

# **Minutes of the forty-fifth meeting of the Ofcom Consumer Panel**

**Tuesday 12 February 2008 at 10.00 hours**

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

Present

## Consumer Panel

Anna Bradley (Chair)

Fiona Ballantyne

Roger Darlington

Simon Gibson

Graham Mather

Kevin McLaughlin

Jeremy Mitchell

Kate O'Rourke

Bob Twitchin

Allan Williams

## In attendance

Julia Guasch (Consumer Panel Support Executive)

Dominic Ridley (Acting Consumer Panel Manager)

Ben Wallis (Policy Executive to the Consumer Panel)

Ofcom colleagues (items 7, 8 and 11)

Colleagues from PricewaterhouseCoopers (item 6)

## **1. Welcome and introductions**

1.1. The new Chair welcomed members to the meeting. Apologies were received from the Deputy Chairman, Ruth Evans. The Chair and Deputy Chairman would meet for a catch-up the following week.

## **2. Declaration of members' interests**

2.1 Roger Darlington had been appointed to the Board of the 'New' National Consumer Council and declared some consulting work he had done on next generation access (NGA) with the trade union Connect. The Chair declared that she had an advisory consulting role with Fishburn Hedges and had done work with BT on its next generation network. Since her appointment as Chair of the Consumer Panel she had ceased that work.

## **3. Minutes of the meeting on 15 January 2008 and matters arising**

3.1 The minutes were agreed subject to minor amendment. Helen Normoyle, Ofcom's Director of Media Literacy and Market Research, had been invited to the Panel's meeting in March 2008. There was discussion on the best approach to establish dialogue with the Ofcom Content Board. This would be followed up with an invitation to Philip Graf to come and talk to the Panel about the work of the Content Board. There would then be a working

dinner with the Content Board and the Panel. There was discussion on how to best interact with BT on complaints handling, following the January 2008 Panel meeting discussion. The Panel would request an update from BT in due course, which could be followed up by a meeting between a Panel sub-group and BT. Ofcom's Additional Charges consultation document would be considered at a future Panel meeting.

AP1 Secretary to ensure that, in July 2008, the Panel reviews how to follow-up to the January meeting with BT on complaints handling, possibly in the form of a written update.

AP2 Ben Wallis to bring Ofcom's Additional Charges consultation document to the April Panel meeting to allow the Panel to consider whether and how to respond to Ofcom's consultation.

#### **4. Chair's report**

4.1 The Chair announced that she had recently accepted an invitation for the Panel to be a member of the Broadband Stakeholder Group's Executive Committee. The Chair also reported on a discussion with Roger Darlington, Graham Mather and Dominic Ridley regarding a joint event with the BSG on NGA in May or June 2008. As the focus was on influencing NGA policy, the event would not be held in Scotland as was originally suggested. Research would be commissioned by the Panel to look at the benefits and issues of NGA for consumers, and the Panel would work with BSG on the event structure, content and speakers. Since the previous Panel meeting, Stephen Timms MP had moved on to the Department for Work and Pensions and Baroness Vadera had become Parliamentary Under Secretary of State for Business and Competitiveness. It was agreed that it would be useful to meet with Baroness Vadera to discuss NGA.

4.3 The Chair explained that a six-month budget had been agreed with a view to reviewing it in the summer in light of how the Panel Chair and Members decide the Panel should look. Ofcom was currently looking at the process of recruitment for the Panel - some members' terms were due to expire in July 2008 and the remainder in February 2009. The Chair was considering a combined recruitment process in Summer 2008 to cover both expiry dates in one go. The Chair would find it helpful to know which Panel members wished to continue as members of the Panel and to receive their views on a single recruitment exercise. If any member wished to serve a further term they would need to apply alongside new applicants.

4.3 The Chair would be meeting with Lord Whitty, Chairman of the 'New' National Consumer Council (NCC), and would report back to the Panel. She was minded to consider NCC-Panel cross-membership once the Summer 2008 Panel member recruitment had taken place. The Chair and Deputy Chairman would be giving a report to the Ofcom Board on 11 March 2008, when they would speak about the future direction of the Panel. Panel members were asked to advise the Chairman of any ideas that they would like expressed at the Board meeting.

AP3 Panel members to inform Anna Bradley of their views on the proposed combined recruitment process for Panel members.

AP4 Dominic Ridley to plan for a possible future meeting with Baroness Vadera on the question of the public value of NGA.

AP5 Panel members to advise the Chairman of any ideas that they would like expressed at the 11 March Board meeting.

## **5. Members' updates**

5.1 Roger Darlington would send Panel members a copy of a paper he had produced with Connect on NGA, it would be published on 5 March 2008.

Roger Darlington reported on the Oxford Media Convention (at which he was a speaker on trust in broadcasting) and on the Westminster e-Forum on Digital Switchover and the Digital Dividend Review. Kevin McLaughlin passed on congratulations to Anna Bradley on her appointment as Chair from Ofcom's Advisory Committee on Older and Disabled People (ACOD). She had been invited to attend an ACOD meeting. He also reported on Ofcom work on ease of use, as well as discussion in the Northern Ireland Assembly on the funding of next generation broadband. Kevin McLaughlin said that officials from the Northern Ireland Department of Enterprise, Trade and Industry (DETI) would be interested in the Panel's forthcoming consumer interest toolkit event and would advise Ben Wallis of contacts. Bob Twitchin reported back on meetings with Ricability and on the progress of the TAG relay campaign.

