

# Minutes of the 69<sup>th</sup> meeting of the Communications Consumer Panel

Wednesday 21 July 2010 at 9.00 hours

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

## Present

### Consumer Panel

Anna Bradley (Chair)  
Fiona Ballantyne  
Kim Brook  
Colin Browne  
Louisa Bolch  
Roger Darlington  
Leen Petré  
Damian Tambini  
Bob Warner

### Apologies

Maureen Edmondson

### In attendance

Alistair Bridge (Principal Adviser)  
Nicola Ebdon (Panel Secretary)  
Emily Keaney (Policy Adviser)  
Ofcom colleagues (items 4, 7 and 11)  
Guy Parker - Chief Executive Advertising Standards Authority (ASA) (item 5)  
Ed Richards - Chief Executive Ofcom and Graham Howell - Ofcom Corporation Secretary (item 8)  
Paul Whiting - Chief Executive and Bradley Brady Phone Pay Plus (PPP) (item 10)

## 1. Declaration of members' interests

1.1 Members declared no interests.

## 2. Minutes of the meeting on 16 June 2010, matters arising and progress on actions

2.1 Members **APPROVED** the draft minutes for signature by the Chair.

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

- AP1 - The net neutrality seminar with POLIS is scheduled for 7 Sept.
- AP 2 - The letters sent to Ed Vaizey and Karen Wheeler will be circulated in the weekly update.
- AP3 - Members discussed feedback from the Board regarding the Panel's paper on switching.
- AP6 - The statement to define the Panel's role and its relationship with Ofcom will be drafted as part of the Panel's submission to Ofcom's governance review.
- AP 8 - Ofcom's technology team will be asked to provide an overview of trends in technology and markets to feed into the 2010/11 workplan discussion in October.
- Future of Radio - If possible Members will be provided with a copy of the Consumer Expert Group's report on digital radio on a confidential basis. Digital radio will be included on the list of possible items for consideration as part of the Panel's 2011/12 work plan.

### 3. Panel discussion of approach to agenda policy items

3.1 The Panel reviewed the policy items for discussion during the day and discussed a number of key points which are reflected in the minutes below.

### 4. Ofcom - Broadband speeds (BS)

4.1 The Panel **CONSIDERED** a paper which updated Members on Ofcom's work in this area. The following points arose from the discussion. Ofcom:

- is proposing to strengthen the BS Code to require ISPs to deliver a number of improvements, including customers having the option to be released from contracts if they receive an access line speed below 10% of the minimum estimate given and clearer advice on fair usage policies; and
- will encourage customers to use online speed checkers to check their speed and contact their ISP if there is a difference between actual speed and the ISPs estimate.

4.2 The Panel gave the following **ADVICE** to Ofcom, it should:

- have undertaken wider engagement, particularly with consumer bodies, when proposing changes to the Code. Not undertaking this engagement has meant that consumer bodies have not been able to contribute to the debate and the Code has been agreed privately between Ofcom and the ISPs;
- consider carefully whether the voluntary approach is viable given the incentives of ISPs, particularly those which are shown by Ofcom's research to be performing poorly;
- carry out experimental research to test the extent to which consumers can make use of the information that ISPs are required to provide. For example, how easy do consumers find it to use online checkers to check their broadband speed and how likely are they to complain to their ISP if they are unhappy with the performance they are experiencing;
- consider whether the revised Code places too much emphasis on consumers acting on, often hard to find, information about their broadband speeds and whether there should be more onus on ISPs to take action to help consumers with low broadband speeds. Members recommend that ISPs be required to advise customers of the actual speed they are receiving within one month of purchasing a service and provide advice on: options to improve the speed; moving to an alternative tariff; or cancelling their contract;
- consider what protection can be put in place for consumers outside the bottom ten per cent to be able to get their ISP to improve performance and whether they should have the option to cancel their contract; and
- be clear about its time frame for reviewing the Code and reviewing whether it has been successful. Ofcom should send a clear message to industry about what measures will be used to measure success and what will trigger a move to formal regulation.

4.3 Once Ofcom colleagues left the meeting, Members **AGREED** to:

- send an email to Ofcom setting out its advice as soon as possible given the timeframe for Ofcom publishing the research and revised Code;
- copy the note to Ed Richards and Colette Bowe to highlight the advantages of undertaking wider engagement when developing or reviewing self-regulatory codes; and
- issue a press release when Ofcom publishes its research and the revised Code.

