

**CONSUMER  
PANEL**

**Ofcom**  
OFFICE OF COMMUNICATIONS

# **Capturing the consumer interest**

**A toolkit for regulators and government**

**February 2006**

# The Ofcom Consumer Panel

The Panel was established to advise Ofcom, the communications regulator, on the consumer interest in the telecommunications, broadcasting and spectrum markets under the Communications Act 2003. The Panel of part-time members is independent of Ofcom, setting its own agenda but working constructively with the Ofcom board and other relevant bodies.

We focus on access to communications regardless of whether this affects people as citizens or consumers. Of particular concern to us are issues affecting older people, people with disabilities, low-income households, people living in rural and urban areas and small businesses.

Our goal is to see a communications marketplace where all consumers can choose and use products and services that suit their needs with the confidence that comes from knowledge.

The Panel's website can be found at:

[www.ofcomconsumerpanel.org.uk](http://www.ofcomconsumerpanel.org.uk)

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# Chairman's foreword

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## The reason we have produced this report

1. The question of how to ensure that the consumer interest is fully understood and taken into account in the framing of economic regulation is one of the most pressing public policy issues in the UK. A number of major industry sectors – communications, financial services, and the utilities – are for different reasons, currently subject to economic regulation. The impact of regulation of these sectors on consumers is significant.
2. There are a number of different models seeking to give the consumer a voice in regulation. All of these models recognise the sheer complexity and difficulty of understanding consumers' interests: of understanding how they might be different at different times and indeed for different consumers; and of ensuring that they are fairly taken account of in the framing of regulatory judgements. And regulators across all sectors themselves grapple with the question of how to ensure that the consumer's voice is heard as clearly as the voice of well-resourced and powerful industries.
3. For the communications sector – as for the financial services sector – the statutory model provides for a Consumer Panel. These Panels are independent of the regulator and charged with advising the regulatory board on consumer issues (but, in the case of the Ofcom Consumer Panel, not including issues about the content of broadcasting). This model is in principle a powerful one – the Panel has the freedom to set its own agenda and to make public its views about the effectiveness of the regulator in understanding and reflecting the consumer's interest in its regulatory judgements.
4. But such Panels have their inevitable limitations – they cannot shadow every policy, every regulatory intervention – nor would it make sense for them to try to do so. The Ofcom Consumer Panel has chosen to handle this problem in two ways. Firstly by limiting itself to advising the board of Ofcom and others (e.g. the Government on digital switchover) on strategic matters. In March 2004 the Panel published a statement of intent<sup>1</sup> explaining that it would set its strategic priorities in terms of relevance, detriment, practicality and disadvantaged groups. Secondly, the Panel devotes significant resources to independent, publicly available research on what actually are the issues that concern consumers. These issues in turn drive the Panel's work programme.
5. In its second year of existence, the Consumer Panel decided that it should, as an important part of its statutory duties, consider how Ofcom handles the identification and analysis of consumer interests in framing its regulatory judgements. An independent Panel with statutory backing is a powerful spur for any regulator but the real test of whether a regulator is delivering and can go on delivering outcomes that serve the consumer is whether the regulator itself has a fully developed internal capability to understand, and give due weight to consumer interests along with industry interests.

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<sup>1</sup> <http://www.ofcomconsumerpanel.org.uk/intent.htm>

## An evaluation based approach

6. In considering how to assess whether Ofcom is delivering for consumers, we came up with the idea that what we needed to do was a form of 'audit'. We believe it should be possible to test whether Ofcom is organised and resourced to give this due weight to the consumer interest. Ofcom, like other economic regulators, carries out regulatory impact assessments to try to predict the effects of its regulatory interventions. We thought that it should also be possible to test whether, in framing its regulatory judgements – i.e. before any regulatory policy is proposed or acted on – Ofcom had fully analysed and reflected the consumer interest.

## How do you define “the consumer interest”?

7. Ofcom is, by statute, required to “*further the interests of consumers in relevant markets, where appropriate by promoting competition*”. But what exactly *is* the consumer interest? The Communications Act mentions choice, price, quality of service, value for money but, clearly these various ideas might not all point in the same direction. We think that this is unavoidable – a lack of a clear, static concept of the consumer interest leads to two possible risks for an economic regulator such as Ofcom operating in a competitive market place.
8. At one extreme, Ofcom policy-makers might regard “the consumer interest” as an entirely obvious concept - its primacy being implicit in everything the regulator does. This carries the risk that at working level, different ideas of what constitutes the consumer interest are being used side by side, without their differences being seen or understood. There is also the risk that approaches to understanding the consumer interest are incomplete because so much is taken for granted or even that individuals believe that the analysis of the consumer interest is “someone else’s job”. This could lead to the consumer interest being factored in late or not at all to regulatory decision-making.
9. At the other extreme, there is a risk that the consumer interest can only play its part in the framing of a regulatory judgement if it can be quantified with great precision. The risk here is not just of spurious precision but of failing to incorporate sufficient judgement and flexibility to address the subtleties that may be required to understand and give due weight to the consumer interest.
10. Against the background of these possible risks, we thought we would explore:
  - How to define the consumer interest, or the framework for identifying the consumer interest in sufficient detail so that:
    - it is clear to those undertaking a project, and those interested in the output what the consumer issues are in any given project;
    - it is strategically consistent and coherent between the different areas that Ofcom is responsible for.
  - How to ensure that “taking the consumer interest into account” is sufficiently well evidenced throughout the processes undertaken by Ofcom that they are capable of being “audited”.

## Can the assessment of consumer interests be evaluated or “audited”?

11. “Audit” is in inverted commas because we wanted to explore whether we could develop a way of testing how the consumer interest was understood and taken into account that is comparable to the disciplines of audit (in that it considers risks, processes and evidence) – without becoming too bogged down in heavy documentation and a box ticking approach to process. We are aware that an organisation may well have heavy processes and documentation – and still not be delivering on its objectives. We are also conscious that Ofcom has been set up to perform on a process-driven model to which we were reluctant to propose adding further layers.
12. We therefore decided to see if we could develop a form of evaluative review which might in turn be able to be adapted to different projects at different times. Our aim was to produce a toolkit, a methodology that would enable the Panel – and indeed other such bodies - to see if any particular project or activity conformed to good regulatory practice in the identification of the consumer interest.

## The background to the report

13. After a process of competitive tender, we appointed PriceWaterhouseCoopers LLP (PwC) to carry out an exploratory study for us. This is summarised and reproduced in full within this report. The study speaks for itself but it is worth drawing attention to the first section which sets out the proposed methodology, the toolkit, for testing whether the consumer interest has indeed, in any given regulatory project, been assessed rigorously and consistently.
14. This toolkit was drawn up after careful exploration of how Ofcom has operated during the first eighteen months of its life. It focuses on two key policy areas and has been heavily based on interviews with Ofcom staff and documentation placed in the public domain by Ofcom. The Board and staff of Ofcom have co-operated with this project but the Panel is of course solely responsible for the conclusions drawn. However, we believe that in principle, such a toolkit could just as readily be applied by, say the board or management of an economic regulator to give itself some degree of satisfaction as to the well-foundedness (or not) of its own processes.

## What about “citizens” – are they different from consumers?

15. The analysis in PwC’s report, and the case studies it is based on, relate entirely to the interests of the consumer. However, we believe that this methodology is readily applicable to analysing how well the interests of the *citizen* are being met by a regulator.
16. The term “citizen interest” is used in the world of communications regulation as shorthand for capturing two distinct concepts.

17. The first concept of “citizen interest” is the ways in which people might have a demand for various services and products of the communications industry. This demand might not, at any price which is generally reasonable, be met by the unfettered working of the market. But this demand is recognised to be legitimate in that its satisfaction has in some demonstrable way been willed by our society. Examples of such demand might be for public service broadcasting or for the enhancement of broadcasting to meet the needs of people who have a hearing impairment. Both of these examples, in various ways, are demonstrably “willed by our society” in that their satisfaction is provided for in legislation.
18. The second concept of the “citizen interest” is more changeful and difficult to pin down. It rests on ideas about the importance of communication and connectedness in our society. These ideas themselves change over time. It also rests on an understanding that how the public and private sectors deliver their outputs is changing in ways that may make it increasingly difficult for some people to participate as fully in our society as they would wish. The dynamism of this second concept is important here. These references to “change” are not just about the use of language. People have to learn, and continue to learn, to interact with communications technology and this is a task that they may perform more or less well at different stages in their lives.
19. This second, distinct concept of the interest of citizens is about understanding how change in this market place, whether influenced or not by regulatory intervention, may work to people’s disadvantage for reasons that do not stem from their ability to have access to some good or service at a reasonable price. Examples of these kinds of “citizen” issue arise in consideration of vulnerable people in the changeover to digital TV or in considering the definition of “universal service”.
20. The Consumer Panel has, during its two years of life, looked at both consumer issues in the usually understood sense and also at “citizen “ issues as described above – which we think of as being about whether people get full access to communications irrespective of who they are and where they live.
21. We believe that evaluation / audit approach and the toolkit described in this report is equally applicable to the understanding of these “citizen” issues.

### **What happens next?**

22. The consumer interest study was discussed with the Ofcom board in the autumn of 2005 and has been used extensively by Ofcom in drawing up its consumer policy work programme for 2006. Ofcom’s response to the Consumer Panel’s study is published within this report. It sets out how Ofcom will be taking the results of our work forward.
23. In 2006/07, the Panel will also be using this methodology on another aspect of Ofcom’s regulatory work, again to test the extent to which the consumer interest is being adequately understood and taken into account in framing regulatory judgements in Ofcom. We will again publish our findings. We will also be working with Ofcom to develop ways of applying this methodology to work in connection with people’s interests as “citizens”.

24. We believe that the toolkit contained in this note could readily be applied to other economic regulators' work and we will discuss further with colleagues elsewhere in the consumer world how this technique of evaluation could usefully be developed.
25. The project board for this project was chaired by Colette Bowe, assisted by Graham Mather and Ruth Evans of the Consumer Panel, Pam Giddy of the Ofcom Content board, and Ed Humpherson of the National Audit Office. The board was supported by Julie Myers and Dominic Ridley. We are most grateful to all those who took part and to the team at PWC who carried through a complex and groundbreaking analysis.

A handwritten signature in black ink that reads "Colette Bowe". The signature is written in a cursive, slightly slanted style. There is a small horizontal stroke under the end of the name.

Colette Bowe  
Chairman, Ofcom Consumer Panel

# Executive summary

# Executive summary

## Introduction

26. Consumers should be the main beneficiaries of regulation and they usually are. But there is no guarantee that consumers are always in this position. And even where consumers have benefited, circumstances change and markets evolve and develop. Regulators face a continuing challenge in identifying and addressing consumer interests.
27. Consumer organisations representing or advocating consumers interests can help regulators meet this challenge. Ofcom's Consumer Panel - an independent body established under the 2003 Communications Act -has developed an approach that aims to help the communications sector regulator, Ofcom, in this way.
28. The Panel, working with consultants PricewaterhouseCoopers LLP (PwC), have developed a 'consumer interest toolkit' which provides a practical means of assessing how regulators:
  - Identify and take account of consumer interests in regulatory policy development and implementation
  - demonstrate what they have done in addressing consumer interests and the basis for their actions.
29. In summarising the approach developed, four key elements are highlighted below:
  - how the approach was developed through close involvement of the regulator
  - the toolkit questions at the centre of the approach
  - the outcome of applying the toolkit on a pilot basis to areas of Ofcom's work
  - the lessons learned from developing and using the toolkit.
30. The approach set out may have scope to be applied in helping regulators in other sectors address consumer interests.

## How the approach was drawn up - getting the regulator involved

31. Regulators are always under pressure from regulated companies to address their concerns first – and these stakeholders have both the resources and the incentive to make their input before and during policy development and implementation.
32. Consumers and their representatives or advocates in contrast are less well resourced and often have a more difficult task in identifying the potential impact of regulations on end users.

33. So any approach to ensure consumers' interests are right at the centre of the regulator's focus needed to have the buy-in of the regulator – right from Board level to those regulatory staff preparing and enforcing regulatory policy.
34. How was this buy-in achieved? From the outset of developing the consumer interest toolkit, the consultants, PwC , talked to a wide range of Ofcom's policy developers and decision makers to understand how they go about furthering the consumer interest. PwC then looked with them at how existing approaches could be supported and further improved.
35. This created a productive and continuing dialogue with Ofcom throughout the course of the work to develop a consumer interest methodology.
36. The result has been an approach that helps put the consumer interest at the centre of the regulator's work but in a way that seeks to enhance and further develop the existing regulatory focus on consumer interests

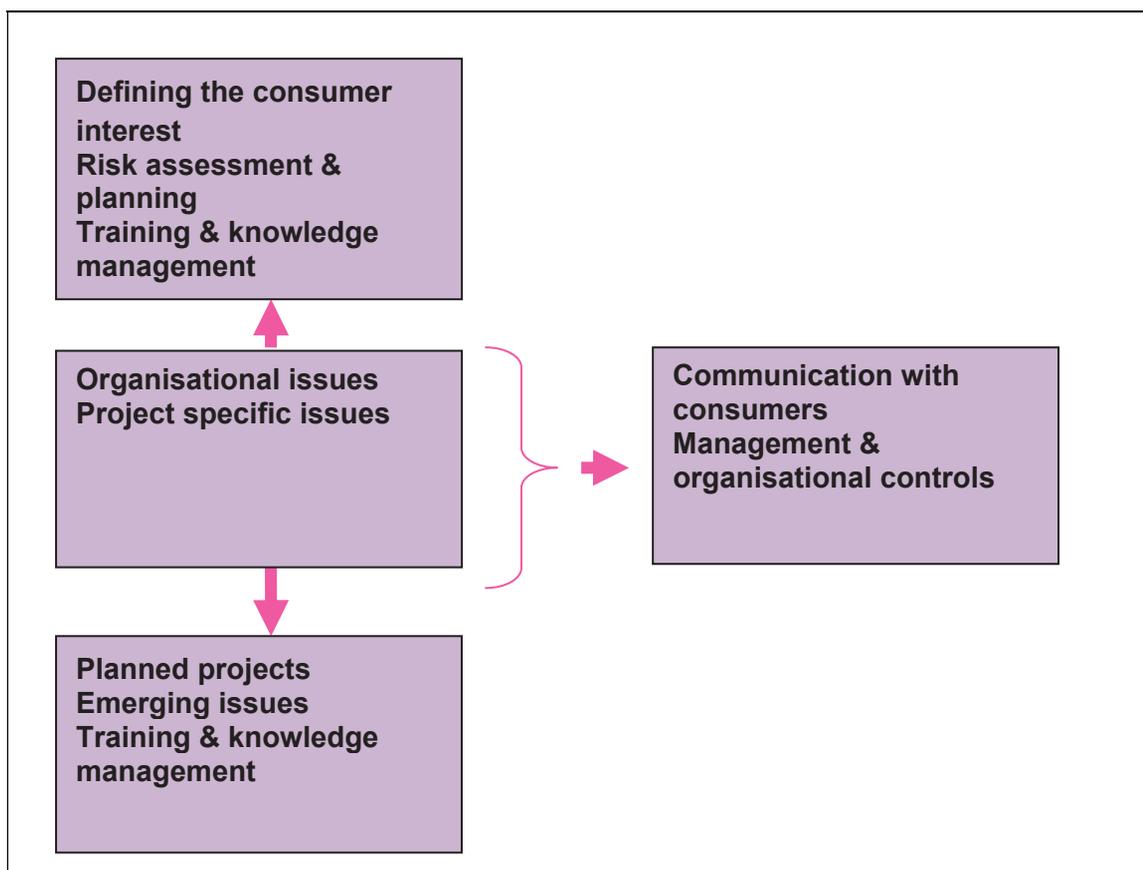
### **Simplicity and flexibility of the consumer interest toolkit**

37. The key strengths of the approach developed (the toolkit) are its simplicity and flexibility.

#### **Simplicity**

38. The toolkit comprises a set of 31 questions that can be asked of the regulator to help determine if the consumer interest is being appropriately considered. These questions cover the areas set out in the three pink boxes in the figure below - addressing organisation wide issues, project specific issues and a combination of both types of issues.

**Figure 1. The consumer interest toolkit – covering a wide range of issues.**



The full set of consumer interest toolkit questions are set out below.

**Table 1. The consumer interest toolkit questions**

<b>Organisational issues</b>	
	<b>Defining the consumer interest</b>
1	Is there a clear view of who the consumer is?
2	Is there a consistent approach for how the organisation identifies and defines the consumer interest?
3	Are there clear policies and procedures setting out the organisation's approach to dealing with consumer interest issues?
4	Are there controls in place to ensure these policies and procedures are followed?
	<b>Risk assessment and planning</b>
5	Is there a process of ensuring consumer interest issues are taken into account of in the development of the organisations periodic business planning process?
6	Are the consumer interest issues included in the planning process supported by evidence of consumer key issues?
7	Are there adequate processes to gain feedback from consumers on the organisations annual plan and to take their comment into account?

<b>Training and knowledge management</b>	
8	Is there regular liaison with consumer bodies to keep informed about their issues and concerns?
9	Is there regular research carried out to inform the organisation about key consumer issues and concerns?
10	Are there training courses in place for personnel to help them understand and appreciate consumers' interests and issues?
11	Is there monitoring of training to ensure that all personnel involved in studies which are relevant to consumers have received appropriate training?
<b>Project specific issues</b>	
<b>Planned projects</b>	
12	For each project are the relevant consumer interest issues explicitly explained?
13	Is the project work plan clear about how the consumer interest issues identified will be addressed?
14	Is there a risk assessment process in place that helps define the significant impact and complexity of the consumer interest issues involved?
15	Are there appropriate processes devised to ensure evidence is gathered from consumers on the key issues being addressed by the project?
16	Are there appropriate processes in place to ensure that the key consumer interest issues are addressed in the final output from the project?
<b>Emerging issues</b>	
17	Are there clear processes in place for regularly logging key consumer concerns?
18	Are the key consumer concerns reported reviewed regularly to identify issues that are emerging that are of concern to consumers?
19	Are there processes for ensuring that emerging consumer interest issues are identified and actioned appropriately?
20	Are there clear processes in place to initiate a project to investigate significant emerging consumer issues?
21	Are there processes in place to determine the urgency of an issue and are the timescales set for the study, which are consistent with the urgency of the issue to be investigated?

<b>Organisational and project specific issues</b>	
<b>Communication with consumers</b>	
22	Are there clear processes in place that set out how the organisation communicates with consumers?
23	Are there processes in place that ensure that the organisation communicates in a way that allows consumers to understand the issues being considered?
24	Are there processes in place by which the organisation explains the decision or actions they have taken (including for example explaining why consumer interest issues may have been sub-ordinate to other issues)?
25	Are there clear channels through which consumers can communicate and raise issues with the organisation?
<b>Organisational controls</b>	
26	Are there regular reports prepared for senior management on consumer related issues?
27	In relation to specific investigations and projects are senior management made aware explicitly of the key consumer interest issues and how these are being addressed?
28	Is there a process in place to ensure peer review and internal challenge of significant consumer interest issues (e.g. definitions, identification of whether an emerging issue is valid, a proposed regulatory change)?
29	Has management established performance indicators that allow them to monitor whether consumer issues are being addressed?
30	Are there management systems in place for logging consumer related issues and for ensuring such issues are followed up on a timely basis?
31	Does management regularly review its approach to dealing with consumer related issues to ensure that is reflecting advances in good practice? For example does it benchmark its processes against processes operated by other organisations involved in consumer matters?

## **Flexibility**

39. The questions listed above can be asked in relation to an individual policy area – broad or narrow in scope - or of the regulator as a whole. The questions can be asked by an independent body – such as the Consumer Panel – or by external assessors on their behalf. Or they can be used by regulatory staff to self assess their work in terms of considering the consumer interest.
40. The toolkit can be used on a one off or regular basis to help assess progress being made in addressing the consumer interest- building on previous assessments as appropriate.

## Piloting the consumer interest toolkit at Ofcom

41. In developing the toolkit, two policy areas were considered at Ofcom plus an overview of Ofcom's overall policy development and review process from a consumer interest perspective.
42. The toolkit was applied to work carried out on:
  - telecoms mis-selling
  - telecoms strategic review
43. These reviews found:
  - both projects were well supported by documentation and underlying process
  - there were different emphases of approach in obtaining consumer views
  - a contrast between the two projects in how explicitly and prominently the final output focused on the consumer interest and in considering how explicitly consumer interests might vary over time.
44. The overview of Ofcom's processes for developing and reviewing policies found that:
  - at the time of the review there was no formal process for defining the consumer interest , although Ofcom has since developed such a process
  - systems and processes for considering the consumer interest existed but enhancements may be required.
45. Following the review, Ofcom is investigating ways in which a framework can be developed for ensuring the consumer interest is consistently and appropriately taken into account in its regulatory decision-making.

## Lesson learned

46. Finding answers to the toolkit questions will help identify the regulator's strengths in taking account of consumer interests – but also point to areas where improvements may be needed.
47. Two lessons learnt from the development and initial use of the toolkit at Ofcom are that:
  - wherever possible recommendations that result from using the toolkit should consider enhancing existing processes rather than create additional processes – e.g. proposing additional consumer interest checklists for the regulator to complete is unlikely to be effective where processes are already heavily documented; and
  - influencing the mindset or culture of regulatory policy makers to take account of the consumer interest from the outset is critical - success is much more likely where the regulator's staff are aware of and take responsibility for considering the consumer interest from the start of the policy development process.
48. Identifying and addressing the consumer interest in regulated industries is a challenging task. The toolkit approach developed by Ofcom's Consumer Panel can help the regulator to keep the consumer interest at the heart of its work.