5.4 Fiona Ballantyne reported back from a Panel research sub-group meeting, which had agreed to commission a video diary piece showing how NGA can affect the lives of consumers. Fiona Ballantyne mentioned recent reports coming from different areas of Scotland of people, when applying for broadband, being told that the exchange was full and were being put on a waiting list. She would investigate further and report back to the Panel. Allan Williams mentioned his participation at a meeting of the Rural Services Network (RSN), and raised the issue of whether the Panel should join the RSN Executive Group. He also reported back on discussion with Ofcom about the Consumer Forum on Communications (CFC). Roger Darlington asked to be included in any further discussions about CFC. Graham Mather informed members of his participation in the Convergence Think Tank and about the BSG's research project on the economic and social value of next generation broadband. The Panel would co-fund of the BSG research.

AP6 Kevin McLaughlin to send Ben Wallis contact details of DETI officials.

AP7 Fiona Ballantyne to enquire with BT's Director of Scotland about whether exchanges were actually full and to inform the Panel support team of the response.

AP8 Roger Darlington to be included in any Panel discussions on the future of the CFC ahead of the March Panel meeting.

## **6. Toolkit study**

6.1 The Panel talked to colleagues from PricewaterhouseCoopers (PwC)

about their draft report on the consumer interest toolkit ‘audits’ carried out on three Ofcom policy areas – the removal of BT retail price controls, the broadband migrations review and the license exemption framework review (LEFR). The following observations about the PwC report arose in discussion:

- the Panel felt that the PwC report merited a score for Ofcom of ‘8 out of 10’ and that the issues highlighted by the report focused on confidentiality and consumer engagement;
- PwC agreed that ‘8 out of 10’ was a fair assessment and felt that attitudes at Ofcom had changed considerably since the toolkit had been launched in February 2006; however, they felt that perhaps more could be done to get Ofcom to think of the toolkit as something Ofcom could use itself, in order to leave an “audit trail”;
- a Panel member expressed concern that not everyone interviewed by PwC seemed to know about the toolkit and that it was not sufficiently institutionalised;
- PwC stated that while Ofcom colleagues might not be aware of the specifics of the toolkit, Ofcom had rolled the toolkit out in the organisation and there was general awareness, with a distilled version of the toolkit on Ofcom’s intranet;
- a Panel member noted that although use by Ofcom of non-consumer-friendly language surfaced several times in PwC’s report, this was not picked up as one of the report’s “Issues for Consideration”; PwC said it would make changes in its report to make this point more explicit;
- PwC was asked whether the toolkit could ever drive engagement with consumers – in PwC’s view more thinking needed to be done on how best to reach consumers and it was felt that it was too soon to reach a view on this point;
- aspects of the toolkit related to communication were very useful because of the importance of using language that the consumer could engage with; there was discussion about whether consumers would have a view on technical issues, such as spectrum policy, the Panel felt that it should not be assumed that consumers would not understand; it was the language that was the barrier, not the principles; for that reason it was important that PwC’s report be readable and understandable to the wider regulatory and consumer world;
- discussing the application of the toolkit to the LEFR project, PwC reported that a lot of the toolkit questions had been difficult to answer but they were still relevant and the exercise had been worthwhile.

6.2 The Panel discussed the conclusions to be drawn from PwC’s report, and the Panel support team would draw up a list of comments for PwC.

AP9 Support team to forward any report comments to PwC.

## **7. Complaints review**

7.1 Members had received a discussion paper from Ofcom on the planned Review on Complaints Handling and Alternative Dispute Resolution (ADR).

Panel members raised a number of comments and questions and Ofcom colleagues responded, as follows:

- asked why the paper did not mention compensation as an aspect of redress, an Ofcom colleague explained that compensation was regulated through terms of approval and that it had not been identified as a problem with the way ADR schemes were providing their services; when Ofcom reviewed the ADR schemes it would consider the issue of compensation; leaving this aside the Panel felt that the review was an excellent piece of work;
- to tackle problems of accessibility, Ofcom was likely to propose a high-level test of accessibility that communications providers would be required to comply with in their complaints handling procedures; Ofcom was also looking at accessibility in other pieces of work;
- Panel members felt that there were concerns where consumers had difficulties even getting through to complain, by phone or email; some consumers that did get through then got lost in a supplier's system;
- an Ofcom colleague said that the ADR schemes' levels of compensation, quality of awards and rulings seemed to be working well, the main issue was a consumer's ease of access to a scheme; Ofcom would focus on the ease of access demonstrated by ADR schemes in its future review of its approval of the ADR schemes;
- the Panel welcomed proposals to shorten the time period before consumers could take a complaint to an ADR scheme, from 12 to 8 weeks after raising the complaint with the supplier; but it was noted that 8 weeks was still a long time to wait to get a refund if the supplier was at fault and if the consumer had withheld payment until resolution of the complaint this would affect the consumer's credit record;
- an Ofcom colleague said that 8 weeks was not unreasonable for providers to work through their complaints process, although Ofcom would expect them to deal with urgent cases in less time; if consumers withheld payment during a dispute, this should not affect credit records;
- the Chair warmly welcomed the fact that the Panel's July 2007 comments had been taken on board and incorporated into the Review.

