

Meeting of the Ofcom Advisory Committee for Scotland held at the Ofcom Scotland Offices, 125 Princes Street, Edinburgh

Thursday, 14 September 2017

Present:

Laura Alexander – Chair ACS
Liz Leonard - ACS
John Trower – ACS
Peter Peacock - ACS
Philip Schlesinger – ACS (Content Board Member for Scotland)

Lindsey Fussell - Ofcom
Glenn Preston - Ofcom
Alan Stewart - Ofcom
Jonathan Ruff - Ofcom
John Jackson - Ofcom
Steve Gettings - Ofcom

Action

1. Welcome and apologies

1.1 Ian Mackay was unable to attend this meeting and sent his apologies.

2. Minutes of the previous meeting of 14 June, 2017

2.1 GP suggested that para 7.1 should read “requested an update on the Scottish Government’s Consumer Taskforce”.

2.2 JT suggested that we revise the wording at 6.3 to “highlighted as an important consumer protection issue.”

2.3 ACS members agreed that a member of the Ofcom Scotland team should provide the Committee with an update on the BBC Performance Consultation.

3. Matters arising

3.1 No matters arising that required further discussion.

4. Directors Report

4.1 GP referred to some of the events reported, including attendance at a BT Scotland board meeting and a meeting with Channel 4.

4.2 The First Minister’s Edinburgh TV Festival speech was noted and it was agreed to send ACS members Ofcom’s Diversity Report. The Scottish Government’s seed funding of the National Film and Television School was noted with LL querying whether it raised state aid issues.

4.3 GP mentioned the contrasting positions of the UK and Scottish Government on the broadband universal service commitment. The Governments were

meeting to discuss, and it was important for Ofcom to know what was happening to inform WLA work.

- 4.4 GP pointed to the specific mention of Ofcom in the Scottish Government's "Programme for Government", announced on 5 September. The SG was asking Ofcom to regulate in a different way in Scotland and this would need to be considered as part of the Annual Plan process.
- 4.5 GP advised ACS of planned engagement with the Clerk to the Scottish Parliament's Rural Economy and Connectivity Committee. He was also expecting the Culture Committee would approach Ofcom for input into its inquiry into the screen sector. LL suggested that if the ACS wished to respond to this, it could be discussed at the November meeting. GP updated ACS on the meeting with the clerk to this committee and it looked like Ofcom would be invited to return to give evidence on its BBC-related work towards the end of the year, possibly during the first half of December.
- 4.6 ACS members agreed there should be an update on Brexit at all ACS meetings from now on.
- 4.7 AS said he would be in touch with PS and LL about the MG Alba/Ofcom protocol. Ofcom was also reaching the stage of contacting the SG about MG Alba board member terms which were due to end next year.
- 4.8 AS fed back to ACS his conclusions from informal consideration of STV's local licence obligations ("STV2"). LL suggested speaking to the local educational institutions such as the University of the West of Scotland. LL requested a copy of AS's monitoring notes.
- 4.9 GP updated ACS on the refit work to the Edinburgh office which was due to be carried out during the first half of October.
- 4.10 PP asked whether it had been possible to organise a charity-related event to coincide with the Edinburgh Festival fireworks. GP advised that he had held discussions with Macmillan Cancer Support about their research programme, but Ofcom's insurance would not have covered holding a third-party event (something that would need to be looked at again in the coming months).
- 4.11 GP updated ACS on recent engagement with the General Medical Council.
- 4.12 ACS was advised that the new Communications Consumer Panel member for Scotland, Amanda Britain, would be attending the November meeting and that Emma McFadyen, attending the September meeting via VC, would be providing support to Nations work from Ofcom's Secretariat.

5. Consumer Policy update

- 5.1 LF provided ACS members with a general overview of Ofcom's approach to developing effective consumer policy:

- **Driving competition and investment:** LF outlined some of the action taken by Ofcom to stimulate infrastructure investment at wholesale/supply side markets
 - fibre to the premises,
 - agreement with Openreach on legal separation
 - our involvement in a potential Universal Service Obligation for broadband services
 - innovative approaches to setting mobile coverage obligations

- **Empowering consumers:** LF described some of the key work areas for the Consumer Policy team, these included:
 - developing a better understanding of the causes of low consumer engagement
 - comparing service quality between communications providers
 - switching across communications services
 - broadband speeds (Code of Practice)

- **Enforcement:** LF explained some of the key work areas for the Consumer Protection team, these included:
 - protecting consumers
 - automatic compensation
 - landline only review
 - directory Enquiries
 - nuisance calls
 - investigations and enforcement of our General Conditions of Entitlement

5.2 There was a brief discussion on the specific reasons for low consumer engagement. JR agreed to share Ofcom’s research (conducted by Jigsaw) with PS and other ACS members.

