

# Communications Consumer Panel and ACOD response to the DCMS' consultation on Reforming Consumer Advocacy in Telecoms

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## Overview and Summary

Communications services are integral to the everyday lives of consumers, citizens and micro businesses. The rapid rate of change in this sector and the significance of its role to people's lives and the UK economy mean that it is vital that the perspectives of consumers and micro businesses are at the heart of the debate.

This is a wide, complex landscape with regional and national variations. Collaboration, constructive challenge, facilitation of discussion informed by robust evidence and clarity of purpose must remain central to the approach to ensure that the interests of consumers, citizens and micro businesses are protected and promoted, so that the opportunities offered by existing and emerging communications services are inclusive and fair, and so that the market succeeds in meeting the needs of us all.

The Panel has considered all three options proposed in the consultation and we provide below an outline of our role, our work and its impact, to contextualise our responses to the consultation. Our work is predominantly ex-ante advocacy - behind the scenes, rather than ex-post - after the event. The Panel's ability to put forward the interests of consumers, citizens and micro-businesses at the early stages of policy development is invaluable. We recognise that investment into an organisation which can gain additional consumer insight and campaign publicly for consumers in the telecoms sector would benefit consumers, citizens and the industry. However, it is our view that this type of ex-post work should not fall upon the Panel, as others have far greater resources and experience in this area and it would risk compromising our ability to intervene and input consumer interest from early-on with the regulator and policy makers.

We therefore do not favour option 2, as we believe that Option 1 or Option 3 with a strengthened role for the panel working in partnership with a campaigning advocate (including nations variations) is likely to offer the best outcome for consumers.

An ex-ante Consumer Panel with access to sensitive information and research from a Regulator is a very different beast to an ex-post campaigning advocate. The consumer landscape needs both. Pursuing option 2 and attaching the ex-post campaigning role would weaken the Panel's connection to the regulator and diminish our ex-ante work. We shouldn't risk this.

Ex-ante aspects of postal services are currently dealt with by the Panel, the campaigning advocacy is dealt with by Citizens Advice Citizens Advice Scotland, and the General Consumer Council for Northern Ireland. This model works and provides more points of interaction on behalf of consumers. Given the current arrangements in postal services, option 1 could be a workable solution.

## The Panel's role

The Communications Consumer Panel is the independent statutory consumer advocate in the telecoms sector. Established by the Communications Act 2003 and appointed by Ofcom with the approval of the Secretary of State, we are a group of eight independent experts with substantial knowledge and directly relevant sectoral experience. We ensure the citizen, consumer and micro-business voice is represented in communications policy development. As a dedicated, sectoral expert body, we work in areas where we can add most value and prevent the most significant consumer harm. Following the alignment of ACOD (the Advisory Committee for Older and Disabled people) with the Panel in 2012, the Panel is even more alert to the interests of older and disabled consumers and citizens.

Our job is to ensure that the sector works for consumers, citizens and micro businesses - and especially people who may be in a more vulnerable position in society. We pay particular attention to the needs of older people and people with disabilities, the needs of people in rural areas and people on low incomes, and the needs of micro businesses, which have many of the same problems as individual consumers.

The communications sector is a complex and fast-moving market - and one that impacts across society and the economy. The Panel's and ACOD's work is therefore diverse and broad, covering not just all telecoms services but also aspects of post and portrayal in broadcasting. By definition this embraces everything that impacts on consumers - for example, pricing; billing; customer service; complaints handling; mobile coverage; unfair policies; privacy; digital inclusion; treatment of consumers in vulnerable situations; and so on.

It is also important to note our role in ensuring that the consumer voice is heard in relation to infrastructure. Infrastructure issues and the allocation of spectrum have wide ranging implications for consumers and citizens - affecting not only mobile coverage and broadband provision but also Freeview, radio and a panoply of white space devices.

Additionally, the Panel also has a role ensuring consumer needs are taken into account in the postal services and broadcast aspects of Ofcom's remit. It monitors and safeguards the universal postal service for letters and parcels across the UK. It ensures broadcast arrangements are accessible and inclusive - particularly subtitling and audio-description. Some elements of issues relating to portrayal in broadcast content are also included in its remit.