# **PricewaterhouseCoopers' Ofcom Consumer Panel Interest Study:**

**Development of a methodology for evaluating or auditing the way in which consumer interests are taken into account by Ofcom in the formation and implementation of regulation**

# Notice

49. This report was issued solely to the Ofcom Consumer Panel for the purposes of developing a methodology for evaluating or auditing the way in which consumer interests are taken into account by Ofcom in the formation and implementation of regulation only.
50. PricewaterhouseCoopers LLP, its partners and staff neither owe nor accept any duty of care to any third party whether in contract or in tort (including without limitation negligence or statutory duty or howsoever otherwise arising) and shall not be liable in respect of any loss, damage or expense of whatsoever nature which is caused by any third party's reliance upon information derived from the report.
51. If any third party wishes to rely upon the report or information derived therefrom, they do so entirely at their own risk.

# Introduction to the study

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## Background

52. The principal duties of Ofcom, in carrying out its functions, are to further the interests of citizens in relation to communications matters; and the interests of consumers in relevant markets, where appropriate by promoting competition.
53. In line with its regulatory principles, Ofcom has to consult widely with all relevant stakeholders and assess the impact of regulatory action before introducing or amending regulation in a market. Ofcom is also required to establish a Consumer Panel to advise on the consumer interest in the markets it regulates. The Panel is independent of Ofcom and operates at full arm's length from it, setting its own agenda and making its views known publicly.
54. A formal consultation by Ofcom requires adherence to specific guidelines on the approach with respect to gathering information or opinions. A variety of tools are used to ensure the widest range of stakeholders can be represented. Research is conducted to understand the views, needs and behaviour of people and organisations involved in or concerned about the communications industry, particularly smaller industry players or consumer groups. Examples include a combination of surveys, opinion polls, focus groups and interviews/informal discussions.
55. The Consumer Panel has responded to a number of Ofcom's consultations including Digital Switchover (DSO), Universal Service Obligations (USO), Number Translation Services (NTS), Telecoms Mis-selling, and The Telecommunications Strategic Review (TSR). In a number of its responses, particularly to NTS, Mis-selling and TSR (Phase 2), the Consumer Panel has expressed concerns that consumer interests have not been explicitly at the heart of Ofcom's reviews.

## Objectives of the study

56. The Consumer Panel, a group of 11 part-time people, from a range of backgrounds, believes that it cannot, with the resources available to it, be a comprehensive sounding board for Ofcom on the whole range of consumer interest issues arising in its field of regulation. Inevitably, it has to be selective and, as part of its role, wishes to advise Ofcom on how well Ofcom carries out the task of understanding and taking on board the consumer interest.
57. Consequently, the objective of this study is to develop a methodology (a "good practice" model or toolkit) for carrying out an evaluation or audit of how Ofcom takes into account the interests of consumers in the formation and implementation of regulation.

58. This study is expected to be of interest to organisations outside of Ofcom and the Consumer Panel, as its successful completion is to yield a novel and transparent method for ensuring that regulators internalise a full and proper consideration of the consumer interest in their formation of regulatory policy; it could be in the vanguard of UK regulatory best practice. In the longer term, regulators could be audited against how they incorporate the consumer interest into their decision-making.

### **Problem statement**

59. On commencing our work we developed the following statement with the Consumer Panel Project Board (for this study) to clarify what was being addressed by the study.
60. Ofcom is statutorily required “to further the interests of consumers in relevant markets, where appropriate by promoting competition”, as set out in the Communications Act 2003. However, exactly what constitutes the consumer interest is unclear, although the Act does refer to choice, price, quality of service and value for money. This presents two important risks:
- At one extreme, Ofcom policy makers might regard “the consumer interest” as an entirely obvious concept, its primacy being implicit in everything Ofcom does. This carries the risk that, at the working level, different ideas of what constitutes the consumer interest are being used side by side, without their differences being seen or understood; that approaches to understanding the consumer interest are incomplete – because so much is taken for granted; or even that individuals believe that the analysis of the consumer interest is someone else’s job – with the risk that it is factored in late or not at all to regulatory decision-making.
  - At the other extreme, there is a risk that it may be believed that “the consumer interest” can only play its part in the framing of a regulatory judgement if it can be quantified with great precision. The risk here is not just of spurious precision but of failing to incorporate sufficient judgment and flexibility to address the subtleties that may be required to understand and give due weight to “the consumer interest”.
61. The problems to be addressed are therefore:
- How to define the consumer interest, or the framework for identifying the consumer interest, in sufficient (but not excessive) detail so that:
    - it is clear to those undertaking any Ofcom review, and those interested in the output, what the consumer issues are in relation to the work of Ofcom; and
    - it is strategically consistent and coherent between the different areas for which Ofcom has responsibility.
  - How to ensure that “taking the consumer interest into account” is sufficiently well evidenced through the processes undertaken by Ofcom colleagues that they are capable of being audited, while not promoting a tick box approach.

## Scope of the study

62. The scope of the study is set out in the Terms of Reference document attached as Appendix 1 to this report. In brief the scope of the study includes:
- Development of detailed terms of reference for the audit and a comprehensive project plan;
  - At the strategic level, consideration of the sort of statements made, and in what context, of Ofcom's general approach to identifying consumer interest including analysis of the way in which those working within Ofcom approach their work and their awareness of, and attitude to, consumer interest issues;
  - Critical assessment of the way in which Ofcom:
    - embeds consideration of consumer interests into its documented policies and procedures and guidance – including consultation procedures, project management procedures, etc – and how these interests are weighted against other possible conflicting interests; how is this done and by whom;
    - organises itself to give effect to the consumer interest and the way in which information is derived from its Contact Centre; and
    - interacts with the Consumer Panel itself.
63. Of note is that while Ofcom has two principal duties under the ambit of the Communications Act, (namely: it shall be the principal duty of Ofcom, in carrying out their functions: to further the interests of citizens in relation to communications matters; and to further the interests of consumers in relevant markets, where appropriate by promoting competition), this study focuses on consumer interest issues (i.e. it excludes citizen interest issues). That said, our discussions with Ofcom and the Consumer Panel have included citizen aspects as clearly they are important, and, furthermore, sometimes difficult to disentangle from consumer aspects. The Consumer Panel aims to extend our work reported here and apply it in the near future to the very important citizen interest issues that are raised in the telecommunications and broadcasting sectors.
64. Moreover, content issues (which are the concern of the Ofcom Content Board) are also outside the scope of this study.

## Our approach to the study

65. We adopted a four phase approach to the study, combining desk research, interviews, analysis, audit methodology development and reporting.
66. Phase 1: information gathering – we conducted a number of tasks in Phase 1, comprising: a high level review of regulator and consumer organisation websites to gain an understanding of what constitutes the consumer interest; a review of documentation available on Ofcom’s website, including policy announcements, its Annual Plan, and Impact Assessment consultation; a review of Ofcom’s structure as it relates to the consumer interest; and 20 face-to-face interviews with senior personnel across Ofcom. (See Appendix 2 for details on the information gathering, Appendix 4 for information on the review of Ofcom announcements reviewed and Appendix 5 for the checklist used for the fact to face interviews.)
67. Phase 2: case studies – two Ofcom “projects” were reviewed – Telecoms Mis-selling and the Telecoms Strategic Review (up to Phase 2). The reviews took the form of an initial face-to-face meeting with Ofcom personnel involved in the projects followed by a review of the relevant documentation. (See Appendix 2 for details on the case studies reviewed and Appendix 6 for the checklist used for interviews in relation to the case studies.)
68. Phase 3: design of “toolkit”/audit methodology – in this phase we used information gathered from the interviews and review of documentation to enable us to understand the consumer interest issues that an audit toolkit needed to address. We also used the interviews to identify and map the processes in place that could be used to define the consumer interest relevant to specific Ofcom studies and projects. We used the case studies to “walkthrough” the processes to confirm the processes described to us did exist and operate as explained. With knowledge of the issues and the processes we then drafted a set of points of focus (i.e. questions we would ask to assess if the consumer interest issues have been appropriately considered). (See Appendix 3 for application of the toolkit to Ofcom.) We then used our findings from this exercise to develop a generalised consumer interest toolkit.
69. Phase 4: reporting – we held regular progress meetings with the Project Board (see below) throughout the study, and on 19 July 2005 we held a feedback session with the Ofcom personnel whom we interviewed. At the end of the study, we produced this report.

## Timing of our work

70. Our work was conducted between 4 May 2005 and end-July 2005. As Ofcom is a fast-moving organisation, some of our observations and/or conclusions may quickly become out of date. For example, after we had completed our fieldwork, Ofcom announced, in September 2005, that it had appointed a Director of Consumer Policy, a newly created post.

## Acknowledgements

71. Throughout the course of our work, the Project Board guided us. The Project Board comprising:
- Colette Bowe (Chairman, Ofcom Consumer Panel)
  - Ruth Evans (Deputy Chairman, Ofcom Consumer Panel)
  - Graham Mather (Ofcom Consumer Panel)
  - Ed Humpherson (National Audit Office)
  - Pam Giddy (Ofcom Content Board)
72. In addition, Julie Myers and Dominic Ridley, both Ofcom Consumer Panel supported us, and our thanks also go to Flora Demetriou for her prompt and seamless organisation of interviews with Ofcom personnel.
73. Our thanks go also to Geoff Delamere (Ofcom) for his constructive inputs throughout our work, and, finally to the members of Ofcom who cooperated in the study, both providing valuable and stimulating insights to the study, and devoting considerable time during their busy schedules.
74. Ofcom was launched on 29 December 2003 and had been operating for only 18 months or so when we conducted our work. It was thus at a relatively early stage of its development as a newly formed regulator.

## Structure of the report

75. This report is structured in two parts as follows:
- In part one we set out a generalised consumer interest “toolkit” developed in the course of this study. This represents a methodological model of good regulatory practice and was developed from our findings on how Ofcom incorporates the consumer interest in its regulatory decision making; and
  - In part two, we provide our assessment of how Ofcom incorporates the consumer interest in its regulatory decision making. This is based on desk research, interviews with key Ofcom personnel and, primarily, two case studies. We examine Ofcom’s approach to defining the consumer interest and whether Ofcom has sufficient process in place in relation to the consumer interest to make an audit possible. Our assessment concerns the potential audibility of Ofcom’s processes and procedures, and is not an audit of those processes and procedures.
76. In addition, there are six appendices attached to the report:
- Appendix 1: the terms of reference for the study;
  - Appendix 2: a summary of the findings of our information gathering (desk research and interviews) and case studies;
  - Appendix 3: application of the toolkit to Ofcom;

- Appendix 4: a summary of our review of Ofcom announcements;
- Appendix 5: the “checklist” used for interviews with Ofcom personnel; and
- Appendix 6: the “checklist” used to frame our preliminary discussions of the case studies.



# Consumer interest toolkit

# Consumer interest toolkit

## Introduction

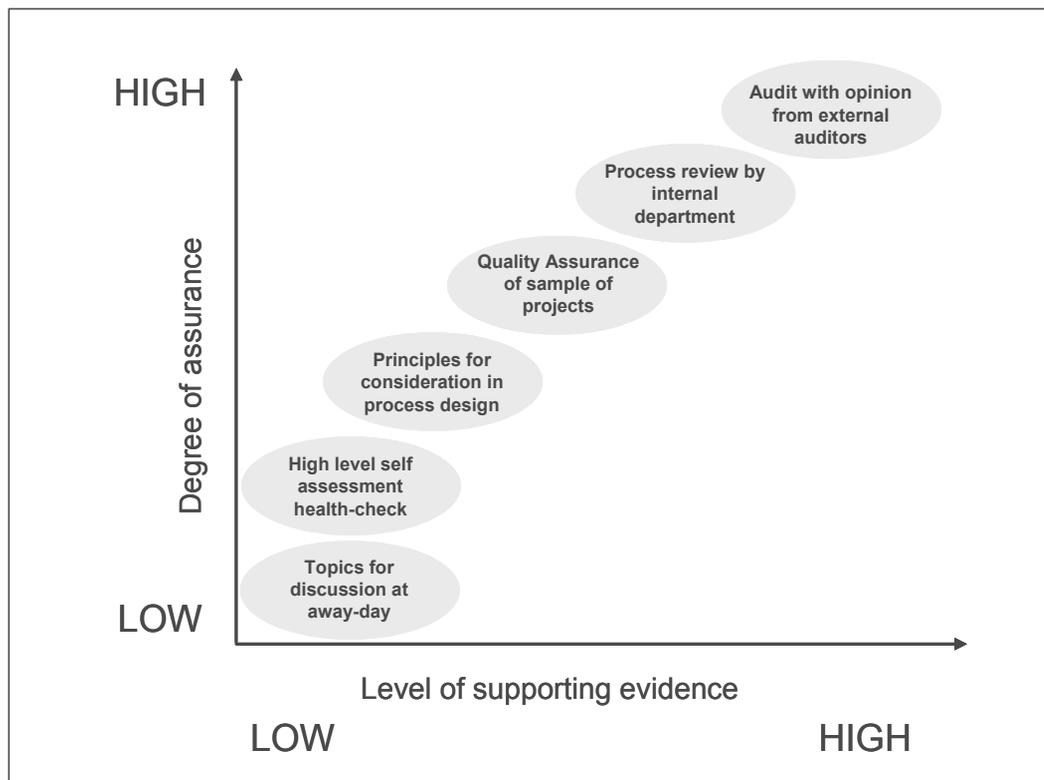
77. In this part of the report we present our proposed methodological model of good regulatory practice for taking into account the consumer interest, the “toolkit”. It is based on the findings from our review (see Part 2 and Appendix 2) of how Ofcom incorporates the consumer interest in its regulatory decision making processes. The toolkit is thus a generalised model based on specific findings. It could be used to assess how effective a regulator (or indeed any other organisation which needs to understand consumer interest issues) is in taking account of the consumer interest.
78. If an organisation is to be effective at taking into account the consumer interest, then all aspects of the consumer interest need to be integral to its cultural processes. Our toolkit assesses how embedded these aspects are, and is driven by the key objectives implicit in the problem statement developed at the start of the study, namely:
- how to define the consumer interest, or the framework for identifying the consumer interest, in sufficient (but not excessive) detail so that:
  - it is clear to those undertaking any Ofcom review, and those interested in the output, what the consumer issues are in relation to the work; and
  - it is strategically consistent and coherent between the different areas for which Ofcom has responsibility.
  - how to ensure that “taking the consumer interest into account” is sufficiently well evidenced through the processes undertaken that they are capable of being audited, while not promoting a tick box approach.
79. As the toolkit has been developed from a review of one organisation, we do not claim that this is the definitive method to assess whether any organisation is taking into account consumer interests effectively. However, we consider that this toolkit presents the starting point for defining the best way through which organisations can embed consumer interest issues into their operations.

## Use of the toolkit

80. Our expectation is that the toolkit will have a range of applications. It could be used by “auditors” who are carrying out an assessment of how effective an organisation has been in taking account of the consumer interest. Alternatively, it could be used as a high-level template to inform a strategy “away day”. Although in the first example, we use the term “auditor” we consider that the toolkit is sufficiently flexible to be used by a number of parties, including:
- Internal Audit, as part of its review of consumer aspects of an organisation’s operations; or
  - An external audit firm or the National Audit Office, for the purpose of producing an opinion on an organisation; or

- Project teams, as a quality assurance tool over a range of projects or for use on a specific project; or
  - An external stakeholder, such as a Select Committee or a sponsor government department, requiring assurance on the way an organisation seeks to fulfil its obligations in respect of the consumer.
81. In addition, we consider that the toolkit could be adapted for use in other areas, citizen interests being a prime example.
82. The degree to which the controls and processes set out in the toolkit need to be embedded in the day-to-day operations of an organisation depends on how the toolkit is to be used. For example:
- If an organisation required an opinion provided by independent external auditors covering all its consumer interest related activities, then the controls and processes required by the toolkit would need to cover all aspects of the organisation's operations related to consumer interest matters; and
  - If the organisation wished to apply it only to selected functions or projects, then the processes would only need to operate in relation to those areas.
83. The more demanding the review process (and hence the higher the level of supporting evidence required), the more assurance an organisation can have that its processes are effective. For example:
- If an organisation required an external opinion from independent external auditors then a "high" level of supporting evidence would be required.
  - If on the other hand an organisation used the toolkit for internal purposes as a high level self assessment of its processes than a relatively low level of supporting evidence would be required.
  - Using the toolkit as input to structure a strategy "away day" would require no supporting evidence.
84. Figure 2 indicates this trade off, together with the flexibility of use of the toolkit.

**Figure 2: Assurance versus supporting evidence**



85. It is also important to note that while documentation is necessary as supporting evidence that due process has been followed, it is not sufficient. What are also required are embedded consistent, transparent and robust methods and processes for furthering the consumer interest (definition frameworks, training, knowledge management, internal challenges, good communications, organisational controls). Otherwise, there is a danger that there could be a fully-compliant tick-box approach in tandem with flaws in the underlying culture, processes and procedures.
86. Furthermore, while we refer to a “high” level of supporting evidence in relation to a high level of assurance, the absolute level and nature need not be onerous, just sufficient to provide satisfactory support. The nature of the supporting evidence will depend on whether there is a compliance-based (strict demands) or a principles-based (more flexibility) culture. In the US, for example, a strict compliance-based culture has developed, requiring very detailed documentation to demonstrate that systems and processes have operated as expected. In the UK, and much of the rest of the world, where the principles-based approach operates, there are less prescriptive requirements on documentation related to the audit of processes.

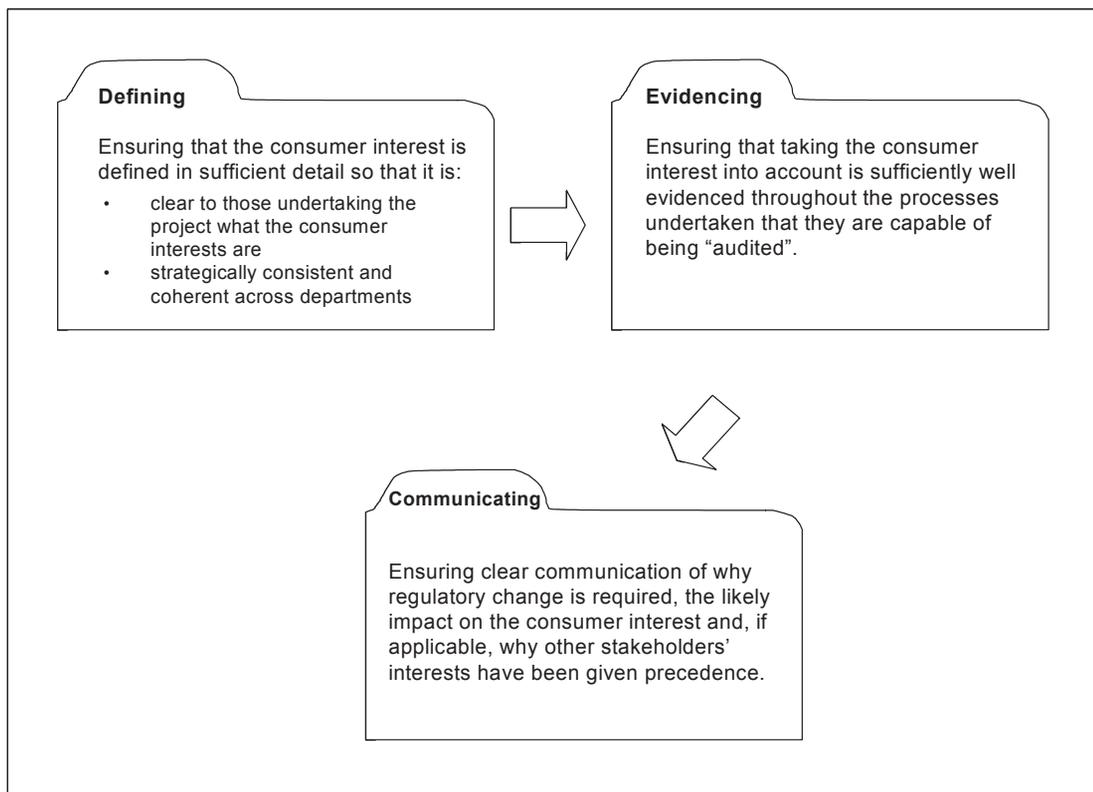
### **Consumer interest audit toolkit**

87. The toolkit methodology comprises three broad areas. These are:
- Defining the consumer interest – establishing a clear definition of what the consumer interest means;
  - Evidencing that the consumer interest has been taken into account – policies, procedures and processes that give assurance that taking the consumer

interest into account in regulatory decision-making is well-evidenced throughout the organisation; and

- Communicating the consumer interest – internal and external best-practice communications in relation to consumer interest issues.
88. We combine these areas into a toolkit checklist (see paragraphs 116 -118). While we identify communications as a separate area above, in the toolkit, effective communications should be an integral part of many of its key components. The components of the toolkit are summarised in Figure 3.