5.3 LL suggested that some older people had the necessary digital skills to engage with some of the new tools/measures that Ofcom was promoting in its General Condition review.

5.4 PS questioned whether the balance was right between the need for increased consumer engagement and obligations placed on communications providers to pro-actively provide information to consumers. He suggested that Ofcom needed to build in these considerations into its research.

6. General Policy update

6.1 MS updated the ACS on the Sky/Fox decision by the Secretary of State and explained that the case would now be referred to the CMA on both plurality and standards grounds.

6.2 There was a brief discussion on how the proposed voluntary USC deal between BT and UK Government was viewed within Parliament. ACS members agreed to submit a response to the relevant DCMS consultation.

7. Brexit update

- 7.1 A verbal update was given covering the potential impact on Ofcom and the sectors it regulates. Ofcom was providing advice to the UK Government.
- 7.2 PS requested more detail on the impact on the AVMS Directive and effects on licensing and trade. ACS was advised that one of the most significant issues was around country of origin. There were a lot of matters around this needing resolved before the UK Government could take a position. There were already impacts as companies were re-locating their licensing arrangements. Ofcom was speaking to its major stakeholders but there was little that could be said with any certainty, especially for companies with licences that were Europe-facing.
- 7.3 PS referred to the potential implications for companies' terms of trade caused by country of origin/destination changes. ACS was advised the situation was not yet clear, but Ofcom was aware of its importance.
- 7.4 LA signalled that ACS would like to invite the team back for an update at a later stage.

8. Connected Nations (covering USO, R100, IoT)

- 8.1 JR advised ACS of the highlights likely to feature in the next Connected Nations report. Ofcom was planning on using new definitions, for example applying to mobile coverage, that would match consumer expectations more closely.
- 8.2 JT asked questions about the thresholds applying to different operators and whether there would be information about the performance of different devices. ACS was advised it was possible Ofcom could move to operator-specific thresholds and had published research on handset compatibility in 2015 – an area that was becoming more important.
- 8.3 ACS discussed how broadband speed performance would be captured. The team advised that the data on actual broadband speeds was derived mostly from the Openreach network, on a line by line basis. The speeds recorded on the Virgin network were approximations.
- 8.4 On the subject of granularity of data for rural areas, LA expressed concern this would not be sufficient to assess the impact on the last 5%. ACS would like to see the data broken down according to SG definitions of rurality. ACS was advised that one issue for Ofcom was to ensure the data was valid on a UK-wide basis. The definitions used were good for comparisons between nations but not within each nation. It was agreed that the Ofcom team would explore this further.
- 8.5 ACS was advised of the findings that had already come into Ofcom, including provider-specific data.
- 8.6 ACS discussed Scotland's performance in terms of speeds above 10Mbps and of 4G indoor coverage for which Scotland had recently improved at a higher rate than the UK as a whole. JT commented on the roll-out of EE

infrastructure and GP advised that the opening up of its mast sites was subject to normal commercial negotiation.

- 8.7 JR referred to the different approaches to superfast broadband adopted by the UK and Scottish Governments and the risks caused for Ofcom's approach to regulation. [Redacted from the minute]
- 8.8 LL thought it should be clear by now that it was not possible have an economy based on a speed of 10Mbps and Ofcom could advise government this was the case. LF said at the time Ofcom supported the notion of 10Mbps it knew this would change and need future proofing. It was possible its suitability would be reviewed in two to three years.
- 8.9 ACS discussed issues around universality. GP said the UK Government had referred to the possibility of a new baseline speed in five years without saying what that should be. PS and JT described the potential of the situation to cause political divisions which could affect the reputation of Ofcom in Scotland. This should be factored into the risk assessment of the Connected Nations publication.
- 8.10 LA recommended focussing on two consultations – one from the DCMS on the USO which LA had started work on, and the other from Ofcom on its WLA market review which looked at cost recovery. JR offered a discussion on the Ofcom consultation.
- 8.11 [Redacted from the minute] GP said there was an opportunity to raise these issues at the Nations Committee on 17 October. JR advised that the Connected Nations report was due for publication in mid-December and that there would be a related stakeholder event.
- 8.12 [Redacted from the minute]

9. 5G update

- 9.1 JR summarised Ofcom's work on 5G and the role Ofcom would play. He also mentioned the upcoming 2.3/3.4 GHz Spectrum Auction and how the legal challenge to our auction parameters may slow the rollout of 5G in the UK. Lastly, he spoke about Steve Unger and Sharon White's upcoming visits to Scotland. Members of the ACS raised the issue that the current lack of fibre backhaul in Scotland limited the ability to roll out 5G. JT agreed to arrange a meeting between SFT, Scottish Government and Ofcom to discuss 5G.

