

Minutes of the 55th meeting of the Communications Consumer Panel

Wednesday 1 April 2009 at 9.00 hours

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

Present

Consumer Panel

Anna Bradley (Chair)

Fiona Ballantyne

Louisa Bolch

Kim Brook

Colin Browne

Roger Darlington

Maureen Edmondson

Leen Petré

Bob Warner

Apologies

Damian Tambini

In attendance

Alistair Bridge (Principal Adviser)

David Edwards (Panel Secretary)

Dominic Ridley (Policy Adviser)

Peter Phillips (Ofcom Partner, Strategy & Market Developments - item 3)

Claudio Pollack (Director of Consumer Policy, Ofcom - items 3 and 6)

Monique Rotik (Opinion Leader - item 7)

Paul Whiteing (Chief Executive, PhonepayPlus - item 5)

Other Ofcom colleagues (items 4 and 6)

1. Declaration of members' interests

1.1 Colin Browne is a Partner of the Maitland Consultancy. He declared an interest in KCOM, a client of Maitland Consultancy. KCOM would be discussed under item 6. Roger Darlington is a member of the Board of Consumer Focus. Consumer Focus has a number of consumer functions in relation to Post and Roger Darlington would withdraw from the meeting during discussion of item 4.

2. Minutes of the meeting on 3 March 2009 and matters arising

2.1 Minutes of the previous meeting were agreed.

Blogging and web statistics

2.2 A number of Panel and Advisory Team members had contributed to the Panel blog. It would be important to maintain momentum with regular postings. Where concerns arose about the suitability of a blog item members could consult

the Chair or Alistair Bridge. Members had received Panel website statistics. Site visits peaked when the Panel published a report or other document, with the majority of visits during the working week. Numbers remained low but 'hits' on the site was not the sole consideration. The Panel had a finite number of stakeholders and it was important to be clear about the target audience. Promotion of the website would be part of wider and ongoing activity to raise the Panel's profile.

2.3 It was agreed that: it would be useful for members to receive quarterly data on visits to the website; steps would be taken to promote the site, beginning with Ofcom colleagues - making use of the Ofcom intranet and an internal Ofcom lunchtime seminar at which the Chair would be speaking - and consideration given to links, visitor questionnaires and better use of the Homepage.

999 mobile roaming

2.4 Panel members had received a written update on 999 mobile roaming. It was agreed that the Advisory Team would monitor progress.

Quality of Service (QoS)

2.5 The Panel had provided Ofcom with an advice note on QoS in Oct 2008. It was agreed that a formal response should be requested.

Digital Britain

2.6 The Panel had expected to meet the Digital Britain Steering Group on 27 March 2009 but the Steering Group did not meet. Instead the Chair, Alistair Bridge and Monique Rotik of Opinion Leader had met the Digital Britain Project Team. There had been discussion of the findings from the Panel's Future of Broadband research project and of media literacy. It was agreed that the Chair would write to Lord Carter setting out the Panel's further comments on Digital Britain, including details of the Panel's research, thoughts on media literacy, and stressing the need for clarity about how the final Digital Britain report would be implemented and for effective co-ordination once the Digital Britain process was over. It was also agreed that Alistair Bridge would suggest to the Digital Britain team that the findings of the Panel research be presented at the forthcoming Digital Britain summit.

AP1 Alistair Bridge to pursue options to promote the Panel website.

AP2 Dominic Ridley to provide members with a quarterly bar chart showing visits to the website per week.

AP3 Advisory Team to monitor progress on implementation of 999 roaming and provide the Panel with updates at the appropriate time.

AP4 Advisory Team to request Ofcom response to the Panel's advice on QoS.

AP5 Alistair Bridge to draft a letter to Lord Carter about Digital Britain, copying the draft to members for comment.

AP6 Alistair Bridge to talk to Digital Britain about presentation of the Panel's Future of Broadband research at the Digital Britain summit.

