

Minutes of the forty-fourth meeting of the Ofcom Consumer Panel

Tuesday 15 January 2008 at 10.00 hours

Ofcom, Riverside House, 2A Southwark Bridge Road, London SE1 9HA

Present:

Consumer Panel

Anna Bradley (Chairman)
Ruth Evans (Deputy Chairman)
Roger Darlington
Simon Gibson
Graham Mather
Kevin McLaughlin
Jeremy Mitchell
Kate O'Rourke
Bob Twitchin
Allan Williams

In attendance

David Edwards (Consumer Panel Secretary)
Julia Guasch (Consumer Panel Support Executive)
Dominic Ridley (Acting Consumer Panel Manager)
Ben Wallis (Policy Executive to the Panel)
Claudio Pollack, Director of Consumer Policy, Ofcom (items 1 and 7)
Michael Pollard, Director of Complaint Management, BT Retail (item 5)
Liz Williams, Head of Consumer Affairs and Inclusion, BT Retail (item 5)
Other Ofcom colleagues

1. Welcome and introductions

1.1 The Deputy Chairman welcomed members to the meeting, particularly the new Chairman who had been appointed on 10 January 2008. The Deputy Chairman would chair the meeting. The new Chairman would chair meetings from February 2008 onwards. Apologies were received from Fiona Ballantyne.

2. Declaration of members' interests

2.1 Bob Twitchin had been co-opted as a member of the British Computer Society's social responsibility committee.

3. Ofcom Consumer policy team priorities

3.1 Claudio Pollack provided Panel members with an overview of the work plans for Ofcom's consumer policy team under the headings of Empowerment, Protection, Inclusion and Consumer Engagement. Panel members raised questions or made comments as follows:

- what were the issues to be addressed in 2008 to prevent consumer detriment? – Claudio Pollack said that those issues would fall into two categories: urgent issues that emerged in the course of the year and would need to be addressed without delay - past examples included mobile mis-selling and advertised broadband speeds; and those that were part of Ofcom's longer-term planned programme of work, such as services for disabled users and securing improvements in Topcomm, the consumer Quality of Service scheme.
- digital inclusion remained a concern, with a third of homes without internet access and older and disabled people less likely to be connected. How would Ofcom be addressing this? – Claudio Pollack said that it was for government to drive the agenda with Ofcom in support, using the powers at its disposal and encouraging initiatives amongst stakeholders; Ofcom activities included its work on BT undertakings, local loop unbundling and efforts to increase competition and media literacy.
- what were the issues Ofcom would resolve by the year end? – Ofcom hoped to have made a difference in a number of areas, for example with the introduction of a set of rules arising from its consumer complaints review; it was committed to improving services for people with disabilities - relay services in particular - and amongst other issues it hoped to resolve concerns related to additional charges, silent calls and broadband speeds.
- was Ofcom committing sufficient colleague resources to achieve its consumer priorities, e.g. its disability agenda? – Claudio Pollack said that he considered there to be sufficient resource overall. His focus now was to ensure that urgent unplanned items did not unduly divert attention from priority long-term work (such as disability) and to secure consensus on key items in the programme.

3.2 The Deputy Chairman drew discussion to a close and it was agreed that Helen Normoyle, Ofcom's Director of Market Research, would be invited to meet the Panel to talk further about the Panel's earlier suggestion of an Ofcom children's panel and to report on Ofcom's media literacy work.

AP1 Secretary to invite Helen Normoyle to the meet the Panel to share Ofcom thinking on a children's panel and media literacy.

4. Additional charges

4.1 Members had received a discussion paper and supporting material on Ofcom's Additional Charges review. Panel members made a number of comments and raised questions, and Ofcom colleagues responded as follows:

- Ofcom's proposed Guidance under the Unfair Terms on Consumer Contract Regulations (the Regulations) would aim to ensure that non-direct debit charges were presented transparently and only where they were not transparent would Ofcom be able to apply the test of fairness; a Panel member was not convinced that transparency would make a difference and argued that fairness should take priority – an Ofcom