**Figure 3: Components of the toolkit**



### **Defining the consumer interest**

89. As a first step, the relevant consumers and specific consumer interest issues need to be identified. Questions to inform this include:

- What are the organisation’s duties/responsibilities as regards the consumer?
- Who is the consumer for the purposes of the organisations’ studies?
- How does the organisation identify and define the consumer interest? Is the consumer interest obvious and universally accepted, or is it initially not obvious and needing to be derived from empirical evidence? Are there consistent best-practice methods adopted across departments, supported by a knowledge base of case studies and market research?
- Are consumer interest definitions that have been developed actively shared and compared across the organisation and with stakeholders to learn from the similarities and differences observed?
- How does the organisation seek and incorporate consumers’ views when determining what the relevant consumer interests are?
- Which other internal and external stakeholders should the organisation be concerned about?

## **Evidencing that the consumer interest has been taken into account**

90. Assurance that taking the consumer interest into account in regulatory decision-making is well evidenced throughout the organisation has a number of dimensions, and specific policies, procedures and processes will need to be established as support. In broad terms the key dimensions include adequate:

- Risk assessment and planning processes to address ongoing and emerging consumer interest issues.
- Training in consumer interest policy, methods and issues for personnel across departments.
- Knowledge management in respect of the relevant consumer interest issues.

91. With respect to policies, procedures and controls, these should cover:

- Identification of the consumer and the relevant consumer interest issue, together with explicit objectives for the consumer interest.
- Adequate consultation with consumers.
- Internal challenge of proposals that impact the consumer interest.
- Transparency of consumer interest and weightings throughout regulatory decision-making.
- Organisational controls to ensure that the standard processes for addressing consumer interest issues are being applied consistently throughout the organisation.
- Adequate supporting evidence – typically in the form of documentation (which need not be onerous).

## **Communicating the consumer interest**

92. This covers internal and external communications. Internally, best-practice methods for defining the consumer interest, market research findings and case studies should be shared across the organisation, to ensure consistency of approach. Furthermore, proposals for regulatory change that impact the consumer interest need to be communicated (and challenged). With respect to external communications, there needs to be regular communication with consumers, their representatives and other relevant stakeholders, and there should be clear statements of why regulatory change is required, the likely impact on the consumer interest, and, if applicable, why other stakeholders' interests have been given precedence.

## Suggested best-practice policies and procedures

93. Building on the above, we list below some of the key policies and processes an organisation could consider implementing. As stated earlier, organisations might use the toolkit for various purposes. As such the extent to which each of the areas listed below will be relevant to an organisation will depend on the level of assurance required. However, we consider that without formal policies, processes and procedures that institutionalise the way consumer interest issues are taken into account, it is not possible to be certain that consumer issues will in fact be taken into account.

### Defining the consumer interest

94. Consistent Framework – In relation to key consumer related projects or key consumer focused parts of the business, the organisation should have an agreed framework for defining the consumer interest issues related to that project (or part of the organisation) and deciding on how these consumer issues should be addressed. This might include a body of case studies, market research, or consultation with consumer bodies, and be supported by best practice techniques. Clear objectives for the consumer interest issue should be established. The framework needs to be supported by adequate empirical evidence (see knowledge management) and training of personnel (see below). The actions to be taken to address the consumer interest issues should be documented and agreed at the start of projects and monitored by appropriate levels of management thereafter.

### Evidencing the consumer interest

- **Risk Assessment** – Whether during the planning phase, or when addressing a specific project, or individual parts of the organisation’s operations, the organisation should have some method for assessing the risk associated with consumer interest matters. Risk is made up of two elements: the likelihood of something happening (i.e. the likelihood that consumer interest issues will not be met); and the consequences or impact if it happens (i.e. the impact for both the consumer and the organisation of consumer issues not being met). The actions it takes to address these issues should be consistent with the risks identified. This risk assessment can help inform the planning process by ensuring that the organisation devotes its efforts in the areas where the consumer interest risk is greatest.
- **Planning process** – Consumer interest issues need to be taken into account during the organisation’s business planning process. The planning processes need to include identifying the key areas that the organisation needs to address in relation to consumer interest issues, with a justification as to why those interests are important, and how the issues will be addressed. Where a decision has been made not to consider consumer related matters in relation to certain parts of the organisation’s operations, this should be explained in the plan. As with other business planning documents, the plan should be adopted by senior management (ideally Board level) and progress against the plan should be reported (see Management Reporting below).

- **Responding to emerging consumer interest issues** – Any planning process can only address issues foreseen at the time of the plan. An organisation also needs a process through which it can identify emerging consumer issues and assess whether these emerging issues need to be addressed, and if so, how.
- **Consumer issues oversight function** – There could be an individual, committee, or similar, which is responsible for overseeing the delivery of the consumer interest plan. This function should have sufficient authority to ensure that its views and decisions are respected by senior management and the wider organisation. It should also have inputs to the group that weighs up the consumer interest issues and determines the extent to which it is right that consumers interests should, or should not, have precedence over the interests of other stakeholders.
- **Consumer team** – If the consumer issues oversight function is to be able to fulfil its role effectively it will need to be supported by a team that ensures there is appropriate communication with relevant consumers and consumer groups. This team's role is not to champion the consumer, but to ensure that consumers' views are heard and understood.
- **Training** – There should be training for personnel directly involved in dealing with consumers or consumer interest issues. This could be a formal training programme including workshop type events perhaps led by those who have most direct contact with consumers (such as the consumer help desk teams) and their representatives. Training for all personnel should also be considered, to raise the awareness of those not directly involved in consumer interest issues.
- **Knowledge management** – There needs to be regular liaison with consumer representatives, regular research and the development of a knowledge base to inform personnel of ongoing and emerging consumer interest issues. Market research can be expensive so the frequency and scope of market research needs to be carefully determined and the consumer issues oversight function should have a key role in determining the extent of the research.
- **Internal challenge process** – Whether it be how the consumer interest is defined, why a specific policy is to be adopted or why a certain stakeholder group benefits over others, organisations should consider implementing a process to ensure that key consumer interest issues are subjected to peer review and challenged.
- **Management reporting** – Management reporting (up to Board level) should be in place. Such management reports should include progress against plan, emerging issues and any consumer appeals/disputes. The Board should be involved in significant decisions where the consumer issues need to be weighed against the demands of other stakeholders.
- **Ex-post evaluation** – Organisations should carry out regular reviews to check that their consumer interest processes are being followed as well as the extent to which the consumer interest is being taken into account through measurement, where possible and appropriate. As noted above, these could be as formal as an audit, or some less stringent quality assurance review.

- **Benchmarking** – There should be benchmarking undertaken by the organisation to monitor its consumer interest processes against those of other organisations (both similar organisations and those in different sectors). This benchmarking should be used to determine if any changes to current processes are required.

## Communicating the consumer interest

95. Best practice internal and external communications strategy – Good communications processes should be implicit in the areas set out above e.g. knowledge sharing internally and regular communications with consumers and their representatives. Additional areas to highlight include:
- **Consumer knowledge** – Where consumers require information to help make informed decisions, the organisation should ensure that sufficient information is made available to them.
  - **Disputes and appeals** – Consumer groups who feel their concerns have not been addressed should have some way of lodging their concerns. Dispute and appeal processes should be in place. The level of rigour and formality of this is likely to depend on the impact of an organisation failing to address consumer interest issues and the level of public interest involved in such non-compliance.
  - **Explicit and transparent communication** – Organisations should consider (within the constraints of commercial confidentiality) whether there should be regular communication with consumers to set out how they address consumer interest issues and to explain instances where other stakeholders' interests have had to be given precedence over the consumer interest issue.

## Points of focus - the toolkit checklist

96. In this section we present the toolkit checklist. This presents our view of the points of focus to assess whether there are sufficient controls and processes in place to ensure that the consumer interest is taken into account. It could form the basis of an audit work plan. The questions define the type of controls we expect to be in place for an organisation to demonstrate that it has robust processes which help ensure that the consumer interest is taken into account in the projects and studies that the organisation undertakes.
97. The points of focus are split into three parts. First there are those relating to processes that should operate across the organisation (the organisational level). These are:
- **Defining the consumer interest** - Are there clear policies, procedures and controls that set out how the consumer interest issues are taken into account?
  - **Risk assessment and planning** - Is there a process for ensuring that consumer interest issues are taken into account in developing the periodic plan?
  - **Knowledge management and training** - Are there clear processes by which the organisation and its personnel are kept informed about consumer interest issues?

98. Second, there are the consumer interest issues, which are specific to certain projects the organisation is undertaking or specific to parts of the organisation's operations. These points of focus we have called project specific and cover the following:
- Planned projects - For planned projects are the relevant consumer interest issues explicitly explained and taken into account during the project?
  - Emerging issues - Are there clear processes for identifying and responding to emerging consumer interest issues that arise during the course of business?
  - Communicating decisions - In communicating the outcome of projects is the organisation clear about the consumer interest issues considered and the reasons for the stance taken on these issues?
  - Points of focus - These have applicability at both organisational and project specific level. These relate to:
    - Communication with consumers - Are there clear processes in place that set out how the organisation communicates with consumers?
    - Management and organisational controls - Are there management and organisational processes in place that set out how the organisation can monitor how it is addressing consumer interest issues?

**Table 2 : The toolkit checklist**

<b>Organisational issues</b>	
<b>Point of focus</b>	
<b>Defining the consumer interest</b>	
1	Is there a clear view of who the consumer is?
2	Is there a consistent approach for how the organisation identifies and defines the consumer interest?
3	Are there clear policies and procedures setting out the organisation's approach to dealing with consumer interest issues?
4	Are there controls in place to ensure these policies and procedures are followed?
<b>Risk assessment and planning</b>	
5	Is there a process of ensuring consumer interest issues are taken into account in the development of the organisation's periodic business planning process?
6	Are the consumer interest issues included in the planning process supported by evidence of consumer key issues?
7	Are there adequate processes to gain feedback from consumers on the organisation's annual plan and to take their comments into account?
<b>Training and knowledge management</b>	
8	Is there regular liaison with consumer bodies to keep the organisation informed about their issues and concerns?
9	Is there regular research carried out to inform the organisation about key consumer issues and concerns?
10	Are there training courses in place for personnel to help them understand and appreciate consumers' interests and issues?
11	Is there monitoring of training to ensure that all personnel involved in studies which are relevant to consumers have received appropriate training?

<b>Project specific</b>	
	<b>Point of focus</b>
	<b>Planned projects</b>
12	For each project are the relevant consumer interest issues explicitly explained?
13	Is the project work plan clear about how the consumer interest issues identified will be addressed?
14	Is there a risk assessment process in place that helps define the significant impact and complexity of the consumer interest issues involved?
15	Are there appropriate processes devised to ensure evidence is gathered from consumers on the key issues being addressed by the project?
16	Are there appropriate processes in place to ensure that the key consumer interest issues are addressed in the final output from the project?
	<b>Emerging issues</b>
17	Are there clear processes in place for regularly logging key consumer concerns?
18	Are the key consumer concerns reported reviewed regularly to identify issues that are emerging that are of concern to consumers?
19	Are there processes for ensuring that emerging consumer interest issues are identified and actioned appropriately?
20	Are there clear processes in place to initiate a project to investigate significant emerging consumer issues?
21	Are there processes in place to determine the urgency of an issue and are the timescales set for the study consistent with the urgency of the issue to be investigated?

<b>Organisational and project specific</b>	
<b>Point of Focus</b>	
<b>Communication with consumers</b>	
22	Are there clear processes in place that set out how the organisation communicates with consumers?
23	Are there processes in place that ensure that the organisation communicates in a way that allows consumers to understand the issues being considered?
24	Are there processes in place by which the organisation explains the decision or actions they have taken (including for example explaining why consumer interest issues may have been sub-ordinate to other issues)?
25	Are there clear channels through which consumers can communicate and raise issues with the organisation?
<b>Organisational controls</b>	
26	Are there regular reports prepared for senior management on consumer related issues?
27	In relation to specific investigations and projects are senior management made aware explicitly of the key consumer interest issues and how these are being addressed?
28	Is there a process in place to ensure peer review and internal challenge of significant consumer interest issues (e.g. definitions, identification of whether an emerging issue is valid, a proposed regulatory change)?
29	Has management established performance indicators that allows it to monitor whether consumer issues are being addressed?
30	Are there management systems in place for logging consumer related issues and for ensuring such issues are followed up on a timely basis?
31	Does management regularly review its approach to dealing with consumer related issues to ensure that it reflects advances in good practice? For example does it benchmark its processes against processes operated by other organisations involved in consumer matters?

# **Assessment of how Ofcom incorporates the consumer interest into its regulatory decision-making**

# Assessment of how Ofcom incorporates the consumer interest into its regulatory decision-making

## Introduction

99. In this part of the report we present our assessment of how Ofcom incorporates the consumer interest in its regulatory decision making. The key drivers to shape the review were the two main aspects of the problem statement – defining the consumer interest and evidencing that it has been taken into account. The review comprised preliminary desk research (of a selection of Ofcom’s public documentation), 20 face-to-face interviews with Ofcom personnel, and examination of two case studies (Telecoms Mis-selling and the Telecoms Strategic Review, up to Phase 2). Appendix 2 details our findings more generally from this work and Appendix 3 contains the application of our toolkit methodology to the two case studies.
100. In conducting our work, we also tried to establish whether it would be possible to carry out an audit of how Ofcom’s incorporates the consumer interest in its regulatory decision-making.
101. While the term audit is typically considered synonymous with the statutory financial audit performed annually on company’s accounts, the latter is in fact only one specific type of audit. For the purposes of this study, we define an audit in its more general terms: as an “assessment of the adequacy of system controls, to ensure compliance with established policies and operational procedures, and to recommend necessary changes in controls, policies, or procedures”.
102. We note that the work we conducted was not an audit. Rather, it was a high level assessment to assess the potential auditability of Ofcom’s processes and procedures as they relate to the consumer interest.

## Defining the consumer interest

103. For any project there must be a clear statement about what the consumer interest means to that specific project. One option would be for individual project teams to define what they consider to be the consumer interest. However if there is to be coherence and consistency across the organisation, order to the process, and some quality assurance, then it is important that boundaries are set on how to go about defining what the consumer interest is. This is especially important as the consumer interest is complex, and while potentially inherent in what Ofcom does, it is often several steps away from the matter at hand and not always made explicit.

104. In reviewing the case studies, we asked when and how the consumer interest issues were identified in the projects. For Telecoms Mis-selling, the project was mainly driven by consumer issues which were identified at the outset. In this case, the consumer issues were identified by reports from the Ofcom Contact Centre (OCC) (customer complaints on Mis-selling and slamming), supplemented by data on Unfair Trading Incidents provided by BT (and subsequently validated by an independent consultancy). In the Telecoms Strategic Review, consumer interest issues were identified initially from existing market research and other data sources. One of the objectives of the first consultation was to confirm what the consumer interest issues were, based on the initial scoping for the study. Subsequently, further market research was conducted and combined with responses to the Phase 1 consultation, in order to yield a better understanding of the various consumer interest issues in telecoms markets.
105. In our interviews with Ofcom, four aspects of defining the consumer interest emerged – the theoretical (maximise consumer welfare), the applied (e.g. price, quality of service), the empirical (testing of the applied) and the pragmatic (what it is like for a real person). Ofcom personnel considered that there is no standard definition (it varies across sectors and projects), that the consumer interest is not always obvious, and that it is debatable and contestable. We concluded that attempting to establish a single definition would not be sensible or desirable and that what is required instead is a consistent framework for identifying and defining the consumer interest on a case-by-case basis. The framework, together with the knowledge base of case studies, could then be used across Ofcom to ensure consistency of approach.
106. To address the complexity inherent in identifying and defining the consumer interest, and to bring about consistency and coherence across the organisation, Ofcom is in the process of developing a Consumer Strategy. This will set out a framework through which Ofcom will be able to ensure that in the studies and projects it undertakes it will identify the consumer interest issues, which are relevant to it in its role as a regulator. The framework will include the approach to identifying various consumer groups, how best to approach defining the consumer interest, and ensuring a coherent and consistent set of principles to guide Ofcom's work. The main objective of the work is to deliver a clear and strategic approach to all Ofcom's consumer-facing work across Ofcom.
107. As the study had not been completed at the time of our review, we are unable to assess whether it will address all the areas we consider necessary. In very general terms, and as set out in paragraph 109, we would expect the framework to define the following boundaries:
- What are Ofcom's duties/responsibilities as regards the consumer?
  - Who is the consumer for the purposes of the Ofcom's studies?
  - How does Ofcom identify and define the consumer interest? Is the consumer interest obvious and universally accepted, or is it initially not obvious and needing to be derived from empirical evidence? Are there consistent best-practice methods adopted across departments, supported by a knowledge base of case studies and market research?

- Are consumer interest definitions that have been developed actively shared and compared across Ofcom and with stakeholders to learn from the similarities and differences observed?
- How does Ofcom seek and incorporate consumers' views when determining what the relevant consumer interests are?
- Which other internal and external stakeholders should the Ofcom be concerned about?

108. We re-visit Ofcom's approach to defining the consumer interest at appropriate sections in the remainder of our report, where we focus on the evidence aspect of the problem statement.

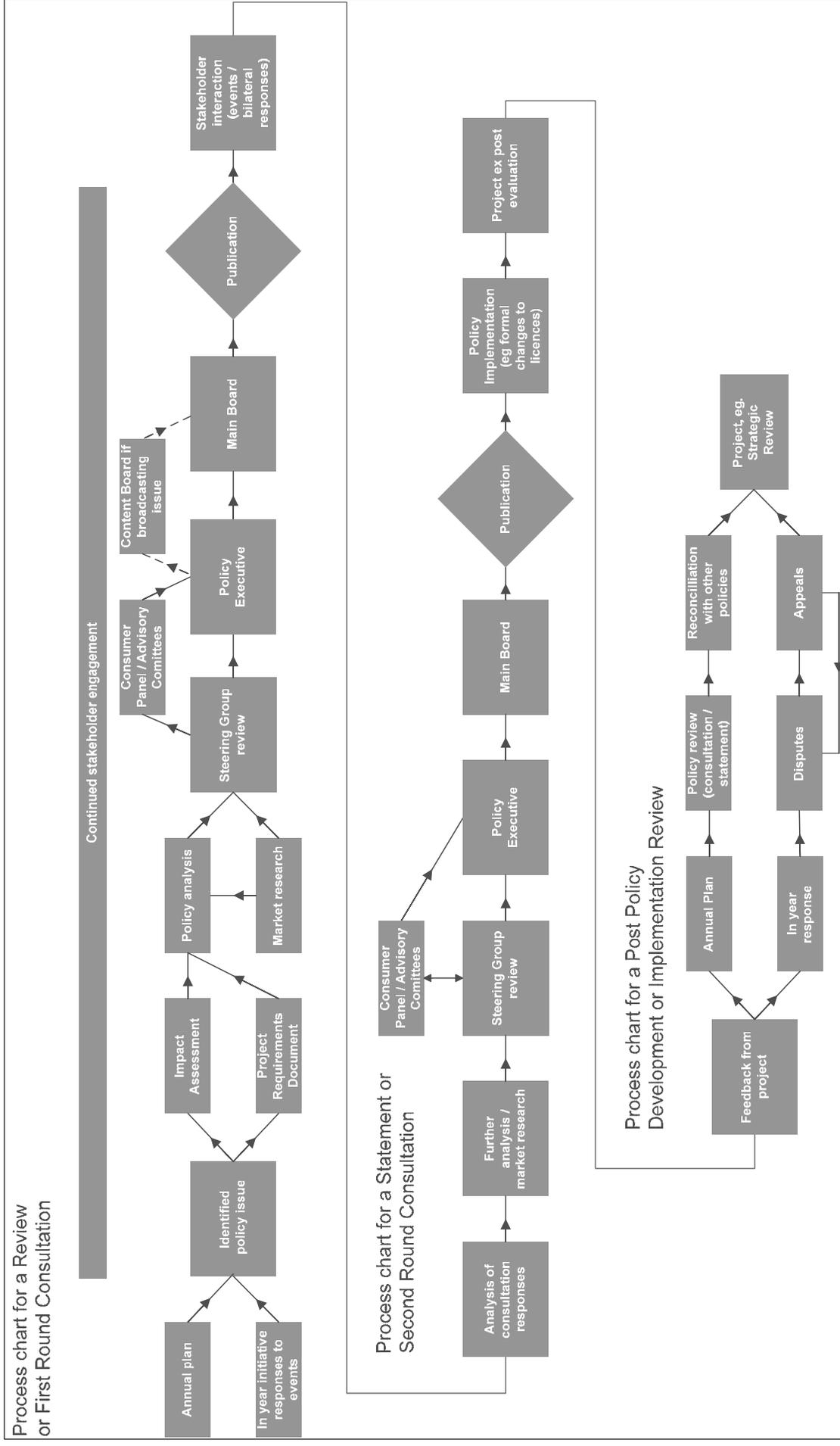
### **Evidencing and communicating the consumer interest**

109. The second part of the problem statement refers to ensuring that "taking the consumer interest into account" is sufficiently well evidenced through the processes undertaken that they are capable of being audited, while not promoting a tick box approach. For an organisation to demonstrate it has auditable systems in place (whether that audit is a high level healthcheck or an in depth external audit) the organisation must be able to present a set of working practices (at the less rigorous end of the spectrum) or processes and procedures (at the more rigorous end of the spectrum) through which it takes account of the consumer interest.

110. One of the objectives of our interviews with Ofcom personnel and of the review of the case studies was to identify whether Ofcom had a defined process in place through which it takes account of the consumer interest. We note that we did identify formal processes and these are summarised in Figure 4.