3. Ofcom, the Panel and Ofcom's work for consumers

3.1 Peter Phillips and Claudio Pollack joined the meeting. Peter Phillips spoke briefly about his role at Ofcom, where he is an executive Board member with responsibility for: consumer policy; strategic thinking and leadership of strategic policy projects; the market research, market intelligence, technology and the Chief Economist's teams. He acted as Board level sponsor of the Panel's relationship with Ofcom. He had joined Ofcom in 2006 and had overseen a step change in Ofcom's work on behalf of consumers. During that period there had been a doubling of consumer policy resource and the Panel's Consumer Interest Toolkit had helped bring about a positive change of mindset. Consumer policy work had to be a proactive and strategic part of Ofcom's agenda rather than a reactive response to consumer concerns, with a forward looking agenda on access and inclusion and consumer empowerment and protection. The Panel had been an important contributor - ensuring that Ofcom understood the issues and adopted an integrated approach to its work - and its own role had evolved. The Panel was able to assist Ofcom by speaking out on important issues that were difficult to regulate, by providing a different and independent perspective and by engaging in debates that could lead to conclusions that Ofcom would not otherwise reach.

3.2 Peter Phillips then spoke about the top priorities in Ofcom's Annual Plan 2009/10, published the previous day. These were: promoting access and inclusion; preparing for the future of Public Service Broadcasting; promoting media literacy; developing and enforcing consumer protection policies; enabling clear regulations for Next Generation Access (NGA) and core networks; supporting the evolution of radio; promoting competition in pay TV; promoting competition in fixed telecoms; releasing spectrum including the Digital Dividend; and assessing Ofcom's regulatory approach to mobile. The integration of Postcomm and transfer of its regulatory functions to Ofcom would be another important activity as would three other important elements of Ofcom's programme of work: promoting consumer information and improving switching procedures; supporting new approaches for online issues; and work related to business consumers, including understanding their experiences of telecom services and assessing whether Ofcom needed to do more to ensure business customers' needs were met. The latter would involve developing work done on an evidence based approach to the consumer experience. He concluded by commenting briefly on the current state of the economy and its impact on business and consumers, the economic downturn coincided with the transition to digital making it even more important for Ofcom to drive through its agenda.

3.3 There was a discussion in response to Peter Phillip's remarks that included the following points:

- There was a danger of Ofcom becoming paralysed in an increasingly litigious environment; there were challenges for the Panel to speak out when there was consumer harm and to encourage Ofcom to be less risk averse.

- Ofcom had to take into account the cost and benefits of regulation. It appeared to be easier to determine costs, eg in debates about NGA and the costs of fibre to the cabinet. The Panel could assist in determining benefits.
- In taking on regulation of Post, Ofcom would need to ensure that it had adequate information gathering powers.
- Ofcom had been active in promoting policy debates in broadcasting; it could be equally active in the telecoms space.
- The Panel noted that Ofcom had been active in debates about broadband as a universal service and that there were decisions for Government. There had been Ofcom activity related to NGA, including development of a regulatory framework to facilitate investment. The Panel had to challenge Ofcom to ensure enough was done in these areas.
- The Panel's advisory role extended beyond Ofcom and the limits of the regulator's remit.
- Ofcom engaged in much strategic thinking and the consumer perspective was not always apparent. Both Ofcom and the Panel benefited from early and direct engagement. It was important to ensure that the Chair and Alistair Bridge were kept informed about the broader policy debates in Ofcom.

3.4 Discussion moved to the work of Ofcom's Consumer Policy team. Members had received a discussion paper covering: the four priority areas of work for the Ofcom Consumer Policy team - access and inclusion, consumer empowerment, consumer protection and stakeholder and internal engagement; the Ofcom tools to deliver policy objectives - General Conditions, powers under the Communications Act 2003 and other legislation, applying pressure to providers, encouragement of policy developments by third parties and work with the Office of the Telecoms Adjudicator; and engagement with the Panel. In addition, a paper had been provided on the detailed work programme of the Consumer Policy team. The following points were made:

- The Panel welcomed the detailed papers that had been provided. These allowed a better understanding of the range of work undertaken and the challenges faced by the Consumer Policy team.
- The Panel was seeking a dialogue with Ofcom about wide ranging issues related to consumer information, including the information requirements of small businesses also. A topic for that discussion could be a set of consumer expectations, eg not to be subjected to mis-selling.
- Earlier Panel research had shown that consumers and small business customers shared similar requirements and experiences.
- Ofcom was keen to encourage competition in networks and services but greater choice could lead to consumer confusion.
- Usability was an important issue for the Panel and a contributor to inclusion and empowerment; it did not appear to loom large in the consumer policy work programme.
- Quality of service was an element of the consumer empowerment workstream, an important metric for consumers would be their providers'

- response when something went wrong.
- Access and inclusion and enforcement were issues the Panel would be discussing at the May Panel meeting.
- There could be dangers in pursuing too broad an agenda. The Panel noted that Ofcom was adequately resourced to meet its consumer policy objectives - making use of the policy team and other Ofcom colleagues in project work - and that it was important for Ofcom to make good its public commitments.