- colleague said that Ofcom's view was that provided charges are transparent and competition would deliver the best value to consumers; while Ofcom recognises the issue around low income consumers, Ofcom considers that the provision of BT's social telephony product is the appropriate way to address this;
- Panel members felt that the effectiveness of monitoring should feed into recommendations/regulations - an Ofcom colleague said that monitoring and enforcement are issues that are being considered carefully; and that much would depend on looking at service providers costs and their allocation, something that often appeared wholly arbitrary - Ofcom expected to be able to derive approximate benchmark costs which it could use to identify those communications providers who were most likely to be in breach of the Guidance (although each case would then have to be looked at individually);
 - would Ofcom publish details of suppliers charges in its forthcoming consultation document? – an Ofcom colleague said that the consultation document would include detailed comparison of charges;
 - a Panel member highlighted the position for Virgin Media customers who were being charged £5 per month for not paying by direct debit; another member raised the issue of consumers paying extra charges as a result of mis-selling of bundled services where customers were not fully aware of the packages they were purchasing; for those customers abusive sales practices resulted in 'additional charges' - it was explained that the issue of bundled services is not within the scope of the review and that the review is industry wide, thus including Virgin Media;
 - why did Ofcom not accept that bad debt was a direct cost associated with late payment and payment failure? – an Ofcom colleague said Ofcom took the view that to include bad debt as a direct cost there had to be a causal link between bad debt and late payment. Ofcom expects that the causal relationship will be relatively weak as the vast majority of late paying consumers do not default on their payments;
 - did Ofcom intend to review the value of using Unfair Terms in Consumer Contract Regulations (the Regulations)? The Panel would be interested in their utility in dealing with additional charges and more generally – an Ofcom colleague said that after Ofcom had issued its Guidance under the Regulations it would expect to monitor how effective the Guidance is.

4.2 The Deputy Chairman drew discussion to a close. It was agreed that Ben Wallis would draft a Panel advice note covering the issues discussed. The Chairman suggested that Ofcom could usefully talk to the Financial Services Authority and other bodies about their experience of the Regulations. An Ofcom colleague later confirmed that these types of discussion have already taken place.

AP2 Ben Wallis to draft a Panel advice note on Additional Charges as soon as possible.

5. BT and complaint handling

5.1 In July 2007 Michael Pollard and Liz Williams met the previous Panel Chairman and Kate O'Rourke to discuss BT's approach to complaint handling and Alternative Dispute Resolution (ADR) schemes. They were now able to update the Panel on developments six months hence. Michael Pollard outlined the steps BT had taken and were taking to improve customer complaint handling, work remained to be done and the challenges were to reduce the number of complaints and to ensure that they were handled better.

AP3 Secretary to ensure that Michael Pollard is invited to talk to the Panel 6 - 12 months hence.

AP4 Ruth Evans to write to thank Michael Pollard for taking part in the January Panel meeting.

6. Impact of the Telecoms Strategic Review

6.1 Discussion of this item was carried forward from the December 2007 Panel meeting. Members had received an information paper and a copy of Ofcom's December statement that evaluated the impact of the TSR. An Ofcom colleague mentioned briefly that, following on from earlier advice, Ofcom had reflected Panel views in the statement. Ofcom had also structured the statement to make outcomes for consumers prominent in the document. Panel members made a number of comments as follows:

- Ofcom's report suggested that the BT undertakings were working well but there still appeared to be some distrust about equivalence amongst some industry players;
- it may not be widely understood that considerable resources are/have been required of BT to deliver on the undertakings;
- BT's focus on undertakings and development of new systems appears to have had an adverse impact on other activities, e.g. WLR3 and delayed introduction of BT's new social telephony product;
- it was not clear that the Equality of Access Board established as part of the undertakings had worked as well as intended although industry's view appeared to be that it had played an effective role;
- the TSR resulted in a settlement for the current network, next generation access (NGA) was expected and it would be necessary to re-visit the relationship between Openreach and the remainder of BT;
- caution needed to be exercised in evaluating the effect of the TSR on BT's business - generally call prices were falling, volumes were increasing, the market was changing rapidly and roll-out of BT's 21st century network (21CN) would have an impact.

6.2 An Ofcom colleague said that BT had been through a phase of activity to implement undertakings but was now approaching a stage of 'business as usual'. He cautioned against making a direct link between the undertakings and BT's profitability. Ofcom was confident that consumers were benefiting from the new BT wholesale arrangements involving Openreach and an Equality of Access

Board. The Deputy Chairman drew this item to a close.