7.2 It was agreed that the Panel would write a strong note of support for this Ofcom project, stating the Panel's belief that the proposals were pragmatic, consumer-friendly, cost-effective and very fit for purpose.

AP10 Ben Wallis to draft a short advice note welcoming Ofcom Complaints Handling project, to be signed off by the Chair by 22 February 2008.

## **8. EU Framework review**

8.1 Members had received a discussion paper from Ofcom on the EU Electronic Communications Framework Review. Panel members discussed which aspects of the Framework Review were of obvious relevance to the Panel's remit; while the Users' Rights Directive had clear consumer interests, the Better Regulation Directive and the proposal for a European Electronic Communications Market Authority had less obvious, but still relevant, links to

the Panel's work. The Panel would need to do some thinking so that it could take a view about the consumer interest should any regulatory powers be shifted from the national to the European level, and also investigate to what extent there were cultural distinctions in the communications sector in Europe.

8.2 The Panel was also interested in the Review of the Scope of the Universal Service Directive and to explore the possibility of extending the future scope of USO to include mobile or broadband coverage. The Panel was interested in the proposal for national regulatory authorities (NRAs) to have a consumer consultation mechanism, and wondered whether the Consumer Panel model was the type of mechanism that the Commission had in mind. An Ofcom colleague explained that this proposal had not yet been discussed, and would attract more attention at the time of implementation.

8.3 It was noted that the European Regulators' Group (ERG) had plans to look at issues of transparency of pricing in communications services. Ofcom welcomed any views that the Panel might develop on the EU Framework Review, particularly in its role of looking at the EU proposals from a consumer perspective. This was also true with regard to the USO Scope Review, where it would be useful to understand the specificities of UK consumers and citizens. The Panel was given a detailed rundown of the current timetable of discussions about the proposals in the European Parliament and Council of Ministers, as well as any stakeholder engagement from BERR, the UK government department leading the UK position on these proposals.

8.2 It was agreed that there was an important set of issues to tackle and discussed how best to support work in this area. A sub-group, led by Graham Mather, would be created to formulate views to bring back to the Panel.

AP11 Ben Wallis to work with EU sub-group (Graham Mather, Bob Twitchin, Roger Darlington and Simon Gibson) to produce proposals for discussion at the April Panel meeting.

## **9. Broadband speeds**

9.1 Ben Wallis had provided an information paper which set out everything that the Panel had done and asked for in its campaign on broadband speeds in late 2007, and the recent developments in this area.

AP12 Ben Wallis to keep the Panel informed of when there is an opportunity or need for the Panel to revisit broadband speeds issues.

## **10. Pay TV market investigation**

10.1 Members had received an information paper including extracts from Ofcom's Pay TV Market Investigation consultation document. Panel members made comments and Ofcom colleagues responded as follows:

- Ofcom colleagues were asked to give a flavour of the responses to the consultation, but they explained that it was too early to say because the

majority of responses are not received until just before consultations close;

- an Ofcom colleague explained that there were still many uncertainties in the Pay TV market, such as the level of consumer demand for a Pay TV-lite proposition on Digital Terrestrial Television (DTT), or the demand for the pay-as-you-watch TV offered by BT Vision;
- Ofcom colleagues explained that they were seeking to determine the level of consumer detriment stemming from the concerns Ofcom identified in its December documents; what intervention would be required to address any consumer detriment that was identified; and how proportionate that intervention would be;
- a Panel member asked why, if Ofcom starts from a position that competitive markets bring benefits to the consumer, it was necessary to prove consumer detriment before intervening in an anti-competitive market - an Ofcom colleague explained that use of competition powers required proof of detriment and proportionality;
- if Ofcom was able to substantiate the possible concerns outlined in its Pay TV Market Investigation consultation document, the Consumer Panel said that it would be concerned at the detrimental consumer impact, and would want to be further engaged in this topic;
- the Panel asked about future opportunities to engage with Ofcom on these issues and an Ofcom colleague suggested that they come back to the Panel once they had been able to analyse responses to the consultation and had started to shape their thinking.

## **11. Any other business**

11.1 Roger Darlington asked if there were documents that gave an overview of all the different submissions that were received for a given consultation and, if so, could the Panel have access to these. As only so much time could be given to reading submissions this would be very helpful. Ofcom produced internal papers summarising responses to consultations. This could be made available to the Panel if members gave notice of the particular consultations they were interested in.

AP13 Dominic Ridley to request from Ofcom the summary of responses to Ofcom's NGA consultation.

AP14 Panel members to inform Dominic Ridley of any consultations for which they would like to see the summary of responses.

.....Chair

.....Date