111. We describe each of the processes shown in Figure 4, based on our understanding of how Ofcom addresses consumer interest issues in carrying out its work.

**Figure 4: Ofcom processes for developing and reviewing policies.**



## How work is identified

- **Annual Plan** – Ofcom produces an annual plan, which sets out the projects and programmes it intends to carry out during the year. The plan is developed by Ofcom based on achieving its mission – of furthering the interests of citizens and consumers – through application of its regulatory principles, and by identifying a number of themes on the basis of which it focuses its work for the coming year. This is based on analysis of market trends, including consumer behaviour and attitudes, emerging issues that it is aware of, and progress on existing projects and programmes.
  - Before consulting on the plan, Ofcom’s initial thinking is shared with representatives of the Consumer Panel and Ofcom’s advisory committees (for the four nations, for elderly and disabled people), and its spectrum advisory board and content board. This occurs at an awayday, where the panels and committees identify their priorities for Ofcom to address in its plan.
  - These views are taken account of in preparing a draft of the plan, which is published for consultation. It is at this stage that the full range of external stakeholders, including consumer groups and representatives, has the opportunity to comment on and influence the planned work of Ofcom in the coming year.
  - Ofcom holds public events in each of the nations and in an English region during the consultation period to enable stakeholders to hear senior Ofcom managers set out the plan proposals and to address questions and comments on the plan to Ofcom. These events attract a wide range of organisations including consumer bodies. Written responses to the consultation are published on Ofcom’s website and analysed, together with the event feedback, in preparation of the plan statement. The annual plan forms the base of Ofcom’s work for the coming year.
- **In-year initiative responses to events** – The Ofcom Contact Centre (OCC) receives calls and complaints from external parties. It logs the issues arising and reports on them to the Chief Executive’s office on a regular basis. This is an important source of emerging issues. In addition there are issues that are raised by market developments, by Government, the EC, or other influential bodies, both nationally and internationally. The studies and investigations that arise from these reports have to be linked into the activities already planned.
- **Identified policy issues** – The “Annual Plan” and “In-year initiative responses to events” together determine the work programme of Ofcom for the year.

## Preparing a consultation document

- **Project Requirement Document** – The Project Requirement Document (PRD) is a mandatory document. The purpose of the document is to specify the objective of a project, the work to be done, the resources required and deliverables from the project. Whilst the PRD does not specifically require the consumer interest issues relevant to the study to be considered, it does provide that opportunity.
- **Impact Assessment** – The impact assessment is a required process for the majority of Ofcom consultations. The first stage in the development of the impact assessment is to define the issue that need to be considered and “to assess how the interests of consumers (or particular groups of consumers) are affected, including the scale of the problem”. As such the impact assessment is vital in making explicit the consumer interest relevant to a study.
- **Policy analysis** – As part of the study process, data gathering, assessment and analysis is undertaken to support the project. The nature of this data gathering and assessment process varies according to the issues that the study is required to address. The PRD defines the nature and purpose of this analysis.
- **Market research** – Market research is undertaken when required to help gain an understanding of the pertinent consumer interest issues (or consumer detriments). It is not mandated that market research must be undertaken (and it is expensive) so each project team determines the level of market research. In certain instances an alternative to market research can be the use of output from the OCC. The OCC output is a useful source of indicative information about the level of consumer dissatisfaction as it relates to certain issues.
- **Steering Group review** – Each project may have a Steering Group. The Steering Group would be specific to the project and its purpose is to ensure that the project is progressing as intended and working within its budget and timescale. The Steering Group would be guided by the PRD.
- **Consumer Panel/Advisory Committee** – In the sample of projects undertaken by Ofcom that we reviewed (the case studies) one of the projects (mis-selling) used an advisory committee, which included individuals from consumer groups and individuals with specific consumer skills.
- **Policy Executive** – The Policy Executive (PE) is the first pan-Ofcom committee at which the outputs from projects and studies are reviewed and challenged. Part of the PE’s role is to ensure that consumer issues have been considered and addressed. Our review of the case studies indicates that the PE has to weigh up the interests of a number of different stakeholder groups, consumers being one of them, along with citizens. The PE has a role to ensure that the consumer issues have been considered.
- **Content Board** – This is another pan-Ofcom committee (a sub-committee of the main Board) although its remit mostly relates to broadcasting. It has an explicit role to ensure that concerns about content (typically citizen rather than consumer issues) are considered.

- **Main Board** – The Main Board (the Board) subjects projects and studies to final scrutiny and approval on findings and decision. As with the PE, the Board has to balance the interests of a number of different stakeholder groups.
- **Publication** of consultation document – In general, Ofcom’s output will be published for public comment and consultation. This provides an opportunity for consumers and consumer organisations (and other stakeholders) to provide input to the issue.

### Preparation of statement (or second consultation)

- **Stakeholder interaction (events/bilateral responses)** – On occasion Ofcom holds meetings and other public consultation in addition to seeking comment on published papers. There is no mandated requirement for this form of public consultation; the extent to which this is undertaken will be set out in the PRD or may be determined by the Board.
- **Analysis of consultation response** – The responses to consultations are made available on Ofcom’s website (except those marked confidential) and analysed. The project team initially handles the analysis of the feedback from the consultation process and it will be its decision initially whether further consumer input is sought.
- **Further analysis/market research** – If further analysis or research is required then the project team is responsible for arranging this. If significant extra work is deemed necessary then reference to the Steering Group/PE/Board may be required. The extent to which consumer issues are considered at this stage will be determined initially by the project team, but subject to review, as mentioned above.
- **Consumer Panel / Advisory Committees** – At this stage there may be further discussion and input from the Consumer Panel and/or relevant Advisory Committee, to help identify appropriate solutions.
- **Steering Group/Policy Executive / Main Board** – The approval process for further work, or for the final deliverables, will involve the Steering Group, PE and Board as previously outlined. As noted, the explicit determination of consumer issues will be through the PRD. There may be several iterations of referral of issues back to the Steering Group and/or PE and/or Board depending on the issues arising.
- **Publication of statement (Final)** – Final publication will set out Ofcom’s decision on the policy proposals it has been consulting on. While there is no mandated requirement that Ofcom specifically explains its decision in terms of the consumer interest considerations, the statement needs to reflect the outcome of its impact assessment which (as noted earlier) takes account of consumer interests i.e. “to assess how the interests of consumers (or particular groups of consumers) are affected, including the scale of the problem”.

## Post-policy development / future year reviews

- **Project ex-post evaluation** – Ofcom will carry out a review of its project decisions to determine their impact and key lessons from the project.
- **Feedback from projects** – The feedback from the projects will be used to help develop the annual plan.
- **Annual plan** – see above.
- **In-year response** – During the year issues will be referred to Ofcom for adjudication.
- **Disputes and Appeals** – Those impacted by reviews undertaken by Ofcom can dispute/appeal and there are dispute and appeal processes in place to deal with these.
- **Policy Review (consultation/statement) and reconciliation with other policies** – There are annual reviews of Ofcom's various initiatives and reconciliation to ensure consistency between various work programmes and work streams.
- **Project** – From the dispute process and from the policy review process, specific projects are agreed.

## Comments arising from our review

112. In this section we provide comments arising from our high level review of Ofcom's processes as set out in Figure 4. The comments cover further clarification we would require in order to assess the robustness of the processes that are in place, together with some observations arising from our review. Note that we are not saying processes are not in place, only that the work undertaken in this study did not cover these areas in depth. Further detail is contained in Appendix 3, where we provide the results of application of our toolkit points of focus to the two case studies.

113. Our comments include:

- **Advisory committees** – What formal structures are in place to ensure liaison with Consumer Groups and other parties who can inform Ofcom on consumer issues?
- **In-year initiative responses to events** – The OCC logs emerging issues/complaints and it distributes regular reports on this information to management. Our work did not examine how this information (and other relevant data) is used to identify significant emerging consumer interest issues. A closer examination would be required to gain a fuller understanding of the effectiveness of these processes.

- **Identified policy issues** – Our work did not address how Ofcom prioritises projects and adjusts its workplan during the course of the year to take account of changes in priority. This information would be required to assess how effective Ofcom is at prioritising its work to address the key consumer issues. It is possible that the emerging issues are of such number and consequence that they will impact on the ability to deliver the work programme set out in the Annual Plan.
- **Project Requirements Document** – A PRD should be completed for all projects, although it does not specifically require mention of consumer interest issues. In our review of two projects undertaken by Ofcom (the case studies) the PRD was completed in one case but not in the other. Where the PRD was not completed, a project plan was produced. This finding provides a good example of where the level of assurance required (and the business culture the organisation operates in) will have an impact on the level of evidence/documentation required should an audit be undertaken. For example:
  - Given that the PRD is a mandated document, in a compliance-based environment the failure to produce a PRD will be considered to be a breach of process. However, in a principles-based business culture, given that an alternative document was produced (a project plan) which met most of the requirement of the PRD, it might be concluded that due process was followed.
  - Further, the fact that the PRD does not specifically require consumer interest issues to be noted may indicate that the PRD does not provide a fully effective control to ensure that consumer interest issues are taken into account. However, a more principle-based review may place trust in the project team that the PRD will reflect consumer interest issues when appropriate. A principles-based approach would also allow account to be taken of the overall transparency of the project. For example, a project may be announced in the Annual Plan, or another form of public communication. On that basis, it could be argued that if the PRD does not pick up the consumer interest issues sufficiently then they will be picked up by relevant stakeholders' comments.
- **Impact Assessment** – Since we completed our case studies, guidance on how Ofcom approaches impact assessments was published. Time is needed to embed this process and make it part of Ofcom's "business as usual" operations before determining its effectiveness. In relation to the two case studies we reviewed, we note that the impact assessment was not described in the Telecoms Strategic Review project, but was included in the PRD (and Consultation document) in Telecoms Mis-selling.
- **Market research** – Ofcom makes effective use of market research. However the resources available for market research are limited and tailoring market research so it addresses the consumer issues appropriately is a skilled process. The following questions thus arise:
  - What processes are in place to determine which issues most need to be supported by market research? And
  - What processes are in place to assure the quality of the research undertaken?

- **Steering Group Review** – We did not identify a formal process or procedures that set out how a Steering Group will operate or what it should consider. Whilst it would be expected that the Steering Group would have a role in ensuring that consumer issues are considered it is not certain that it does or would, although the consultation process is likely to identify consumer concerns which would need to be addressed in the preparation of the statement or subsequent consultation.
- **Consumer Panel / Advisory Committee** – We also did not identify a mandated process that requires specific projects to set up an advisory committee or to make use of the Consumer Panel. We would expect the PRD to set out whether an advisory committee should be formed and thus it is important that the PRD determines how the project will inform itself about consumer issues and where the use of an advisory committee would be useful.
- **Policy Executive / Main Board** – The extent to which issues are fully considered by the PE / Board will be in large part determined by the quality of the project team’s research and analysis which should be influenced by the PRD. This reinforces the message that ensuring that the PRD is appropriately drafted and agreed is the key to giving appropriate weight to consumer issues. Again, the consultation process is likely to identify consumer concerns, which would need to be addressed in the preparation of the statement or subsequent consultation.
- **Publication** – The principal limitation to input to consultations is that consumers may not be sufficiently informed to allow them to participate meaningfully in the debate, whilst consumer organisations might not have the resources or technical skills to respond. We are aware that there are “plain English” guides produced on certain issues to help consumer issues. What processes are in place for determining what guides are produced and on what subject? Furthermore, what processes are in place for ensuring the level of consumer knowledge is sufficient so that they are able to participate in the debate? There are tight controls maintained by the Director of Communications over the reports and communications issued by Ofcom. Whilst we are aware that such controls exist we do not know whether these controls are supported by formal processes (i.e. are there are sign-offs or other requirements that must be completed before reports are issued). In addition we do not know the extent to which the controls over publication of reports will include checks that consumer issues have been addressed.
- **Training** – What training, or awareness building, is undertaken for Ofcom staff in relation to consumer interest issues?
- **Benchmarking** – We are aware that Ofcom produces international benchmarking reports, including data on prices of services, and that the Consumer Strategy study may lead to establishing a baseline for this type of activity. In addition, does Ofcom compare and contrast its consumer interest processes against those of other organisations (both other regulators and other organisations)?

- **Risk assessment** – There is a general risk assessment process used for overall project risk. In addition, we understand that communications to be issued are given an informal risk rating. What risk assessment process is in place for determining the scale and impact of consumer interest issues as they relate to a specific project?
- **Management reporting** – What formal processes are in place for management reporting on consumer issues by which management can satisfy itself that consumer interest issues are being addressed?

### **Outcome of our assessment of how Ofcom incorporates the consumer interest in its regulatory decision making**

114. In terms of “defining the consumer interest”, at the time of our review there was no formal structure in place to ensure that there is a consistent and coherent approach adopted across the organisation to defining the consumer interest. However, Ofcom has sought to address this by instigating the Consumer Strategy Project whose purpose is to help develop a framework for ensuring such consistency and coherence.
115. The work undertaken in producing the toolkit shows that there are formal systems and processes in place whereby consumer interest issues are considered during the projects and studies that Ofcom undertakes. A number of these are potentially auditable. As the work we conducted was not an audit, we are unable to provide a view on what the outcome of a formal audit would be.
116. However, the findings of our review indicate that Ofcom is an organisation that, in general, has a lot of formal processes and controls in place. In respect of “evidencing the consumer interest has been taken into account”, Ofcom should be well placed to provide evidence that it has considered and taken account of consumer interest issues in its work due to its formal processes and controls. Ofcom has sought to strengthen these processes by:
- Introducing new guidance on the Impact Assessment which requires that project teams define the consumer issues relevant to that project; and
  - Recently appointing a senior person within the organisation with specific responsibilities for ensuring Ofcom gives consumer issues appropriate consideration.
117. Using our toolkit, we have been able to identify a number of controls processes in place, which confirms the likely potential audibility of these processes and controls. Some areas of specific strength of the processes as they relate to consumer issues are the management review processes, the quality of the market research undertaken and the OCC through which consumers have ready access to bring their views to Ofcom's attention.

118. It should be noted that Ofcom's processes were not solely designed with the objective of evidencing how it addresses consumer interest issues. Given that, and given that consumer interest issues are one of many issues that Ofcom needs to consider, there are areas in our high level review where we did not immediately find control processes. While these are noted, this does not imply that controls are not in place, rather, that not all processes are explicit and thus readily testable.
119. Based on our high level review, it appears that Ofcom does have processes demonstrating how it incorporates the consumer interest in its regulatory decision-making. Further enhancements may be required, depending on the level of scrutiny to which Ofcom wants to expose its systems and processes.
120. The toolkit is consistent with the sort of quality assurance processes adopted by professional services firms. The use of the toolkit may highlight the areas where processes could be enhanced to take account of the consumer interest more effectively. The toolkit should ideally be presented as a method for reviewing and identifying areas where existing processes can be enhanced, rather than as a strict compliance manual.
121. As mentioned, the toolkit could be used by a number of groups, including external auditors, the Ofcom Consumer Panel, internal auditors, quality assurance teams or project teams themselves.



# **Ofcom's response to the Ofcom Consumer Panel interest study**

14 December 2005

Colette Bowe  
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Ofcom Consumer Panel

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### **OCP Consumer interest study**

First, I would like to congratulate the Panel on its development of a methodology for evaluating the way in which consumer interests are taken into account in regulatory decision making. This is an excellent, innovative piece of work and Ofcom welcomes the opportunity to work with the Panel to ensure Ofcom takes account of consumer interests effectively across the organisation.

Whilst the Study focuses specifically on consumer interests, Ofcom considers that the methodology applies equally to how we take account of citizen interests. This is reflected in our proposals set out below.

The Study concludes that Ofcom does have processes demonstrating how it incorporates the consumer interest in its regulatory decision making but that further enhancements may be required. In response to these conclusions, Ofcom has identified three key areas of activity where we would like to enhance the way we take account of citizen and consumer interests – planning, projects and communications.

Under each area of activity, Ofcom has developed a series of proposals to help ensure the organisation takes due account of citizen and consumer interests throughout its work and can articulate these interests across relevant publications and in its communications with stakeholders. We believe successful implementation of these proposals would also make Ofcom more auditable.

Attached to this letter I include a detailed plan for implementing these proposals. A summary of the proposals follows:

### **Planning**

We have identified a number of actions Ofcom could take to help ensure citizen and consumer interests are taken into account appropriately in the development of Ofcom's annual plan and setting its priorities. We propose that Ofcom establishes an Early Warning System and Issues Log for logging and tracking all citizen and consumer issues dealt with by Ofcom. We also suggest that Ofcom

publishes periodic consumer policy progress reviews, measuring progress using indicators such as pricing, awareness and complaints.

We believe that the proposed consumer policy progress reviews adequately address the need for Ofcom to measure the effectiveness of its citizen and consumer interest framework, without the need to benchmark itself against other regulators. However, if the audit methodology is successfully rolled out to other organisations, we recognise that it will in future be easier to compare one organisation's processes against another's.

### **Projects**

We propose that existing projects tools (PRDs, IAs and PE/Board submissions) should be enhanced to make sure project teams identify and explain citizen and consumer interests effectively and consistently and that we have regard to these interests throughout our decision making processes. We also put forward proposals aimed at improving the use of research and feedback from consumer stakeholders to evidence citizen and consumer interests in our policy making. We recommend that Ofcom launches a consumer policy training programme to enable projects to define, evidence and communicate citizen and consumer interests effectively.

### **Communication**

We recommend a number of actions Ofcom could take to help ensure the organisation engages appropriately with consumer stakeholders and explains the outcomes of its decisions for citizens and consumers clearly and effectively, in a manner and format that is appropriate to the intended audience.

As set out in the plan, Ofcom expects implementation of the proposals to run during the first half of 2006. On this basis I would urge the Panel to consider carrying out an audit at some time after September 2006. This would allow the audit to test the extent to which citizen and consumer interests have been embedded throughout the organisation and reflected in Ofcom's activities.

*Yours ever*



David Currie

cc. Ofcom Board, Claudio Pollack, Lucy Wickstead

**Table 3: Ofcom citizen and consumer interest implementation plan**

<b>Planning</b>		
<b>Recommendation 1</b>		<b>Date</b>
<b>Ensure processes are in place for ensuring citizen and consumer interest issues are taken into account appropriately in the development of Ofcom's annual plan.</b>		
1a	Nominate Executive Committee (ExCo) and Policy Executive (PE) 'consumer policy sponsors' to ensure citizen and consumer interests are taken into account appropriately and consistently in the Annual Plan process and in policy decisions making.	Q4 05/06
1b	Consumer Policy Team to produce regular (quarterly) consumer policy overview for senior management / PE.	Q1 06/07
1c	Take forward Consumer Policy Review proposal to publish periodic consumer policy progress reviews, measuring progress using indicators such as pricing, awareness and complaints. Use results of consumer policy progress reviews to identify and weight consumer issues in Annual Plan.	Q2/3 06/07
1d	Use Ofcom's Internal Operating Plan (IOP) to note progress and look at what's changed in terms of citizen and consumer priorities. Feed results into consumer policy progress reviews.	Q4 05/06
<b>Recommendation 2</b>		
<b>Establish an Early Warning System and Issues Log system for logging and tracking action on all citizen and consumer issues Ofcom deals with.</b>		
2a	Establish an Early Warning Group - comprising Consumer Policy, Investigations, Ofcom Contact Centre (OCC), Market Research and Press Office - to create and maintain a comprehensive Issues Log and Early Warning System. Circulate Log to ExCo.	Q4 05/06
2b	Use the proposed Early Warning System/Issues Log to track how citizen and consumer issues are being dealt with e.g. watching brief, investigation, policy review.	Q1 06/07
2c	Use the proposed Early Warning System/Issues Log to determine where action is (and is not) required.	Q1 06/07
2d	In establishing the Early Warning System/Consumer Issues Log, consider whether it would be appropriate to introduce timescales/commitments for dealing with 'urgent' issues.	Q1 06/07
2e	Review the way Investigations carries out consumer enforcement – possibly leading to creation of new dedicated team.	Q4 05/06

<b>Projects</b>		
<b>Recommendation 3</b> <b>Highlight the implications of the Consumer Policy Review internally and use the outputs (e.g. definitions and principles) to enhance existing project tools and processes to make sure citizen and consumer interests are explicitly identified, explained and communicated consistently across the organisation.</b>		
3a	Use the planned review of Impact Assessment (IA) document as an opportunity to write into the document the new framework for identifying and defining the consumer interest (as established by the Consumer Policy Review).	Q1 06/07
3b	Revise the Project Requirements Definition (PRD) so that projects: <ul style="list-style-type: none"> <li>▪ Identify citizen and consumer interests, from the outset, in a consistent manner;</li> <li>▪ Make a commitment to undertake an impact assessment (or otherwise) as part of the approval system;</li> <li>▪ Explain what the desired outcome of the project is for citizens and consumers (unless it can be argued that the project has no citizen or consumer interest);</li> <li>▪ Explain how the project will measure and track success in terms of actual citizens and consumer outcomes; and</li> <li>▪ Explain from outset whether a plain English summary will be necessary (where a publication is involved).</li> </ul>	Q4 05/06
3c	Enhance Ofcom's Policy Executive and Board submission templates to ensure citizen and consumer interests are considered appropriately and consistently across all projects, to enable effective peer review and challenge.	Q4 05/06
3d	Produce an internal guide to dealing with citizen and consumer interests for Ofcom project managers, pulling together all the proposal set out in this paper (e.g. use of PRDs, IAs, how to engage with stakeholders).	Q1 06/07
<b>Recommendation 4</b> <b>Ensure project teams seek feedback from consumer stakeholders and OCP appropriately and use Ofcom research to evidence the consumer interest in decision making.</b>		
4a	Consumer Policy Team and Consumer Panel secretariat to provide colleagues with advice on how and when consumer stakeholder and OCP input should be sought.	Q4 05/06

