

Capturing the Consumer Interest  
Consumer Panel Toolkit Launch  
2 February 2006

Good morning. This session will cover the lessons Ofcom has learned from being assessed using this new approach. I will also cover how we are applying the toolkit in practice. Before coming to that, I'd like to step back for a moment to provide some context on how Ofcom, and indeed the communications sector, may differ from other regulated areas; and thus how, in our particular circumstances, we are "capturing the consumer interest".

The Communications Act puts the consumer front and centre. Our core statutory duty is:

- to further the interests of citizens in communications matters (statutory code for the importance of communications and media to democracy, of plurality, cultural quality and the need for universality) and
- to further the interests of consumers in relevant markets where appropriate by promoting competition.

But we are also enjoined to secure a wide range of communications services throughout the UK and to have regard to the desirability of:

- investments and encouraging innovation;
- the availability of broadband;
- the promotion of competition;
- reduction in regulation over time and
- of promoting effective self-regulation.

What does this say? That the consumer interest is very important; and that it is best met by helping to develop as near to an effectively functioning market as possible.

But as the Consumer Panel's report notes, getting from A to B involves different balances and allocations of priority to those decisions which benefit the consumer in the short term. It recognises that every regulatory decision can distort the development of an effective market. It also acknowledges the importance of decisions which bring sustainable benefits for the consumer in the longer-term, through the investment, innovation and competition that delivers range, choice and affordability. It is a tightrope; and identifying and capturing the real consumer interest in each case is a crucial step.

Ofcom is substantially helped in that task both by the innovative design – and subsequent practice under Colette Bowe's chairmanship – of the Ofcom Consumer Panel. As the DTI's recently published Consumer Policy document notes, there are broadly two models of consumer representation. There is the more traditional model which has developed over the past 20 years: quite large, responsible for handling of individual complaints (but not arbitration), feeling required to respond to each and every consultation document the regulator issues – a cottage industry in its own right - and set up to be distant from, and sometimes adversarial to, the regulator. That is one model. The other is that of a Consumer Panel that is lean, independent but in the flow, a 'critical friend' to the regulator and above all strategically focused. That is the model that the Communications Act set up for the Ofcom Consumer Panel, and is very much how Colette and her Panel colleagues have operated. Specifically, by:

- making an important input at the design stage of our annual and three year rolling plans, identifying those issues and projects that will be of real significance to consumers and getting into the flow early;

- helping to shape our market and consumer research programmes in a way that best complements theirs;
- undertaking strategically important research. The work on identifying who most would be the vulnerable consumers in digital switchover in television, proposing practical steps to help those consumers and assessing the likely cost of those measures - in the Panel's report to the Secretary of State was in my view, a very significant milestone in the national digital switchover programme; and
- here's where we come to today; key underpinning projects such as the Consumer Interest toolkit which help the regulator to help itself.

Leaving aside, for a second, the individual prescriptions and recommendations in the toolkit, I think it is fair to say that we found the process of assessment itself helpful in getting an Ofcom-wide focus on how we do capture the consumer interest. As the toolkit notes this can easily be an implicit, and thus unconsidered – or at least not rigorously considered – process.

If there is a fair criticism of Ofcom's first two full years in operation I would say it is that we were slower to bring that considered focus on capturing the consumer interest than we would have liked.

In part, I think that reflected the inheritance from the five legacy regulators. I exclude from that the Broadcasting Standards Commission whose work on fairness and privacy in broadcasting went strongly to questions of individual redress – but was a very particular interest and essentially a citizen interest rather than a consumer one. Most of the others simply did not have consumer issues in their DNA. Oftel, to be sure, did have consumer responsibilities and its last DG, David Edmonds, pioneered the independent ombudsman/arbitration schemes for individual consumer complaints – a model commended in the DTI's Consumer Policy document. But there was also a perception that the promotion

of competition was an end in itself, that the consumer interest had become implicit not explicit, with a focus on the resolution on inter-industry disputes.

Also – in part – and this is a lesson for those who will be the product of regulatory mergers, for which there is an increasing fashion – the set up and bedding down stages of what will be, if successful, not simply a merger but a start-up take longer than you think they will; and it is important to bake the consumer interest early.

That said, since the end of Ofcom's first operational year we have adopted a steadily closer and more intense focus on consumer interests – a process which has continued through the PwC assessment phase and into the implementation of the toolkit's recommendations. That activity falls under four broad headings:

- consumer protection;
- informed consumers;
- competition in the consumer interest and
- structures and processes.

Let me make a few observations about each of these, starting with consumer protection.

Although telephone services are in virtually every house (like electricity or water) the communications sector is very far from being a utility business. We have five vigorously competing mobile networks and a further 8 MVNOs; three competing broadcast platforms; convergence and local loop unbundling are opening up many more multi-purpose networks; in broadband the vast majority of consumers have access to a multiplicity of providers; and in plain old fixed line voice telephony, carrier pre-select, wholesale line rental and voice over IP mean that millions of residential consumers have an end-to-end service relationship with someone other than BT. What's the point? It is this: just as technology change is

bringing great increases in choice and range, it is also providing opportunities for fraudsters and rogue traders to exploit consumers who are unaware of the existence of the scam until they are hit by it, often for substantial sums of money. Such issues can arise on a large scale and very quickly.