10. BBC Scotland BCA

- 10.1 The team spoke about the work Ofcom were doing in regard to the BBC Scotland BCA. They explained that Ofcom was still waiting on the results of the BBC's PIT, but would need to be ready if the BBC Board approved the new channel. They then outlined the process Ofcom would undertake – the initial short assessment (6 weeks) to determine if a full assessment was needed, then the process for a full competition assessment ("BCA" of up to 6 months) and what we consider as part of that.

- 10.2 PP asked where the public value assessment would fit into this work. It was explained that Ofcom's assessment would be available in the consultation document several months into the process. Furthermore, we would not conduct a public value assessment – that is the purpose of the BBC's PIT. Ofcom's main concern with the BCA is the market impact of the channel.
- 10.3 LL queried where the second BBC Radio Scotland Channel would fit in. ACS were advised that it would be a separate proposal which would go through the same process as the TV channel.
- 10.4 There were several questions from the ACS about the political and reputational impact if Ofcom rejected the proposal based on it causing a significant market impact and how we would manage that situation.
- 10.5 The team described the end of the BCA process where there are 3 outcomes depending on the market impact – approval, rejection or ask the BBC to change specific aspects of their proposal. They agreed with the ACS that a coherent communications strategy would be needed to ensure that both industry and the general public totally understand Ofcom's role in the process.
- 10.6 LL then questioned how the channel would affect the BBC Operating Licence if it was approved. It was explained in that instance, Ofcom would then decide the formal obligations to be applied to the service.

11. Communications Consumer Panel /ACOD update

- 11.1 ACS members were given a short update on the activities of the Communications Consumer Panel and Advisory Committee for Older and Disabled People.
- 11.2 Some of the main highlights included attendance at:
- a roundtable on subtitling in June 2016
 - an expert workshop on citizen/consumer engagement with the Internet of Things at the British Computer Society
 - Ofcom's BBC Performance diversity stakeholder event
 - a meeting with DCMS to discuss areas of concern affecting consumers, citizens and micro businesses
- 11.3 ACS was also updated on:
- the appointment of the new CCP Member for Scotland (Amanda Britain)
 - CCP involvement in the Scottish Government's Nuisance Calls Commission
 - research published by the Phone-paid Services Authority (PSA) on customer care and complaints handling

12. Content Board

- 12.1 PS Updated ACS on the Content Board meetings from July 11 and September 12, covering a range of topics including – the Fox/Sky merger,

editorial standards, diversity, BBC MG Alba operational plan, Brexit and content monitoring.

- 12.2 LL suggested that ACS invite Clare Enders (Enders Analysis) to a future ACS meeting to talk about research commissioned by Ofcom covering the EU Referendum and the US Presidential Election..

13. Nations Committee

- 13.1 LA outlined the most recent Nations Committee Update including; Content policy highlights, and a change in the meeting pattern considering the new nations board members.

- 13.2 LL thought it would be worth discussing the indigenous language policy at Nations Committee. GP will pick it up with DoNs.

14. AOB

- 14.1 GP advised that next year's Annual Plan process had started, and the document would take the same format as last year. It would be in a fuller form by the time of the November ACS meeting with the draft plan published before the end of the year. The Scottish Government was expected to submit comments.

- 14.2 In the view of ACS, the context would be more political with the uncertainty caused by Brexit meaning the potential for more scrutiny. Another issue was the new BBC Scotland channel, taking into account a general lack of awareness of the process and potential impact on BBC/MG Alba, with the related consideration of the SG's funding of Gaelic broadcasting. This was linked to governance issues that could lead to pressure on Ofcom to develop a more symmetrical approach to indigenous languages. It was agreed to circulate views on the Annual Plan by email.

15. Dates of Future 2018 Meetings:

- 15.1 Wednesday, 21 February
Tuesday, 1 May
Thursday, 21 June
Wednesday, 19 September
Tuesday, 27 November