Projects		
<b>Recommendation 5</b>		
<b>Establish an Ofcom consumer policy training programme</b>		
5a	<p>Options to pursue include:</p> <p><i>Ofcom-wide training</i></p> <ul style="list-style-type: none"> <li>▪ Lunchtime seminars (expert speakers e.g. academics)</li> <li>▪ Consumer Policy Team to attend team meetings, to highlight implications of Consumer Policy Review</li> <li>▪ Establish new “Introduction to...Consumer Policy” (1 day course taught by external consultants). As set out in PwC report, this course could focus on: <ul style="list-style-type: none"> <li>-<i>Defining</i> citizen and consumer interests</li> <li>-<i>Evidencing</i> citizen and consumer interests</li> <li>-<i>Communicating</i> citizen and consumer interests</li> </ul> </li> <li>▪ Look at where it would be appropriate to add or enhance citizen and consumer interests components to existing training programmes (e.g. ‘Introduction to regulation’)</li> <li>▪ Consider PwC’s suggestion that OCC could act as a channel through which colleagues could be educated</li> </ul> <p>Training for Consumer Policy Team (and Consumer Panel secretariat?)</p> <ul style="list-style-type: none"> <li>▪ Specific training for Consumer Policy Team (need to define scope)</li> </ul>	Q1/2 06/07
5b	Use My Development to monitor take-up of consumer policy training once programme is established.	Q1/2 06/07
Communication		
<b>Recommendation 6</b>		
<b>Ensure Ofcom and project teams engage appropriately with consumer stakeholders and OCP to get feedback on Ofcom’s policy thinking, highlight forthcoming issues and get input on current citizen and consumer priorities.</b>		
6a	Consumer Policy Team to establish stakeholder management project to include programme of regular bi-laterals/events with key consumer bodies.	Q4 05/06
6b	Consumer Policy Team to distribute quarterly consumer policy updates to consumer stakeholders, outlining Ofcom’s programme of work e.g. highlighting forthcoming consultations and new research.	Q4 05/06

Communication		
-	As per Rec. 4, Consumer Policy Team and Consumer Panel secretariat to provide project teams with advice on how and when consumer stakeholder and OCP input should be sought.	
<b>Recommendation 7</b>		
<b>Ensure Ofcom communicates its decision to consumers clearly and explains the effect of its decisions for consumers.</b>		
7a	Communications to: <ul style="list-style-type: none"> <li>▪ provide advice to project teams on when plain English summaries are required;</li> <li>▪ consider how Ofcom communicates the effects of its decisions on consumers in press releases; and</li> <li>▪ consider whether to extend (and document) existing internal risk assessment procedures for assessing what the consumer and/or citizen interest risks of publishing a document might be.</li> </ul>	Q4 05/06
7b	Consider whether research is needed to explore whether plain English summaries provide the information consumers need.	Q4 05/06
-	As per Rec. 3b, amend PRD so that projects involving publications explain from outset whether a plain English summary will be necessary.	
-	As per Rec. 8, Consumer Policy Team to establish stakeholder management project to include programme of regular bi-laterals/events with key consumer bodies. This will provide avenues for project teams to tailor their communications to consumers appropriately.	
-	As per Rec. 5a, "Introduction to...Consumer Policy" training to focus on communicating decisions to consumers.	



# Appendices



## Appendix 1

# Terms of reference

## Schedule A

### Specification: Ofcom Consumer Panel

**Development of a methodology for evaluating or auditing the way in which consumer interests are taken into account by Ofcom in the formation and implementation of regulation.**

### Specification, information and instructions

#### Summary of requirement

122. Ofcom's independent Consumer Panel wishes to review the way in which the interests of consumers are taken into consideration in Ofcom's regulatory activity in order to ensure that such interests are fully understood, given appropriate weight and ultimately furthered by the decisions that Ofcom takes.
123. The Panel is now seeking proposals to develop a methodology for carrying out an audit of how Ofcom takes into account the interests of consumers in the formation and implementation of regulation.

#### Background to the project

124. Ofcom exists, according to its mission statement, to further the interests of citizens and consumers.
125. The Ofcom Consumer Panel, established by virtue of the Communications Act 2003, advises Ofcom on consumer interests in the markets that it regulates. The Act requires the Panel to specifically consider the interests of a number of groups including consumers in each of the four nations, elderly consumers, those on low incomes and consumers with disabilities. The Panel – a group of 11 part-time people, from a range of backgrounds – believes that it cannot, with the resources available to it, be a comprehensive sounding-board for Ofcom on the whole range of consumer interests arising in its field of regulation. Inevitably, it has to be selective. It is therefore seeing part of its role as advising Ofcom on how well Ofcom itself carries out the job of understanding and taking on board the consumer interest.
126. Many regulators, including Ofcom, have developed methodologies for assessing regulatory impacts. These are about outputs. The purpose of this project is to develop a "good practice" model, a toolkit, which is focussed more on regulatory "inputs", i.e. what goes in to the formation of regulatory policy and its implementation.

127. The project would be carried out with the full co-operation of Ofcom, and the result of the project would be widely publicised. The Panel believes that such an audit will be a new and innovative method of making regulatory decision-making more transparent and holding regulators to account for consumers and as such will be of immense interest to a range of other bodies.

### **Output of the project**

128. The Panel expects the output of the project to be a methodological model of good regulatory practice in the identification of the consumer interest, as affected by Ofcom's regulation, and the reflection of that interest in the framing and implementation of Ofcom's regulatory activity.

129. It will be derived from, and applicable to, the work of Ofcom in respect of consumers. But it is envisaged that the model will be sufficiently analytical and rigorous as to be useable in other areas of Ofcom's work. As far as we are aware there is no available paradigm. But there are analogies with risk management and quality assessment procedures that are embodied in ISO and BSI standards, and we would expect the output to reflect best practice in these areas.

130. In order to make the project manageable, the project will be expected to focus on only a specific number of Ofcom projects.

131. The Panel expects the final report to include:

- Notes of interviews with Ofcom colleagues
- A comprehensive review of documented policies and procedures
- Conclusions and recommendations on ways that Ofcom's regulatory approach could be enhanced to further the interests of consumers
- Guidelines for the future conduct of similar audits

132. As this project is likely to be of significant interest to other parties, those appointed may be invited to present on their experience and findings at external events.

### **Issues to be addressed**

133. The Panel expects proposals for this project will include reference to the following activities:

- development of detailed terms of reference for the audit and a comprehensive project plan;
- at the strategic level, consideration of the sort of statements made, and in what context, of Ofcom's general approach to identifying consumer interests including analysis of the way in which those working within Ofcom approach their work and their awareness of and attitude to consumer interest issues;
- critical assessment of the way in which Ofcom embeds consideration of consumer interests into its documented policies and procedures and

guidance – including consultation procedures, project management procedures etc – and how these interests are weighed against other possibly conflicting interests; how is this done? By whom?

- the way in which Ofcom organises itself to give effect to the consumer interest and the way in which information is derived from its Contact Centre, and other sources e.g. ADR organisations;
- the way in which Ofcom interacts with the Consumer Panel itself.

### **Method of working**

134. Those appointed to this project will work in partnership with a Project Board chaired by Colette Bowe, Panel Chairman, and comprising representatives of the Ofcom Consumer Panel, Ofcom Content Board and National Audit Office. Julie Myers, Advisor to the Consumer Panel, will manage Day to day reporting and liaison.
135. The project board will take overall responsibility for the work but the appointed consultants will be expected to prepare their own report for the Panel setting out their own conclusions and recommendations. The Panel will decide on the appropriate manner to communicate the audit conclusions to Ofcom. This may include publication of the report under cover of a paper setting out the Panel's own conclusions and recommendations.
136. Those appointed must be aware that the content of the report will remain the property of the Ofcom Consumer Panel. This is detailed in Ofcom's terms and conditions, which must be strictly adhered to – please confirm agreement to T&Cs in proposals. The final report may or may not be made publicly available.
137. Those appointed to the project will need to agree the detailed arrangements with the project team but it is likely that the bulk of the work will be of the following kinds:
  - agreeing the detailed scope of the audit and approach
  - interviews with a range of Ofcom colleagues (and possibly key selected external stakeholders)
  - written reports of interviews to be agreed wherever possible with those interviewed
  - collation and analysis of Ofcom documentation
  - reports on progress and other planning documentation to be provided to the project board
  - draft material for the final report to be discussed with project board members
  - final edited text of the report in Word format and provided in electronic form and hard copy.

- **Timetable**

138. The work will commence in April/May 2005 and is to be completed within a three month period.

**Contact**

139. Any enquiries about this specification should be addressed to Julie Myers, Advisor to the Consumer Panel on 020 7981 3470 or [julie.myers@ofcom.org.uk](mailto:julie.myers@ofcom.org.uk)

**Selection criteria**

140. The project board will decide on the successful supplier on the basis of criteria that will include:

- value for money
- understanding of the brief and subject area
- project management skills/experience of those to be directly involved
- previous track record of the supplier in the broadly similar work
- agreement with Ofcom terms and conditions
- added value

## Appendix 2

# Information gathering and case studies

## Introduction

141. This appendix provides a summary of the findings of Phase 1 (information gathering) and Phase 2 (case studies) of the study. We include an overview of the consumer interest based on our research, a review of Ofcom's documentation and organisation as it relates to the consumer interest, a summary of findings from the interviews conducted with Ofcom personnel, and our findings from the two case studies undertaken.

## Defining the consumer interest

### Introduction

142. In this section we set out our findings from a high level review of a number of regulator and consumer organisations' websites and relevant documentation to establish some broad parameters of what constitutes the consumer interest. What is striking from our review is that while many organisations refer to the consumer interest, few explicitly define it. Protection and advancement of the consumer interest is referred to, as is the promotion of effective competition. Value, quality, a wider range of choice, orderly and fair markets, and innovation are some of the key words referred to by regulators such as Ofwat, Ofgem, the FSA, and the Competition Commission. We provide short reviews of our findings most relevant to this study.

### Of tel and the consumer interest

143. Of tel's 2003 annual report clearly aligns the consumer interest with the aim of increasing competition in telecommunications markets. This was seen as an explicit priority for Of tel, hence its inclusion in the foreword addressed to the Secretary of State for Trade and Industry, Patricia Hewitt:

"Of tel has continued throughout 2003 to develop competition in telecoms markets so that consumers continue to get the best possible deal. Key areas covered in the report include further developments in the rollout of broadband services and considerable growth in the number of fixed telephone line users taking up carrier pre-selection."<sup>2</sup>

And further in the Director General's statement:

"Of tel is clear that competition will deliver the best deal for consumers. And Of tel has developed an increasingly competitive market, which has

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<sup>2</sup> Of tel 2003 Annual report, available at:

[http://www.ofcom.org.uk/about/accoun/reports\\_plans/leg\\_reg/annual\\_report.pdf](http://www.ofcom.org.uk/about/accoun/reports_plans/leg_reg/annual_report.pdf)

delivered many benefits to consumers in terms of choice and value for money.”<sup>3</sup>

144. Thus Oftel’s position could be summarised by saying that promoting competition is the best way of furthering the consumer interest, three specific and important elements of which are choice, quality and value for money.

### **National Consumer Council and the consumer interest**

145. The National Consumer Council (NCC) published guidelines for authorities to use when conducting consumer impact assessments<sup>4</sup>. The NCC sees this as best practice for organisations whose policies and decisions will impact consumers:

“Carrying out a consumer impact assessment will help to assess whether markets and public services are working in the consumer interest.”<sup>5</sup>

146. The NCC lists the following eight consumer impacts as constituting the consumer interest:

- Value for money
- Access
- Choice
- Information
- Redress
- Safety
- Fairness
- Representation

147. With regard to Ofcom’s specific remit, access, fairness and representation are closer to citizen issues than consumer issues.

### **The Communications Act 2003 and the consumer interest**

148. The Communications Act 2003 states that one of Ofcom’s general duties is:

“to further the interests of consumers in relevant markets, where appropriate by promoting competition.”<sup>6</sup>

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<sup>3</sup> *ibid.*

<sup>4</sup> “Consumer Impact Assessments: a guide by the National Consumer Council” available at: [http://www.ncc.org.uk/regulation/consumer\\_impact.pdf](http://www.ncc.org.uk/regulation/consumer_impact.pdf)

<sup>5</sup> *ibid.* page 2.

<sup>6</sup> Communications Act 2003 Part 1, 3(1b).

149. In fulfilling this duty and determining what constitutes the consumer interest the Act identifies four particular elements<sup>7</sup>:

- Price
- Quality
- Value for money
- Choice

150. In doing so the Act states that Ofcom should also have regard (where appropriate) to:

“the desirability of promoting competition in relevant markets... the desirability of encouraging investment and innovation in relevant markets... the opinions of consumers in relevant markets and of members of the public generally.”<sup>8</sup>

151. The factors to which Ofcom must have regard also give some indication of what (in addition to price, quality, choice and value for money) constitute or at least impact upon the interests of citizens and consumers under the Act.

### **Ofcom Consumer Panel and the consumer interest**

152. The Ofcom Consumer Panel (OCP) has challenged the definition of the consumer interest, as made particularly clear in its June 2004 response to the “Protecting Consumers from Mis-selling of Fixed-line Telecoms Services” consultation by Ofcom. In this response the Consumer Panel states that:

“Even at this early stage of our work, we are taking the view that a genuinely competitive market cannot be defined simply in terms of the existence in the marketplace of a range of different suppliers. For competitive markets to work in the interests of consumers, those consumers have to be able to make informed choices with a clear understanding of the consequences and appropriate opportunities for redress.”<sup>9</sup>

153. The OCP thus adds information as being essential for markets to work in the interests of consumers and questions whether light-touch regulation that encourages competition will always deliver the consumer benefits.

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<sup>7</sup> *ibid.* Part 1, 3(5).

<sup>8</sup> *ibid.* Part 1, 3(4).

<sup>9</sup> Ofcom Consumer Panel response to Telecoms Mis-selling, paragraph 2, available at; <http://www.ofcomconsumerpanel.org.uk/consultations/Mis-selling.pdf>

## Competition law and the consumer interest

154. The Office of Fair Trading's (OFT) approach to the consumer interest is evidenced from its published guidance on market studies<sup>10</sup>;

“When working effectively, competition involves a process of rivalry between firms who strive to win business by achieving the lowest level of costs and prices, developing new products or services or exploiting their strengths, skills and other advantages to meet customer needs more effectively than competitors. This process is good for consumers and firms alike. Competition encourages innovation and diversity of offerings. It also gives a strong incentive for firms to compete on price and quality of customer service. When competition does not work effectively consumers can suffer.”

“Consumers can also suffer as a result of commercial misconduct such as misleading advertisements, can be disadvantaged by complicated contracts, or can make poor decisions when not given clear information. They can also suffer when products are mis-sold. Consumer protection legislation, which the OFT and trading standards departments enforce, covers these, and other issues.”<sup>11</sup>

155. Lower prices are important, together with new products and services through innovation and increased choice. Informational and quality issues are also referred to.

## Consumer law and the consumer interest

156. Consumer protection legislation takes a similar approach to the competition legislation. In the context of the Unfair Terms in Consumer Contracts Regulations (UTCCRs) the OFT<sup>12</sup> determines that a term is unfair when:

“Contrary to the requirement of good faith it causes a significant imbalance in the parties' rights and obligations under the contract, to the detriment of consumers.”

157. The consumer interest is implicitly the inverse of the consumer detriment.

## Summary

158. Our review indicates that few organisations explicitly define the consumer interest. However, several key aspects of the consumer interest are referred to, including:

- Price
- Quality
- Value for money

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<sup>10</sup> “Market studies: Guidance on the OFT approach”, December 2003, available at:

<http://www.offt.gov.uk/NR/rdonlyres/5AFF9EB2-AFF3-462E-B497-2255F0F3BAF5/0/off509.pdf>

<sup>11</sup> *ibid.* paragraphs 1.4 - 1.5.

<sup>12</sup> Extensive guidance on UTCCRs is available at:

<http://www.offt.gov.uk/Business/Legal/UTCC/guidance.htm>

- Choice
- Access
- Information
- Redress
- Safety
- Representation
- Innovation

159. Many of the organisations see the promotion of competition, with the relevant caveats, as being the most effective way of achieving these aspects.

## **Review of Ofcom's documentation and organisation**

### **Introduction**

160. The objectives of this section are to review various elements of Ofcom's published documents, its structure and interaction with other organisations, as they relate to the consumer interest. These are the main channels through which Ofcom communicates and is visible. It is therefore important for these channels to communicate the rationale for Ofcom's decisions and convey to stakeholders that their interests have been appropriately considered, as well as explaining to interested parties how they might expect to be affected by the policy or review.

### **Mission statement**

161. Ofcom's stated mission is:

"Ofcom exists to further the interests of citizen-consumers through a regulatory regime which, where appropriate, encourages competition."<sup>13</sup>

162. This is clearly derived from the Communications Act 2003. As noted earlier the Act gives limited guidance with respect to what constitutes the consumer interest. Consequently the mission statement provides a goal and a possible instrument with which to achieve the stated goal but does not provide much guidance on what the what may constitute the interests of citizen-consumers.

### **Annual plan 2005-06**

163. The annual plan for 2005-6 was drawn up through a consultation process whereby Ofcom initially issued a draft for consultation on 20 January 2005<sup>14</sup> followed by a statement of the final document on 12 April 2005.

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<sup>13</sup> Ofcom Annual Plan 2004/05, section 2.1.1. Available at:

[http://www.ofcom.org.uk/about/accoun/reports\\_plans/annual\\_plan\\_2004-05/section2#content](http://www.ofcom.org.uk/about/accoun/reports_plans/annual_plan_2004-05/section2#content)

164. The opening foreword states that stakeholders, in response to the previous draft plan, had highlighted a number of issues that Ofcom needed to address in the coming year. These included:

“The need to create the right environment for investment in communications infrastructure, especially broadband... The need to ensure widespread and affordable access to communications services and equipment, taking account of the interests of all citizens and consumers, wherever they live and whatever their circumstances... The demands of citizens, consumers and small businesses for the information and support they need to be able to make more informed choices and take full advantage of increased competition and choice across the sector.”<sup>15</sup>

165. Many of these issues have strong consumer interest aspects to them. The foreword noted that in response to the submissions, Ofcom had initiated four new projects, one of which, the Consumer Strategy project, will examine consumer issues. The objectives of the Consumer Strategy project are described as follows:

“Develop an overall strategic approach to all Ofcom’s consumer-facing work, taking account of: the Consumer Audit, Nations and Regions Audit; the opportunities for consumers to exercise more control and choice which may result from increasing convergence.”

166. This review falls under the third “theme” for 2005/06 which is titled, “addressing important citizen and consumer issues.” This theme encompasses the promotion of widespread access and the protection of citizens and consumers. The plan provides details on a number of workstreams that will tackle specific issues within these fields.

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<sup>14</sup> Available at:

[http://www.ofcom.org.uk/consult/condocs/annual\\_plan2005/annual\\_plan200506/fpv/annual\\_plan\\_print.pdf](http://www.ofcom.org.uk/consult/condocs/annual_plan2005/annual_plan200506/fpv/annual_plan_print.pdf)

<sup>15</sup> Available at: [http://www.ofcom.org.uk/about/accoun/reports\\_plans/annual\\_plan0506/?a=87101](http://www.ofcom.org.uk/about/accoun/reports_plans/annual_plan0506/?a=87101)

## Consultation guidelines

167. Ofcom's consultation guidelines<sup>16</sup> set out the process and principles that Ofcom will follow in conducting its consultations. The document explains that there are essentially two channels through which consumers' opinions of the consumer interest will be accessed, the formal and the informal. The formal channel involves each consultation being publicly posted on Ofcom's website, with a summary of no longer than two pages. Where the consultation is particularly long and technical, a shorter "plain English" version may be produced. These measures are designed to reduce the time and costs of engaging with Ofcom, which in turn should increase the number of residential consumers and SMEs who are able to find the resources to contribute their opinions. The consultation guidelines acknowledge that this may not be sufficient to obtain the required breadth and depth of consumers' views and consequently has put forward a range of informal methods for engaging consumers. These include informal discussions with consumers themselves, interest groups that represent consumers, membership bodies such as trade associations and community groups, the use of focus groups and interactions with the OCP.

## Consultation champion

168. Ofcom's consultation guidelines also highlight that there will be a person within Ofcom who will undertake the role of ensuring that Ofcom follows its own guidelines and reaches out to the largest number of people and organisations interested in the outcome of Ofcom's decisions. This person will be called a consultation champion and will also be the principal person to contact with comment and suggestions on the way that Ofcom runs its consultations.

## Ofcom's approach to impact assessments

169. Ofcom's consultation and statement on its approach to Impact Assessments<sup>17</sup> reflects its statutory duty to carry out an Impact Assessment of the proposed policy on "important" reviews. The purpose of this document is to explain how Ofcom goes about undertaking an Impact Assessment.