Major examples over the last couple of years have included internet dialler frauds involving Premium Rate calls and, in mobile, unscrupulous practices around premium rate downloads - often aimed at children or teenagers. Both of these issues fell into the bailiwick of Ofcom's co-regulator, ICSTIS. And, with them, we undertook a thorough review of ICSTIS' capabilities, powers and processes, adopting, as it happened, several of the steps recommended in the toolkit. They now have much more substantial fining powers, emergency code powers to act at speed, and improved mechanisms for working with the communications operators, whose networks are the innocent conduits for such scams but whose timely cooperation in cutting them off is vital.

Much of the illegal activity in the 09 Premium Rate number range has now been stamped out. But, like dodgy traders on Oxford Street, as soon as they are closed down in one location they pop up again elsewhere, perhaps in less lucrative but still profitable (for them) places. Regulators, who have to follow due processes have to run hard to keep up as the rapidly evolving market and technologies throw up new types of consumer issues and problems that existing systems have not been crafted to deal with. So, short of giving regulators arbitrary, King Henry the Eighth powers, which many would, rightly, be leery about, regulators have to equip themselves to be fast off the starting block. This reinforces the importance that we put on the toolkit's recommendations about effective early warning and issues logging systems to track emerging consumer issues and to surface them quickly at senior levels in the organisation so that the right remedial action can be taken.

In Ofcom's case, whilst considerable strides have been made over the last year, enabling us, for example quickly to identify emerging consumer migration issues in broadband and to get the operators on the case (issues no doubt inevitable in what is the fastest growing market in Europe), we think more can be done. So, we are bringing together all the 'trip wire' points in the organisation (and around it, including our co-regulatory bodies and industry self-regulatory organisations) and incorporating their input into Ofcom's top level management information.

Secondly, informed consumers; essential to any well-functioning market. How best consumers can be informed of their rights and risks, of tariffs, of choice, of quality of service, to enable them to pick what is best suited to them, is one of the themes in Ofcom's Consumer Policy Review on which we will be consulting from next week.

I will make only two observations today: firstly, I think all regulators are aware of the limitations, as means of effectively informing consumers, of the occasional regulatory leaflet in the library or Citizens' Advice bureaux, of the information on the back of the bill, or even of bunging things up on the website. In general the market is much better at informing consumers than any regulator can be. But there may be a couple of exceptions: where the issue is an international one where tariff information is not readily available on the market - for example international mobile roaming prices, where we have recently brought information together on our website for consumers to be able to identify better deals and avoid the pitfalls; and where a previously monopoly or incumbent market is being liberalised – as in bus deregulation or Directory Inquiry liberalisation, where there will be transition issues in the market, or where there is an enforced change affecting consumers. Here there can be a case for the regulator holding the ring, to encourage a structured and coordinated response from the industry to inform consumers. At our recommendation, that is the role that Digital UK is playing with the broadcasters, retailers and manufacturers in digital switchover.

Thirdly, competition in the consumer interest. The toolkit provides a useful reminder that, over time, regulators can come to see competition in and of itself as being in the consumer interest. Regulators can tend to spend increasing amounts of their time and intellectual energy on inter-industry discussions about competition at the wholesale layer. And often, that produces good outcomes for the consumer. Ofcom would not have spent the time it has on local loop unbundling – a wholesale layer issue - if we were not convinced that it would lead to higher broadband speeds, cheaper calls and a raft of new triple-play services that will offer consumers the full benefits of converged communications technology. But in those wholesale layer discussions, it is vital always to keep front of mind where the end-user's interests lie.

The Consumer Interest toolkit provides, in my view, some good pointers on how to systematise that necessary focus on the consumer interest.

Fourthly, turning to systems and processes; the published toolkit document sets out in detail our proposed implementation plan so I will not reprise it here. I will confine myself to three of the steps we have taken or are taking: first, the appointment last September of a Consumer Policy Director who is very clearly part of Ofcom's Senior Management Group, able to bring the necessary intellectual rigour and clout to bear within the organisation for the consumer interest; second, locating that team within the Strategy and Market Developments Group so that their work infuses the whole organisation rather than being a bolt-on activity; third, a strengthened Investigations function. A regulator can have any number of well-meant and well-written consumer and competition policies; but swift and rigorous investigation and enforcement is absolutely a necessary complement to them.

In conclusion, we regard the toolkit as a very good approach. It avoids creating the 'tick box' mentality and provides a good range of practical and sensible recommendations. As I have said, the communications sector is different in many

ways from the other regulated sectors; and Ofcom has been structured differently to many other regulators. But I believe the toolkit's recommendations are at a level and of a type that can have application well beyond Ofcom, and I commend it.