We carry out research, provide advice and encourage Ofcom, governments, the EU, industry and others to look at issues through the eyes of consumers, citizens and micro businesses. The Panel's remit covers the UK and, by statute, it has four members who represent the interests of consumers in Scotland, Wales, Northern Ireland and England. They liaise with the key stakeholders in the Nations to understand the perspectives of consumers in all parts of the UK and input these perspectives to the Panel's consideration of issues.

## How we work

The Panel reaches out to stakeholders, consulting publicly on our workplan each year and our work results in significant policy changes. Our role is not to campaign publicly nor

expend resources on seeking a significant public profile - we contribute expert advice to Ofcom and others based on a trusted relationship to ensure consumers' interests are high on the agenda and we do not shrink from airing issues more widely when necessary. When we anticipate consumer detriment, or identify it occurring, we work with those who can make a difference - Ofcom, Communications Providers (CPs) and UK and National Governments. Our sector specialism and expertise mean we can challenge in a constructive environment, offer comprehensive advice and influence the development of policy so it delivers for consumers and citizens. Our behind the scenes way of working means that we do not celebrate victories publicly - for us success is a question of achieving change rather than how we have achieved it.

The Panel works to influence before, during and after policy development - through a variety of methods and channels. We challenge and advise Ofcom to ensure that the interests of consumers, including micro businesses, are central to regulatory decisions. Examples of these are provided under 'Our Impact' below. Our unique relationship as a 'critical friend' to Ofcom, made possible by a Memorandum of Understanding, means we have early, confidential access to the Ofcom's thinking, research and information, much of it market sensitive; and can proactively influence decisions by making early, robust, high quality interventions. Much of our work is ex-ante, influencing policy whilst it is in development and before it is made public.

We also submit a variety of expert, detailed and evidence-based responses to a wide range of stakeholders developing policy and processes - and monitoring subsequent implementation. This is in addition to holding face to face meetings with CPs and stakeholders to discuss issues and offering advice on moving forward in the best interests of consumers. Alongside this, within a limited budget we have commissioned valuable and well-received research, often of a qualitative nature, to really bring alive consumers' experiences for policy makers and industry. These are robust studies that have led to increased regulatory focus in a number of areas including;

- complaint handling and customer service;
- access services in broadcast and on-demand content;
- the privacy of consumers' data;
- the requirements of older and disabled telecoms consumers;
- micro-businesses' experience of communications services; and
- digital participation.

The level of trust we have fostered in the sector enables us to effectively influence CPs and hold Ofcom to account. We engage with a range of stakeholders - including, for example, the Alternative Dispute Resolution (ADR) schemes and the main CPs, where we challenge their assertions from an informed position. The feedback we get from stakeholders tells us that what we do is significantly valued by Ofcom, industry and charities. Our expert advisory value has been recognised at the most fundamental level: in its review of the General Conditions, Ofcom required that from October 2018, CPs consult with the Panel on a wider basis, including a particular emphasis on consumers in vulnerable circumstances.

A key part of the Panel's role is to identify potential market failures and make the case for changes so that consumer detriment is prevented, reduced or eliminated. We also use our expertise to advise on the issues that might affect consumers in the future, where

evidence from experience is unavailable. Equally important is anticipating potential areas of detriment as Ofcom develops consumer policies, so that detriment is prevented in the first place. We are currently significantly involved in the development of policies addressing the potential for consumer detriment in relation to the Future of Voice.

The Panel's wide remit enables it to identify sometimes diverse projects that are apparently unrelated but raise similar consumer issues and ensure that there are connections made between them. Its structure means that it can respond swiftly to emerging issues - it meets monthly but conducts much of its business electronically between meetings. Panel members work between three and four days per month (five for the Chair) and bring a UK-wide perspective. Our wide remit, but limited budget means that we seek to be efficient as possible in discharging our statutory duties. We have secured important policy and process changes and delivered high quality advice and research under a tight resource envelope – particularly given the range and complexity of the issues and the variation in consumer experiences across the UK. In 2018/19, the Panel received a 50 per cent budget uplift - we consider this to be a recognition of our contribution to the telecoms sector in bringing the consumer voice to the forefront of Ofcom's thinking, and in turn, the industry.

