

Ofcom's response to the Consumer Panel

Response from the Consumer Panel to Ofcom's Section 10 duties: Proposals for 2006

In responding to the Consumer Panel's comments on Ofcom's proposals for implementing its section 10 duties in 2006, we have set out the Panel's comments first, followed by Ofcom's response.

Consumer Panel comments

1. We welcome Ofcom's paper entitled, 'Section 10 duties: Proposals for 2006' and Ofcom's work in this area. We think it is essential that there is the availability in the market place of easily usable communications products for the widest possible range of people, in order for all to engage effectively with the communications market. We are pleased to note that Ofcom has modified some of its Section 10 proposals following the recommendations that we had made in our February 2005 response. For example, the removal of the three year timeframe and 'likely to be adopted quickly' criteria - which if implemented may have caused the inadvertent exclusion of important products from possible future Section 10 workstreams.

Ofcom response

We note the Consumer Panel's comments, and are grateful for its advice on the criteria for considering possible section 10 activities, which as the Panel notes, were amended to take on board the Panel's suggestions.

Consumer Panel comments

2. Whilst we think that the projects Ofcom have identified for 2006 are worthwhile, and we recognise that this is the first time Ofcom has identified projects for its Section 10 workstream, we do nonetheless have concerns over how Ofcom has concluded which projects to pursue. This is because we think Ofcom has failed to have a consultation process with the relevant stakeholders in order to identify the product 'gaps' in the market. A consultation process would have ensured that all stakeholders could feel that Ofcom has correctly set its Section 10 priorities for 2006 and the future.
3. Ofcom seemed to acknowledge our view that a consultation process was necessary when identifying people's communication needs. In the opening paragraph of the Section 10 paper it states, "*In addition, we are also consulting members of the Advisory Committee on Disabled and Older People, the Consumer Panel (and) the Consumer Forum.*" However, we do not recall the Consumer Forum being asked for their thoughts. Further, no member of the Consumer Forum has received a copy of the Section 10 paper and nor have they had a chance to respond to it. This is unfortunate when several of the organisations who attend the Consumer Forum represent groups that have a strong interest in the availability of accessible communication equipment. Also, some organisations were unable to attend the Consumer Forum meeting at which Ofcom presented its Section 10 proposals – the RNID being one.

4. It is of the utmost importance that Ofcom develops robust processes for consulting on section 10 issues. Given the fragmented nature of many of the interested parties, we know this may be difficult. We note the difficulties in consulting so far and would urge Ofcom to devote more resources to working out the best method of identifying and consulting interested groups.

Ofcom's response

As the presentation on Ofcom's section 10 programme noted, the process of formulating plans for 2006 was necessarily constrained by the need to agree criteria, and the limited time available for consulting parties outside Ofcom. It should be noted that it was never Ofcom's intention to consult externally on the criteria that Ofcom should apply when considering possible section 10-related activities. Nevertheless, as we explained at the Forum meeting, we are prepared to review the criteria in the light of experience, and we would certainly take account of any further advice from the Consumer Panel and the Advisory Committee on Older & Disabled People.

The Consumer Forum, bringing together as it does a wide range of active consumer and disability organisations, provides a very useful sounding board for section 10 activities. This is why we were keen to explain to the Forum the process and proposed programme (which, incidentally, remains a proposed programme until signed off by the Board as part of Ofcom's annual plan).

In the light of the Panel's suggestion, we will look carefully at how to make consultation on subsequent plans more wide-ranging than was possible this year. Ofcom already has frequent discussions with several of the organisations represented on the Forum, and had informal discussions with the RNID and RNIB about proposed section 10 activities. There may well be benefits in extending and formalising this process, but we would not wish to marginalise the Consumer Forum, since it provides the opportunity for frank and informed multilateral discussions in a way that public consultation does not. We respond below to the Panel's comments on identifying 'product gaps'.

