

Minutes of the 72nd meeting of the Communications Consumer Panel

Tuesday 16 at 2.30 hours and Wednesday 17 November 2010 at 9.00 hours

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

Present

Consumer Panel

Anna Bradley (Chair)
Fiona Ballantyne
Colin Browne
Roger Darlington
Maureen Edmondson

Apologies

Bob Warner

In attendance

Alistair Bridge (Principal Adviser)
Nicola Ebdon (Panel Secretary)
Emily Keaney (Policy Adviser)
Ed Richards (Ofcom - Chief Executive - item 8)
Antony Walker (CEO) & Pamela Learmonth (Broadband Stakeholders Group - item 9)
Ofcom colleagues (items 11 and 13)

1. Declaration of members' interests

1.1 Members declared no additional interests.

2. Ofcom Governance Review

2.1 The Panel discussed the outcome of a meeting with Tim Gardam, the Chair of the new Nations and Communities Committee, on 26 October 2010. As a result of the discussion the Panel **AGREED**:

- to share its revised workplan with Tim to identify the issues of importance to consumers which the Panel will be working on until the end of March 2011 and any issues which the Panel has stopped working on due to lack of resources;
- to share the revised workplan with Ofcom's National Advisory Committees;
- to expand the list of issues addressed by the Panel over 2010/11 to incorporate Panel advice provided to Ofcom and any ongoing Panel concerns, by March 2011. Share this list with Tim Gardam and Citizens Advice.

2.2 Members discussed the request by Colette Bowe, at the October Panel meeting, for the Panel to develop a paper on Ofcom's proposed governance arrangements. Members are keen to ensure that consumers' interests continue to be represented in Ofcom's new governance arrangements, however recognize that due to the Panel's independent status it has been able to do far more than the new proposals will realistically allow for. Therefore the responsibilities of the current Panel will only partly be met by Ofcom's new committees and other functions will need to be fulfilled by an external consumer advocacy function. Members are keen to outline the different responsibilities which will need to be fulfilled by consumer advocacy in the future, regardless of which body will carry them out, and communicate this to Ofcom and others. Members **DECIDED** to ask Tim Gardam for a follow up meeting to find out in more detail how the new committee structure will handle consumer issues. Members **AGREED** that following the meeting, the content

of a briefing note/letter on the proposed governance arrangements will be agreed and drafted. The briefing note on the Panel, prepared for Ofcom's governance review, will also be passed to Tim Gardam if of interest.

2.3 Members discussed a number of occasions on which stakeholders have asked Members for clarification over the Panel's future and Ofcom's plans for consumer protection. Members **AGREED** to express their concerns to Ed Richards regarding a perceived lack of communication of Ofcom's new governance and consumer protection arrangements to stakeholders. Stakeholders are particularly keen to know how they will be expected to interact with Ofcom in the future.

2.4 Members discussed the outcome of a meeting between Anna, Fiona and Colette Bowe earlier in the day. Ofcom have agreed to provide the Panel with required resource within current budget until at least the end of the financial year, if required. Ofcom agreed to ensure that suitable arrangements would be made to house the Panel's website and archive its documents so they can be fully accessed by stakeholders in the future. Anna was offered a speaking slot at Ofcom's Consumer Experience Report launch on 8 December 2010, to give the Panel's reaction to the report and Ofcom's Annual Plan. Members **AGREED** that Anna should take up this request and that the Advisory Team should approach Ofcom to make arrangements.

3. Possible transfer of functions to Citizens Advice

3.1 Members discussed the outcomes of engagement between Anna and the Department for Business, Innovation and Skills (BIS), Citizens Advice (CA), Consumer Focus (CF) and the Broadband Stakeholder Group (BSG) since the last Panel meeting. BIS is currently considering the period of transition until Citizen Advice takes over responsibility for consumer advocacy in approximately 18 months time, subject to a change in legislation. BIS are keen to ensure that the Panel has input into the shape of UK consumer advocacy in the future and will continue to engage with the Panel, via the Chair.

3.2 Members gave their support to the action taken and views expressed by the Chair on this issue and **AGREED** that the Chair should continue to engage on behalf of the Panel as appropriate.

3.3 Members **AGREED** to issue a statement in its November newsletter regarding its continuing engagement on handover arrangements with Ofcom and Citizens Advice. It also **AGREED** that once the Panel's future is clear a statement and press release will be issued.