## Our impact

Our work on complaints handling and customer service shows what an effective consumer advocacy body inside the regulatory environment, such as the Panel can achieve. The Panel highlighted significant problems with complaints handling in the telecoms sector in its 2013 research *Going Round in Circles*. We pushed both Ofcom and CPs to improve their performance in this area and it remains something that we monitor closely. Ofcom opened an Enforcement Programme into complaints handling in 2013 and now actively monitors CPs' compliance with complaints handling rules, including access to ADR and customer service more generally. Ofcom subsequently investigated and fined three CPs for not complying with complaints handling rules including a £1 million fine for EE, £925K for Vodafone and £250K for H3G.

The Panel's sustained argument for free Caller Line Identification (CLI) gathered significant support and we were delighted by Ofcom's decision to mandate this requirement in its revised General Conditions. This not only saves individual consumers money on a monthly basis, but also gives them an additional tool in the fight against nuisance calls.

Our involvement in the Nuisance Calls and Texts Task Force on Consent and Lead Generation convened by Which? at the request of the Department of Culture, Media and Sport (DCMS), led to the consideration and introduction of new powers given to the Information Commissioner's Office (ICO), enabling it to hold company directors personally responsible and fined up to £500,000.

The Panel has used its research and its unique relationship with Ofcom to persuade the regulator to make tackling mobile not-spots one of its organisational priorities and the situation improved as a result. We also made the case for better consumer information, which is now available via Ofcom's website and its coverage checker app. We continue to press both Ofcom and government to consider national roaming as a rapid and cost-

effective solution to the remaining persistent coverage issues which continue to be a cause of significant detriment to both consumers and micro-businesses.

We are about to publish independent, qualitative research to understand how CPs engage with people on lower, sometimes unpredictable incomes (such as zero-hour contracts). We wanted to learn more about not only the barriers, but any examples of good practice that we could share with providers and policy makers to improve their approaches. We will publish the research shortly and will share key findings and our recommendations with industry, policy makers and consumer groups across the UK in the coming months.

## Consumer advocacy for communications

The communications market is characterised by rapidly changing complex products delivered in a competitive market with many varied players. The telecoms sector presents different challenges to those in utility sectors such as energy and water; in many ways it is closest to financial services in its complexity. An appreciation of the complexities of the market is vital if progress on consumer service is to be made - different services within the sector present different challenges. Ofcom's recent [Comparing Service Quality 2018](#) report (published in April 2019) noted, while overall satisfaction among mobile customers (93%) was in line with that among current account customers (94%), and above gas (87%), electricity (87%) and landline customers (86%), satisfaction among broadband customers (83%) was below all other services.

To be effective, consumer advocacy for communications needs to continue to incorporate a high level of sector specific expertise. Whilst cross-sectoral analysis provides a useful seam of best practice to mine and evaluate, highly-specialised expertise, experience and a profound understanding of the communications sector, allow us to robustly challenge telecoms policy development from a position of strength, supported by sound evidence and resulting in pragmatic actions based on real world solutions.

Part of our role is to facilitate the input of the consumer and citizen voice into policy development from a wider constituency. Consultations provide a fundamental opportunity for policy-makers to hear the consumer and citizen voice and, to improve the representation of these voices, we reviewed how Ofcom consults. Our review identified a number of recommendations, many of which were adopted including for Ofcom to create a consultations mailing list. This promotes transparency to consumers and their representatives in formal regulatory processes, enabling interested parties to be notified of the consultations underway and strengthening the impact of the consumer and citizen voice in Ofcom's deliberations.

The Panel is a cost-efficient advocacy body Our access to Ofcom's research and data (and early unfettered access to its policy thinking) helps shape both our and Ofcom's consumer research work, avoiding duplication and adding value, so that both the Panel and Ofcom achieve maximum value from the research. We have low overheads, being based at Ofcom and benefitting from its support services.

## Working in partnership

The Panel's focused work programme enables it both to critique and to influence the work of Ofcom. As noted above, our unique relationship as a 'critical friend' to Ofcom means

we have early input into Ofcom's thinking and information, ensuring that consumer interests are brought to the forefront of policy development. The Panel's ability to hold Ofcom to account means we can provide a degree of assurance to the Board of Ofcom about the regulator's performance in the protection of the consumer interest. The pace of convergence and innovation in the communications sector means that new issues of importance to consumers will continue to emerge and policy needs to address these new opportunities - and challenges. It is important for there to be a strong, informed consumer voice in this debate. The Panel values its relationships across the consumer landscape, including with Citizens Advice, Which?, Citizens Advice Scotland and GCCNI.