Consumer Panel's comments

5. Additionally, in terms of process the Section 10 paper fails to show the range of possible projects that Ofcom considered before it decided which ones it would take up. It is also not entirely clear from the paper that Ofcom has taken into account our call for, "*a proactive stance in identifying and pursuing key longer term developments (and the) monitoring in such critical areas*". We can see no list that Ofcom can point to that sets out the future or the possible future areas of its Section 10 work.
6. We would like to point out that under its Section 10 duties Ofcom is to encourage others to develop domestic telecommunications apparatus that is easy to use for "the widest range of individuals". We are concerned that the proposals encourage the development of telecommunications apparatus that is easy to use for 'the greatest number of people'. For example, Ofcom refers to our research when it sets out what the most common difficulties are for consumer usability. However, our research does not have the sample size to identify the range of communication problems

that are experienced by people with different disabilities. We think it is important for Ofcom to drill down, below the headline research figures, to ascertain what the needs are for those sections of society that would otherwise be overlooked.

7. For example, SENSE, the organisation that represents deaf/blind people, estimate that there are perhaps only 500 people in the UK who require a mobile phone that has the ability to provide a Braille input/output service. This service is absolutely crucial for those people who are unable to see or hear what is happening around them. Today, there are only one or two devices available in the market place that deliver this service and they cost over £3000. Thus, accessible terminals exist but the cost acts as a prohibitive barrier to ownership and therefore a deaf/blind person's full engagement with the communications market.
8. We are also concerned that Ofcom is not concentrating on encouraging manufacturers to produce products that are affordable for consumers in niche markets. The telecom's Universal Service Obligations (USO), which tackles affordability issues, is restricted to services. Thus, if Ofcom does not tackle affordability issues when addressing its Section 10 duties, then it would seem that neither the USO nor the Section 10 workstream will provide a means to resolve the prohibitive cost of telecommunication equipment that is required by a small number of people in society - for example, by those who are deaf/blind.

Ofcom's response

The Panel's comments highlight an issue that was also discussed at the Forum's meeting on 20 July. As was noted in the discussion, the duty placed upon Ofcom requires it to encourage others to secure that domestic electronic communications apparatus is easy to use, and affordable for the widest possible range of individuals, including people with disabilities (to paraphrase section 10). This raises a number of important issues.

First, Parliament has not given Ofcom the powers to direct investment by third parties in development work, to require the manufacture of particular types of equipment, and to mandate that such equipment be retailed at affordable prices. It follows therefore that Ofcom must seek to be as effective as it can be within the framework it has been given. Second, the duty applies to all consumers, including but not limited to those who have disabilities.

In Ofcom's view, the most effective approach to pursuing its section 10 duty, within the framework it has been given, combines:

- (a) a continuous dialogue with decision-makers within industry on building in usability and accessibility to affordable domestic equipment. For example, we have regular discussions with Intellect (which represents the manufacturers and importers of many types of consumer equipment), the Digital Television Group (including broadcasters, manufacturers and others) and the UKCTA (the United Kingdom Competitive Telecommunications Association) and recently co-organised with Intellect a seminar for manufacturers on usability. This is not a straightforward issue – it is already clear that

from the discussions we have had with consumer goods companies that many are sceptical that investing extra effort in usability would pay dividends. For example, when faced with a choice between competing DVD players or set top boxes, it appears that many consumers disregard usability, and focus on price. It is not clear whether this is because consumers assume that all such products will be complex, and that there is no advantage in paying more for one in the hope that it has been designed to be more usable and accessible, or whether most are confident in their ability (or that of family and friends) to master the technology. But the net effect is that retailers such as Tesco can sell large volumes of (for example) cheap basic digital set top boxes without showing consumers how the EPG works, or whether they support subtitling. Nonetheless, there are signs that consumer goods companies are beginning to recognise the benefits of usability – as product markets mature, companies need to target potential purchasers who lack the confidence of early adopters, and make products that are easier to use than initial models, if they are not to suffer a high rate of expensive ‘no fault returns’;

- (b) working with bodies such as the DTG to set voluntary standards aimed at making consumer equipment easier to use (as the Panel will be aware, it is not open to individual EU member states to set mandatory standards). This has resulted in a standard for remote controls which we hope will encourage designers to work towards a standard layout with buttons that are large enough, labelling that is clear etc. We are also working towards a standard on ‘connectivity’ – ways of connecting the multiple devices many consumers now have attached to their televisions. An early outcome of this work is the ‘connection wizard’ for consumers at the DTG’s website (http://www.dtg.org.uk/consumer/connection_wizard.html); and
- (c) targeted interventions in accordance with Ofcom’s criteria that offer good prospects of benefits for consumers in terms of usability and accessibility. The proposed ‘clean audio’ standard is one example, which would help the many people who find background noise a problem when watching television, and which has a better chance of succeeding than some previous research projects because it has an industry partner (Dolby) who could bring it to market, and if that happens, there are good prospects of the standard being incorporated in mainstream consumer equipment.