3.4 Members **NOTED** that Fiona will join a working group to consider consumer issues established by the Scottish Government and Maureen will be meeting with the Department of Enterprise, Trade and Investment in Northern Ireland shortly.

4. Panel Workplan 2010/11 and Future of the internet research scope

4.1 Members considered the revised workplan and **AGREED** to continue working on the following areas:

- Behavioral economics - publish report by end December;
- Mobile Usability - undertake stakeholder event and publish research by mid January;
- Net neutrality - comment on BSG principles via email and engage with Ofcom on a periodic review basis (February);

- Switching - respond to Ofcom's consultation in November then engage with Ofcom on a periodic review basis (February);
- Universal Broadband - engage with BDUK on a periodic review basis (February);
- Non-geographic call services review - engage with Ofcom on a periodic review basis (February) particularly in relation to what Ofcom has changed as result of Panel input;
- Advertising of broadband speeds - respond to the CAP consultation in January;
- Ofcom's Annual Plan - engage with Ofcom on a periodic review basis (December) and respond to Ofcom's consultation in February;
- Communications Bill - engage with on a periodic review basis; and
- Mobile coverage - engage with on a periodic review basis.

4.2 Members **AGREED** to stop working on the following areas which had previously been part of the Panel's 2010/11 workplan:

- Toolkit review of Ofcom projects;
- Digital Participation - Advisory Team to contact Inside Government and withdraw from event on 1 December;
- Spectrum release - stop engagement after November Panel meeting;
- Online copyright infringement - stop engagement; and
- Implementation of the new EU telecoms framework - stop engagement.

4.3 Members **AGREED** that if a decision is made for the Panel to continue after March 2011, whether based at Ofcom or elsewhere then the Panel would like to be updated on the following issues:

- Implementation of the new EU telecoms framework; and
- Ofcom's Consumer Experience Report.

4.4 Members **AGREED** to add a number of new areas of work into their the Panel's 2010/11 workplan:

- engagement with BIS, CA, CF and the BSG on the future of consumer advocacy in the UK;
- engagement with Ofcom on its new governance structure;
- a piece of original research - see minute 4.5; and
- a document to illustrate the Panel's agreed philosophy - see minute 4.6.

4.5 Members discussed a number of options for research on the future of the internet and **AGREED**, subject to resources, to undertake a piece of original quantitative research on consumer attitudes to privacy and monetisation of data.

4.6 Members **AGREED** that the Panel should draft a document to bring to life the Panel's philosophy on a number of issues, as defined over the last two years. A small steering group will be formed, to identify issues on which the Panel has developed and adopted overarching positions, to be articulated in the document. The Advisory Team will pull together information to be used as illustrations of where the Panel has shared these philosophies.

5. Panel interim governance arrangements

5.1 Members were updated on recent discussions which confirmed that Ofcom are prepared to provide the Panel with required resource until at least the end of the financial year. Members will be informed once a response from BIS has been received regarding the Panel Chair's term of office.

5.2 Members **AGREED** that in order to complete the revised work plan for 2010/11, including the new research project and the additional work on engaging with the Ofcom governance review and the future of consumer advocacy in the UK it is imperative for the Panel to continue with a full Advisory Team until 31 March 2011. Members **AGREED** to formally notify Colette Bowe of the Panel's intention to continue with full resource until 31 March 2011.

5.3 Members **AGREED** to ensure that all Panel advice and research is made available to Citizens Advice and other stakeholders. Members **AGREED** to keep all dates for future Panel meetings to be used for formal business and/or other sub-group meetings. Due to the unavailability of the Chair and another Member, the Panel **AGREED** to change the date of the January meeting to Monday 24 January. [Secretary note: The January meeting has subsequently been cancelled].

6. Minutes of the meeting on 13 October 2010, matters arising and progress on actions

6.1 Members **APPROVED** the draft minutes for signature by the Chair and **NOTED** the current status of actions arising.

7. Panel discussion of approach to agenda policy items

7.1 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.

8. Ed Richards - Ofcom Chief Executive

8.1 The Panel welcomed Ed Richards to the meeting to discuss the future of UK consumer advocacy and Ofcom's plans for consumer representation. Members heard that as part of Ofcom's restructuring a new consumer group will be created which will ensure that consumers' interests are at the heart of Ofcom's decision making structure. The consumer group will be led at a senior level by a consumer champion. In addition Ofcom hopes that its Nations and Communities Committee and national Advisory Committees will provide input into the consumer group and other Ofcom groups on consumer issues. However this input will be made in a different way to the input currently provided by the Panel.