170. Ofcom describes what constitutes an Impact Assessment by stating that it should:

- Identify the impact of each option on particular groups of stakeholders;
- Identify the impact of each option on competition;
- Identify and, where appropriate, quantify the costs and benefits of each option;
- assess the key risks associated with each option.

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<sup>16</sup> "How will Ofcom consult? A guide to our consultation process". Available at:

[http://www.ofcom.org.uk/consult/consult\\_method/consult\\_guide.pdf](http://www.ofcom.org.uk/consult/consult_method/consult_guide.pdf)

<sup>17</sup> Available at: [http://www.ofcom.org.uk/consult/condocs/policy\\_making/guidelines.pdf](http://www.ofcom.org.uk/consult/condocs/policy_making/guidelines.pdf)

171. Ofcom explains the reasons why it is looking at the effect on competition by saying,

“The benefits for citizens and consumers are potentially largest where markets are open, new entrants can compete against incumbents, investment is encouraged and innovation flourishes. For this reason, we are committed to promoting open and competitive markets. Where appropriate, therefore, Impact Assessments need to show the extent to which the options under consideration would have an impact on competition.”

172. In the process of producing an Impact Assessment, the identification of the citizen or consumer interest is the first step. The fourth step relates to the identification of the impacts upon different stakeholders. This discusses the need to consider different groups such as those on low incomes or living in different parts of the country. The sixth step involves assessing the impacts, including consideration of when the costs and benefits are likely to materialise, and deciding upon a preferred option.

173. This process has ample scope to identify and assess the nature and impact upon the consumer interest of a particular policy. The document itself explicitly acknowledges that this consultation and statement is part of a wider programme of work to embed the process of carrying out Impact Assessments across Ofcom. This involves training and other initiatives to raise awareness.

### **Key policy statements and announcements**

174. We conducted a review of Ofcom's policy statements and announcements over the first six months of 2005 in order to examine how Ofcom communicates its consideration of, and the impacts upon, the consumer interest in its policy statements, announcements and news releases. Below we provide a summary of our findings; in Appendix 4 we provide the details of our analysis of each release we considered.

175. We drew three particular conclusions from our review:

- Ofcom explains acronyms and technical terms in variable detail across its releases;
- Ofcom frequently references its statutory duties where appropriate but does not always appear to explain how the proposed policy directly relates to them; and
- Where Ofcom explains that it is promoting competition in order to further the consumer interest it does not always appear to specify how promoting competition in this particular market could be reasonably expected to improve certain aspects of the consumer interest or how it is anticipated that the policy instrument will promote competition.

176. A theme emerging from the review was the apparent variation in referencing the consumer interest. This may well be appropriate where the proposed policy impacts almost exclusively upon industry players; however even where the consumer is almost entirely directly removed from the matter at hand there may be scope for more articulation of how proposals can be expected to affect consumers.

### **Ofcom's structure as it relates to the consumer interest**

177. Ofcom's policy making structure is split into three main divisions, Strategy & Market Developments (S&MD), Competition & Markets (C&M) and Content & Standards (C&S). The bulk of consumer interest issues arise in S&MD and C&M. The Consumer Policy team is based within S&MD to enable a strategic focus and is led by the Consumer Policy Director.

178. The market research team is based within S&MD, as is the Chief Economist's team. There are also teams with significant consumer interaction that are not within the policy-making structure. The Ofcom Contact Centre is based in Operations, and the External Relations and Communications teams are part of the Chief Executive's Office. The Ofcom Contact Centre is the first point of contact for consumers with Ofcom and is examined below.

179. Ofcom's process structure yields two key forums for the discussion of the consumer interest; the Policy Executive and the Board. These are two control bottlenecks where reviews and consultations are robustly challenged on all issues, including consumer interest issues. As the overwhelming majority of projects must pass through these forums, they help to facilitate a consistent approach to all aspects of regulatory decision making.

180. Within Ofcom there are a number of advisory panels and steering committees that advise on consumer, and other, issues. External to Ofcom, the Ofcom Consumer Panel responds to individual consultations and gives strategic level input into Ofcom's consideration of the consumer interest. Ofcom also interacts with the Alternative Dispute Resolution bodies, examined below.

### **The Ofcom Contact Centre**

181. The Ofcom Contact Centre (OCC) receives communications from the public covering the range of sectors and issues. These calls, emails and letters are categorised by the issue to which they relate and reports on a daily, weekly and monthly basis are circulated within Ofcom to aid policy teams in their assessment of what is causing consumer harm. In this manner the OCC uses contact with the public to input into Ofcom's work.

- The OCC also develops its external presence, particularly through the production of leaflets that detail what to do if you have a complaint about a communications service. These form an important part of Ofcom's external presence as they provide information without the consumer having to visit a website or use other technology. These are entitled:
- "How to complain about a telecoms service";

- “Who to complain to about television and radio”; and
  - “Interference to TV and radio reception”.
182. The telecoms leaflet succinctly explains what you should do in the event of having a complaint with regard to a telecoms service and what Ofcom doesn't regulate. It indicates the amount of time that consumers must allow their telecoms provider to resolve the complaint and the details of the Alternative Dispute Resolution schemes (ADR) in case the provider fails to resolve the issue. It stresses that Ofcom will only be concerned itself with complaints relating to the process that the provider or ADR undertook.
183. The television and radio leaflet is concerned principally with content and is consequently beyond the remit of the Ofcom Consumer Panel and outside the scope of this study. However it is informative to note that the leaflet clearly describes the issues which Ofcom can consider such as impartiality, accuracy, privacy, harm and offence.
184. The TV and radio interference leaflet highlights Ofcom's priorities for dealing with interference issues (emergency services, then businesses, then others) and identifies the sort of problems that Ofcom can investigate.
185. All three leaflets provide contact details by web, email, phone and post.

### **Interaction with alternative dispute resolution bodies**

186. The Alternative Dispute Resolution bodies (ADRs) are The Office of the Telecommunications Ombudsman (Otel) and The Communications and Internet Services Adjudication Scheme (CISAS). All providers of communications services are required to be a member of an ADR organisation in order to provide their customers with an additional channel to resolve any complaints that they feel their service providers have been unable to address satisfactorily.
187. CISAS issued a report on its activities to Ofcom<sup>18</sup>. This report highlights how CISAS works with consumers and consumer interest issues through twelve case studies of arbitrations it has adjudicated on. The themes of the case studies covered overcharging, ex-directory, debt collection, unauthorised international calls, text play, no service, deactivated simcards, infra red links, free phone charges, stolen mobile calls and rogue diallers. These cases cover the spectrum of consumer interest issues by dealing with price, quality, access, innovative services and informational issues.
188. In terms of the volume of work CISAS has dealt with, it received 821 inquires, of which 127 led to requests for adjudication. Where the case was not settled the adjudicator ruled in favour of the consumer 60% of the time.
189. The report also details the timetable, laid down by Ofcom, that CISAS aims to keep to, and discloses that it will, upon request, disclose a number of details to Ofcom including any delays experienced by consumers in being paid the amount they are owed. In its conclusion CISAS emphasises it is continuing to work closely with all its stakeholders, including consumer groups:

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Available at: <http://www.arbitrators.org/cisas/index.asp>

“CISAS continues to work with OFCOM, consumer groups, ISPA, ICSTIS, EURIM, the various government departments and member and non-member companies.”

190. Otelo issued its annual report<sup>19</sup> for the period April 2003 to March 2004. Its report follows a similar structure to that of CISAS with key figures and case studies. In its first year of operation, Otelo dealt with 16,200 contacts, which led to 508 complaints. The largest subsection of these was related to customer service, with billing being the second largest concern. Otelo identified a lack of sufficient clarity in the information customers receive when purchasing a new product or service as being a significant source of consumer complaints. In addition it noted that whilst customer service was rarely the original cause of a complaint, it does frequently make things worse and contributes to the development of a major problem.
191. There are also two telecoms related bodies that are not ADRs; the Office of the Telecommunications Adjudicator (OTA) and the Independent Committee for the Supervision of Standards of Telephone Information Services (ICSTIS), which regulates the pricing and content of Premium Rate Services (PRS).
192. Due to Ofcom’s profile many consumers who have a dispute will call Ofcom before calling an ADR or other appropriate body. The Ofcom Contact Centre plays a key role in directing them to the body best placed to deal with their complaint. This tendency to contact Ofcom first is exacerbated by certain service providers placing Ofcom’s telephone number above their own inquires line on the back of their bills.

## Summary

193. In summary, focus on the consumer interest appears to vary across Ofcom’s published documentation and structure. The Impact Assessment and consultation guidelines clearly explain Ofcom’s reasoning, the link between the consumer interest and promoting competition and the methods by which Ofcom should engage with consumers and their representatives. The Annual Plan also clearly articulates how Ofcom’s programme of work relates to consumer interest issues. Based on our review of key policy statements, however, how a proposed policy will impact upon consumers and the consumer interest is not always made explicit.

## Interviews with Ofcom personnel

### Introduction

194. We conducted 20 face-to-face interviews with Ofcom senior personnel across a range of departments/areas, including:

- Competition and Markets;
- Consumer Policy Group;
- Strategy and Market Developments;

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<sup>19</sup> Available at: <http://www.otelo.org.uk/content.php?pageID=79>

- Nations and Regions;
- External Relations;
- Communications;
- Market Research;
- Ofcom Contact Centre; and
- Chairman, Deputy Chairman and Chief Executive.

195. The interviews were conducted using a “checklist”, which is attached as Appendix 5 to the report. In brief the areas discussed included:

- Definition and approach to defining the consumer interest;
- The process of including consumer interest issues in the formation and implementation of regulatory policy making; and
- Any issues and problems identified.

196. Below we provide a summary of the comments made during the interview programme.

### **Key messages**

197. Most participants viewed the study as being beneficial to Ofcom. These benefits were seen to be:

- Clearer, more transparent articulation of the consumer interest;
- Reinforcement of the processes that need to be followed;
- Embedding of quality assurance;
- Obtaining an external viewpoint; and
- Results of an objective process could be stated in Ofcom’s annual plan and report.

198. One participant noted that all of Ofcom’s work has consumer focus, but that it is sometimes indirect and is not systematised. A potential benefit of the study would be to bring greater transparency to this. Another held the view that the study could be beneficial because at present there was not a requirement to think systematically about the consumer interest, whilst another felt that there was not always a clear terminology within Ofcom with respect to consumer issues versus citizen issues and that they should be expressed in a way that Ofcom personnel can use to make decisions. Generating increased clarity surrounding what Ofcom means when it is discussing the consumer interest was seen as a positive step.

199. Other comments focused around Ofcom’s statutory duty to be an evidence-based regulator and, it was stated that if the study were to provide an output that Ofcom can use to strengthen its evidence base, this would clearly be a good thing.

200. Finally one participant expressed that it would be of benefit to get to the heart of Ofcom's regulatory philosophy.
201. It was recognised at the commencement of this study that any output or suggestions would only be effective if they worked with the grain of how Ofcom operates on an organisational basis. Ofcom provided us with a number of clear pointers in respect of our deliverables for the study, as displayed in Figure 5.

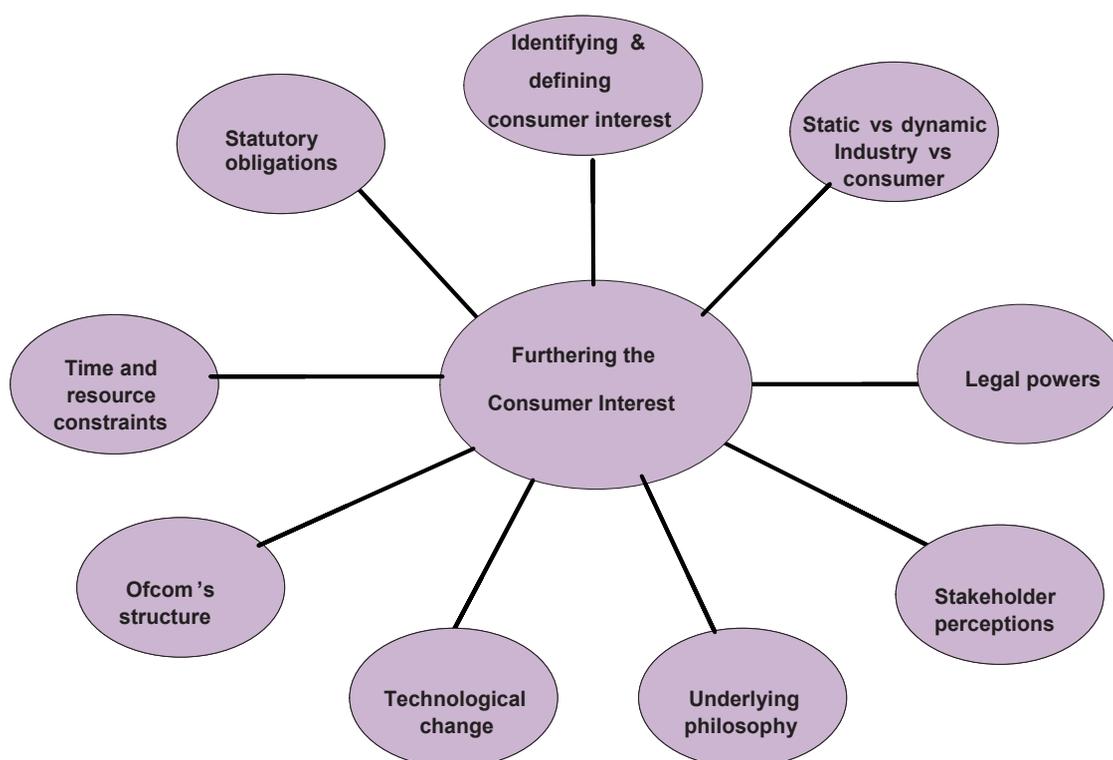
**Figure 5: Pointers for the study provided by Ofcom**

• Increased bureaucracy	<input checked="" type="checkbox"/>	• Quality assurance	<input checked="" type="checkbox"/>
• More tick boxes	<input checked="" type="checkbox"/>	• Simple and practical	<input checked="" type="checkbox"/>
• More process	<input checked="" type="checkbox"/>	• Work within existing IAs	<input checked="" type="checkbox"/>
• Simple definition	<input checked="" type="checkbox"/>	• Embed into thinking	<input checked="" type="checkbox"/>
• Overstate the problem	<input checked="" type="checkbox"/>	• Small measures only	<input checked="" type="checkbox"/>

**Challenges faced by Ofcom in furthering the consumer interest**

202. Whilst furthering the consumer interest is a statutory duty of Ofcom, participants identified a number of challenges that arise from the Communications Act 2003, the markets in which Ofcom operates, and practical limitations on its capabilities, as summarised in Figure 6.

**Figure 6: Challenges faced in furthering the consumer interest**



### **Defining the consumer interest**

203. Several interviewees stated that the starting point for defining the consumer interest has to be the Communications Act. Another noted that the Impact Assessment document has at its heart the concept of consumer interest, given that it looks at the effect of the regulatory stance upon the major stakeholders. Taking all responses into consideration we identified 4 aspects of the definition of the consumer interest resulting from our discussions with Ofcom, as summarised in Figure 7.

**Figure 7: Ofcom's definition of the consumer**

<b>The Theoretical</b>	<b>=</b>	<b>Maximise Utility Maximise Welfare Maximise Consumer Surplus</b>
<b>The Applied</b>	<b>=</b>	<b>Price, Value for money, Choice, Quality of service, Innovation, Access, Redress mechanism</b>
<b>The Empirical</b>	<b>=</b>	<b>Market research to test and verify the above</b>
<b>The Pragmatic</b>	<b>=</b>	<b>What is it like for the punter?</b>

### **Characteristics of the consumer interest**

204. Ofcom also highlighted a number of characteristics of the consumer interest, including:

- It isn't always obvious;
- It is complex;
- It is contestable and debatable; and
- There is no standard definition – it varies across sectors and projects.

205. Consequently, it became clear to us early on in the study that attempting to establish a single definition of the consumer interest appeared neither sensible nor desirable and that what is required instead is a consistent framework in which to identify and define the consumer interest on a case-by-case basis.

206. Furthermore, in our interviews with Ofcom, we also discussed citizen issues particularly because there inevitably emerge as specific groups of consumers (e.g. vulnerable consumers), are identified.

207. Participants raised some interesting and diverse issues with relation to the citizen interest and its interface with the consumer interest. It was acknowledged that whilst competition would deliver for the consumer in most general cases, this was not the case for vulnerable consumers or citizen interest issues. One participant felt that the resolution to this would be that wherever the market was unable to deliver a satisfactory outcome the 'citizen' part of Ofcom's duty should kick in. This could then involve interventions that are not welfare-maximising, and so stray from some views of the consumer interest, but would be driven primarily by equity considerations. Another participant thought that the citizen interest issues were inextricably linked to consumer interest issues. This could be seen to be the case where consumers have to be protected. It was also stressed that vulnerable citizens should be included in the decisions and that protecting vulnerable consumers could arguably be seen as a citizenship goal. With respect to the bodies within Ofcom that examine citizen interests one participant highlighted that the Content Board deals with citizen issues connected to content but structurally no-one within Ofcom represents the citizen on issues outside of content. The Ofcom advisory committees that sit outside Ofcom address this to some extent.

### **Is the consumer interest explicitly defined by Ofcom?**

208. Views on whether there was an explicit definition varied amongst participants. Some thought that there was no explicit definition, whereas others felt that in competition analysis it was taken to be the inverse of the consumer detriment as defined in competition law. Many described the starting premise as being the proposition that (with the usual caveats) promoting competition will promote the consumer interest, whilst noting that this is sometimes missed as an explicit upfront step. One felt that this was principally about communication and explanation in the sense that Ofcom does not always link the proposed actions to the objectives and hence gives the impression that it is focusing on means rather than ends.

209. One participant remarked that Board and PE papers are full of economic, legal and commercial issues, but few with respect to the consumer and that it was sometimes difficult for those not close to the project to develop sufficient understanding to identify the implications for consumers. Another remarked that perhaps it would be helpful to have a section on the Board template that split out the impact upon stakeholders and an area where citizen, consumer and regulatees' interests are specifically addressed.

210. One stated that there may need to be more articulation to make the implicit explicit.

### **Is the consumer interest consistently applied across Ofcom?**

211. Participants highlighted a number of difficulties associated with consistency and challenged the notion that Ofcom should be aspiring to be consistent in its application of the consumer interest. The challenges included the diverse sectors for which Ofcom has responsibilities and the statutory requirements to treat different issues in different ways. However, others noted that despite being articulated differently across the organisation, there was a consistent philosophical approach and that the consistency was largely due to the focus on competition. One respondent, however, remarked that there is a lot of unsystematic consideration of the consumer interest.

## **Awareness and attitudes toward the consumer interest**

212. Participants reacted in different ways in relation to this topic and provided responses ranging from, “everything we do is about the consumer interest”, to doubting whether it was in the hearts and minds or “DNA” of their colleagues. One noted that, given the technical and public service background of a large section of Ofcom personnel, they would not have had to deal with consumer interests in the raw in their previous careers. One provided the insight that excellence in consumer issues and policy might not be viewed as being key to advancement in Ofcom when compared to technical or commercial skills.
213. Some participants stated that training would help improve awareness, whilst one expressed that training was needed on why to intervene first and then on consumer interest issues.

## **Measurement of the consumer interest**

214. Participants consistently noted the difficulty of measuring the consumer interest. These ranged from data availability (many benefits and costs will be realised in the future) to the limited use of reducing the consumer interest to a single measure. However, those closer to the operation of such measurement tools noted that when it is used, it is treated as less of an exercise in itself but more as a worthwhile discipline on thinking and a sense check on magnitude.

## **To what extent is the consumer interest seen as being met through promoting competition?**

215. Responders to this question all noted the relevant caveats surrounding the promotion of competition, that it should not be promoted for its own sake, only to establish a more effectively competitive market where the benefits will flow down to consumers. In addition, whilst a well functioning market generally advances the consumer interest and delivers 80% of the time for most, there will be some consumers for whom this is not the case. One participant also commented that competition tools, used properly, always furthered the consumer interest but that there exists good and bad competition analysis which boils down to whether those conducting the analysis have the correct understanding of the problem in the market.

## **How are consumer interests weighted against other factors in the regulatory decision making process and which guidelines or principles do you feel are most frequently in conflict with consumer interest issues?**

216. One participant noted that it is not Ofcom’s job to champion the consumer exclusively and another that the Act leads Ofcom to attribute a high weight to it. Another stated that there is no formulaic solution to how the impacts upon various stakeholders are traded against each other, though aspects of the consumer interest are weighted against each other, for example coverage and capacity in the Digital Switchover review. This was reflected by another’s comment that dealing systematically and effectively with the trade-offs associated with the consumer interest is genuinely challenging.

217. Another participant noted that whilst tensions do arise between the static and the dynamic, the industry and the consumer, this is the “meat and drink” of the Policy Executive debate. Another felt that Ofcom should be clearer about which forms of competition are most likely to maximise welfare and thus aid judgements that have an intertemporal aspect. Some interviewees raised concerns, stating that the weighting of consumer interests against others could be systemised better and that the process by which conclusions are reached is not particularly transparent.

