

Minutes of the 73rd meeting of the Communications Consumer Panel

on 15 December 2010 at 10.30 hours

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

Present

Consumer Panel

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

In attendance

Alistair Bridge (Principal Adviser)
Nicola Ebdon (Panel Secretary)
Emily Keaney (Policy Adviser)
Ofcom colleagues (items 6, 8 and 9)

1. Declaration of members' interests

1.1 Members **NOTED** that Anna Bradley has taken a position as a Board member of the Colchester Hospital University NHS Foundation Trust.

2. Minutes of the meeting on 17 November 2010, matters arising and progress on actions

2.1 Members **APPROVED** the draft minutes for signature by the Chair, subject to some small amendments, and **NOTED** the current status of actions arising.

3. Ofcom Governance Review

3.1 The Panel **NOTED** that it had not been possible to arrange a follow up meeting with Tim Gardam, the Chair of the new Nations and Communities Committee, to find out in more detail how the new committee structure will handle consumer issues. Members **DECIDED** to continue to try and arrange a follow up meeting with Tim Gardam, after which the Panel will develop its response to Ofcom's proposed governance arrangements. The Panel **AGREED** to arrange a meeting for Bob and/or Anna with Bill Dutton, the Chair of the Advisory Committee for England.

3.2 Members **NOTED** progress made with arrangements for Panel resource until the end of March 2011 and recognised that the Panel team, as Ofcom employees, may be unable to engage in discussions regarding the Panel's future.

3.3 Members **AGREED** to collectively send a letter to Ed Vaizey, the Minister for Communication, Culture and the Creative Industries and Ed Davey, the Minister for Employment Relations, Consumer and Postal Affairs, urging them to make a decision regarding the extension of the Panel Chair's term past 9 January 2011 and outlining concerns regarding the Panel's ability to function effectively past 31 March 2011. The Panel **AGREED** that should the Chair's term not be extended, Bob Warner would become Panel Chair for Ofcom purposes.

3.4 Members discussed Ofcom's recent communications with stakeholders regarding the Panel's future and Ofcom's plans for consumer protection. Members

NOTED there remained confusion on this issue with stakeholders. The Panel **AGREED** to develop a statement regarding the Panel's future, based on the description published in Ofcom's Annual Plan, to inform stakeholders in January.

3.5 Members are still uncertain about how Ofcom will be structured from 1 April 2011 and **AGREED** to ask the Ofcom Corporation Secretary for an organogram showing Ofcom's new top level management and governance structure, so that Members are able to communicate appropriately with Ofcom.

3.6 Members **NOTED** the content of the speech made by the Panel Chair at Ofcom's Consumer Experience Report launch on 8 December 2010.

4. Future of Consumer Advocacy

4.1 Members discussed the outcome of engagement between the Chair and the Department for Business, Innovation and Skills (BIS) regarding the Consumer Landscape consultation and the outcome of other engagement on the future of consumer advocacy. Members **NOTED** that meetings with John Fingleton, Chief Executive of the Office of Fair Trading, Richard Hooper, Chair of the Broadband Stakeholders Group and Gillian Guy, CEO of Citizens Advice are being arranged. Roger Darlington **AGREED** to approach Christine Farnish, Chair of Consumer Focus to follow-up on a suggested meeting.

4.2 Members discussed a number of issues relating to the future of consumer advocacy in the UK, including in the devolved Nations. During the discussion Members **AGREED** to:

- identify the most effective way of protecting consumers' interests during any transitional period, once the Panel's future is clear;
- if required send a subsequent letter to Ed Vaizey, the Minister for Communication, Culture and the Creative Industries and Ed Davey, the Minister for Employment Relations, Consumer and Postal Affairs, outlining Panel concerns regarding potential gaps in consumer advocacy, once its future is clear;
- consider proposed options for the future of consumer advocacy in the UK, including the devolved Nations and exchange views by email ahead of discussion at sub-group meeting on 19 January 2011;
- develop a communications plan to ensure the Panel is able to engage with stakeholders in relation to the consultation on the future of consumer advocacy in the UK. The plan will be circulated for discussion at a Panel sub-group on 19 January 2011.

5. Panel discussion of approach to agenda policy items

5.1 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.