3.5 It was agreed that: Ofcom had identified the right priority areas in its consumer policy work, that the Panel would benefit from a quarterly update on these priority areas and from ongoing dialogue with Claudio Pollack; and that there would be a Panel brainstorming session with Ofcom colleagues on consumer information. The Chair thanked both Peter Phillips and Claudio Pollack for their contributions to the meeting.

AP7 Claudio Pollack to provide the Panel with a quarterly written status report on consumer policy projects and then attend a Panel meeting to discuss it.

AP8 Advisory Team to arrange a brainstorming session on consumer information, including the suggestion of a set of consumer expectations.

AP9 Panel members to advise Alistair Bridge of any particular Ofcom consumer policy projects that they wish the Advisory Team to track.

AP10 Alistair Bridge to raise with Ofcom mobile mast planning applications as an obstacle to improved coverage and report back to the Panel.

AP11 Colin Browne and Alistair Bridge to discuss issues where the Panel could add value by issuing a call to action, particularly where Ofcom is constrained to act.

4. Post regulation

4.1 Roger Darlington withdrew from the meeting for this item. Members had been provided with a short briefing note from Ofcom covering: the universal postal service; regulatory conditions; financial support for the universal service in post; reference of access disputes to Ofcom; competition and consumer powers; information gathering powers; enforcement powers; appeals against decisions by Ofcom; and transitional provisions. An Ofcom colleague joined the meeting and presented slides to amplify these and other provisions in the Postal Services Bill. He stressed that provisions were subject to change during the Bill's passage through Parliament. Ofcom was expected to gain its new powers in the Autumn.

4.2 There was a discussion that included the following points:

- It was expected that Ofcom would not regulate Post Offices, ie counter services, but would have to ensure that Royal Mail provided sufficient access points for consumers; and that Consumer Focus would retain its functions in Post, ie consumer advocacy, research and in relation to vulnerable consumers.
- The Panel would acquire new advisory functions in relation to Post.
- The Panel and Consumer Focus had recently agreed a Memorandum of

Understanding, it would need to be reviewed in the light of new Post legislation.

- There were issues related to delivery services prescribed in the Bill, including the days they would be made and the costs involved.

4.3 [This paragraph has been redacted.]

4.4 The Panel agreed that it would need to keep abreast of the parliamentary process to consider how to prepare itself to take on its functions in relation to Post, including consideration of resources.

AP12 Ofcom to confirm the remit of the Office of Fair Trading (GB or UK?) and whether the EU Postal Services Directive required Member States to prescribe the five days on which deliveries should take place.

AP13 Alistair Bridge to confer with Ofcom on whether there would be value in the Panel raising publicly the issue of when the universal service provider should be required to make deliveries.

5. PhonepayPlus

5.1 Paul Whiteing joined the meeting and delivered a short presentation on PhonepayPlus: its role, remit and Business Plan 2009/10. He provided background and context covering the creation of PhonepayPlus (previously known as ICSTIS) and its designation as an agency of Ofcom. He explained what premium rate services were, ie the services regulated by PhonepayPlus. He spoke about the organisation's vision and remit; its Framework Agreement with Ofcom; about how PhonepayPlus worked with other regulators and the Police; governance; its consumer interfaces via its website, by phone and in writing; the Number Checker available on its website; the consumer complaints it received; and its investigations. On the Business Plan, he outlined seven particular areas of work that included Ofcom's review of the scope of regulation of premium rate services.

5.2 Paul Whiteing welcomed the opportunity to maintain an ongoing dialogue with the Panel. The Panel shared this aspiration and agreed to engage in joint working, by providing advice on an early draft of PhonepayPlus' new Code. Paul Whiteing agreed to provide the Panel with a regular update of the consumer issues dealt with by Phonepayplus. In relation to wider issues related to numbering, it was agreed that the Panel would benefit from a briefing.

5.3 Agreed Panel position – The Panel decided that it should have a direct relationship with PhonepayPlus, rather than engaging via Ofcom.

AP14 Panel to provide advice to PhonepayPlus on an early draft of its new code.

AP15 PhonepayPlus to provide the Panel with a quarterly data set of issues dealt with by PhonepayPlus.