## 5. Advertising Standards Agency - Broadband Advertising Review

5.1 The Panel welcomed Guy Parker to the meeting and **RECEIVED** an overview of the review being undertaken by CAP and BCAP of broadband advertising and other issues being considered by the ASA. Members welcomed the review and discussed a number of issues including:

- the Panel's input in December was a contributing factor in the decision to undertake the review;
- a significant proportion of consumers are receiving speeds way below the advertised headline speed;
- there is a growing number of complaints relating to the tension between unlimited download polices and ISP's fair usage policies on mobiles. The proportion of consumers now reaching their fair usage broadband and mobile limit is growing, however fewer ISP's are now advertising unlimited policies. The sanctions imposed by ISPs on customers who break the fair usage policies vary considerably, with some sanctions having significant implications for consumers;
- the review is considering whether to propose an average speed or speed range, as proposed by the Panel. In order for this to work the ASA and ISPs will need to rely on sound data as a basis to calculate the averages or ranges of speeds advertised;
- the review is considering whether there should be more information in adverts to guide consumers as to what proportion of customers can get an average speed and how they can establish their speed; and
- CAP/BCAP hopes to published a paper for consultation in the Autumn, although the 'unlimited' element of the review is likely to proceed more quickly than the 'speed' element.

5.2 The Panel found the presentation thought provoking and **DECIDED** it would respond to the Code consultation and interact with the ASA further if more detail is required.

5.3 The Panel **RECEIVED** an overview of the ASA's plans to extend its remit further in the digital space. A CAP online working group has nearly concluded its work and an announcement is expected in the Autumn.

## 6. Accessibility Update

6.1 The Panel **RECEIVED** an update on the work being undertaken by the Advisory team and sub-group in this area. Members discussed the following:

- a second draft of the research on accessibility of mobile phones is being updated to reflect market context and opportunities for the future and will be circulated to the sub-group and then the whole Panel;
- the report will be published in September and stakeholder engagement will be undertaken ahead of the launch;
- early conclusions from the research indicate that lessons can be drawn across to other equipment in that: if equipment is made easier for general consumers it becomes easier for some disabled consumers and features can be delivered by software rather than hardware, making it easier to develop individual features;
- early conclusions from the research echo the findings of the Digital Participation work in that: there is a lack of support and information available

- smart phones are more intuitive and are easier to use for some disabled consumers and provide opportunities to get more consumers online. However there are particular problems with touch screen technology for some disabled consumers; and
- preset user profiles could be developed for users with different needs.

## 6.2 The Panel **DECIDED** that:

- As part of the September options paper, the sub-group will set out options for further work in this area during quarter three and four, focusing on non-substantive options where conclusions are drawn across different types of hardware;
- an email from an independent consultant on relay services will be shared with the Advisory team;
- an update from the Ofcom roundtable on relay services will be provided to the Advisory team;
- it would not engage further in relation to the R&TTE directive; and
- it will seek to ensure that the positive implications for usability are maintained in the transposition of the Telecoms Directive into UK legislation.

## 7. Ofcom - Digital Agenda for Europe

7.1 The Panel **CONSIDERED** a paper which updated Members on Ofcom's contribution to the formulation of the EU's agenda for 2010-2015. The following points arose from the discussion:

- Ofcom has a role to use its technical expertise to help develop a UK industry view as to how options could work in practice;
- BEREC is putting in place a support office and developing a more transparent process for engaging with consumer bodies such as the Panel;
- there are a number of issues on which Ofcom would value the Panel's engagement, including; EU spectrum policy programme, USO consultation, NGA recommendation, net neutrality, internet protection rights and licensing and European interoperability strategy and framework; and
- input from the Panel is particularly sought in relation to the harmonisation of internet protection rights across member states, to ensure the debate is not focused on industry rights.

7.2 The Panel thanked Ofcom for the overview of issues and **AGREED** that it:

- will engage regularly with Ofcom in relation to Ofcom's response to the EU consultation on net neutrality, to identify where the Panel can become involved and possibly shape research to enable Ofcom to understand consumer views in this area. The Panel would like Ofcom's response to start with consumer interests and identify whether the regulatory instruments available are sufficient to satisfy the consumer interest; and
- will write to the new Chair of BEREC once in place.

