

Minutes of the 63rd meeting of the Communications Consumer Panel

Wednesday 20 January 2010 at 9.00 hours

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

Present

Consumer Panel

Anna Bradley (Chair)
Fiona Ballantyne
Kim Brook
Maureen Edmondson
Leen Petré
Damian Tambini
Bob Warner

Apologies

Louisa Bolch
Colin Browne
Roger Darlington

In attendance

Alistair Bridge (Principal Adviser)
Nicola Ebdon (Panel Secretary)
Emily Keaney (Policy Adviser)
Angela Stainthorpe (Policy Advisor)
Collette Bowe (Chairman - Ofcom) (item 6)
Andy Carter (Department of Business) (item 8)
Ofcom colleagues (item 9)

1. Declaration of members' interests

1.1 There were no interests declared, although it was noted that Bob Warner would be a guest of O2 at a dinner on 21 January 2010.

2. Minutes of the meeting on 2 December 2009, matters arising, progress on actions and forward plan 2010

2.1 Members **APPROVED** the draft minutes for signature by the Chair, subject to some small amendments.

2.2 Members **NOTED** the current status of actions arising including:

- AP11 - Otelo has responded to the request to provide details of the number of complainants, who have been subject to credit-rating action while their case was with Otelo - this will be circulated to Members;
- Minute 4.3 - LP has considered whether the Panel should form a view on how the R&TTE Directive could be modified to help improve availability of accessible end-user equipment and will send her thoughts and research to the Advisory Team;
- AP17 (03/11/09) - The Ofcom International team has formed a proposal as to how the Panel could become involved in international consumer engagement. AIB will meet the team and circulate the proposal to Members.
- Complaints handling - KB updated Members on his recent engagement with the Consumer Focus (CF) complaints department based in Cardiff and their willingness to engage with the Panel. It was noted that AIB is drafting a paper on joint working with CF to be discussed with the CF Board at the next Joint meeting between the Panel and CF Board. It was noted that Which? could be a potential partner in relation to complaints handling. Members noted that an update on Ofcom's complaints handling work will be given at the February Panel. It was agreed that a briefing paper would be sent to Ofcom to highlight the concerns of Members on complaints handling to inform the development

of the paper presented to the Panel. It was agreed that the Panel would have a further discussion about complaints handling before discussing the issue with Ofcom colleagues. This would allow the Panel to develop its views, including on the barriers to complaining as well as the complaints-handling process.

2.3 Members **NOTED** the content of the meeting forward plan.

3. Processes for making and evaluating regulation - update

3.1 The Panel **CONSIDERED** a paper which updated the Panel on work being undertaken in this area.

3.2 The Panel **DECIDED** that it would delay the review of Ofcom projects using the Panel toolkit as recommended in the paper.

3.3 In relation to the Ofcom Better Regulation project the Panel **AGREED** that it will aim to ensure that the:

- project keeps on track;
- Better Regulation project does not recommend any simplification of regulation which would compromise consumers' interests; and
- Panel toolkit is appropriately integrated into Ofcom's new decision making guidance.

4. Mobile - update

4.1 The Panel **CONSIDERED** a paper which updated Members on the work undertaken by the Advisory team, and the following points arose from the discussion:

- A Panel sub-group is considering whether it should make changes to the proposed scope of the mystery shopping research due to a number of potential ethical, legal and public relations issues; and
- The Panel has written to the European Commission jointly with CF pushing for a thorough review of the merger. Members were concerned about the possible infrastructure, spectrum and competition issues which the merger may pose, in particular for the Nations. However, Members felt that they would need to rely heavily on Ofcom's technical, spectrum and competition expertise in order to take a view.

4.2 The Panel **DECIDED** that it should seek to understand the related issues of infrastructure, spectrum and competition in more detail to identify whether the Panel should take a position on the merits of the merger. It was **AGREED** that the Ofcom Mobile team would be requested to prepare a paper for the Panel to brief Members on these issues.

5. Update on Panel engagement with the Ofcom Board

5.1 The Panel **CONSIDERED** a paper which updated Members on correspondence and recent engagement with the Ofcom Board in relation to Ofcom's priorities for the year ahead, the Panel's activities during 2009/10 and the Panel's draft workplan for 2010/11.

5.2 A good discussion had taken place at the Ofcom Board meeting from which two issues had arisen:

- The Panel's breadth of engagement across Ofcom and whether the Panel should look to engage with areas of Ofcom where the consumer interest is less clearly identifiable or immediate; and
- The Panel's engagement with the Ofcom Board and the scope for the Panel to provide the Ofcom Board with advice and recommendations directly on particular issues.