In our [response to the BEIS's Green Paper on Modernising Consumer Markets](#), the Panel highlighted the need to strengthen the consumer voice across the UK. We recommended further collaboration between appropriate consumer bodies, organisations, relevant charities and NGOs, to ensure the voices of vulnerable consumers are clearly heard by Ofcom, accompanied by the FSB to represent the interests of micro-businesses. We proposed a series of measures that we believe will achieve this objective and are now taking these proposals forward:

**An Industry Forum** - to highlight issues, debate solutions and disseminate successful approaches and best practice. Providers have been willing participants in the meetings, keen to explore and discuss new approaches and learn from other sectors. The Forum is a constructive space for them to meet and discuss challenges in improving the consumer experience. The Panel invites external speakers from other sectors - who, framed by the providers' needs - are able to inform and inspire better practices in the communications sector.

**Consumer Stakeholder Hub** - following initial meetings between the Panel Chair and consumer advocacy bodies we are in the final stages of formalising the Consumer Stakeholder Hub. It will be a regular forum for consumer bodies to ensure the voices of more vulnerable consumers are clearly heard by the regulator, accompanied by the FSB to represent the interests of micro-businesses. We are continuing to work with the consumer representative bodies of all parts of the UK and will work closely with any future organisations in the area. We recently responded to the latest call for views on the Consumer Scotland Bill and have a strong existing relationship with the General Consumer Council for Northern Ireland as well as with Welsh and English consumer stakeholders.

**Nations Hubs** - roundtable meetings to strengthen the consumer voice across the UK by ensuring input from across the devolved nations into telecoms advocacy are scheduled to take place this quarter and will convene a wide range of stakeholder representatives in their Nation to inform the development of Panel advice to governments, Ofcom and providers.

## Future consumer advocacy: models of representation

The Essential Services Access Network conference held in 2016 examined a variety of models used across different sectors and compared the merits of three models of consumer representation: a consumer body within the regulator, a standalone consumer body and a consumer voice within the company. It concluded that there was no one solution - rather a variety of models working in tandem achieved impact at different



intersections in policy development. Each complementary model of consumer representation has its merits in working to ensure that the consumer voice is heard.

It is vital that consumer representation is underpinned by statute, and adequately resourced, if it is to be effective. *Championing Consumers: The story of consumer advocacy in Scotland from 1975 to 2014* notes that the final report published by Consumer Futures in 2014, *Consumer Protection, Representation and Constitutional Change in Scotland* set out a number of key principles for a consumer-focused consumer protection and representation framework. This framework has four pillars: consumer advocacy; consumer advice and education; consumer enforcement; and consumer redress. The principles were largely based on the work and experience of Consumer Futures and its predecessors. They stated that an effective consumer advocacy body should:

- be independent and seen to be independent;
- be secure and sustainable;
- have statutory powers to protect consumers;
- be accountable to funders, the Scottish Parliament and the public;
- be sufficiently well-funded to carry out its role effectively;
- cover all sectors which affect consumers;
- represent the interests of all consumers in Scotland, with a particular responsibility for those who are most vulnerable or disadvantaged;
- be focused on prevention;
- have a strong research focus to support robust consumer policy conclusions; and
- retain an outward focus, representing the consumer interest at appropriate national and international policy levels, and in doing so maintain effective links with consumer bodies elsewhere in the UK and overseas.

Whether advocacy arrangements achieve their full potential depends on several factors. These include:

- sector-specific expertise and involvement, especially in a complex sector like communications;
- the statutory obligation for the regulator to consult with the advocacy body, in confidence, at an early stage before policy options are finalised;
- the capacity to undertake independent research;
- the capacity to anticipate and explore emerging issues and research in order to shape policy with regulators and government and to forestall citizen and consumer problems before they arise;
- the capacity to meet with and hold CPs to account;
- credibility and trust;
- having a strong consumer voice across the UK with links with consumer advocacy bodies in the Nations, which might adopt different models depending on their specific circumstances and the existing institutional arrangements;
- the powers to call for information and initiate ‘super complaints’;
- adequate resources/secure funding - to allow long-term planning in a complex sector; and
- a focus on efficiency - demonstrating real value for money.