**How does Ofcom’s consideration of the consumer interest fluctuate depending upon the proximity of the consumer to the matter at hand? What problems are encountered in accessing views?**

218. Participants were clear that Ofcom had a closer dialogue with business stakeholders than consumers and that the natural process of trying to develop a deep understanding of a frequently technical issue takes the project further away from the consumers. Some felt that a stronger voice for the consumer should be developed within Ofcom. One mentioned that it is important also to get right the relationships and processes of the OCP inputting to Ofcom’s projects.

219. With respect to consumers themselves, SMEs were regularly identified as being the most difficult group to target and obtain views from. In addition, comments were made that consumer groups themselves are not as specialised in individual markets and lack the resources to become so. This can lead to a lack of understanding between Ofcom and the consumer bodies as they do not recognise or identify with the way in which Ofcom communicates, and Ofcom’s processes are not visible to them. Further, the ability of consumer groups to represent consumers in general was questioned given they do not have access to a comprehensive research facility such as Ofcom’s and sometimes they do not respond, or respond only partially, to consultations.

220. One participant noted that the strategic reviews did start with people; they looked at where the market couldn’t deliver, where it could be improved and whether there should be more intervention.

**Process**

221. We asked several questions about how the consumer interest is factored into regulatory decision-making and implementation. Ofcom appears to be process rich, with many key procedures in place:

- The consumer interest is identified at the start of the review through the Impact Assessment and Project Requirements Document;
- Policy issues are typically debated at the relevant steering group (e.g. Policy Paper Review Group), the Policy Executive and the Board. Templates and minutes are produced for the Board and PE; and
- The principal decision making bodies aid consistency of approach.

222. With respect to Ofcom's processes one participant expressed the view that a framework was needed which first sets out when it makes sense to intervene in the market. From that framework explicit processes need then to be developed, and finally specific tasks or actions should arise from those processes. Another stated that Ofcom needed to embed consumer thinking in its existing processes, whilst another held the view that a set of working principles needed to be rolled out across Ofcom

### **Ofcom's suggestions for improvement**

223. The interviewees made the following suggestions:

#### Awareness

- Make the implicit definitions and assumptions explicit;
- Awareness training such as a "Consumer Interest 101"<sup>20</sup>;
- Spend time in the OCC;
- Integrate consumer interest into appraisals; and
- Get a more consistent understanding of principles of the consumer interest across groups.

#### Process

- Insert a half a page on the PE template to explain how this review relates to functions and duties;
- Improve the PRD;
- More visible integration into work processes and embed consumer interest thinking;
- Enhance the regulatory principles to reflect the consumer interest;
- Move consumers up the agenda;
- Spend more time with consumer stakeholders; and
- Systemise better the weightings of consumer against other interests.

#### Structure

- Consumer champion or senior consumer affairs leader;
- Embed consumer policy personnel throughout Ofcom teams; and
- Cross-functional teams where possible.

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<sup>20</sup> This could be a one hour course to bring to the surface the complexity and some of the different aspects of the consumer interest (consumers don't always know what they want) and could cover definitions on how the consumer interest is weighed against other factors.

Other

- Think about the consumer as a real person; and
- Think about people on the fringes.

## Summary of key points

224. We consider that the following summarises the key points arising:

- The consumer interest is complex and cannot be reduced to a single definition;
- The consumer interest is implicit in all Ofcom does but it is not always made explicit and is often n-steps away from the issue at hand;
- The consumer interest is considered by most to be best served by the promotion of competition (subject to the usual caveats), although some disagree;
- There is agreement that engagement with consumer stakeholder groups needs further attention;
- Ofcom is process-rich and the new IA roll-out (together with the outputs of the Consumer Strategy project, the PRD and new PE/Board templates) should ensure the highlighting of consumer interest issues early on and throughout the process, and a consistency of approach across Ofcom;
- For defined projects, the key processes kick in. How specific consumer issues that arise on an ad hoc basis (e.g. via the OCC or the media) become a “project” is less transparent and difficult (i.e. are they really an issue?); and
- There are a number of areas for further debate and these relate to awareness, making the implicit more explicit, process, and structure.

## Case studies

### Scope and rationale

225. Ofcom released more than 1,100 publications last year, by far the largest category of which were in telecommunications. As the OCP thus far has also focused largely on telecoms issues, the Project Board selected the following case studies:

- Telecoms Mis-selling – a case whereby consumer protection issues arose and Ofcom intervened.
- TSR (phase 1 and 2) – a substantial and significant study helping to shape the future of the whole telecoms sector.

226. An initial face-to-face overview discussion was held, followed by a review of documentation. The key issues that were considered in each case study were:

- Were Project Requirement Documents and Impact Assessments completed as a means of recording the consumer issues to be addressed?
- What were the main consumer interests identified in the study?
- How were the main consumer interests identified?
- At what stage in the review were the consumer interests identified?
- How were consumers and their representatives given a voice?
- What was the level of consumer consultation?
- Did Ofcom consider how the impact on the consumer interest might vary over time?

## Telecoms mis-selling

### Introduction to the consultation

227. The mis-selling related to providers making misleading claims relating to their services, whilst slamming referred to customers being transferred without their explicit acknowledgement or consent.
228. The background to the study is as follows. When competition was first introduced that involved other suppliers supplying fixed telecom services that relied on using the BT network, customers had to dial a prefix (or install an autodialler) to use their selected supplier. If they forgot (or chose not) to use the prefix number/autodialler the calls were treated as BT calls which BT could charge the customer for. Such a customer received two bills – one from the new supplier for calls and one from BT for calls and rental for use of the network. The introduction of CPS (Carrier Pre-Selection) meant that BT was required to re-programme exchanges so that customers calls were routed via their chosen supplier without the use of the prefix/autodialler. With CPS, customers still receive two bills, one for the calls and one from BT for rental for the use of the BT network. The next stage of roll out involved some service providers paying BT directly for use of the BT network (Wholesale Line Rental (WLR)) so the customer only receives one bill from their preferred supplier.
229. Mis-selling was related to customers who transferred from BT to both the CPS and WLR service. When the CPS service was first introduced, transfer to new providers involved the customer posting a reply card to BT to confirm its desire to adopt a CPS provider. Using this method CPS take-up was low so this requirement was relaxed to a 10-day cooling off period during which the customer could, without penalty, cancel the arrangement to switch to a CPS provider. Consumer representative organisations were involved in the design of this transfer system. BT wholesale, or the losing provider, receives a postcode of the customer who wishes to switch, from the gaining provider. This acts as a cross check to identify the customer.

230. BT and customers complained to Ofcom that people were being switched to another provider without fully understanding that the gaining provider was a separate organisation. BT collated statistics on these “Unfair Trading Incidents” (UTIs). These were determined by BT by contacting those customers from who they had received a switching request and questioning them to ensure that they understood the implications. These marketing activities by BT, following a request to transfer supplier, were termed “save calls”. Where the consumer didn’t want to switch, BT unilaterally applied the “Cancel Other” facility, which cancelled the transfer and logged a UTI. If, during the 10-day cooling off period, the customer informed the gaining provider that it no longer wanted to switch, the gainer could employ “Cancel Own”.
231. Oftel, and subsequently Ofcom, monitored the situation and in particular the industry’s compliance with a voluntary code of conduct. This monitoring involved checking if there was mis-selling/slamming occurring and also whether BT was using the “save calls” and the “Cancel Other” facilities appropriately. Ofcom started the process of determining whether the code of conduct needed to be made mandatory in the first few months of coming into existence. At this stage Ofcom and the OCC were receiving approximately 50 complaints a month indicating that there was a genuine consumer issue.

### **Documentation reviewed**

- In our review the following documentation were reviewed:
  - Policy Executive and Board papers showing how issues were discussed and agreed;
  - BT’s UTI data and review of that data by Schema;
  - Ofcom Contact Centre data;
  - Consumer Issues Task Group minutes; and
  - Notes of discussions with CPS Operators.

**Table 4: Key messages about telecoms mis-selling**

Key questions asked in reviewing the case study paperwork	Responses to those questions
Was a Project Requirement Document (PRD) completed?	Yes
Was a Risk Impact Assessment Form completed?	No – Regulatory impact assessment included in Project Requirement Document
What were the main consumer interests identified in the study?	Based on the PRD the key consumer interest issues were: Ensure benefits of effective competition available to citizen-consumers Protect consumer from Mis-selling Protect consumer by ensuring switching supplier is low cost and easy to implement
How were the main consumer interests identified?	Regular reports received from the Ofcom Contact Centre on Mis-selling and slamming reported to them. Unfair Trading Incidents (UTI) reported to BT by consumers to BT reviewed and substantiated via an independent review undertaken by Schema (independent consultancy)
At what stage in the review were the consumer interests identified?	From the outset. Project mainly driven by consumer issues
How were consumers and their representatives given a voice?	Consultation process resulted in responses from: Age Concern, Citizens Advice Bureau, Consumer Association, Consumer Panel, National Consumer Council  Regular meetings with Consumer Issues Task Group (CITG) which included representatives from Public Utilities Access Forum (PUAF) and DIEL (Advisory Committee for Disabled and Older People)
Did Ofcom consider how the impact on the consumer interest might vary over time?	The mandatory code of conduct imposed has a two-year sunset clause to deal with the temporal aspect
Were consumer issues clear in the final communication	The final output was a mandatory code of conduct imposed on CPS providers. This was a clear consumer protection action and as such the consumer issues can be said to have been clear in the final communication

## Conclusions

232. The conclusions from the review of the documentation relevant to the strategic review of Telecoms Mis-selling are as follows:

- The project was well supported by documentation and the underlying process. The Mis-selling documentation was presented in well organised files, facilitating process of reviewing documentation;
- The views of consumers were sought to inform the project. In particular, use was made of OCC, consumer representatives and direct consumer consultation;
- The Board was keen to balance consumer issues with the concerns of other stakeholders. In particular the Board was concerned about market perception of additional consumer protection; and
- Inter-temporal aspects are considered but considered explicitly through the use of a sunset clause.

## Telecoms strategic review

### Introduction to the consultation

233. The project to perform a strategic review of telecommunications began in early 2004. The key issues it was designed to address were as follows:

- What consumers would like to see;
- Underlying cost structure of telecoms;
- The role of information/data in the creation of effective competition;
- Significance of vertical integration;
- Relevance of approaches taken in other countries/regulated sectors;
- Prospects/factors influencing investment;
- Overall balance of the incentives in Ofcom's regulatory approach;
- Overall effect of regulatory action on incentives; and
- Explore opportunities to reduce regulation in the telecoms sector.

234. The study was split into three phases:

- Phase One – Current position and prospects in the telecoms sector;
- Phase Two – Options for Ofcom's strategic approach to telecoms regulation;
- Phase Three – Proposals and implementation plan.

235. For our case study we reviewed phase 1 and phase 2 of the study. The objectives of phase 1 were:

- Assess importance of telecoms to the UK economy;
- Assess the extent to which the UK market has delivered competition at all levels including mobile, narrowband and broadband sectors;
- Examine how far competition and/or regulation have delivered the goals greater efficiency, higher productivity, innovation, lower prices and wider choice.
- If the goals have not been achieved, establish the likely causes;
- Review the current investment in patterns and innovation trends and the financial position of key segments of the industry; and
- Establish the prospects for the telecom sector.

236. The phase 1 reviews, which was designed to be brief and to examine the current position and prospects for the telecoms sector involved:

- Sector overview – telecoms in the UK economy;
- Audit of competition and consumer benefit;
- Review of regulatory strategy; and
- Scenarios and prospects.

237. The objectives of phase 2 were:

- Identify the scope for effective competition at relevant levels;
- Estimate the underlying economics of competition to inform the question of how far competition is sustainable;
- Understand what, if any, cost advantage competitors have to BT in terms of both existing and new network technologies;
- Establish what types of business models are now, or likely to be, competitive to BT;
- Identify whether there are major barriers to prospects of sustainable competition;
- Identify the regulatory policies required to overcome barriers to effective competition;
- Assess the merits of alternative regulatory policies; and
- Identify and outline key strategic alternatives.

## Documentation reviewed

238. In our review of phase 1 and phase 2 of the TSR, the following documentation was reviewed:

- Papers presented to Board;
- Presentations on Regulatory options;
- Summary of Phase 1 consultations documents;
- Summary of BT's response to Phase 1 documentation;
- Presentations summarising consumer research;
- Paper on Ofcom's approach to providing information for citizen-consumer; and
- Paper on linking TSR review with other policy initiatives.

**Table 5: Key messages of the telecoms strategic review**

Key questions asked in reviewing the case study paperwork	Responses to those questions
Was a Project Requirement Document (PRD) completed?	No but detailed project plan produced
Was a Regulatory Impact Assessment Form completed?	No
What were the main consumer interests identified in the study?	In relation to the interests of the citizen-consumer what are the key attributes of a well functioning telecoms market? How successful is the UK telecoms sector in delivering the benefits to citizens and consumers?
How were the main consumer interests identified?	Initially from existing market research and other secondary data sources, subsequently: Market research; Use of strategy consultants; and Response from consumers to phase 1 telecoms review (Consumer Panel, NCC)
At what stage in the review were the consumer interests identified?	Consumer issues included in initial scoping for project and refined at end of Phase 1 Specific consideration given to need for Ofcom to provide consumer information
How were consumers and their representatives given a voice?	Market research  Response from consumers to phase 1 telecoms review (Consumer Panel, NCC)
Did you consider how the impact on the consumer interest might vary over time?	Inter-temporal aspects were implicit in the regulatory approach but looking beyond 5 years wasn't sensible given the pace of the industry. No explicit review date set
Were consumer issues clear in the final communication	While consumer interest issues are referred to in the final communication, they are embedded in the detail of the report

## Conclusions

239. The conclusion from the review of the documentation relevant to the strategic review of telecommunication is as follows:

- The projects undertaken were supported by documentation and underlying process. However the documentation was not presented in a way that made the review easy to perform. Some more structured method of filing and presenting paperwork would have made it easier to review the documentation;

- The views of consumers were sought during Phase 1 of the study through direct meetings with Consumer Groups and through the use of existing market research. In Phase 2, bespoke market research was conducted;
- The Phase 1 report put consumer issues at the front of the document and returned to them during the course of the document, including summarising the benefits to the consumer. In Phase 2, consumer issues were again addressed but were more embedded in the detail of the final report, which led to the criticism that consumer issues were an afterthought rather than at the forefront of Ofcom's consideration. We note that early drafts of the Phase 2 report did put consumer issues at the front of the document. However the later drafts and the final draft issued for publication put the consumer issues later in the document. Overall it would appear to us that the consumer interest was, to some extent, lost in the wider technical issues relating to the document; and
- In this study there is no explicit consideration of the inter-temporal aspects. The argument presented was that this was implicit and looking beyond five years wasn't sensible given the pace of the industry.

### **Conclusion on case studies**

240. The projects undertaken are well supported by documentation and underlying process. This was particularly evident in Telecoms Mis-selling where the documentation was presented in clear, easy to follow files. Due to its broader nature, the TSR documentation was more difficult to follow.
241. The views of consumers are sought to inform Ofcom's work. In Mis-selling the use of OCC, consumer representatives and consumer consultation was evident. In the TSR consumer consultation and market research were both extensive.
242. The Board is keen to balance consumer issues with the concerns of other stakeholders. With respect to Mis-selling the Board was concerned about market perception of additional consumer protection. In the TSR, the Phase 2 report had consumer issues explicit and upfront in initial drafts, but they became more embedded in the detail of the report in later versions.
243. Inter-temporal aspects are considered, but not always explicitly. In Mis-selling this was identified explicitly through use of a sunset clause whilst in the TSR the issues were generally implicit.



# Points of focus: The toolkit checklist applied to Ofcom

244. As set out in Part 1, our toolkit checklist contains certain points of focus to assess whether there are sufficient controls and processes in place to ensure that the consumer interest is taken into account. We applied these points of focus to assess the two case studies (Telecoms Mis-selling and Telecoms Strategic Review Phase 1 and 2).
245. The results of this exercise as set out in the table below. We categorise our appraisal into two main areas:
- “Evidenced” – there was evidence that the processes were potentially auditable (column headed “Controls identified which would be auditable”);
  - “Not evidenced” – more investigation would be required to assess if the systems were potentially auditable (column headed “Areas for further investigation to determine if auditable processes exist”).
246. Where we state that we have not identified processes, we are not implying that they do not exist; rather, that they were not sufficiently explicit to be identified in the high level review we performed.
247. We set out further investigative work we would need to conduct to determine if there is either a lack of control processes or alternatively the control processes are not explicitly evidenced. In some cases we identified no controls but are aware of work in progress to address this.

**Table 6: Organisational consumer interest points of focus**

	<b>Point of focus</b>	<b>Controls identified which would be auditable</b>	<b>Areas for further investigation to determine if auditable processes exist</b>
	<b>Defining the consumer interest</b>		
1	Is there a clear view of who the consumer is?		Ofcom is undertaking a Consumer Strategy Project whose purpose is to develop a framework for identifying and defining the consumer interest. Since this was in development at the time of the review we were not able to assess this framework.
2	Is there a consistent approach for how the organisation identifies and defines the consumer interest?		At the time of our review there were a number of ways in which the consumer interest was defined and viewed. One of the purposes of the Consumer Strategy Project is to develop a consistent framework for identifying and defining the consumer interest. Once the output from this project has been produced and implemented, there should be a framework for assuring consistency of approach.
3	Are there clear policies and procedures setting out Ofcom's approach to dealing with consumer interest issues?	As noted there is a Consumer Strategy Project underway whose purpose is to develop a framework for defining the consumer interest. The Ofcom document "Making Better Policy" sets out the approach for conducting impact assessments, which address consumer interest issues.	

	Point of focus	Controls identified which would be auditable	Areas for further investigation to determine if auditable processes exist
4	Are there controls in place to ensure these policies and procedures are followed?	There is a defined process by which Ofcom management approves work being done on specific reviews or projects. Based on the review of case studies we determined that consumer interest issues are considered. However, it is unclear to us whether this process is formalised and thus whether the consumer interest issues would always be considered. We would need to do more work to determine this.	
<b>Risk assessment and planning</b>			
5	Is there a process of ensuring consumer interest issues are taken into account in developing the Annual Plan?	The Annual Plan is issued for comment, which does allow consumer groups and others concerned with consumer issues to influence plans. We would need to investigate further perhaps how consumer interest issues are weighted against other issues in arriving at the final plan.	
6	Are the consumer interest issues included in the Annual Plan supported by evidence of consumer key issues?	As part of the Consumer Strategy Project all consumer related market research and case studies will be consolidated to give a view of the key consumer interest issues.	
7	Are there adequate processes to gain feedback from consumers on the Ofcom's Annual Plan and to take their comment into account?	The Annual Plan is issued for consultation which gives consumer groups and others concerned with consumer issues an opportunity to input and influence.	

	Point of focus	Controls identified which would be auditable	Areas for further investigation to determine if auditable processes exist
<b>Training and knowledge management</b>			
8	Is there regular liaison with consumer bodies to keep Ofcom informed about their issues and concerns?		There is liaison with consumer bodies but based on interviews held it would appear that there are no regular pre-arranged meetings with consumer groups. We would need to investigate further whether there is sufficient liaison with consumer groups or whether more structured meetings would be needed.
9	Is regular research conducted to inform Ofcom about key consumer issues and concerns?	Regular research is undertaken to support the work of Ofcom.	
10	Are there training courses in place for Ofcom staff to help them understand and appreciate consumers' interests and issues?		We found no evidence of formal training on consumer interest matters. We would need to investigate further whether there are less formal routes through which personnel are educated on consumer issues. In this regard we would note that the OCC does provide one channel through which Ofcom personnel could be educated on issues that concern consumers.
11	Is there monitoring of training to ensure that all Ofcom staff involved in studies which are relevant to consumers have received appropriate training?		As noted, we found no evidence of formal training and thus further investigation would be needed to see if alternative processes exist which would substitute for such training.

**Table 7: Project specific consumer interest points of focus**

	<b>Point of focus</b>	<b>Controls identified which would be auditable</b>	<b>Areas for further investigation to determine if auditable processes exist</b>
	<b>Projects</b>		
12	For each project are the relevant consumer interest issues explicitly explained?	<p>For the two case studies we reviewed there was evidence that the consumer issues were explicitly explained.</p> <p>We note, however, that there is a newly developed Impact Assessment document. This requires the project team to specify the consumer issues relevant to the project. In addition the Project Requirement Document (PRD) can also describe the consumer issues that are to be considered by the project (although the PRD does not mandate the explicit description of such issues). Given that the Impact Assessment document is relatively new, time is needed to embed this process into Ofcom's day to day operations. More effective processes are likely to be in place once the revised Impact Assessment process is embedded in day to day operations.</p>	
13	Is the project work plan clear how the consumer interest issues identified will be addressed?	<p>In the two case studies we reviewed consumer issues were an explicit part of the project. On that basis there is evidence that project work plans set out how consumer issues are addressed.</p> <p>From a pure process perspective we note that it is through the PRD that the workplan is initially defined. Our understanding is that there is not an explicit requirement for the PRD to set out the consumer interest issues</p>	

	Point of focus	Controls identified which would be auditable	Areas for further investigation to determine if auditable processes exist
		<p>relevant to a project. Assurance that project plans will always address consumer issues may be strengthened if there was some mandating on how the PRD considers consumer issues. As noted above the implementation of the Impact Assessment may also have a role in providing greater assurance that consumer will always be addressed in project work plans.</p>	
14	<p>Is there a risk assessment process in place that helps define the significant impact and complexity of the consumer interest issues involved?</p>		<p>The PRD contains a risk assessment section within the document where the consumer related risks can be recorded. Also there is an internal risk assessment used by the Director of Communications for determining the risk associated with any specific Ofcom publication. However there is no explicit requirement that the risk assessment covers consumer interest issues. The development of a simple risk assessment process that assesses the likelihood of consumer issues arising from a project (and the impact of those consumer issues if they arose) may be worth consideration.</p>

	Point of focus	Controls identified which would be auditable	Areas for further investigation to determine if auditable processes exist
15	Are there appropriate processes devised to ensure evidence is gathered from consumers on the key issues being addressed by the project?	Ofcom uses a number of information sources on consumers including: market research, meeting with consumer groups, use of consultation groups comprising consumers, and data from the Ofcom Contact Centre. The case studies we reviewed showed that use is made of these sources of information. We note that there is no guidance on how or when consumer input is sought. We believe that processes may be strengthened if there were some project team guidance for project teams, from those with expertise on consumer issues, on when and how the views of consumer should be sought.	
16	Are there appropriate processes in place to ensure that the key consumer interest issues are addressed in the final output from the project?		The PRD sets out the deliverables, which may or may not be consumer focused depending on the assignment. We found no evidence of a process that would ensure that consumer issues are considered. We would want to investigate further the best means of ensuring that consumer issues are explicitly considered when considering deliverables out of any specific project.
<b>Emerging issues</b>			
17	Are there clear processes in place for regularly logging key consumer concerns?	The OCC logs all submissions made to the OCC, whether via letter, e-mail or phone. There are no formal processes for logging broader consumer issues.	