5.3 The Panel **DECIDED** that it would look to engage with other areas of Ofcom. A meeting will be arranged between Anna Bradley and H Nawana, Ofcom's partner for spectrum policy. The Advisory Team will also look to engage more with Ofcom colleagues in relation to competition issues, possibly holding a meeting with policy directors in the Competition group to discuss consumer interests.

5.4 It was **AGREED** that a list of areas in which the Panel and Ofcom Board had a common cause and therefore where the Panel will be able to provide the Ofcom Board with a paper, will be identified. It was **AGREED** that when reviewing the MOU between the Panel and Ofcom, the appropriate mechanism for the Panel to provide advice to the Ofcom Board will be considered.

6. Colette Bowe - Chairman of Ofcom

6.1 The Panel welcomed Colette Bowe to the meeting and **RECEIVED** a verbal update on a number of issues. The following points arose from the update and Panel discussion:

- Colette felt that the meeting between the Panel and Ofcom Board had been productive and expressed her support for the two outcomes. She felt that it would be beneficial for the Panel to widen its breadth of engagement across Ofcom and identify an improved mechanism for the Panel to provide advice and recommendations to the Ofcom Board;
- Colette outlined the context of discussion in the House of Lords relating to the proposed duties on Ofcom to report regularly on the state of the UK's communications infrastructure, and recommended that Members follow the debate;
- Colette outlined the provisions of the Digital Economy Bill which would affect Ofcom if brought into statutory effect and was interested to hear the Panel's thoughts on illegal file sharing. Members expressed concern that the process must be fair, reasonable and proportionate for consumers; that there must be proper safeguards to protect consumers in relation to both the notifications process and whether any technical measures should be applied; and that the costs of the system will affect not just rights holders and ISPs but also consumers. Members expected consumer interest bodies to be involved in discussions about the proposed Code of Conduct; and
- Colette gave the Panel her sense of the current policy climate and the challenges it might bring for Ofcom and the Panel over the next year.

6.2 It was **AGREED** that:

- In relation to illegal file sharing the Panel will become involved in the debate if and when the Code of Conduct is being developed;
- The Panel will review whether it should send a copy of its response to the Department of Business' consultation on illegal file sharing to interested parties; and
- Colette Bowe and Monica Arino would be invited to a future Panel meeting to engage with the Panel in relation to the new European Framework.

7. Ofcom Consumer Experience Report

7.1 The Panel **REVIEWED** the Ofcom Consumer Experience Report and made the following **RECOMMENDATIONS** as to how the report could be improved in the future:

- Include children under the age of 15 in the research, although this may not be relevant across the board as they do not tend to make purchasing decisions;
- Link the small percentage of those identified as using dial-up to age and/or circumstances;
- Provide some statistics in relation to the usage of impairment kit;
- Identify whether the people identified as not using digital television, access digital television through another medium;
- Breakdown the statistics in relation to competition to form a view as to whether competition is working in the Nations or whether it is causing dis-benefits which could disadvantage consumers; and
- Not use averages to describe spend in relation to telecommunications services per household, as this does not reflect the differences in percentage of income or identify how many people use the services in each household.

7.2 The Panel **CONSIDERED** the Ofcom Consumer Experience Report in relation to what lessons the Panel could learn from the report and the following issues came out of the discussion:

- Whether the decline in the take-up of fixed-line services would deter broadband take-up;
- Whether switching of bundles is more of an issue because broadband is included in the bundle. Members noted that work had been done in Malta and Japan in relation to the portability of email addresses which may be of interest on this issue; and
- That it was clear that consumers rely heavily on information from friends, family and the internet when making decisions and that therefore Ofcom should ensure that it embraces this thinking when deciding whether to provide information to consumers on issues.

7.3 The Panel gave the following **ADVICE** to Ofcom:

- That the report was a very good reference tool, however could be improved by including more detail, in particular in relation to the high level averages which are used to describe income, spend and competition;
- That an increased level of detail should be included in relation to the Nations and the groups of consumers most reflected in the Nations; and
- That consideration could be given to undertaking a larger and more complex survey, to complement the Consumer Experience Report, perhaps every three years. Such a report could identify consumers' reported behaviour, analysed against what they actually do. The survey would enable reflection on what choices are made by consumers and whether those choices are the right ones to make.