6. Ofcom - Monetisation of Personal Data

6.1 The Panel **CONSIDERED** a paper which updated Members on Ofcom's internal research study to assess developments in the collection and analysis of information about individuals, enabling granular personalisation of services, advertising and marketing based on preferences, behaviours, demographics and/or location. This research was conducted as part of Ofcom's wider online developments work to ensure Ofcom are aware of current market issues and was shared with the Panel as

background for the Panel's planned research. The following points arose from the discussion:

- the speed of change and how behavioural targeting is being used is surprising;
- the issues are very complex, including identifying who owns the data and the blurred lines between targeted advertising and consumers opting to receive updates about things that interest them. Therefore it is hard to establish risks to consumers of this activity and it is not clear whether it will lead to significant consumer harm;
- the rapid processing of personal data is becoming integral to all businesses and is affecting how they operate and competition over who owns the data will become increasingly important to businesses;
- there are likely to be benefits of behavioural targeting which need to be explained to consumers, however balancing this with the importance of protecting individuals by ensuring that personal data is managed appropriately and secured properly is a challenge;
- consumers should be made aware of the limits of computer security software in protecting against data collection systems and will need to take appropriate steps to use the internet securely;
- improvements in the simplicity and quality of information available for consumers must be made to ensure that consumers are clear what data they are giving away when they agree to terms and conditions and what they will get in return;
- consumers should be made aware of the consequences of receiving advertising on their mobile, such as who will pay for the advertising. Working out who pays for the advertising and who gets the benefit is very complicated and consumers need to be able to make an informed choice, such as accepting advertising in exchange for a free application; and
- consideration of the implications of data being used to provide public sector benefits should be made, including who owns the data collected and whether individuals can be traced via the data.

6.2 Ofcom **AGREED** to find out whether Ofcom have engaged with the Information Commissioner's Office to find out if they are also considering this issue.

6.3 The Panel **NOTED** that the Consumer Forum for Communications had received a presentation from Privacy International which may be of interest to Members. The Advisory Team will try and obtain a copy of the presentation to circulate to Members if appropriate.

7. Monetisation of data research update

7.1 The Panel **CONSIDERED** a paper drafted by the Advisory Team which updated Members on progress made on scoping the quantitative research to investigate consumer understanding and awareness of monetisation of personal data on the internet and set out the resource arrangements, timetable and next steps. Following a discussion, Members **AGREED** that the research should:

- identify the potential advantages as well as risks for consumers, including public benefits, in the summary;
- include questions as advised by the research agency; ensuring that the questions are not leading and consideration is given to including some unprompted questions regarding potential benefits and threats, some trade-off

questions to identify what risks consumers will accept to obtain benefits and a ranking question to establish on a scale how comfortable consumers are with what is happening to their data;

- draw on the data typology used in Ofcom's research to structure the types of risks and benefits;
- try and draw out consumer attitudes towards companies they know and trust and ones they don't;
- include social networking if possible;
- include examples of the benefits of data collection and positive uses of information as well as examples of targeted advertising;
- include examples of different types of data being collected such as buying habits versus financial details;
- include proposals to industry as to how to help consumers understand and protect their privacy and recommendations for further research and debate;
- consider how much control consumers actually want and how much they would prefer to be regulated;
- possibly include a schematic to identify the trade offs and issues consumers should consider; and
- identify to industry that they should not take consumer trust for granted.

7.2 The Panel **AGREED** for the Advisory team to consider with Ofcom's market research team and the research agency whether it would be possible to split the research results by length of time using the interest, amount of use (regular or occasional) and type of use, subject to research time constraints.

7.3 Members discussed the types of consumer codes of practice in existence and **AGREED** to identify if any lessons have been learnt from the market research society's code of conduct on data use. Members considered that a general consumer principle code could be of value to consumers however recognised that the principles could become very complicated and would be hard to put into practice.

7.4 The Panel **NOTED** that the Advisory Team have approached the Westminster Forum to secure a speaking slot on this issue in March. Members **AGREED** that Fiona will act as the Panel Lead on this project to ensure continuity of knowledge.

8. Ofcom - Draft Annual Plan

8.1 The Panel **CONSIDERED** a paper which updated Members on Ofcom's draft Annual Plan, outlining Ofcom's proposed priorities and major work areas. The following points arose from the discussion:

- due to limited resources, Ofcom is for the first time using a traffic light gating system to assess possible policy projects to make sure that Ofcom can make an impact and achieve a difference. Members **RECOMMENDED** that Ofcom explain the use of the gating system in the draft Annual Plan and be clear about the areas in which they are not going to do any work and the reasons why as consumers and citizens will need to understand why Ofcom are not addressing issues of importance to them;
- Ofcom are not describing their priorities in terms of effect on consumers, despite a strong Panel request to do so a year ago;
- Ofcom are attempting to express the consumer and citizens benefits for each priority in the expected outcomes, against which Ofcom will assess its performance. This approach fits with the recommendations of the National Audit Office;

- Ofcom has not yet decided how and when each outcome will be assessed and who will decide whether there has been a consumer benefit in each outcome; and
- the draft Annual Plan consultation process will be shorter than in previous years, with some public meetings to answer questions. Members **RECOMMENDED** that Ofcom make these meetings livelier to stimulate debate.