	Point of focus	Controls identified which would be auditable	Areas for further investigation to determine if auditable processes exist
18	Are the key consumer concerns reported to Ofcom reviewed regularly to identify issues that are emerging that are of concern to consumers?	The OCC produces regular reports on the issues reported to the OCC and these reports are distributed to senior Ofcom management. We also understand (but have not seen) that the management information pack for the Executive Committee contains a report of top consumer issues and that Ofcom has introduced cross-referring of these issues to policy actions	
19	Are there processes for ensuring that emerging consumer interest issues are considered to determine appropriate action to be taken to address these?		As noted, the OCC reports are distributed to the senior management within Ofcom, do receive information on consumer issues. Based on the work we have done in this review we are not clear how actions arise from this and we would want to investigate this area further.
20	Are there clear processes in place to initiate a project to investigate significant emerging consumer interest issues?		As noted above, OCC reports are distributed to Ofcom senior management and so we may conclude that there must be implicit consideration of these issues to determine if action is required. However we identified no formal processes in place that show how emerging issues are considered and addressed and for that reason more investigation may be needed to assess if emerging issues are being considered.

	<b>Point of focus</b>	<b>Controls identified which would be auditable</b>	<b>Areas for further investigation to determine if auditable processes exist</b>
21	Are there processes in place to determine the urgency of an issue and are the timescales set for the study which are consistent with the urgency of the issue to be investigated?		We did not identify any explicit processes in place by which the urgency of an issue is determined and the timescale within which a matter should be considered. For that reason more investigation is needed into how the urgency of consumer issues is determined.

**Table 8: Both organisational and project specific points of focus**

	<b>Point of focus</b>	<b>Controls identified which would be auditable</b>	<b>Areas for further investigation to determine if auditable processes exist</b>
	<b>Communication with consumers</b>		
22	Are there clear processes in place that set out how Ofcom communicates with consumers?		Ofcom does have links with consumer groups, but we identified no standard processes by which communication with consumers takes place. Further investigation would be required to assess if the communication processes are sufficient to ensure consumer groups are kept informed about consumer issues.
23	Are there processes in place that ensure that Ofcom communicates in a way that allows consumers to understand the issues that Ofcom is considering?		As noted above, there are plain English guides produced for specific issues but it is not clear under what circumstances such guides are produced or whether they provide the information consumers need. For that reason we believe more investigation would be necessary on consumer communication issues.
24	Are there processes in place by which Ofcom explains the decisions or actions it has taken (including for example, explaining why other stakeholder interests may have been given precedence over consumer interest issues)?		Our work did not identify any mandated process by which Ofcom explains the decisions it has reached in the context of the consumer. We would need to do more investigation to determine what processes Ofcom has in place for determining how it explains its decisions in the context of issues relevant to the consumer.

	Point of focus	Controls identified which would be auditable	Areas for further investigation to determine if auditable processes exist
25	Are there clear channels through which consumers can communicate and raise issues with Ofcom?	The OCC provides a formal channel through which consumers can log issues with Ofcom. There are also contacts with consumer groups	
<b>Organisational controls</b>			
26	Are there regular reports prepared for senior management on consumer related issues?	<p>There are regular management reports produced including:</p> <p>Annual plan progress which reports quarterly to senior management – one of the annual plan themes is ‘addressing important citizen and consumer issues’ and any delays to this work will be highlighted;</p> <p>Consumer related projects – will be reported as part of monthly senior management information pack covering all significant issues.</p> <p>Whilst there is evidence of management reporting on consumer issues, we would note that the appointment of a Consumer Policy Director will provide a focus for reporting of consumer related issues and this may result in changes to these reports.</p>	

	<b>Point of focus</b>	<b>Controls identified which would be auditable</b>	<b>Areas for further investigation to determine if auditable processes exist</b>
27	In relation to specific investigations and projects are senior management made aware explicitly of the key consumer interest issues and how these are being addressed?	Progress on investigations and studies are reported to senior management via Policy Executive and the Main Board meetings.	
28	Is there a process in place to ensure peer review and internal challenge of significant consumer interest issues (e.g. definitions, identification of whether an emerging issue is valid, a proposed regulatory change)?	Discussions at Steering Groups, at Policy Executive and at the Main Board demonstrate peer review and internal challenge of significant consumer interest issues.	
29	Has management established performance indicators that allow them to monitor whether consumer issues are being addressed?	Evaluation measures reported six monthly do cover key consumer issues (e.g. take up and availability of services, levels of prices). There is also an annual stakeholder survey which provides consumer group feedback on Ofcom. It was beyond the scope of the project to assess if these are the correct measures to be used and a more detailed further assessment of the performance indicators may be appropriate.	

	Point of focus	Controls identified which would be auditable	Areas for further investigation to determine if auditable processes exist
30	<p>Are there management systems in place for logging consumer related issues and for ensuring such issues are followed up on a timely basis?</p>		<p>As noted earlier the OCC logs consumer issues and reports them to management. Outside of reporting on specific project underway, our work did not identify other formal consumer interest reporting process (including processes for broader reporting consumer issues which may not be reported via the OCC). More investigation is thus needed to identify how management keep updated on the key consumer interest issues being addressed by Ofcom.</p>
31	<p>Does management regularly review its approach to dealing with consumer related issues to ensure that it is reflecting advances in good practice? For example, does it benchmark its processes against processes operated by other organisations involved in consumer matters?</p>	<p>Ofcom's international benchmarking work focuses on prices paid by consumers for different types of services – which are an indication of the success of the regulatory regime in each country benchmarked. The Consumer Strategy Project may lead to establishing a baseline for this type of activity.</p>	



# Review of Ofcom announcements

## January

248. Community Radio Fund (07/01/05)<sup>21</sup> – Ofcom publishes its proposals on the management and administration of the new Community Radio Fund. The news release discusses Ofcom’s aim of ensuring that financial support is well targeted but does not examine what this means for consumers. Will this funding ensure they have access to niche radio stations, more radio stations, what distinguishes a “Community Radio station” from standard local radio?
249. Universal Service Obligation (10/01/05)<sup>22</sup> – Ofcom publishes its review of USO. The press release explains that, “USO ensures that basic fixed line telecoms services are available to all UK consumers at an affordable price.” Further it identifies four specific aspects of the USO:
- Public call boxes;
  - Low cost schemes to help those on low incomes;
  - Telephone lines capable of delivering dial up internet access and;
  - Special services for people with disabilities.
250. The discussion of public call boxes clearly outlines the current procedure for removal and consequently addresses the consumer interest. The discussions of low cost schemes, telephone line provision and services for customers with disabilities are less extensive and highlight the consumer interest to a lesser extent (though given that this is a consultation seeking responses this may not be inappropriate).
251. Ultra WideBand high-speed wireless service (13/01/05)<sup>23</sup> – Ofcom publishes its proposed policy in respect of the use of UWB devices. The third paragraph of this release refers to Ofcom’s duties to secure optimal use of spectrum, promote competition and have regard to economic and other benefits. Entirely absent is its duty to advance the consumer interest. The release briefly discusses the issue of interference and provides a link to a study it commissioned but does not give any indication of the range of consumer interests impacted by its proposals.
252. Spectrum allocations and liberalisation in mobile (13/01/05)<sup>24</sup> – Ofcom seeks views on proposals to bring further spectrum bands to the market. The second paragraph of the news release refers to Ofcom’s duty to further the interests of consumers. Beyond this it is largely a technical document listing the bands that will shortly be brought to auction. The last section discusses issues of most relevance to the consumer interest. This is a discussion of the 3G roll-out

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<sup>21</sup> Available at: [http://www.ofcom.org.uk/media/news/2005/01/nr\\_20050107](http://www.ofcom.org.uk/media/news/2005/01/nr_20050107)

<sup>22</sup> Available at: [http://www.ofcom.org.uk/media/news/2005/01/nr\\_20050110](http://www.ofcom.org.uk/media/news/2005/01/nr_20050110)

<sup>23</sup> Available at: [http://www.ofcom.org.uk/media/news/2005/01/nr\\_20050113](http://www.ofcom.org.uk/media/news/2005/01/nr_20050113)

<sup>24</sup> Available at: [http://www.ofcom.org.uk/media/news/2005/01/nr\\_20050113a](http://www.ofcom.org.uk/media/news/2005/01/nr_20050113a)

obligations as specified in the licenses. There is a very brief mention of license revocation being a possible penalty. Given the implications of such action to existing customers there are very clear consumer interests present but this is signalled in only two paragraphs.

253. Ofcom / ComReg joint report (19/01/05)<sup>25</sup> – This Joint Working Group was set up to examine cross border telecoms issues and in particular the issue of “inadvertent roaming” in Ireland and Northern Ireland. The document clearly explains what this entails and the differences in costs depending on whether you are a pre or post-pay customer and highlights some simple statistics to convey the extent of the problem.
254. Annual Plan 2005/06 consultation (20/01/05)<sup>26</sup> – This short release states that the Plan sets out the key priorities for the coming year but provides little information on how it relates to the consumer stakeholders.
255. Spectrum liberalisation initiative (26/01/05)<sup>27</sup> – Ofcom publishes its conclusions from the consultation on spectrum liberalisation. The second paragraph explains why radio spectrum is important and refers to Ofcom’s statutory duty to further the interest of citizens and consumers. Whilst there is a discussion of the benefits of liberalisation it does not drill down in terms of what are the impacts upon spectrum consumers (direct and indirect).

## February

256. Update on Local Loop Unbundling (08/02/05)<sup>28</sup> – The Office of the Telecoms Adjudicator (OTA) publishes an update on LLU progress and performance on several key metrics. This is a topic from which the end user is somewhat far removed; consequently Ofcom focuses on technical issues such as delivery of LLU.
257. Ships’ Radio licensing (22/02/05)<sup>29</sup> – Ofcom announces a consultation to reform licensing rules relating to maritime radio. The news release clearly outlines the financial and administrative impact of these changes ensuring that the consumer interest is apparent.

## March

258. Half-year report (23/03/05)<sup>30</sup> – Ofcom announces a 6 month review of its activities in broadcasting and telecommunications. The news release discusses how many complaints and investigations has been received and undertaken. It also lists some of the major projects in progress. It does not explain how either these projects or its investigatory work relate to the consumer interest. In particular it does not seek to allay any concerns that the fall in the percentage of complaints that result in investigations, from 90% to 21%, may be resulting in consumer detriment.

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<sup>25</sup> Available at: [http://www.ofcom.org.uk/media/news/2005/01/nr\\_20050119](http://www.ofcom.org.uk/media/news/2005/01/nr_20050119)

<sup>26</sup> Available at: [http://www.ofcom.org.uk/media/news/2005/01/nr\\_20050121](http://www.ofcom.org.uk/media/news/2005/01/nr_20050121)

<sup>27</sup> Available at: [http://www.ofcom.org.uk/media/news/2005/01/nr\\_20050126](http://www.ofcom.org.uk/media/news/2005/01/nr_20050126)

<sup>28</sup> Available at: [http://www.ofcom.org.uk/media/news/2005/02/nr\\_20050208\\_2](http://www.ofcom.org.uk/media/news/2005/02/nr_20050208_2)

<sup>29</sup> Available at: [http://www.ofcom.org.uk/media/news/2005/02/nr\\_20050222](http://www.ofcom.org.uk/media/news/2005/02/nr_20050222)

<sup>30</sup> Available at: <http://www.ofcom.org.uk/media/news/2005/03/nr20050323>

## April

259. Annual Plan (12/04/05)<sup>31</sup> – Ofcom publishes its Annual Plan. The news release stresses Ofcom’s “light touch” intentions and its budget. Consumer and citizen issues are mentioned as the third theme of 2005/06.
260. Fixed-line Telecoms Mis-selling (13/04/05)<sup>32</sup> – Ofcom announces mandatory sales and marketing codes of practice for fixed-line telecoms services. The news release explains that Mis-selling takes place when consumers are switched without their knowledge and consent. It also states that consumers benefit from a competitive market through lower prices and greater choice, though does not explain how the guidelines in particular will help.

## May

261. Community Radio Fund (19/05/05)<sup>33</sup> – Publication of the final strategy on the management and administration of the fund. The news release gives background to the Fund, references the policy documents and states how many licences have been awarded. The implications for consumers are not discussed.
262. London (020)3 telephone numbers (20/05/05)<sup>34</sup> – Announcement of the public awareness campaign. The news release makes clear the impact upon consumers: that existing numbers will not be affected, merely that some new lines for business and residential customers will be allocated an (020)3 number.
263. Complaints handling guidelines (24/05/05)<sup>35</sup> – Ofcom publishes guidelines on how communications providers should handle complaints and resolve disputes with their customers. The guidelines outline what the Codes of Practice should cover. There is no discussion of how specifically consumers will benefit from adherence to these codes being adhered to.

## June

264. Digital Terrestrial Television coverage (01/06/05)<sup>36</sup> – Publication of coverage plans for DTT following switchover. The second paragraph mentions that Ofcom has taken account of all relevant statutory duties without explaining which of the duties were relevant. Whilst the news release states that the percentage of population covered by DTT will be the same as analogue it does not acknowledge that the 1.5% who do not receive DTT may not be in the same areas as the 1.5% who do not currently receive analogue.

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<sup>31</sup> Available at: [http://www.ofcom.org.uk/media/news/2005/04/nr\\_20050411](http://www.ofcom.org.uk/media/news/2005/04/nr_20050411)

<sup>32</sup> Available at: [http://www.ofcom.org.uk/media/news/2005/04/nr\\_20050413](http://www.ofcom.org.uk/media/news/2005/04/nr_20050413)

<sup>33</sup> Available at: [http://www.ofcom.org.uk/media/news/2005/05/nr\\_20050519](http://www.ofcom.org.uk/media/news/2005/05/nr_20050519)

<sup>34</sup> Available at: [http://www.ofcom.org.uk/media/news/2005/05/nr\\_20050520](http://www.ofcom.org.uk/media/news/2005/05/nr_20050520)

<sup>35</sup> Available at: [http://www.ofcom.org.uk/media/news/2005/05/nr\\_20050524](http://www.ofcom.org.uk/media/news/2005/05/nr_20050524)

<sup>36</sup> Available at: [http://www.ofcom.org.uk/media/news/2005/06/nr\\_20050623\\_20050601](http://www.ofcom.org.uk/media/news/2005/06/nr_20050623_20050601)

265. Mobile call termination charge controls (07/06/05)<sup>37</sup> – Ofcom proposes to extend the existing charge controls for a further 12 months. The first paragraph explains that termination relates to connecting incoming calls from another (mobile or fixed) network. The second relates the charges to consumers by stating that they have no control over the charge and that it was specifically to protect consumers’ interests that Ofcom and Oftel have controlled the charges. The news release gives figures for the new charge caps but does not explain how this might affect tariffs or bills.
266. Regulatory approach for fixed telecoms (23/06/05)<sup>38</sup> – Ofcom announces details of a new regulatory approach to the UK’s fixed line telecommunications market. The first two objectives of the new regulatory approach are aimed squarely at the consumer interest as they concern reducing prices and supporting innovation and choice. This focus is reiterated by a quotation from David Currie that expresses Ofcom’s opinion that the proposals will lead to more services, lower prices and greater choice. Stephen Carter’s comment adds that effective regulation has to deliver tangible benefits for consumers.
267. Beyond these remarks the document is fairly technical, laying out the proposed undertakings from BT, the cost of capital study and a description of some of the upcoming news releases relating to fixed line telecommunications.
268. Funding and provision of telephone services (30/06/05)<sup>39</sup> – Ofcom publishes its proposals for the Universal Service Obligations (USO). The first paragraph highlights Ofcom’s duty to ensure that basic telecommunications services are within reach of all consumers. Together with the second paragraph, which explains what the Communications Act 2003 requires of Ofcom, this immediately highlights the consumer interest and focus of the proposals put forward. The proposals are set out to relate directly to consumers’ interests; price is addressed in the section on low cost schemes whilst the four other categories (phone boxes, connections, services for those with disabilities and pre-pay schemes as an alternative to disconnection for non-payment) reflect the access aspect of the consumer interest. As a result the implications of the proposals for the consumer interest are clear.
269. Consultation on BT’s proposed undertakings (30/06/05)<sup>40</sup> – Ofcom announces that it has decided to consult on whether it should accept the undertakings offered by BT. The executive summary reiterates Ofcom’s regulatory philosophy that effective competition is the best means to deliver benefits to businesses and consumers in relation to telecoms. This is stated with the caveats that consumers need to be informed in order to exercise effective choice and that there is a need to ensure the delivery of services to vulnerable groups and isolated communities. It also explains that:
- “[the] undertakings must be for the purpose of remedying, mitigating or preventing any adverse effect on competition concerned, or any detrimental effect on customers.”
270. In section 4 of the document, Ofcom highlights BT’s incentives to engage in discriminatory behaviour and explains that if it is allowed to abuse its upstream

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<sup>37</sup> Available at: [http://www.ofcom.org.uk/media/news/2005/06/nr\\_20050623\\_20050607](http://www.ofcom.org.uk/media/news/2005/06/nr_20050623_20050607)

<sup>38</sup> Available at: [http://www.ofcom.org.uk/media/news/2005/06/nr\\_20050623](http://www.ofcom.org.uk/media/news/2005/06/nr_20050623)

<sup>39</sup> Available at: [http://www.ofcom.org.uk/media/news/2005/06/nr\\_20050630a](http://www.ofcom.org.uk/media/news/2005/06/nr_20050630a)

<sup>40</sup> Available at: <http://www.ofcom.org.uk/consult/condocs/sec155/sec155.pdf>

market power it, “will be to the detriment of its downstream competitors and ultimately of final consumers.”

271. Throughout sections 4 and 5 Ofcom identifies potentially anticompetitive behaviour and explains how such behaviour could be reasonably expected to result in consumer detriment under most circumstances.



## Appendix 5

# Checklist used for interviews with Ofcom personnel

### Checklist for interviews with Ofcom on the consumer interest

In responding to these questions, it will be helpful if you give concrete examples to support your response.

#### Definitions and approach

- Given Ofcom's mission to further citizen and consumer interests, how is the consumer interest defined? Is there a standard definition in Ofcom?
- Is it defined explicitly and consistently across Ofcom?
- Within Ofcom, what do you consider general awareness and attitude to consumer interest issues are?
- Are consumer interest issues typically measurable?
- To what extent is the consumer interest seen as being met through promoting competition?
- How does the way in which competition is promoted impact on consumer interests?

#### Process

- Are certain aspects of the consumer interest highlighted at the start of each review/project?
- How does Ofcom typically reach a decision on what the consumer issues are and how significant they are?
- Does Ofcom always take into account consumers' views of the consumer interest issues?
- How are consumer interests weighted against other factors in the regulatory decision making process?
- Are such decisions documented?
- Are there processes in place to ensure the consumer interest is taken into account consistently? What are the processes?
- Does Ofcom attempt to distinguish between the interests of different groups and consumers and how is this done?

## **Issues/problems**

- Are there perceived problems in dealing with consumer issues?
- What other regulatory principles interact or overlap with the consumer interest?
- Which guidelines or principles do you feel are most frequently in conflict with consumer interest issues?
- How does Ofcom's consideration of the consumer interest fluctuate depending upon the proximity of consumer to the matter at hand?
- What, if any, changes need to be made?

**What is your view of this study (including potential challenges for us)?**

# Checklist for preliminary interviews for case studies

## Case study interview checklist

- What were the main consumer interests identified in the review?
- How did you go about identifying them?
- At what stage in the review were they identified?
- How were they incorporated into the process?
- How were consumers and/or their representatives given a voice? Was there adequate consumer consultation?
- Was the likely impact of regulation on consumer interest/ consumer benefits identified?
- Did you consider how the impact on the consumer might vary over time?
- How did you take into account the consumer views? How were consumer views weighted against other issues?
- What parts of the review/consultation worked well?
- Is there anything in retrospect you would have done differently?