7.4 The Panel made the following **DECISIONS**:

- It would discuss the issue of portability of email addresses with Ofcom, when discussing the issue of switching; and
- It would encourage Ofcom to ensure that behavioural economics, and its role in understanding how consumers make decisions is embraced in all parts of Ofcom, building on the work done to date by the Chief Economist's Team. It was agreed that the paper on behavioural economics commissioned by the Panel would be circulated to relevant Ofcom colleagues for information.

8. Andy Carter - Department of Business (BIS)

8.1 The Panel welcomed Andy Carter to the meeting and **RECEIVED** a verbal update on the Universal broadband commitment (UBC), and the landline duty and the final third fund. The following points arose from the update and Panel discussion:

- The progress and timeline for future work in relation to the implementation of the USC and setting up of a procurement agency for delivery;
- BIS are considering a number of issues and problems; and have a challenging timeframe under which they need to be addressed;
- That BIS regularly met with representatives of the devolved Nations to ensure an appropriate transfer of knowledge; and
- That BIS are increasing their knowledge of providers' networks before recommending minimum requirements for industry to follow.

8.2 The Panel **ADVISED** BIS that it was very important to keep the consumer interest at the heart of the current discussions in relation to how the commitment will be delivered and defined, and how consumers will get redress. Members are keen for the commitment to be defined in a way that is meaningful to consumers, i.e. it enables them to use services and carry out activities that they value.

8.3 The Panel **DECIDED** to engage further with BIS in relation to ensuring the consumer interest is at the heart of the debate. It was suggested that using the Panel's Consumer Interest Toolkit may be of help in this respect. Members **AGREED** the Panel will continue to

engage on this issue to ensure that as far as possible next generation access is used to implement USC or that the USC is built in a way that will ensure future proofing.

9. Ofcom's role in relation to digital switchover and Ofcom's digital dividend clearance project

9.1 The Panel **NOTED** the content of a paper which updated the Panel on work undertaken by Ofcom in this area. Prior to the meeting the Members decided to take the paper as read and requested that the Ofcom team return to the Panel in around April when the digital clearance research has been received and analysed.

10. Ofcom Annual Plan and Update on Ofcom 2015

10.1 The Panel **CONSIDERED** Ofcom's Annual Plan and the following points arose from the discussion:

- Members welcomed that the Plan was simpler than in previous years and included a number of issues which the Panel has identified as important to consumers;
- Members were reassured that Ofcom takes account of the impact of competition on different Nations and noted that the Annual Plan would be amended to highlight the issues which face certain consumers in certain areas of the UK;
- Members were reassured that Ofcom's priority remains to protect consumers and therefore it would not recommend any simplification of regulation which would compromise consumer interest and that this would be articulated clearly in the Annual Plan;
- Members raised the issue of how Ofcom intends to use behavioural economics in its policy making and therefore whether Ofcom's approach should be reflected within the approach to regulation section of the Annual Plan;
- Members expressed their wish that Ofcom plan to engage more pro-actively in relation to complaints handling as it believes that this is an area where there is significant consumer detriment and would like complaints data from companies to be published. Members would like Ofcom to ensure that complaints handling processes are made simpler and clearer; and
- It was noted that some issues included in the Annual Plan have been included over a number of years. Members felt that if there was an issue concerning the ability to commit resource, then it would be better to take the issues out of the Annual Plan until resources become available. By including issues which Ofcom would like to address, but which it does not have the resources to address, expectations of consumers are raised unnecessarily.

10.2 In relation to Ofcom's Annual Plan the Panel **ADVISED** Ofcom to:

- Make revisions to the Annual Plan as discussed during the meeting;
- Seek clarification of Ofcom's approach to building behavioural economics into its policy making and ensure it is explained in the Annual Plan;
- Seek clarification from Ofcom as to the planned level and type of engagement in relation to complaints handling and ensure it is explained in the Annual Plan;
- Seek clarification as to the reason/s why some issues are included in the Annual Plan that have been included over a number of years and make a decision as to whether they should remain in the Annual Plan; and
- If possible identify within the Annual Plan how much resource is committed to each area, for example, enforcement vs developing regulatory policy.

10.3 The Panel **RECEIVED** an update on Ofcom's 2015_project, outlining the broad strategic goals and proposed timeline. The following points arose from the discussion:

- In response to a query Members were reassured that Ofcom is taking a more textured strategic approach to reflect the different needs of consumers, including those of children; and

- In response to a query it was noted that the Panel would be consulted on the project in its next phase which was expected to start after February, subject to further discussion with the Ofcom Board. However Ofcom offered to send Members a presentation that was made to the Ofcom Board previously that covers market developments, identifies the key issues and provides a broad view of likely future developments.