7. Migrations, switching and mis-selling

7.1 Members had received an information paper to update them. Panel members made comments and Ofcom colleagues responded as follows:

- It was noted that there had been a delay between publication of the Ofcom consultation document and proposals coming to the Panel detailing taking the work forward. Ofcom commented that there were a number of factors to bear in mind: the first was that the work was aimed at addressing concerns in the future relating to increased use of bundled services by end users and therefore was not aimed at addressing current harm. This was an important point because, as the Panel was aware, resource had been diverted over the last 12 to 18 months to address growing concerns related to broadband migrations and issues around MAC; the second point was that this was a complex issue and, by its nature, required intensive debate and input from the industry in order to progress. In particular, the proposals put forward by Ofcom in the 200 consultation document received a mixed response from stakeholders, and consequently industry established an 'Industry Working Group' to consider the issue and report back to Ofcom. One of the Working Group's recommendations was for a feasibility study into the costs and timelines of changes to migrations processes - this was the reason Ofcom had engaged Deloitte.
- Ofcom explained that it was considering the establishment of a 3rd party assessing body to investigate provider specific complaints about mis-selling and slamming. The Panel noted this, and asked whether consideration had been given to using existing powers more effectively rather than introducing new powers. Ofcom noted that it had, but that experience to date was that these had not proved sufficiently effective in tackling fixed-line mis-selling. A dedicated body to investigate complaints and recover costs on a 'polluter pays' principle should therefore reinforce existing powers by ensuring that there were greater incentives on providers not to mis-sell. A Panel member added that cost allocation was not always straightforward. Ofcom agreed, and noted there were a number of ways that costs could be used to internalise better compliance by providers, and that Ofcom was still considering the various options.

7.2 There was brief discussion of the merits of having more than one assessing body, as was the case with ADR schemes. Ofcom pointed out that the way the body was likely to be set up it was unlikely to have a consumer-facing function, and therefore it was not clear what the benefits of multiple ADR schemes would be. There was also a discussion around the need to ensure that consumers were aware of their rights. Ofcom agreed, and noted that this would be a particular challenge given proposals to move to a Gaining Provider-led model, but that an important objective would be to ensure that consumers were well informed of their rights as well as the implications of switching given there may well be

contractual liabilities with the previous Provider(s).

7.3 The Deputy Chairman then drew this item to a close.

8. Minutes of the meeting on 18 December 2007 and matters arising

8.1 Dominic Ridley had discussed Panel thinking on publication of Ofcom consumer complaints data with Claudio Pollack. This would be followed up by a written submission and a formal response from Ofcom. A January 2008 date had been agreed for a Panel/Ofcom discussion about the Consumer Forum on Communications (CFC). There was brief discussion about the Panel's broadband NGA event, timing and its tie-in to research projects. It was agreed that Roger Darlington, Dominic Ridley and Ben Wallis would discuss the event further with the new Panel Chairman.

AP6 Roger Darlington, Dominic Ridley and Ben Wallis to discuss the Panel's Spring NGA event with the new Panel Chairman.

9. Chairman's report

9.1 The Deputy Chairman had attended an Ernst & Young evaluation workshop on digital switchover (DSO) looking at the experience of Whitehaven. Switchover was judged to have been a success based on agreed criteria and lessons would be applied in other regions. The Panel would continue to keep a watching brief on DSO, particularly on the outstanding issues of multiple dwelling units, second TV sets and video conversions. There had been lower than expected take-up of the Whitehaven help scheme; a board was in place to oversee the national Help Scheme and Digital UK understood that Help Scheme take-up would need to be addressed going forward.

10. Members' updates

10.1 Roger Darlington, Graham Mather, Bob Twitchin and Kate O'Rourke attended a meeting with officials from the Better Regulation Executive to discuss its Consumer Law Review. Allan Williams had met with Ofcom's Graham Howell to discuss rural issues and had suggested that Ofcom could consider conducting research to determine consumer detriment. Bob Twitchin had chaired the December 2007 meeting of the CFC. He had met with the new member of Ofcom's consumer policy team leading on disability issues. He reported that the TAG Relay Campaign Sub-group would be working on raising awareness of relay issues with policy makers, concentrating on provision of an IP gateway to text services. Simon Gibson had met an Ofcom colleague to discuss 21CN. Simon Gibson would continue to provide the Panel with feedback on any international developments related to next generation networks. Kevin McLaughlin would attend the meeting of Ofcom's Advisory Committee on Older and Disabled People the next day.

11. Update from Consumer Panel manager

11.1 There were no items to report that were not covered elsewhere on the meeting agenda.

12. Other matters to note/agree

12.1 Members had been provided with a written report on Panel activities, Ofcom publications, policy projects and events and approaches to the Panel; its contents were noted.

13. Any other Business

13.1 There was brief discussion of 2008 meeting dates. It was agreed that there would be a Panel meeting on the morning of 19 March 2008 and an afternoon meeting on 22 April 2008. Simon Gibson would be able to take part in the April meeting if a videolink could be arranged.

AP7 Secretary to advise members of the revised Panel meeting schedule for 2008 (March date and April start time changed).

AP8 Secretary to investigate video-link participation in Panel meetings.

.....Deputy Chairman

.....Date