


Reply to Consumer Panel observations on Ofcom consultation process

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1. Thanks for the Consumer Panel's questions of 15 June on Ofcom's consultation processes. I welcome these comments and would be grateful for any future suggestions to support our performance in this area.
 2. On the timing of consultation response publication, we have now amended the consultation response cover sheet so that respondents can specifically confirm when each response can be posted on our website. New standard text for consultation documents – included below - expresses a preference for responses to be posted upon receipt:

‘The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to confirm on the response cover sheet that Ofcom can publish their responses upon receipt.’
 3. Despite the benefits of early publication of responses, we do not think that we can force stakeholders to have their responses published early, as this would lead those who did not want this to happen to submit their responses very close to the consultation close date. This would not aid transparency or debate, but could delay Ofcom decisions.
 4. The issue of what information should be confidential is a similar one, as a high test for confidentiality might deter some stakeholders from submitting relevant information to us at all. Our consultation document text does express a preference that everyone should see responses. We have also designed the consultation response cover sheet in such a way as to allow those who only want certain aspects of a response to be confidential - such as their identity or limited parts of the response – to indicate this rather than requiring that everything remain confidential.
 5. As for the grounds for confidentiality, Ofcom does have powers to disclose certain confidential information where this is necessary to fulfil its functions, although in practice it would do so only in limited circumstances. This position is stated in our standard text for consultation documents. It is difficult to define such circumstances in advance, partly as disclosure would often require legal advice based on the individual case. We need to take a balanced approach, not least as the Communications Act contains criminal sanctions, including imprisonment, on Ofcom employees improperly disclosing confidential business information.
 6. On the Panel's own position in relation to consultation responses, and subject to not revealing confidential information, I agree it is appropriate for

the Panel to have early sight of consultation responses, in accordance with the Memorandum of Understanding. If the Panel would like to specify further the types of organisations from which it would like responses (regardless of the issue concerned) we can adapt our internal guidance so that this happens.

Philip Rutnam

2 July 2004