



Ofcom response to the BIS consultation *Empowering and Protecting Consumers: consultation on institutional changes for provision of consumer information, advice, education, advocacy and enforcement*

1. Introduction

Ofcom is the regulator for the UK's communications sector. We regulate telecommunications, broadcasting and the radio spectrum, and will shortly take on responsibility for postal markets. Our response to the Government's consultation on empowering and protecting consumers focuses primarily on consumer advocacy and the most appropriate institutional arrangements for advocacy in the communications sector. We also offer some views on the implications for Ofcom of the Government's plans to change the way in which horizontal (as opposed to sector-specific) consumer law is enforced in the UK. We have concentrated on how the proposals would affect the communications sector and so have not sought to answer all of the questions set out in the consultation document.

2. Consumer advocacy

a. Ofcom position

Consumer advocacy is critically important to Ofcom's ability to understand consumer experiences and how they are affected by market failures from both the supply and demand sides. Hence, effective advocacy is a key input to our policy making and enforcement programme. There are a number of stakeholders who provide important evidence and advice to us through consumer advocacy. Some of these represent consumers broadly and with cross-sectoral experience (e.g. Which?, Consumer Focus, Citizen's Advice). Others are more focussed on particular groups of consumers and their needs. It is vital that consumer advocates are able to continue to engage with us going forward, irrespective of the outcome of the Consumer Landscape Review.

In this response we focus on the Communications Consumer Panel since the Panel is the primary source of independent consumer advice to us. The Panel was established under Section 16 of the Communications Act 2003 with the specific purpose to advise Ofcom on consumer issues.

Ofcom believes there is merit in retaining the Communications Consumer Panel as part of the UK's system of independent consumer advocacy. There are three main reasons for this approach:

- The Panel delivers real benefits for consumers by providing timely and relevant input to regulatory decisions. Communications markets are changing and converging quickly, which makes the Panel's sector-specific expertise invaluable.
- There continues to be a need for Ofcom to receive independent advice on consumers' interests to counterbalance industry views.

- The Panel has substantially reduced its costs and provides very good value for money.

We elaborate on each of these points in turn.

b. Benefits of the Panel model

The Panel's role is to provide advice to Ofcom to ensure that the interests of consumers, including small businesses, are central to regulatory decisions. The Panel also provides advice to Government and champions consumers' interests with industry. It has members who represent the interests of consumers in England, Northern Ireland, Scotland and Wales.

The Panel model has a number of benefits that it would be valuable to retain:

- Ofcom shares information and ideas with the Panel early in the regulatory process, before consulting formally with other stakeholders. This promotes constructive day-to-day engagement and means the Panel can influence the issues that Ofcom chooses to address, as well as how it addresses them, before any positions are adopted. It would be harder for a cross-sectoral advocacy body to provide early input in this way. For example, generally the first substantive formal engagement for an external consumer stakeholder would be likely to be in response to published policy proposals rather than through the early opportunities which exist with the panel model.
- Panel members have a broad range of experience and a high-level of expertise. This means they can quickly get to grips with the wide range of issues that arise in a dynamic and complex sector like communications. They can also advise on the interests of different groups of consumers, such as older and disabled people, people on low incomes and people living in the Devolved Nations. The Panel can also use its expertise to advise on the issues that might affect consumers in the future, where evidence from complaints or consumer research is unavailable.
- The Panel is not proposing to provide advice on post once Ofcom takes on the role of postal regulator. In our view, there are good reasons for adopting this approach. First, Consumer Focus currently provides advocacy on issues affecting consumers in postal markets and has a significant amount of expertise in this area. Secondly, as well as providing advocacy in relation to postal regulation, Consumer Focus provides advocacy in relation to post offices, which will continue to be the responsibility of Government. It makes sense for advocacy in these two areas to be provided by a single body.

c. Value of independent advice to Ofcom

Ofcom continues to need independent advice, and the Panel is effective and efficient in delivering this. There are a number of reasons for this:

- Ofcom is lobbied heavily by industry representatives. This is an important part of the consultative process, but an expert and articulate consumer voice is needed as a counterpoint.
- Ofcom needs to maintain the trust and confidence of stakeholders in order to function effectively. The Panel contributes to this by publishing its advice on its website and showing that Ofcom is receiving proper scrutiny on behalf of consumers.