We agree with the Panel that it makes sense to use research to identify broad areas in which work on usability and accessibility would benefit all consumers, including those with disabilities. The research we are carrying out on the numbers of people with hearing and / or sight impairments, and the range of communications equipment and services that they use will be helpful in this respect. However, we doubt that a detailed approach based on analysing the needs of different sub-sets of consumers and gaps in provision would be proportionate. Clearly, gap analysis would be a time-consuming and resource-intensive exercise. It would no doubt identify many gaps, but it is unlikely to be effective in encouraging others to provide appropriate communications equipment that was both usable and affordable.

For example, much of this equipment (such as the Braille input/output device) would have to be highly specialised. It would be expensive to manufacture and hence expensive to buy because the very limited markets it would serve would offer little scope for economies of scale. The only way that such devices could be made affordable is by subsidising them at the point of manufacture or the point of sale – both are well beyond Ofcom's remit. Similar economic considerations apply to the incorporation of accessibility and usability features in mainstream products. Those which are not valued by the generality of consumers and will not sell products are not included, since this adds cost, and price competition is very fierce. Major UK-based consumer goods companies have told us that this is why they have considered but rejected the idea of incorporating audio description capabilities in digital television set top boxes. Thus, while gap analysis would help in generating a 'wish list' of usable and affordable communications products, we see no reason to believe that it would be an effective means of encouraging consumer goods companies to make them, or retailers to stock them.

This does not mean, however, that Ofcom believes that nothing can be done. On the contrary, the pace of technological development offers unparalleled opportunities to improve both the usability and accessibility of communications equipment, and there is probably more such equipment available now than there has ever been. Many of these opportunities will need to be seized on an opportunistic basis, as they will piggy-back developments that are not aimed at consumers with particular usability or accessibility needs. Moreover, most of these opportunities will not be driven by Ofcom, but by research and development programmes carried by other bodies in accordance with their own agendas. A case in point is the opportunity to use some models of personal digital assistant (PDAs) as voice in / voice out remote controls, which would enable visually-impaired people to bypass complex EPGs. It would avoid the economic barriers that would be posed by the need to develop specialised equipment, as it is a software solution based on existing consumer equipment. It arose from an idea proposed by the University of Salford, but it would help to meet the objective of reducing the barriers to usability and accessibility posed by digital television. In sum, we believe that broad strategic objectives, coupled with the ability to respond flexibly to opportunities as they arise, is more likely to yield benefits to consumers.

Consumer Panel's comments

9. Finally, we welcome Ofcom's recommendation to SwitchCo that it should commission a consumer advice campaign for older and disabled people which "*would explain to them the different ways of obtaining digital television, and the type of equipment that would best suit their needs*" and thus help facilitate their digital switchover. We note in coming to this conclusion Ofcom utilised our research which shows that older and disabled people have a lower awareness of digital television than other groups. Our research also reveals that these same groups have a lower awareness than others of the products and services available in the fixed line and mobile markets. Thus, we think there is a need for a similar consumer information campaign in this area. To help achieve this Ofcom could encourage the provision of an up to date information booklet along the lines of Ricability's 2004 report, 'Stay In Touch'. The original booklet

was funded by Oftel, DIEL and industry members. It can be found at the following web address:

<http://www.ricability.org.uk/reports/report-telecoms/stayintouch/contents.htm>

Ofcom's response

We note the Panel's response and were encouraged to learn from a recent SwitchCo presentation to the Digital Switchover sub-committee of the Advisory Committee on Older and Disabled People that SwitchCo is considering commissioning a body such as Ricability to provide consumer information.



21 October 2005