CN); it was his view that the Panel should keep an eye on this in terms of service delivery and competition issues, and should contribute to the debate which was likely to develop over the next couple of years, and he noted that the BT undertakings referred to 21CN and a separate consultation on this.

13. A member referred to work he had been doing with Dominic Ridley on the European review of the scope of universal service. He then reported on a meeting of the Advisory Committee on Older and Disabled People (ACOD) the previous week, and commented on the good quality of the briefing papers. He drew the Panel's attention to ACOD's first annual report which set out the way in which ACOD saw its own role; he had been invited to participate on ACOD's DSO sub-committee. He reported on suggestions made by Leen Petre, of the Royal National Institute of the Blind, at the CFC for ways in which consumer

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groups might work more closely with the Panel, and he suggested that the Chairman might pick this up in her proposed bilaterals.

14. Another member reported that she had recently met the Head of Regulation at the mobile operator 3, who was keen to meet the Chairman of the Panel; the industry view seemed to be that the Panel had a strong voice and needed to be listened to.

15. A member referred to work he had been doing with Ofcom's Kristina Glushkova on the Indian mobile market; he was also following up with Ofcom's Chinyelu Onwurah on consumer research relating to Ofcom's numbering project. He reported on the visit to OneTel, and the way in which it said it tackled mis-selling issues, including monitoring and setting of quality targets for the agencies it used; he had been impressed by the staff he had met, and the way in which they appeared to have bought into the OneTel mission (more so than many larger telecoms operators). He had had lunch with Ofcom's Ed Richards, at which the question of the alternative network operators investing in Local Line Unbundling, following BT's ADSL statement, had been raised; this might be an issue to which the Panel would wish to give some thought. He then reminded the Panel that he would be giving a presentation on 'social media' to the Ofcom Board in September 2005.

### **Members' workstreams**

16. The Chairman advised the Panel that she had found it interesting to review members' workstreams sixteen months into the life of the Panel. She and the Deputy Chairman had switched their roles on DSO and telecoms, and she invited other Panel members to give some thought over the next couple of weeks as to whether or not they wished to exchange any workstreams with colleagues (although there would be some limitations, with the Nation briefs for example). She then asked for views as to whether there were any significant topics missing from the workstreams, or whether there was anything currently included which had turned out not to be a large enough issue to warrant inclusion. It was agreed that there should be a workstream on futures and 21CN. It was noted that one of the new workstreams set out in Ofcom's latest Annual Plan, Digital Multimedia Platforms, might cover some aspects of this but, since this project had not yet been started, it was too early to be sure.

17. It was noted that there was currently a gap in relation to small businesses, and the Panel discussed the difficulties in tackling this issue. The Panel concluded that it might be effective to engage with small businesses at regional level, perhaps through development agencies. It was suggested that consideration might also be given to regional representation in the two proposed Panel appointments. It was proposed that the age for purposes of the young people workstream should be reduced to seven/eight years. It was agreed that the workstream on urban consumers should become a watching brief for the time being.

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18. It was noted that Panel members had different outside commitments which would affect the amount of time they were able to commit to Panel work. All Panel members had agreed to commit to a certain minimum of work, and this they had discharged. It should not be forgotten that attendance at outside events and acting as ambassadors for the Panel were also valuable contributions to the Panel's work. The Chairman considered that, with the assistance of Julie Myers and David Edwards she had a good sense of where the Panel was in terms of being organised to pick up on issues; she considered that the Panel arrangements worked well and that there was a good mix of skills and competencies around the table.

### **Ofcom Consumer Policy Review**

19. Gareth Davies updated the Panel on the status of this project, the overall object of phase 1 being to develop and articulate Ofcom's approach to consumer policy and strategy, including an attempt to clarify the distinction between the consumer and the citizen, and a review of those consumer issues where Ofcom could strengthen its knowledge and activities. The next phase would be to consider implementation in organisational and process terms, ie to further consumer interests and consider how Ofcom could work with other external consumer bodies. The team hoped to achieve an agreed outcome for phase 1 in September 2005; it might revert back to the Panel before then, but would in any event provide it with an update. He then referred to the linkage between this project and the Panel's audit project.