7.3 Once Ofcom colleagues left the meeting, Members **AGREED** that it will:

- identify a small number of key issues that are priorities for the Panel and where engagement with Europe would help deliver improvements for UK citizens and consumers;

- agree with the Ofcom team how the Panel can best engage with Ofcom, Europe, BEREC and others on those issues, and request that future papers from the Ofcom team would be structured around those issues;
- incorporate additional resource commitments required to effectively conduct this engagement into the Panel's work plan; and
- consider the best way of feeding the Panel's digital participation research into the EU digital literacy and participation work.

## 8. Ofcom Spending and Governance Review

8.1 The Panel **RECEIVED** an update on Ofcom's spending and governance review.

## 9. Panel review of Ofcom Spending and Governance Review

9.1 The Panel considered the Panel's part in relation to Ofcom's spending and governance review and **DECIDED** that it would develop a paper to input into the review. The paper will provide clarity around the Panel's role and how it works with Ofcom, identify a number of options for reductions in Panel expenditure and make recommendations for governance changes.

## 10. Phone Pay Plus - Premium Rate Services Code of Practice and consumer research

10.1 The Panel welcomed Paul Whiting and Bradley Brady to the meeting and **RECEIVED** an overview of the development of PPP's new Code of Practice and recent consumer research. Members welcomed the new Code and discussed a number of issues including:

- the Code is grouped in terms of high level outcomes for consumers, designed to allow greater flexibility in the future, backed up by industry guidance;
- guidance will provide a benchmark for providers but allow flexibility to achieve outcomes in other ways. All guidance be subject to a 10 week consultation;
- PPP will provide compliance advice to providers to help them achieve the outcome;
- attempts to achieve the outcome and follow guidance will be taken as mitigation if providers are found to be in breach of the Code;
- PPP are reviewing the governance arrangements and road testing the new Code to ensure compliance can be enforced;
- an industry registration scheme is being implemented to ensure all PRS providers are identified and improve information for providers and consumers;
- PPP adjudicates international providers by following EU commerce rules;
- PPP currently Chairs the PRS international regulators group and is sharing good practice;
- in order to improve price transparency PPP are looking to Ofcom in relation to its review of non-geographical numbers; and
- emerging consumer issues are the monetisation of content on the internet and mobile security.

10.2 The Panel congratulated PPP on its decision to change the way in which it will regulate the PRS market and **DECIDED** it would express its support of the Code to PPP by email. The Panel expressed some concern about the viability of this shift in terms of industry commitment to implementation. Once the new scheme is implemented and results are evident the Panel will ask PPP to return to the Panel in order to consider its impact.

## 11. Ofcom - Automatically Renewable Contracts (ARCs)

11.1 The Panel **CONSIDERED** a paper which updated Members on Ofcom's review of ARCs and consideration of whether Ofcom should regulate to prohibit ARCs. The following points arose from the discussion, Ofcom:

- has robust evidence that ARCs adversely affect consumers ability to switch providers;
- BT has stopped actively advertising ARC packages and agreed to reductions in early termination charges (ETCs) which mitigate the consumer detriment caused by ARCs; and
- is considering the legal implications of enforcement and considering proportionality issues.

11.2 The Panel **DECIDED** it would reflect on the options proposed and respond to Ofcom with its view. Members believe that consumer detriment is likely to be limited by reductions in ETCs and that Ofcom should take this into consideration in deciding next steps. The Panel suggest that Ofcom should indicate that it is against these contracts and be in a position to act quickly should providers start using ARCs more widely.

## 12. Panel round up discussion of agenda policy items

12.1 The Panel reviewed the policy items which had been discussed during the day and agreed any further actions as reflected in the minutes above.

## 13. Any Other Business

13.1 Options for Panel work on spectrum, taking into account the Governments decision on the spectrum modernisation plan, will be considered as part of the options for quarter three and four paper which will be considered at the September Panel meeting.

13.2 In preparation for the meeting with Ofcom on the social value of spectrum background papers will be circulated to Members.

13.3 A draft Panel response to Ofcom's consultation on silent calls will be circulated to Members for review.

13.4 Members discussed the possibility of a visit to the Oxford Internet Institute. Further details will be decided and communicated to Members.

13.5 Access to Ofcom's training resource for Members has been successfully trailed by one Member and details of how to access the resource will be provided to all Members.

.....Chairman .....Date