AP16 Advisory Team to arrange a Panel briefing session on numbering (to take place before the Summer).

6. Narrowband market review

6.1 Members had received a discussion paper on Ofcom's Fixed Narrowband Retail Services Market Review covering milestones and relevant background; key issues including the deregulation of BT, inactive consumers, implications for retail regulation, KCOM and potential future concerns in Hull. Ofcom had issued a consultation document and the Panel had been provided with the executive summary. The consultation was due to close on 28 May 2009. Ofcom colleagues were present for discussion and had provided supporting slides, including a summary of Ofcom recommendations and detail on the impact on consumers. There was a discussion that included the following points.

- It was noted that Ofcom's conclusion was that UK retail markets for fixed narrowband were largely competitive, with the exception of Hull. The UK had probably moved further in this direction than most other countries and the majority of UK consumers had a choice of fixed narrowband services, from BT and from third parties, eg the Post Office, via wholesale line rental (WLR). Virgin Media provided a cable service in many urban areas.
- Issues of ongoing concern were: BT was likely to remain as the largest UK player; it might be able to benefit from the inertia of customers not wishing to exercise choice; bundling could act as a disincentive to switching and a unified process could be beneficial – comparable to the MAC process for broadband switching; in Hull KCOM continued to have significant market power in all retail narrowband markets where WLR was not available, nor local loop unbundling nor carrier pre-selection – competitors had shown little interest in entering the Hull market.

6.2 Panel agreed position - The Panel agreed with Ofcom's proposed approach to regulation of narrowband retail markets

6.3 The Panel thought that Ofcom's Advisory Committee for England would have an interest in Hull, where consumers were not benefiting from competition and innovation to the same extent as consumers elsewhere in the UK.

AP17 Roger Darlington to discuss Hull with members of the Advisory Committee for England.

7. Future of broadband research

7.1 Monique Rotik gave a slide presentation on the Panel's Future of Broadband research. She spoke about the background to the research; its aim to explore the issue of access to broadband internet at home; the methodology based on qualitative research using focus groups and quantitative research using a face-to-face omnibus survey; and the findings of the research. In summary, participants' comments indicated that they regarded broadband to be an "essential" service and its importance was expected to continue to increase. Some concerns were also raised about these developments, including the potential for a digital divide and for people to miss out.

7.2 Members made a number of detailed comments in response to the presentation and discussion included the following points.

- When publishing the research report it would be necessary to clarify what was meant by 'super-fast broadband'.
- Slides included a summary of findings and this would form the basis of the Chair's foreword to the published research report. The summary could say more about the social benefits of broadband and the role of Government, commercial and other organisations.
- The Panel noted responses from a focus group in Carmarthen, their experience of residing in a broadband not-spot and awareness of being disadvantaged. Those responses could be reflected in the research report whilst telling the wider story of other participants' views. It could be useful also to look again at quantitative responses related to a lack of broadband with an understanding of its value.
- It was noted that many consumers appeared to think that the internet and broadband were the same thing; mobile broadband meant a different category of consumer/access.
- Setting a basic level of universal broadband and a mechanism for its review could be acceptable – but where that level was set would be important, eg the iPlayer required at least 1Mbit.
- Less attachment to use of the internet for entertainment – as compared with its use for finding information, communication and completion of transactions - had been expressed, with 20% of respondents describing it as the most important internet activity. But it was noted that 55% had included entertainment as one of their internet activities.
- Where possible data should be broken down for consumers with a disability and reference made to the inclusion in samples of consumers aged over 75.

7.3 It was agreed that the Panel's research report would include conclusions and recommendations, the report would be drafted by Opinion Leader and a foreword by the Chair. Previously it had been suggested that a discussion on broadband - and how services could be delivered for older people - be held with experts from organisations like Age Concern, with views fed into the Panel's research report. It was agreed that this suggestion would be considered further.

AP18 Monique Rotik to take account of Panel comments in preparing the Panel research report.

AP19 Chair and Alistair Bridge to draft and agree a foreword to the Panel research report.

AP20 Alistair Bridge to consider broadband issues relating to older people.

AP21 Secretary to email research slides to Panel members.

8. Any other business

8. The Advertising Standards Authority (ASA) was undertaking an advertising code review with a public consultation open until 19 June 2009.

AP20 Louisa Bolch and Alistair Bridge to consider whether the Panel should respond to the ASA's code review.

.....Chairman

.....Date