10.4 In relation to Ofcom's 2015 project the Panel **ADVISED** Ofcom to consider framing Ofcom's strategy to ensure that it accurately portrays Ofcom's positioning of consumer and citizen issues, i.e. make clear that all activities are geared ultimately to furthering consumers' and citizens' interests. One suggestion was to use the Panel's Digital Participation Framework template to identify the different consumer and citizen issues in relation to each area of Ofcom's remit.

10.5 The Panel **DECIDED** that it would schedule time at a future Panel meeting to receive the aforementioned presentation from the Ofcom 2015 team.

11. Digital Inclusion and Participation - update

11.1 The Panel **CONSIDERED** a paper which updated the Panel on work undertaken by the Advisory team and the following points arose from the discussion:

- A Panel sub-group had met with Ofcom in relation to the development of the National Plan for Digital Participation and Ofcom had found the meeting very helpful;
- The research group sessions have been completed and the second round of individual visits is underway. Key issues arising from the group sessions were fraud, identity theft, and confidence issues;
- Participants had found the last column of the framework confusing;
- Participants felt that friends and family can be a barrier to getting online due to a patronising attitude and lack of teaching skills, and would prefer a mentor/teacher of their own age; and
- Ofcom had used the draft framework to ask Consortium members to think about what activities they provide and identify gaps which need addressing.

11.2 The Panel **AGREED** that it will:

- Revisit the content and language of the last column of the framework;
- Publish the research report alongside the literature review and framework;
- Review whether there are any other uses for the framework template outside digital participation, as a framework for identifying consumer issues. For example Ofcom could use it to use to help define future priorities and projects, and community or voluntary groups could use it to understand better the process of digital participation and gaps in current support;
- Identify events with cross sectional audiences at which the Panel could promote the research and framework.;
- Circulate the current version of the framework to Members for use informally with stakeholders; and
- Check with the research agency what reassurance had been given to participants in relation to the use of video, to ensure that any video taken could be used in presentations and on the Panel's website.

12. Consumer Protection and Empowerment - update

12.1 The Panel **CONSIDERED** two papers which updated the Panel on the work undertaken by the Advisory team in this area, the content of which was noted. Members will respond directly to Emily Keane with any specific comments.

13. Panel Work Plan

13.1 The Panel **EVALUATED** the Panel's draft work plan for 2010/11 against the agreed criteria and **CONSIDERED** the balance of workload and resource implications of the plan.

13.2 The Panel **DECIDED** that it would:

- Ensure time is allowed for the Panel to look at other issues and areas, such as spectrum and the changing nature of content regulation, which are not covered by the work plan;
- Not initiate the second phase of the Digital Participation research until the start of 2011/12;
- Reduce the level of engagement in relation to consumer information to that of monitoring with engagement and encourage Ofcom to undertake research looking at how consumers make decisions;
- Not undertake the academic articles on consumer engagement with the internet, instead possibly look into opportunities to encourage other bodies to undertake work on this issue;
- Either undertake the second phase of usability testing or the qualitative research on consumer expectation of the internet during the second half of 2010/11;
- Consider undertaking some work in relation to the internet with a narrower focus, for example in relation to internet fraud;
- Include on the list of other work areas, succession planning for the Panel;
- Consider areas of joint working with other bodies, such as illegal file sharing and the TMobile/Orange merger;
- Consider whether to keep Digital Switchover on the list of areas to monitor after the update from Digital UK at the February Panel;
- Consider whether and if so how the Panel should continue to engage with the issue of broadband speeds; and
- Add to the work plan a list of issues on which the Panel would like to receive a periodic update, but not undertake more active monitoring or engagement.

13.3 The Panel **AGREED** that the Advisory Team will give consideration to:

- Reducing the work plan further to ensure that the Panel is not doing too much and has time to engage with ad-hoc and emerging issues;
- Spreading areas of significant proactive engagement over longer time periods;
- Changing the length of the lines relating to monitoring to ensure monitoring and engagement is undertaken when required rather than ongoing through the year;
- If possible identify five areas that could be subject to periodic review rather than ongoing monitoring; and
- Planning a timetable of engagement in relation to the draft work plan.

14. Any Other Business

14.1 Introduction to Spectrum - Members **NOTED** that a one day course is available from Ofcom. A possibility of arranging a short technical presentation on Spectrum at a future Panel meeting was discussed. It was **AGREED** that a list of relevant one day courses would be circulated to Members.

.....ChairmanDate