20. Gareth Davies then referred to key issues being considered as part of phase 1, on which the Panel's input would be welcomed, including how far beyond the specific obligations set out in the Communications Act 2003 should the promotion of citizens' interests extend. The project team was advised that individual Panel members would not necessarily have views on every question posed. In response to a question from the Panel, Gareth Davies confirmed that the team was not proposing to seek the views of the Content Board, since the issue did not cover content; the views of the Ofcom Advisory Committees had not been sought, although he did not rule this out. One immediate comment made to the team was a proposal to try to avoid using the term "vulnerable" wherever possible (whilst recognising the strictures of the legislation, which did use the term), but to use words such as "disadvantaged" or "discriminated against" which were considered to be less emotive but more empowering terms.

### **Number Translation Services**

21. Gareth Davies introduced this subject, on which the Panel had already had a briefing. The Chairman advised the Panel that its views on Number Translation Services would need to be provided to Ofcom by close of business that day, in preparation for the Ofcom Board's consideration of this subject the following week. The Panel commented that the deeper research which Ofcom had undertaken was valuable. However, the Panel still had concerns around

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complexity and pricing transparency. It also had questions about the regulatory philosophy, namely, the reliance on co-regulation and on guidance, which raised issues of enforceability. On the question of call charge pre-announcements, this was an area where a technical solution, ie a product, might be found, although there was a view that there would be no incentive to develop this until 21CN came into being; this could be an issue to cover in the BT 21CN trials.

### Visit from Ed Humpherson

22. Ed Humpherson outlined his role as Director of Regulation at the National Audit Office (NAO), which included responsibility for the NAO's performance audit of regulators, and work on regulation, especially "Better Regulation", which he said was manifested in a concern with impact assessment. He outlined the change in approach towards protection of the consumer, following the move away from privatised industries.

23. He referred to the first report produced by NAO in the regulatory area, which had looked at the work of all the regulators and had concluded that there was an insufficient pass through to the consumer of the benefits of price cuts, and a sense that the consumer voice was not being heard. In the late 1990s the focus of debate had shifted, leading to the Utilities Act 2000, and the establishment of separate bodies with a voice for consumers; however, this had led to adversarial relationships between the regulators, the consumer voice bodies, and consumers. The Communications Act 2003 had introduced a new approach, which appeared to be more effective than the earlier one, with the creation of the Consumer Panel which had been given a challenge function viz a viz the regulator, without the duty to be a strong voice, to deal with complaints, etc. He thought the work which the Panel had undertaken in relation to its consumer audit had been very interesting and had provided a very different model, putting a focus on the regulator to ensure that appropriate processes were in place. He had high hopes for the outcome of the audit, not just in relation to Ofcom, but also for it to be rolled out more widely.

24. Ed Humpherson then referred to the two ends of the pendulum swing between the backward-looking role of NAO in reviewing Government's expenditure of taxpayers' money, and improvement. The pendulum was now very much towards the improvement role, and the Consumer Panel audit project was a good illustration of that.

25. There then followed a general discussion, including a reference to the Hampton Report and the possible outcome for certain consumer bodies and regulators. In relation to handling of competition issues, Ed Humpherson noted that the trend in Europe was for competition bodies to deal with consumer complaints, mainly because the nature of an issue was not always clear at the start of the process, nor the particular law which applied.

26. The discussion concluded with an outline of certain issues which could

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arise with the Ofcom/Consumer Panel model, namely, regulatory capture, ie the two bodies becoming too close, or a perception of this, and lack of visibility, eg on occasions the Panel was referred to by the outside world as "Ofcom". It was suggested that the Panel's name might have something to do with the visibility question; however, there was also a view that, even if the Panel was less visible than others, it might nevertheless be more effective. There was agreement that public legitimacy was an issue for both the Panel and the NAO, and that achieving this was often a case of choosing the appropriate issue to promote.

### **Other matters to note/agree**

27. Members were copied a report on meetings, consultations and approaches to the Panel; its contents had been noted.

### **Any other Business**

28. There was no other business.

### **Date of the next meeting**

29. The next meeting would be held on 22 September 2005 at Ofcom.