8.2 The Panel **AGREED** to respond formally to the Ofcom Annual Plan consultation and include the following points in the response:

- areas which are of high importance to the Panel but which are not included in the Plan;
- that the new gating mechanism could mean that areas of importance to consumers or citizens may not be included in the Plan and that Ofcom must make their decisions not to choose consumer or citizen issues using the gating process transparent;
- that Ofcom's primary purpose to deliver citizen and consumer benefits is not reflected in all its strategic priorities, where only one mentions consumer priorities, so the Panel will suggest new wording for each priority focused on citizens and consumers and deliberately linking the priorities with outcomes;
- suggest new measurable and meaningful process and consumer outcomes related to Ofcom's primary duty and check that delivery mechanisms will result in the required outcomes. This is particularly important to identify where outcomes are not likely to deliver Ofcom's primary purpose. Outcomes should be shown as either intermediate if within Ofcom's control or longer term which are more dependent on market developments; and
- make recommendations as to how, when and by whom the outcomes should be assessed, including independent assessment, particularly of the extent to which Ofcom's decisions impact the outcome.

8.3 Members **AGREED** to circulate their response to the Ofcom draft Annual Plan consultation to other interested stakeholders.

9. Ofcom - Relay Services Review and Consumer Affairs Quarterly Review

9.1 The Panel **CONSIDERED** a set of papers which updated Members on the progress of Ofcom's consumer policy projects and enforcement work and their expected activity over the next quarter.

9.2 In relation to the Review of Relay Services the following points arose from the discussion, Ofcom is:

- considering the results of quantitative research into relay services which examines how consumers use relay services and issues they have with the use of communications;
- considering what improvements to existing relay services should be made and the benefits of video relay, based on the research evidence, and what broader economic benefits these services could bring;
- going to engage with Government regarding options for video relay services;
- continuing to attempt to engage with disability stakeholder groups to establish what video relay service is achievable in the UK. Ofcom recognises that there are legal problems with the video relay service implemented in the USA and that some form of rationalisation will be required to establish video relay in the UK;

- considering options for rationing of video relay services, drawing on international examples; and
- going to publish a consultation in early 2010 which will include a mandate to provide emergency services SMS. Ofcom want to be able to guarantee this service which has already proved to be valuable while being provided voluntarily.

9.3 In relation to the Review of Relay Services the Panel feel Ofcom have made a lot of progress and gave the following **ADVICE** to Ofcom, it should:

- look to propose a video relay service which is achievable and of benefit to people;
- conduct consumer research into options for rationing of video relay services. Looking to establish what consumers think are the best options from a mix of solutions with other modes of communications; and
- engage with the Panel further on this issue if required (subject to Panel resource).

9.4 Members discussed the issues raised by general consumer protection powers not applying to small businesses. The Panel **RECOMMENDED** Ofcom ensure that it considers this issue when it relies on general consumer protection powers as a remedy. The Panel would like Ofcom to conduct a gap analysis to establish where small businesses are not protected, when consumers are.

9.5 In relation to the publication of complaints data, the Panel gave the following **ADVICE** to Ofcom, it should:

- ensure it presents any published complaints data in a user friendly way, ensuring it is of practical benefit to consumers and easy to understand. Ofcom should refer to recent data published by Consumer Focus using a star rating system;
- engage with the Panel when Ofcom are nearing publication; and
- consider its focus on transparency and information which relies on consumers being able to understand a vast amount of information in order to make a purchasing decision. Members feel that in reality consumers will not use information as they find it too confusing and will make a decision on issues such as brand and price. Ofcom should look at the bigger picture for the consumer and how the remedy of transparent information works. If Ofcom is proposing to publish complaints data to make providers improve processes rather than being used by consumers, then it should be clear as to why the data is being published and therefore how the data should be presented.

9.6 Members discussed the issues a lack of 2G and 3G coverage in some areas cause for small businesses. Ofcom **AGREED** to report back to the Panel on its engagement with Government on the issue of coverage where the market is unlikely to deliver.

10. Any Other Business

10.1 The Members **NOTED** the content of a report from PhonePayPlus.

.....ChairmanDate