8.2 In relation to the future of UK consumer advocacy Members heard that Ofcom is uncertain of what external consumer advocacy will be available in the future, but Ofcom will want to ensure that consumer issues are not overlooked.

8.3 Members requested that Ofcom ensured these changes are appropriately communicated to all relevant stakeholders as soon as possible.

9. Broadband Stakeholder Group - Net Neutrality and traffic management

9.1 The Panel welcomed Antony Walker and Pamela Learmonth to the meeting to discuss the work being undertaken by the Broadband Stakeholder Group (BSG) to make consumer information on net neutrality and traffic management more transparent, understandable and comparable across different operators. The following points arose from the discussion. The BSG:

- has responded to Ofcom's net neutrality consultation, expressing the view that enhancing transparency is important and will be a good first step;
- has set up a small working group, encompassing 70% of the larger providers to discuss the issues and reach some conclusions;

- working group is developing a code, including a number of principles that will inform how traffic management practices are communicated to consumers;
- is committed to ensuring: consumers gain access to meaningful comparable information; there is an independent verification of providers' adherence to the principles; and third parties are able to make a retrospective analysis of the implications of providers' traffic management policies;
- will share the code and good practice principles publically by the end of the year or early next year and will have an ongoing dialogue with stakeholders;
- anticipates that the code and principles will result in providers' policies becoming aligned and any differences in policies being highlighted by comparison;
- anticipates that the code and principles will help address current issues and help address new issues as they develop in the future;
- has discussed the code with the Internet Services Providers' Association who are taking an interest and will consider whether they wish to adopt the code; and
- anticipates that once the code has been agreed Ofcom will decide whether to publish it and whether to establish a verification process.

9.2 The Panel gave the following **ADVICE** to the BSG, it should:

- ensure that it identifies what information about traffic management consumers want to know and ensure that any comparisons made between providers include all factors which are of importance to consumers, not just traffic management policies;
- ensure that the code can be read and understood by consumers;
- ensure that the code commits providers to informing consumers when changes are made to their traffic management policies and ensure contractual requirements which enable consumers to get out of their contract on the basis of any material change to service;
- consider whether to develop an online arbitration service to enable quick and inexpensive arbitration of disputes relating to material changes to service through changes in traffic management policies; and
- engage with other consumer stakeholder groups regarding the code, such as: Consumer Focus; Which?; the Consumer Forum for Communications; and the Open Rights Group.

9.3 Members **AGREED** to comment on the BSG's draft principles when available.

10. Ofcom - Review of Broadband Speeds Advertising

10.1 The Panel **CONSIDERED** a paper which outlined Ofcom's thoughts on the advertising of broadband speeds, in anticipation of a consultation by the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP). The following points arose from the discussion:

- a one month consultation is due to start at the end of November, which could deliver a decision by CAP and BCAP in late February;
- it is expected that the consultation will be a "closed" consultation open only to relevant stakeholders, though some consumer stakeholder groups are expected to be invited to respond;
- Ofcom strongly feel that the current practice of advertising an "up to" speed must be changed;
- Ofcom prefer a typical speed or range, but does not, at this stage, have a preferred definition of how this typical speed should be measured and advertised;

- Ofcom are considering a speed range that could be based either on sync speed or throughput speed;
- transparency of actual speeds achieved could encourage both ADSL and cable providers to invest in speeds improvements; and
- Ofcom are continuing work on broadband speeds and are intending to publish the next fixed-line residential broadband speeds report and a mobile broadband speeds research report early in 2011.

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

- focus on achieving a better descriptor than is used at present and do not use the “up to” descriptor at all. Members are clear that the “up to” descriptor has lost credibility with consumers. Using the “up to” descriptor in combination with a typical speed range will be impossibly complicated for consumers to understand and will be viewed as contradictory;
- the descriptor should indicate that speed is not the same for all, therefore prompting consumers to ask for actual speeds at point of sale;
- strap lines should be kept short and simple, otherwise some of the strap line will be included in the small print;
- information included in small print should be kept to a minimum;
- ISP’s should be responsible for justifying any speed claims they make;
- bear in mind that not all consumers understand percentages and therefore could find a descriptor using a percentage figure confusing. When describing “most” or “typical” consumers generally respond better to 2/3rds or ¾ as a descriptor;
- consumers are more interested in what they can do with a speed than what the speed actually is, so slow, medium and fast descriptors may be more meaningful, however will still need to be defined; and
- when making a choice between options, Ofcom should consider factors of importance to consumers rather than industry, giving weight to those factors of more importance to consumers.