- Ofcom project teams benefit from early independent advice on consumer experience and perspectives. This is particularly valuable for projects which do not have a direct 'touch point' with consumers, e.g. covering competition and spectrum-related issues, where the implications of different options for consumers may be downstream of the issues directly in scope for these projects.
- The pace of convergence and innovation in the communications sector means that new issues of importance to consumers will continue to emerge. The policy landscape is also set to change as the Government plans a new Communications Bill. It will be important for there to be a strong expert consumer voice in this debate.

d. Value for money

The Panel has significantly reduced its budget and provides very good value for money:

- Panel members work between 2 and 4 days per month and bring a UK-wide perspective. They are supported by one full-time member of staff. The Panel's benefits from Ofcom's support services, research and data.
- The Panel is funded via Ofcom. As part of the recent review of all Ofcom expenditure, the Panel reduced its budget significantly - from £740k in 2010/11 to £303k this financial year. This represents a reduction of 60 per cent in nominal terms.
- This reduction is in the context of Ofcom increasing resources devoted to consumer policy and protection, and carrying out a substantial programme of consumer research, which is compiled annually in a comprehensive report on the consumer experience of telecoms, the internet and digital broadcasting markets.¹
- The Panel has also worked effectively in partnerships with other consumer bodies, for example by drawing on case studies provided by Citizens Advice on the impact on consumers of mobile not-spots and drawing on the complementary expertise of Which?, Citizens Advice and Consumer Focus in order to provide Ofcom with a consolidated consumer position on the proposed system for tackling online copyright infringement.

e. Summary

Ofcom's view is that it is vital to preserve the benefits provided by the Communications Consumer Panel. An expert panel can foster a close and constructive relationship with a regulator, respond quickly and flexibly across a wide range of issues, and operate with a small team of advisors and very low overheads.

¹ This is the link to the latest consumer experience report: <http://stakeholders.ofcom.org.uk/market-data-research/market-data/consumer-experience-reports/consumer-experience/>

3. Consumer enforcement

Ofcom is responsible for consumer enforcement in the communications sector and so has significant experience of collaborating with the other authorities involved in consumer enforcement. We think that there are important features of the current structure that should be preserved in order to achieve positive outcomes for consumers in the communications sector.

In our view, any future model should seek to ensure that, at a national level, an organisation has the responsibility and capability to:

- co-ordinate enforcement activity among bodies with concurrent powers (including Ofcom) to avoid duplication or issues falling through the cracks;
- publish general guidance and training on consumer protection legislation, such as the Unfair Terms in Consumer Contracts Regulations, the Distance Selling Regulations and, more recently, the Unfair Commercial Practices Directive - implemented as Consumer Protection from Unfair Trading Regulations;
- pursue cases on points of principle, such as the unfair contracts terms in the bank charges case, which help to clarify legislation and its application across different sectors;
- provide advice to Government on the development and implementation of consumer law;
- act as a backstop for self-regulatory bodies like the Advertising Standards Authority; and
- liaise with international bodies on cross-border enforcement.

In addition, we would hope that any future model maintains market studies on, for example, price transparency, internet security, e-commerce and consumer behaviour. Such studies save each sector regulator looking at generic consumer issues individually, although, of course, we can still carry out sector specific studies as necessary.

In summary, our stakeholders benefit from the fact that we can draw on the enforcement expertise that OFT currently provides at a national level. We hope, therefore, that the expertise which we have highlighted can be retained in some form under the new arrangements.