For consumer advocacy arrangements to work there must be collaboration but independence in an environment where advice can be given without fear or favour. The

current landscape has a number of different points that all allow for interventions on behalf of consumers. Effective consumer advocacy needs to work across the spectrum of policy development - both ex-ante and ex-post. As noted above, much of the Panel's work is ex-ante - early intervention in policy design is useful in avoiding unintended consequences, stopping or reducing likely detriment and working to ensure that a potential problem doesn't occur. Ex-post provides a framework to support consumers when things have gone wrong - a framework that we believe would considerably benefit consumers in the telecoms sector.

In considering advocacy arrangements in the telecoms sector, we believe the government should reinforce the unique benefits of the Panel model within any new framework that may emerge - if indeed that is the outcome of the review. Panels often have sight of commercial information, or government policy information that is unlikely to be shared with other campaigning consumer bodies. Retaining the ex-ante work of a panel challenging regulation is an accepted and valued part of the work of Financial Services regulator, CCA, and IPSO the press regulator. It should be retained in the telecoms, broadcasting and postal sector.

Consumer bodies, including Citizens Advice's local network, provide valuable support for individual consumers who have experienced a problem. Local intelligence based on those reported problems is extremely valuable, but there is a risk that it could under-represent the issues experienced by harder to reach consumers. It is always ex-post - 'after the event' - with detriment already experienced when our ambition is to prevent detriment, by ensuring policy design that has the consumer interest at its centre.

The Panel's statutory remit does not include providing direct support and advice to consumers and we believe that there is space for an advocacy organisation to provide that service. However, there is a risk that this service will be hampered by an inability to deal with consumer queries and problems that extend beyond the telecoms sector and into unregulated sectors. We suggest that this requires further consideration by DCMS and other departments.

We agree that the new arrangements to support consumers - particularly vulnerable consumers - should complement the work of the Ofcom Consumer Contact Centre Team. Aside from its ability to take calls about broadcasting matters, the team benefits from information and training from within Ofcom, which helps them to assist with queries, signpost callers to relevant information and where relevant highlight consultations where callers can input their own views and concerns. Ofcom uses the data from the team's communications to identify emerging trends and inform its enforcement and policy work. This is a key area that must be taken into account in any new arrangements. It is vital that data collection on consumer issues is accurate, consistent, reliable and that is possible to highlight multiple layers of detriment.

In the area of communications, a large number of complaints are also routed directly to the regulator, in addition to those received by the ADR schemes. A holistic overview of these sources of evidence both allows advocates and the regulator to identify, and the regulator to act upon, any immediate issues of concern in addition to those trends which become more problematic due to their persistent nature over time and to look at cross-cutting issues as well as specific issues.



As noted above, the Panel commissions high quality, robust research which has helped to shape the policy debate and avoids duplication of effort and resources. We would invite further government consideration of the role of any new body in commissioning research in relation to making the best use of available funding and ensuring it does not duplicate the work carried out by Ofcom or others.

It is vital that there are strong links between consumer advocacy bodies in the Nations, which we understand might adopt different models depending on their specific circumstances and the existing institutional arrangements. Consumer policy is a devolved power in Northern Ireland with the exception of some reserved matters such as telecoms and broadcasting. Strong links between consumer advocacy bodies in NI and GB are essential, especially on issues such as communications policy which is a reserved power and particularly in the light of the new powers around consumer advice and consumer advocacy devolved under the 2016 Scotland Act.

## Conclusion

The Panel does not favour a scenario in which it becomes the sole consumer advocate for the telecoms industry, undertaking both ex ante and ex post work. The motivation of an ex-post public campaigning advocate would be out of tune with our ability to access sensitive information and research from Ofcom. To attach the ex-post campaigning role to our work is likely to have a detrimental impact on our relationship with Ofcom, and diminish the highly valued ex-ante work we undertake.

It is our view that the consumer landscape needs both ex-ante and ex-post work and we believe a strengthened role for the panel, working in partnership with a campaigning advocate (including nations variations) is likely to offer the best outcome for consumers.