10.3 Members **AGREED** to share their draft consultation response with Ofcom.

11. Review of Broadband Speeds Advertising

11.1 The Panel **CONSIDERED** a paper drafted by the Advisory Team which updated Members on the proposed consultation by CAP and BCAP on broadband headline speed claims, research on consumer views of broadband speeds advertising by Virgin Media (conducted by ICM) and previous Panel advice on the advertising of broadband speeds. Following a discussion, Members **AGREED** on the following points:

- the proposed consultation being open only to relevant stakeholders, including consumer stakeholder groups, is not ideal and means that strength of argument from consumer groups will need to be strong to counteract considerable industry representation;
- the “up to” descriptor is no longer credible or sustainable;
- what matters to consumers most is what they can do with a particular speed, however it is too difficult to define this in an appropriate and consistent way for advertising;
- some type of typical speed descriptor is the best option, but average as a descriptor is confusing for consumers due to the many statistical definitions;
- a single speed is preferred to a speed range;

- 60% as a typical speed descriptor is not appropriate to indicate “most” consumers. For a definition of “most” to be used it would be helpful to carry out research to find out what consumers understand “most” to mean, and to base the policy proposals on the findings. Members felt that “most” might indicate that at least 70% of consumers must be able to achieve that speed. However, “most” could be as high as 80 - 90%;
- if an 80% “most” can not be used then a short and simple strap line is preferred, such as “2 out of 3 people will receive Xmb”, which indicates that speed is not the same for all, therefore prompting consumers to ask for actual speeds at point of sale;
- behavioural economics shows that disadvantaged consumers are more likely to become disadvantaged by confusing and lengthy information in adverts. Therefore adverts must be short, simple and with minimum information included in small print;
- small print should encourage consumers to ask for the actual speed at point of sale rather than try to describe the reasons why speeds may be different;
- the argument by some providers that a typical/average speed is unfair to those providers who have invested in rural areas with longer average line length and therefore lower average speed is counteracted if the average speed is calculated for each package available. Providers will be encouraged to place consumers on the right speed package and improve their average/typical speeds;
- as faster broadband networks are rolled out and speeds in general increase, information about speeds could become less important for some consumers; and
- when deciding which option is best for consumers policy makers should take into account the need to:
 - differentiate between providers to promote competition and increase investment;
 - ensure comparability within and across networks; and
 - have some form of credible verification of speed claims. The system to measure and verify speed claims should not incur costs which are likely to be passed on to consumers or which outweigh the expected benefits in terms of improved speeds.

11.2 Members **AGREED** to draft a response to the anticipated consultation, including a set of consumer principles which can be used to assess possible ways of improving the advertising of broadband speeds to consumers and share these with Ofcom.

12. Ofcom - Spectrum for mobile services

12.1 The Panel **CONSIDERED** a paper which updated Members on Ofcom’s approach to making more spectrum available for mobile and mobile broadband services. The following points arose from the discussion:

- the planned changes may result in the reduction of 2G capacity by some operators in urban areas. However Ofcom assume that operators will limit the impact as much as possible;
- there is a risk that through time greater spectrum holdings on the part of some operators may lead to less competition;
- Ofcom is trying to ensure ongoing levels of competition through the spectrum award. It will aim to avoid an overconcentration of spectrum in the hands of particular operators and promote alternative market entry if appropriate;
- Ofcom are considering whether, and if so how, to promote the wider availability of mobile broadband services;

- Ofcom are considering how the 800MHz spectrum auction may help in meeting the Government's target of extending superfast broadband provision to the "final third";
- when considering the possible options, Ofcom will analyse the pros and cons for consumers and citizens and present this analysis to the Ofcom Board; and
- Ofcom expect to hear whether Government will bring into force a direction covering this work within a few weeks.

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

- ensure that an analytical framework for recommending which citizen and consumer objectives to pursue through the spectrum auction is developed appropriately. The framework should take into account the social and economic benefits for citizens and consumers, including small businesses, and the analysis should take account of qualitative and quantitative benefits;
- consider any potential impacts on consumers, particularly vulnerable consumers, who only use mobile phones for limited calls and who are less able to switch provider;
- show an analysis of any implications for competition in the proposals;
- help Broadband UK as far as possible to achieve the target of delivering superfast broadband to the "final third" and engage with the devolved administrations in relation to improving coverage in rural areas;
- when considering whether to pursue coverage obligations through the spectrum auction, also consider setting out an option for pursuing coverage obligations at a later date. Setting out clearly the process for identifying when (at a trigger point) and how these obligations would be imposed in the future; and
- be transparent about how Ofcom is making each decision, which will encourage acceptance of the proposals.

12.3 The Panel **AGREED**, due to a lack of resources, to not engage any further with this issue. However, it will provide clear guidance to Ofcom on how to ensure the interests of citizens and consumers are at the heart of their work going forward, via the minutes of this meeting.

13. Panel's mobile usability research

13.1 The Panel **CONSIDERED** a paper drafted by the Advisory Team which updated Members on the research commissioned from Ricability to explore how far improvements in the usability of equipment for older and disabled customers would benefit all users, and how these improvements can best be delivered. The following points arose from the discussion:

- input on the draft report and recommendations will be gained through a stakeholder event on 23 November;
- the Global Accessibility Reporting Initiative (GARI) information provision initiative, which aims to encourage manufacturers to provide comparative information about the accessibility features of the phones they make, could be a useful guide for sales assistants if it is kept up to date and is appropriately publicised;
- mobile phones with improved usability features could be a growth area for manufacturers in the future, as current regular mobile phone users become older;

- the most interesting of the key findings as identified in the Executive Summary are 2 (usability ladder), 3 (increasing customisation) and 7 (accessible information);
- one recommendation could be exploring with operators the possibility of testing phones with older and disabled users; and
- consumers, and their friends and family, need to know where they can go to access support in understanding phone functionality, such as in store sales advisors and community support groups if available.

13.2 Members **AGREED** to update the report to reflect feedback from Members and stakeholders ahead of publication. Members **REQUESTED** that the drafting be checked to ensure the appropriate use of “older and disabled” as a group descriptor and the over age 35/old descriptor.

14. Switching - draft consultation response

14.1 The Panel **CONSIDERED** a paper drafted by the Advisory Team which proposed a draft response to Ofcom’s consultation on switching processes in the communications sector. Following a discussion Members **AGREED** to update the consultation response by:

- encouraging Ofcom to ensure that the strategic review includes a plan for reviewing all sectors as quickly as possible, to limit the time it will take to review other sectors. If consumers are able to switch providers more easily and confidently in a way which makes them better off, the communications market will become increasingly competitive and ultimately benefit all consumers. Members are keen for this to happen and are therefore concerned that Ofcom has taken considerable time to get to a point at which it has issued the consultation. The pace of change in the communications sector and the number of consumers likely to reach the end of a bundle contract soon gives Members concern that in order to be effective this strategic review needs to be conducted as quickly as possible.
- emphasising that the issue of whether gaining provider led processes could lead to increased slamming needs to be properly addressed;
- addressing the argument that gaining provider-led processes will limit save activity which industry believes is good for consumers. Members are clear that save activity is not transparent, hampers competition and is not available to all consumers on an equal basis. Therefore save activity is not in the interests of all consumers, particularly disadvantaged consumers. Gaining provider led processes will encourage operators to become more transparent and open about their policies to encourage customers to switch; and
- highlighting the benefits that by streamlining switching processes, consumers will be more inclined to switch as the stress of switching will be reduced.

14.2 Members discussed whether consideration should be given now to developing a case for a public campaign to increase consumer awareness of switching and the benefits it can bring. Members **AGREED** that this idea should be passed to whichever body takes over the Panel’s functions in this area.

15. Behavioural Economics

15.1 The Panel **CONSIDERED** a paper drafted by the Advisory Team which updated Members on the publication plans for a report commissioned from the Economic and

Social Research Institute (ERSI) on behavioural economics and vulnerable consumers. The following points arose from the discussion:

- the paper will be published under the author’s own names and has been peer reviewed to ensure the conclusions are sufficiently robust given the limited nature of the available evidence; and
- Members feel the report and Panel foreword are of good quality and will be useful to highlight the differences in behaviour between different groups of consumers.

15.2 Members **AGREED** to:

- publish the report and foreword, subject to final sign-off and double checking publication arrangements with ERSI; and
- disseminate the report to stakeholders as per the plan, with the addition of the Office of Fair Trading.

16. Panel round up discussion of agenda policy items

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

17. Any Other Business

17.1 Members **NOTED** that Members and Advisory team will meet on the evening of December 15th to say goodbye to Panel Members who have recently stood down.

.....ChairmanDate